Brighthouse Ltd v Tazegul [2016] QBD (Spencer J) 12/07/2016

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Brighthouse Ltd v Tazegul [2016]

Summary: Following new evidence which amounted to a prima facie case of perjury and fraud concerning the independence of a witness, Spencer J ordered that a county court judgment be referred back to the trial judge to determine whether judgment should be set aside.

The respondent (R) made a claim for whiplash arising out of a road traffic accident against the appellant (A). R (driving a BMW) and A's employee (driving a lorry) were travelling in the same direction on a dual carriageway. R alleged that he was in front and the lorry behind. R had noticed A's employee talking on the telephone. R's case was that A's employee had attempted to change lanes before pulling back into the nearside lane and into collision with R's vehicle. A's case was that its employee was returning to the left hand lane after overtaking another vehicle when R had overtaken A's lorry, pulled in front and braked sharply.

At trial, an (ostensibly) independent witness (W) gave evidence on behalf of R. W corroborated R's account of the accident. W said that he had met R by chance in a car park shortly after the accident. Both W and R averred that they had never met previously. The police subsequently uncovered that W's partner and R's wife were friends on Facebook. Uploaded pictures were also found showing W and his partner present at the bar where R worked. A submitted at trial that there was strong circumstantial evidence that W and R knew one another. In judgment, the trial judge preferred R's evidence. The judge found that W had witnessed the accident. He concluded that there was no evidence of a personal connection between R and W sufficient to undermine W's account. R's claim succeeded. An award of £6,000 was made.

A appealed on grounds that there was fresh evidence which better demonstrated a friendly relationship between R and W. It was alleged that this evidence suggested R and W had committed perjury.

On appeal, the principle enunciated in Noble v Owens [2010] EWCA Civ 224 was followed: Where fresh evidence is adduced tending to show that a first instance judge was deliberately misled, a retrial will only be ordered where (i) the fraud is admitted or (ii) the evidence of fraud is incontrovertible. In any other case, the issue of fraud must be determined before the judgment of the court below can be set aside. Spencer J considered that neither (i) nor (ii)

had been established by the new evidence. Spencer J also stated that, on the evidence presented at trial, the trial judge had been entitled to find that W's evidence was not undermined. However, the new evidence cast fundamental doubt on the evidence given at trial concerning their relationship and suggested a greater familiarity between R and W than had been admitted. Spencer J deemed that, had the new evidence been before him, the trial judge's decision might have been different. Spencer J stated that the test for referral to the trial judge was whether the new evidence was capable of showing that the trial judge had been deliberately misled. He concluded that the new evidence demonstrated a prima facie case of fraud and perjury which fell to be determined by the lower court. The matter was referred back for determination by the trial judge as to whether the judgement should be set aside.

Comment: This case, along with the recent Supreme Court case of Hayward v Zurich Insurance Company plc [2016] UKSC 48, affirms that Lord Denning's maxim 'Fraud unravels everything' has force beyond the moment of court judgment or case settlement. If new evidence comes to light demonstrating a prima facie case of fraud or perjury, on appeal a judgment can be referred back to the trial judge pursuant to CPR 52.10(2)(b). This approach, previously endorsed by the Court of Appeal in Noble v Owens [2010], should be welcomed. In balancing the need for finality/proportionality in litigation and the need to ensure the court is not misled, recent decisions point to an increasing emphasis on the latter over the former. PI practitioners, on both sides, must remain keenly aware of the present direction.

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