Neutral Citation Number: [2018] EWHC 37 (QB)

Case No: HQ16X01047

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/01/2018

Before :

MR. JUSTICE TEARE

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Between :

UK Insurance Limited	**Claimant**
- and -	
Stuart John Gentry	**Defendant**

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- -

Marcus Grant (instructed by **Keoghs LLP**) for the **Claimant**
The Defendant represented himself

Hearing dates: 18, 19 December 2017

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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.

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MR JUSTICE TEARE

Mr. Justice Teare :

1. This is a claim by the Claimant, an insurance company, for damages in the sum of £226,458 plus interest and costs from the Defendant, Mr. Gentry, on the grounds that Mr. Gentry fraudulently represented to the Claimant that his Range Rover motor car had been in collision with a Peugeot motor car driven by Mr. Miller who was insured by the Claimant.

2. The collision is alleged to have occurred on 17 March 2013 in Hampshire at the junction between Folly Farm Road and the A339. The litigation which ensued from then until February 2016 is described by the Court of Appeal in its judgment dated 25 February 2016; see [2016] EWCA Civ 141 at paragraphs 3-10 per Vos LJ. I need not recite the details but in short Mr. Gentry commenced proceedings in the Liverpool County Court against Mr. Miller on 3 July 2013 and obtained judgment in default of acknowledgment of service on 8 August 2013. On 17 October 2013 damages were assessed in the sum of £75,089. In February 2014 the Claimant obtained information which suggested to the Claimant that if the collision had occurred at all it had been staged. The default judgment was set aside on 17 March 2014 but the Court of Appeal reinstated the judgment on 25 February 2016. However, a stay of execution was ordered on terms that the Claimant commenced an action seeking damages for deceit.

3. That action was commenced on 22 March 2016. Mr. Gentry filed a defence on 20 May 2016 alleging that the collision had indeed occurred as he had alleged. The trial was to have taken place in May 2017 but the trial date was vacated because of injuries received by Mr. Gentry in another collision. At the trial of the action in December 2017 Mr. Gentry represented himself. He had not served a witness statement either from himself or from any other person. He nevertheless told me that he maintained that there had been a collision as he had alleged. At the close of the Claimant's case on 18 December 2017, the first day of the trial, he said that he wished to call Mr. Voller to give evidence. Mr. Voller was, it was said, a passenger in Mr. Gentry's car at the time of the alleged accident. Mr. Voller could not attend court on the first day of the trial but could do so on Tuesday 19 December 2017, the second day of the trial. I gave Mr. Gentry permission to call Mr. Voller for reasons given in the afternoon of 18 December 2017. In short, justice required permission to be given in circumstances where there was an outstanding application to commit Mr. Gentry for contempt and the length of any sentence imposed for contempt would or might depend upon whether there had been a collision or not. On the second day of the trial Mr. Gentry called Mr. Voller to give evidence. No other evidence was adduced by Mr. Gentry.

Reports of the collision and notification of claims

4. On 18 March 2013 Mr. Miller reported the collision to the Claimant in a 23 minute telephone call of which there is a transcript. He referred to his car as a "Grey Golf" which, it is common ground, was an error. He explained that a deer had jumped out from the other side of the road and had run across causing Mr. Miller to swerve in order to miss it. He then hit a car which was waiting at the junction. He said "the bloke I hit had a guy in his car" and that he had the name of the driver "on a bit of paper". He gave the Claimant the name, address and telephone number of Mr. Gentry. He said he thought Mr. Gentry was younger than him. He described Mr. Gentry as "really pee'd off because it was his car and he was screaming at me". He said there was a male passenger in the front seat who looked "quite young, mid 20s."

5. On 24 March 2013 the Claimants wrote to Mr. Gentry accepting that Mr. Miller was at fault for the accident and saying that they would supply a free hire vehicle whilst Mr. Gentry's vehicle was off the road.

6. On 26 March 2013 Mr. Gentry entered into a Rental Agreement for the hire of a Mercedes vehicle (but not with the Claimant). He rented it for 150 days until 22 August 2013 for a total cost of £56,540 (or £317.93 per day).

7. On 27 March 2013 Mr. Gentry's then solicitors issued Claim Notification Form TRA 1. He claimed to have suffered soft tissue whiplash injury and to have been off work for 4 days.

8. On 28 March 2013 Mr. Voller (the passenger in Mr. Gentry's car) also issued a Claim Notification Form TRA 1. He also claimed to have suffered soft tissue whiplash injury and to have been off work for 4 days.

