

**MATTHEW HICKS v PERSONAL REPRESENTATIVES OF IONEL ROSTAS (Deceased) & MOTOR INSURANCE BUREAU (2017)**

**QBD (Judge Reddihough) 17/03/2017**

**A claimant in a personal injury claim had not been ambushed by the defendant after it had delayed in applying to introduce surveillance evidence which allegedly showed that the claimant had been exaggerating his disability. The defendant was allowed to rely on earlier surveillance evidence of which the claimant was aware but not on further evidence which it had attempted to introduce later, but the claimant could rely on the further material if that would help his case.**

The second defendant (D2) in a personal injury claim applied for permission to rely on surveillance evidence relating to the severity of the alleged disabilities of the claimant (C).

C had been involved in a road traffic accident with the first defendant (D1) who had been driving on the wrong side of the road. C suffered serious injuries and claimed that he had ongoing disabilities and psychological problems. He claimed damages including a substantial sum for future loss of earnings. D2 was joined as a party as D1 was uninsured. A detailed order was made directing the exchange of expert evidence and for joint reports and a trial date was fixed. In June 2016, about 10 months before the trial, D2 served surveillance evidence which it claimed showed that C was operating at a higher level of fitness and was exaggerating his claim. Five weeks before the trial D2 applied for permission to rely on the surveillance evidence. It served further surveillance evidence in February 2017 which had not been mentioned previously which it also wished to rely upon.

C argued that D2 had failed to deal with the surveillance evidence in a timely manner and had breached the continuing duty of disclosure in [CPR r.31.11](#) and that he had been ambushed by the late disclosures.

HELD: Whilst the court had the relevant authorities in mind, the matter had to be dealt with on the facts, and on the basis of the overriding objective and justice, [Rall v Hume \[2001\] EWCA Civ 146](#), [Jones v University of Warwick \[2003\] EWCA Civ 151](#), [O'Leary v Tunnelcraft Ltd \[2009\] EWHC 3438 \(QB\)](#), [Douglas v O'Neill \[2011\] EWHC 601 \(QB\)](#) and [Hayden v Maidstone and Tunbridge Wells NHS Trust \[2016\] EWHC 1121 \(QB\)](#) considered. D2 had been at fault in not disclosing the unedited tapes much sooner, but that did not amount to an ambush. The footage disclosed in June 2016 made it clear that there was evidence suggesting that C's disability was far less than he claimed and it was accepted that that could undermine quantum. In the circumstances, it would not be just if D2 was denied the opportunity to rely on any surveillance evidence so that the claimant could potentially be overcompensated for his losses. It would be difficult for D2's experts to give evidence of his disabilities without referring to the surveillance tapes that they had seen. The defendant should be allowed to rely on some of the surveillance evidence but because of the late disclosure the permission would extend only to the June 2016 footage. The claimant would be able to rely on further footage if that would help his case. That decision meant that the trial date would have to be vacated. However, on balance, in order to seek to do justice in the instant case that would be the consequence. Even if the application had been dismissed entirely, all the matters that had to be dealt with before the trial date could not have been dealt with in time.

Judgment accordingly.

Counsel:

For the claimant/respondent: Adam WeitzmanQC

For the defendants/applicants: James Arney

Solicitors:

For the claimant/respondent: Field Fisher

For the defendants/applicants: DAC Beachcroft

**LTL 20/3/2017 EXTEMPORE**

**Document No.: AC9301719**