



**IN THE COUNTY COURT**  
**SITTING AT OXFORD**

Case No: G16YJ720

Oxford Combined Court Centre  
St Aldates  
Oxford  
OX1 1TL

Date: 06/12/2022

Before :

**DISTRICT JUDGE LUMB**

Between :

**LEE REED**

**Claimant**

**- and -**

**CARL STEVEN BOSWELL**

**Defendant**

-----  
-----  
**The Claimant appeared in person assisted by Mr Peter De Feu of Counsel  
Ms Ashley Blood-Halvorsen (instructed by Bower & Bailey) for the Defendant**

Hearing dates: 4 November 2021, 1 April 2022  
-----

**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
**DISTRICT JUDGE LUMB**

**District Judge Lumb :**

1. This small claim is a cautionary tale for litigants in person who consider that they have been wronged by another person and, perhaps encouraged by a popular perception that the Small Claims Court is an easy way to seek redress, launch into court proceedings without specialist guidance or a proper understanding of what may be required to enable the court to determine the matter.
2. The so-called Small Claims Court is not a separate division in the court system. Small claims are heard in the County Court and are subject to the same law and general procedural requirements (subject to a few specified exceptions largely not relevant to this case) as claims in excess of £10,000 in value.
3. There is some leeway provided in the Civil Procedure Rules (CPR) for the trial judge to adopt a more informal approach to the conduct of the final hearing at trial where the judge considers it would be helpful or appropriate. This is often the case where both parties are in person, inexperienced in presenting cases before the court. This was not the position in this case.
4. The Claimant, although a litigant in person, is a solicitor, albeit one who throughout a long legal career has specialised in criminal law. She was also assisted by an in-house barrister from her own firm, again a criminal specialist, who conducted the cross examination of the Defendant.
5. The Defendant was represented by counsel both at the trial and at the interim stage of the claim instructed by solicitors on the record as acting for the Defendant.
6. There was detailed written expert evidence involving the examination of the parties' mobile phones and, very unusually, witnesses were required to give evidence on oath given the serious allegations of deception and dishonesty made by the Claimant as part of her claim.
7. In short, this case was as far removed as it could have been from one that was suitable for an informal final hearing.
8. The background to the claim concerns a Mr Matthew Fernandes who was originally a tenant of the Defendant, or more precisely one of his companies, of a flat at 364 Banbury Road, Oxford who then became a tenant of the Claimant at 61 Spencer Avenue, Yarnton.
9. At least with the benefit of hindsight, and perhaps on his own admission, Mr Fernandes proved to be a disastrous tenant who from time to time failed to pay his rent punctually or at all, caused damage to the rented properties and engaged in antisocial behaviour. The Claimant alleges that the Defendant provided a favourable reference for Mr Fernandes without which she would not have taken him on as a tenant and she seeks to claim damages for the losses which she says she suffered as a result of her reliance upon the alleged reference. The Defendant denies that he provided any reference at all.



10. At the outset of the trial, I expressed my concern to the parties about the way in which the Claimants claim had been pleaded. The brief details of the claim at the start of the claim form and the particulars of claim endorsed on the claim form running to only 5 lines can be set out in full as follows;

*“brief details of claim*

*Mr C S Boswell knowingly made an untrue statement of fact which induced Mrs L Reid to enter into a contract with Mr M Fernandes from which contract she suffered financial damage.*

*Value*

*£8833.92*

*Particulars of Claim*

*Mr C S Boswell gave Mrs L Reid a favourable reference and a sum of money purporting to be a deposit relating to Mr M Fernandes knowing it to be false and which induced her to give Mr Fernandes possession of Flat 61 Spencer Avenue Yarnton OX5 1NQ and which resulted in substantial financial damage to her. Such financial damage was reasonably foreseeable by Mr Boswell given his poor experience with Mr Fernandes as a tenant of Mr Boswell's flat at 364 Banbury Road OX2 7PP.”*