9. On 19 June 2013 Mr. Miller telephoned Privilege Damage Management (who appear to be part of or related to the Claimant) and informed them that he had seen "the guy that I hit" in the supermarket and that the latter had asked what was going on with the insurance company; he was "still in a hire car". Mr. Miller said that he would check up. Privilege Damage Management replied that they had had difficulty contacting him. By contrast, the account of the facts given by the Court of Appeal shows that Mr. Gentry's solicitor had sent several letters to the Claimant between 8 April and 14 June 2013 (see p.4 of the judgment).

Proceedings and payments

10. On 5 April 2013 the Claimant paid Mr. Miller £225 in respect of the value of his car.

11. On 3 July 2013 Mr. Gentry issued a Claim Form against Mr. Miller claiming damages between £50,000 and £100,000.

12. On 29 July 2013 the Claimant paid Mr. Gentry the sum of £14,000 in respect of the value of his car.

13. On 13 February 2014 Mr. Voller's claim for damages for personal injuries was settled in the sum of £1600 and the Claimant agreed to pay costs of £1240.

14. On 14 February 2014 the Claimant informed Mr. Voller's solicitors that "information had come to light" and as a result "all prevous offers …are now withdrawn". The two cheques in respect of Mr. Voller's claim were stopped. Although notice of a claim by Mr. Voller was given on 15 March 2016 no proceedings have in fact been served.

The Claimant's suspicions

15. In February 2014 the Claimant conducted Face Book, Twitter, Linked In and Experian searches which indicated that the Defendant and Mr. Miller were known to each other before the alleged collision and had taken part in cross-country running events together. As a result the Claimant suspected that there had not been a genuine accident.

16. The Claimants sought an order setting aside the judgment in default which had been entered in favour of Mr. Gentry. The Claimant's case was "insofar as collision did occur it was staged and that [Mr. Gentry's] claim is fraudulent."

Mr. Gentry's response

17. In his witness statement dated 15 March 2014 Mr. Gentry described the allegation that the accident was not genuine as untrue and being "mischief making". He said that prior to the accident on 17 March 2013 he had not known Mr. Miller. He explained that at the scene of the accident Mr. Miller had told him that his son had died of Sudden Infant Death Syndrome and that after the accident he had kept in touch with Mr. Miller and that they had become friends on Facebook. Mr. Gentry had taken part in running events with Mr. Miller to raise money for a charity which supported families affected by Sudden Infant Death Syndrome. With regard to the Claimant's evidence that he and Mr. Miller had participated in a race on 23 February 2013 he said that that Mr. Miller was not the same Mr. Miller who had been involved in the accident on 17 March 2013. He exhibited to his statement a photograph which he said was of the Mr. Miller who took part in the race.

18. There is no dispute that Mr. Gentry's witness statement dated 15 March 2014 contained statements which were untrue. He now accepts (since at least 20 May 2016 when he served his defence in this action) that he did in fact know the Mr. Miller who drove the Peugeot before 17 March 2013. It is accepted that they had engaged in cross-country racing before 17 March 2013. His elaborate explanation of how they only became friends after 17 March 2013 was untrue. Facebook records show that he was aware in 2011 of the loss of Mr. Miller's son. The photograph he said was of another Mr. Miller was in fact of another of Mr. Gentry's friends, a Mr. Sullivan, who, as it happened, took the place of Mr. Miller in the run of 23 February 2013. On 16 March 2013, the day before the alleged collision, Mr. Gentry, Mr. Miller and Mr. Sullivan had run in a cross-country race. He said in his defence that he had not disclosed his "prior knowledge of Mr. Miller" so as "not to slow down the very genuine claim." Before this court he apologised for his dishonesty.

The burden of proof on the Claimant

19. The Claimant has brought this claim for damages for deceit and therefore bears the burden of proving that Mr. Gentry dishonestly represented to the Claimant that his car had been struck by Mr. Miller's car on 17 March 2013 in a genuine collision at the junction between Folly Farm and the A399. That burden must be discharged on the balance of probabilities but since the allegation against Mr. Gentry is of criminal behaviour, which is inherently unlikely, particularly cogent evidence is required before the court can properly be satisfied on the balance of probabilities that he acted in the manner alleged. The need for cogent evidence in this context is apparent from other cases where a party alleges criminal conduct in a civil case; see for example *Parker v National Farmers Union Mutual Insurance Society* [2012] EWHC Comm at paragraph 6 and 103 (where an insurance company alleged arson by its assured) and *The Atlantik Confidence* [2016] 2 Lloyd's Reports 525 at paragraphs 6-7 and 9 (where a cargo owner alleged that a shipowner had scuttled his ship in order to make an insurance claim for the loss of the ship).

