

# The employer/employee relationship and independent contractors

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1. In [Andrew Carr v Brands Transport Limited \[2022\] EWHC 3167 \(KB\)](#) the Claimant was the sole director and 80% shareholder of the Defendant company. He suffered catastrophic brain injuries when he fell some 14 feet onto concrete whilst loading a car on a transporter that was defective due to the fault of an independent contractor. The court held however that the Defendant was liable with the Claimant being 40% contributorily negligent. The lengthy judgment is a helpful review of the authorities in claims of this nature and serves as a good reminder that:
  1. a company's sole director can also be an employee;
  2. a company can be liable for the negligent acts of an independent contractor; and
  3. the Brumder defence won't always bite.
2. Knowles J confirmed that the determination of whether someone is an employee or an independent contractor requires a factual assessment. In this case he concluded that the following factors supported the Claimant being an employee: the Claimant paid income tax on a PAYE basis; employee NI was paid; the Defendant had employee insurance in place; the way the Claimant was treated by the Defendant's accountants; the existence of an unsigned contract of employment specifying the Claimant to be an employee; the Claimant's partner considered them to be employees of the Defendant; and the Claimant's job title on Companies House was "manager". Accordingly the court held that the Defendant owed the Claimant a duty of care as its *employee*. Knowles J said "A company is a distinct legal personality from its directors, and a director can also be an employee".
3. Had the independent contractor been an employee there would have been little doubt that the Defendant would have been vicariously liable. How then was the Defendant liable in this case? The court found that the duty of care here was non-delegable on the basis that:

- (a) the Claimant was vulnerable as he did not have technical and/or employment experience on transport issues and depended upon the protection of his employer against the risk of injury;
  - (b) the Defendant had a positive duty to protect the Claimant from harm given the specialised nature of the transport requirements;
  - (c) neither the Claimant, nor his partner, could perform the obligations required of the independent contractor;
  - (d) the delegated function (ensuring that there was a full and accurate maintenance planner of the transporter) was an integral part of the Defendant's positive duty; and
  - (e) the independent contractor was negligent not in some collateral respect but in the very function delegated to him.
4. Practitioners will be familiar with the case of *Brumder v Motornet Service and Repairs Ltd* [2013] 1 WLD 2783 where the claim for injuries by Mr Brumder, as sole director, was dismissed. Knowles J distinguished this case on the basis that although the Claimant was the Defendant's sole director he was not the only person through whom it could act and his attitude to health and safety, unlike Mr Brumder's, was assiduous.

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