11. These scant particulars are wholly insufficient, they do not even specify the cause of action giving rise to the claim as a matter of law and it is regrettable that at the allocation hearing at the outset of this matter they were not struck out and the Claimant required to file full and proper particulars of claim in compliance with paragraph 8.2 of the Practice Direction to CPR Part 16 namely:

*8.2 the Claimant must specifically set out the following matters in his particulars of claim where he wishes to rely on them in support of his claim:*

*(1) any allegation of fraud*

*(3) details of any misrepresentation*

*(8) any facts relating to a claim for mitigation expenditure.*

12. Quite simply, the Claimant's case completely fails to set out with sufficient particularity the alleged full factual circumstances relied upon to found a claim. In normal circumstances, this will often prove fatal to the claim. Ms Blood-Halvorsen on behalf of the Defendant seeks to take this pleading point. At the very least, she urges the court to adjudicate the dispute between the parties on the basis of how it has been pleaded. I accept this latter submission. I am not, however, prepared to dismiss the claim on the pleadings given that both parties indicated to me at the outset of the trial that they would



rather press on with the hearing on the basis of what was available rather than the court giving further directions to correct the mess that the claim had become.

13. In any civil claim, even the most straightforward and low value small claim, the burden of proof remains on the Claimant to satisfy the court of each and every element of her claim to the appropriate civil standard of proof namely on the balance of probabilities. The Defendant does not need to prove anything. If the Claimant fails to satisfy the burden upon her, her claim fails.
14. The evidence available to me at trial comprised a bundle which together with a short supplementary bundle ran to approximately 400 pages. This included the witness statements of the parties and witnesses who gave oral evidence and the 3 expert reports in relation to the mobile phones. Of these, the report obtained from Matthew Jackson by the Claimant and that of Anthony Smith obtained by the Defendant were not admissible as expert evidence but by order of District Judge Devlin could be relied upon as factual evidence. The expert evidence for which permission was granted was that of the single joint expert, MD 5, dated 16 April 2021.
15. Oral evidence was given by the parties, the Claimant's life partner, Mr Goodwin, as well as Mr Fernandes. Other written witness statements were provided which are admissible at a small claims final hearing even if the witness themselves is not called to give oral evidence. These included statements from Mr Barter, a private investigator and former police officer instructed by the Claimant which did not really take matters any further forward and the statement by Joshua Beadle who had been the former tenant of the Claimant at 61 Spencer Avenue and who was also at that time an employee of the Defendant. Little weight should be attached to the statement of Mr Beadle given that he did not attend the trial to give oral evidence nor be cross-examined upon his evidence.
16. Due to other cases in my list, the trial started later than the intended start time and the matter had to be adjourned part heard at the conclusion of the Claimant's case. Regrettably, due to availability, the adjourned hearing took place some months later when the Defendant's evidence was heard. The matter was then adjourned for the parties to prepare written closing submissions with a view to this reserved judgment being handed down in due course.
17. In reaching my decision, I have considered all the written and oral evidence as well as the skeleton argument on behalf the Defendant produced at the outset of the hearing and the parties written closing submissions. I do not propose to go through all of the evidence in any detail but I do set out below the findings of fact that I have made and brief reasons for those findings and the effect of the application of those findings to the relevant law.
18. Even though the Claimant failed to specify the cause of action in law upon which her claim is based the Defendant has assumed that this is based upon the tort of deceit. This is a constructive approach to a poorly set out claim and, in my view, the correct one.
19. In order to succeed in a claim based on the tort of deceit the Claimant has to prove to the civil standard each and every element of the tort. There are 6 elements that the Claimant must satisfy namely; was there a statement and if so, when was it made?; Was that statement false?; Did the maker of the statement know that it was false or was he



reckless as to its truth?; Did the maker of the statement intend the Claimant to rely on it?; Did the Claimant rely on that statement?; Has the Claimant suffered loss by reason of such reliance?.