20. The standard of proof required in care proceedings (where a parent is alleged to have assaulted his or her child) has been considered by the House of Lords. Lord Hoffman and Lady Hale have observed that the probabilities must be borne in mind "to whatever extent is appropriate in the particular case" and that where it is clear that a child has been assaulted and that one of the two parents looking after the child must have been responsible the improbability that a parent had assaulted his or her child ceases to be of relevance; see *In re B* [2009] 1 AC 11 at paragraphs 14-14 per Lord Hoffman and at paragraphs 62 and 68-73 per Lady Hale.

21. By contrast the present case is one where there is a dispute as to whether a fraudulent misrepresentation was made. It is therefore appropriate to bear in mind the improbability of a person acting fraudulently in the manner alleged of Mr. Gentry. It follows that particularly cogent evidence is required in order to discharge the burden of proof. In short the nature of the allegation makes it appropriate to apply a standard not far short of the criminal standard. In *In Re B* Lord Hoffman accepted that that can be so in some circumstances (see paragraph 13), as did Lady Hale (see paragraph 69). Thus, in order to discharge the burden of proof the Claimant must be able to exclude any substantial, as opposed to fanciful or remote, possibility that the collision was genuine. The court must have a very high level of confidence that the Claimant's allegation is true; see *The Atlantik Confidence* at paragraph 9.

22. There is rarely direct evidence of fraud. Where there is no direct evidence of fraud it can only be inferred from circumstantial evidence. Thus it is necessary for the court to have regard to all the relevant evidence and to the story as a whole. Having considered the evidence it is necessary to stand back and consider whether the alleged fraud has been made out to the required standard.

Contemporaneous documents

23. In cases of this nature the contemporaneous documents can be of particular assistance.

(a) The recovery of the Peugeot

24. On 18 March 2013 Green Flag (instructed on behalf of the Claimant) issued an invoice in the sum of £300 made up of two charges of £150 in respect of the recovery of Mr. Miller's Peugeot on 18 and 20 March 2013. This invoice is consistent with the telephone call between Mr. Miller and the Claimant on 18 March 2013 when the Claimant informed him that Green Flag would pick up his car from the scene of the collision.

25. On 10 April 2013 Green Flag were invoiced in the sum of £54 by NCR Bodyshops in respect of a collection and storage fee in respect of Mr. Miller's Peugeot. NCR Bodyshop had been described by the Claimant to Mr. Miller on 18 March 2013 as "our recommended repairers". It was envisaged that they would inspect the damage to the car and advise as to the costs of repair. Their invoice does not mention any repairs but it is known that on 4 April 2013 the Claimant paid Mr. Miller £225 which, I was told, was in respect of the value of his car.

26. It would thus appear that Mr. Miller's car was in fact collected from the scene of the collision by Green Flag on 18 March 2013 and taken to NCR Bodyshop who must

have reported to the Claimant that it was not worth repairing the car and that its value could be paid.

(b) The recovery of the Range Rover

27. On 15 April 2013 a business known as Perfect Match and run by Mr. Colin Ebbs from Unit 32, Folly Farm, provided Mr. Gentry with an invoice in the sum of £924 in respect of the recovery and storage of Mr. Gentry's Range Rover for 19 days. The Claimant does not accept that this was a genuine invoice. It records a charge of £295 in respect of the recovery of the vehicle and a charge of £475 in respect of the storage of the vehicle for 19 days. It does not otherwise identify the period of 19 days.

28. In December 2016 Mr. Ebbs was interviewed by Mr. Bellis, an investigator, who had been instructed by the Claimant to make enquiries about the alleged collision. He interviewed Mr. Ebbs who signed a manuscript statement. In that statement he accepted that the invoice was a true copy of the original. He said that in 2013 he operated from Unit 32 at Folly Farm. He recalled that the Range Rover was brought to his unit by Mr. Toms of PA Autos which business was based in another unit at Folly Farm. He could not recall whether he had instructed Mr. Toms to do so or whether Mr. Toms had asked if he could store the vehicle at Mr. Ebbs' unit. He recalled seeing that the vehicle was damaged towards the front near side. He first saw the vehicle on the recovery truck the day after it had been damaged. Later that day, or the next day, he spoke to Mr. Gentry who said that the "crash" was not his fault. He did not know Mr. Gentry prior to taking his vehicle into storage "on or around 18 March 2013".

29. On the basis of that signed statement it would appear that Mr. Ebbs' invoice was genuine and that the Range Rover was brought to Mr. Ebbs' unit no.32 at Folly Farm on 18 March 2013. 19 days storage from then would terminate on or about 6 April 2013. Since Mr. Ebbs charged for the recovery it is more likely than not that he was instructed to recover the vehicle (presumably by Mr. Gentry) and that he had instructed Mr. Toms of P.S. Autos to do so.