20. Taking each of these in turn, my findings are as follows;
21. was there a statement and if so, when was it made?
22. The pleaded case in the Claim Form does not state with any particularity how the statement was made, whether orally or in writing, what the precise wording of the statement was or the time and date on which it was made. This is only marginally improved in the three witness statements of the Claimant but beyond some vague assertion that the Claimant gave a positive reference no real particulars of what was said in the alleged telephone call is ever set out. The alleged time and date of the telephone call only emerged in the Claimants oral evidence during cross examination which was really far too late. The Claimant has been unable to produce any telephone logs to prove that the call was made. This could have been done but was not.
23. The Defendant denied that any such telephone call took place. I found the Defendant to be entirely consistent in his evidence that there was no such telephone call. The Claimant's account of what was said in a telephone call was inconsistent even in different paragraphs of her own first witness statement. In cross-examination she was taken to paragraph 24 at page 63 of the bundle and confirmed that that was a full account of the conversation. She was then taken to paragraph 5 page 61 of the bundle which included the extra detail in relation to Mr Fernandes having not caused any antisocial behaviour
24. I accept the evidence given by the Defendant in relation to his not being aware of the state of the flat until after Mr Fernandes moved out when a formal inspection was carried out. Mr Fernandes had moved out before the six-month routine inspection had been due to take place.
25. I also accept the evidence of the Defendant that Mr Fernandes initially had paid the shortfall of his rent over and above his benefit payments on time initially and latterly technically late when the due date for the rent was changed at Mr Fernandes request.
26. The evidence of alleged antisocial behaviour while at 364 Banbury Road was limited to the playing of relatively loud music during office hours, a misunderstanding over bin collection and the leaving of rubbish in common parts and a minor disagreement over the parking of Mr Fernandes car. Taken together, these barely amounted to actionable antisocial behaviour although the Defendant did warn Mr Fernandes in a text message that he should comply to avoid his lease having to be reviewed. The tone of that text message was friendly and there is no evidence that Mr Fernandes did not behave himself thereafter.
27. The allegation that the flat at 364 Banbury Road was raided by the police looking for drugs was untrue and it was confirmed by both the Defendant and Mr Fernandes that the attendance by the police at the flat was as a result of a reported burglary. The Defendant's account on each of these matters was not only consistent but also entirely plausible and more likely than not to be correct.



28. I also accept the account given by the Defendant in relation to the disputed text messages. The Claimant has maintained throughout an almost obsessional assertion that the disputed text messages were never sent to her and were “ghosted” onto the Defendant’s mobile phone before it was examined by the single joint expert. The evidence of that expert simply does not support this assertion.
29. A possible explanation as to why the Claimant could not find the text messages on her own phone may be that they were initially moved into a spam folder and then automatically deleted before she read them.
30. The court has to decide the issues in the case on the basis of the evidence. The expert evidence quite simply does not support the Claimant’s case. For that reason, I find that the Defendant’s account is more likely than not to be the correct one. The Claimant’s case is inherently unlikely in the absence of clear corroborative evidence to support her assertions. There is no such corroborative evidence.
31. The Claimant invites the court to accept her case that the statement of a favourable reference was made by the Defendant to her by effectively saying that her word should be preferred to that of the Defendant as she is a woman of impeccable character being a solicitor of many years standing who would not dream of lying.
32. I do not find that the Claimant is lying about the reference. I do, however, find that she is mistaken about it and has assumed that in some way the Defendant led her to believe that Mr Fernandes was a good tenant. Perhaps her pride has caused her to convince herself that she could not have been mistaken and that there was no need for her to carry out other checks as to the suitability of Mr Fernandes?
33. The Claimant as a solicitor with considerable experience in the criminal law will fully appreciate the importance of the best evidence being produced to the court and for the desirability for there to be corroborating evidence. The best evidence of a reference would have been to have requested a written reference as this makes the contents of any representation so much easier to prove. I am sure that in hindsight she wishes that she had obtained a written reference which would have been the prudent thing for any prospective landlord to do. In addition to this, a prudent landlord would have sought an employer’s reference and required proof of income. The Claimant did none of these things. Her explanation that she thought the Defendant was a local businessman of good standing when she did not know him personally, is, I am afraid, a rather weak explanation as to why she failed to make proper and comprehensive checks.
34. She explained that when the flat was let to Mr Beadle she had engaged Estate Agents to manage the letting at a cost of a thousand pounds. She clearly thought that this was so straightforward that she could simply copy and paste the terms of that tenancy agreement for Mr Fernandes and avoid having to pay a letting agent’s fee.
35. I find that it is more likely than not that the Claimant has convinced herself that although she tried to arrange the letting to Mr Fernandes “on the cheap” without conducting all the necessary prudent enquiries that should have been undertaken, that she must in some way have been misled.
36. Given her inability to specify with sufficient particularity exactly what representations she alleges were made by the Defendant and the inconsistency in relation to her account



and the details of it I am afraid I find that she fails to come up to proof in relation to this first element of her claim and therefore the claim is bound to fail.

37. Given that finding the second, third, fourth and fifth limbs of the test do not fall to be decided.
38. Even if I had been wrong about my conclusions in relation to the making of the statement, the Claimant would have struggled to prove any loss that have been caused by any misrepresentation.
39. It was accepted by the Claimant in cross examination that for the first 3 months Mr Fernandes had paid his rent earlier on time. The following 3 months he was late with the rent but did eventually pay. Whilst ultimately he did not pay the rent and possession proceedings were commenced this was so long after the tenancy of 61 Spencer Avenue that this amounted to a break in the chain of causation in relation to him being unreliable in his payment of rent.
40. In her original Claim Form and in parts of her evidence the Claimant appeared to be asserting that the £875 deposit paid by the Defendant to the Claimant to carry over to the Claimant's new tenancy was not a deposit at all but was money that was due back to Mr Fernandes. This is clearly a misunderstanding of the position on the part of the Claimant. At the conclusion of the tenancy for 364 Banbury Road there was an obligation to maintain the part of the deposit that would relate to the new tenancy of 61 Spencer Avenue and it was quite correct for the Defendant to pass this on to the Claimant.
41. I accept the Defendant's evidence about the timing of the post tenancy inspection and that he had rued the fact that he had paid over the £875 to the Claimant when he could have used it to defray the cost of the damage caused by Mr Fernandes to 364 Banbury Road.
42. In any event, it is quite bizarre that the Claimant chose to pay £875 to Mr Fernandes when he left 61 Spencer Avenue following the possession order when she was owed rent. Her explanation that her experiences of working in the criminal law had meant that she often adopted the role of a quasi-social worker may perhaps explain this but that was a clear example of a failure on her part to mitigate her losses as was her failure to look to Mr Fernandes for payment of damages in the first instance rather than pursuing the Defendant.
43. The evidence with regard to the cost of the repairs to the flat was also extremely unsatisfactory given invoices were raised from a company run by the Claimant's partner that was no longer trading and had not traded for a number of years and the invoices were made out to a separate legal entity other than the Claimant herself and therefore arguably were not her losses. It is also potentially telling that a copy of the tenancy agreement with Mr Fernandes has never been produced by the Claimant and maybe this is because the tenancy was in the name of a company controlled by the Claimant and not in the name of the Claimant herself and therefore the losses were not truly hers. This, I am afraid, is just a further example of how chaotic and disorganised this claim has been.

44. In conclusion, the Claimant's claim fails. I do not find that she has deliberately misled the court but in many respects the claim was misconceived and unclear. It was unreasonable to continue to run the argument with regard to the disputed text messages given the findings of the single joint expert and there were aspects of the quantum of damages claimed that were also inconsistent, unsupported and on the face of it, not losses that were sustained by the Claimant herself.