30. On 3 April 2013 Assess Direct sent to Professional and Legal Services Limited, an accident management company instructed by the solicitors then acting for Mr. Gentry, a document entitled "Confidential Report (Total Loss)" (and wrongly dated 3 April 2012). It recorded that Assess Direct had attended at P.S. Auto's, Unit 6, Folly Farm, Tadley in Hampshire on 26 March 2013 to survey damage to Mr. Gentry's Range Rover. The document recorded that the vehicle had sustained moderate impact damage to the right hand front corner and itemised the new parts and repairs which were required. The repair costs were assessed at £15,500 (which included an estimate for repairs, paint and materials from P.S.Auto's) and a recommendation was made that the claim be dealt with on a total loss basis. There is no dispute as to the genuineness of this document. It is therefore reliable evidence that Mr. Gentry's vehicle was seen to be damaged on 26 March 2013.

31. Mr. Ebbs recalled an engineer being sent out to look at the Range Rover. The engineer agreed that the vehicle was "beyond repair" and told Mr. Ebbs how much he could charge for the recovery and the storage. Mr. Ebbs said that the value of the car was agreed with Mr. Gentry. That was the second occasion on which Mr. Ebbs had met Mr. Gentry. Assess Direct refers to the vehicle being at P.S Auto's, unit no.6. However, it would appear from the evidence of Mr. Ebbs and the invoice he issued

that the vehicle was at Mr. Ebbs' unit no.32 on 26 March 2013 when Assess Direct attended. A plan of Folly Farm shows that units 6 and 32 are in different parts of Folly Farm. There is no evidence as to why Assess Direct's report refers to the inspection taking place at unit no.6 rather than at unit no.32. It is possible that the author of the report was confused in circumstances where P.S Auto's had provided an estimate for the costs of repair, paint and materials. It is also possible that the vehicle was moved to no.6 in order for P.S.Auto's to give an estimate of the cost of repairs.

The evidence called by the Claimant

32. The Claimant called Ms. Khatun, the solicitor with conduct of the matter, to give evidence. Her evidence was a summary of the proceedings and the reasons why the Claimant suspected that the collision was staged. Her evidence was derived from the documents rather than from her own knowledge. She was not cross-examined. The Claimant also called Mr. Bellis, an investigator. He gave an account of his investigations in December 2016 when he had failed to trace Mr. Miller, when Mr. Voller had refused to speak to him and when he had obtained a signed statement from Mr. Ebbs. He was not cross-examined. In addition two statements from Mr. Berry and Ms. Graber, were put in evidence under the Civil Evidence Act. They were both intelligence analysts who had discovered from their searches in Facebook and other electronic sources that Mr. Gentry and Mr. Miller were friends. It is not necessary to recount the detail of their researches and findings.

33. Enquiries were made of the two cars' histories. On 2 May 2013 the registration number of Mr. Gentry's Range Rover was changed and on 11 June 2013 the vehicle passed its MOT. At its previous MOT in May 2012 its odometer reading was 93,168 miles. In June 2013 its reading was 93,075 miles. Thus in the one year intervening it had travelled only 807 miles. Enquires revealed that Mr. Ellis' Peugeot, which had first been used in 1995, passed its MOT in April 2012 but that it expired on 9 April 2013. Its mileage was over 152,000.

The evidence called by Mr. Gentry

34. Although he did not give evidence his case is clear from his Defence which was verified by a statement of truth. At paragraph 2 it was stated that Mr. Gentry

> "was involved in a night time accident caused by the negligent driving by Lee Miller. At the roadside Mr. Miller admitted total responsibility for the accident. At the time, Mr. Gentry was in his vehicle with an independent witness, Mr. James Voller, a fireman from Basingstoke whose statement regarding the incident it not present in the claimant's particulars of claim yet has been part of other proceedings since day one. Mr. Gentry's Range Rover Sport S17 UEE was completely stationary at the time of the collision on the entrance to a farm next to the A399."

35. On 1 May 2013 Dr. Tidy examined Mr. Gentry and produced a medical report. Mr. Gentry gave Dr. Tidy an account of the collision and of his injuries. Dr. Tidy concluded that Mr. Gentry had suffered a "musculo-ligamentous sprain" of his neck and upper back and that his account of the collision was compatible with his injuries.

He also considered that he had suffered soft tissue injury to his right shoulder and that his account of the collision was consistent with such an injury. Headaches and airbag burns to wrists and forearms were also mentioned. Dr. Tidy was not called to give oral evidence and in any event his evidence was based upon what Mr. Gentry had told him.

36. In support of his case Mr. Gentry called Mr. Voller to give evidence. Mr. Voller made a witness statement dated 18 December 2017 in which he stated that he was the passenger in the Range Rover at the time of the accident. He said he had known Mr. Gentry for many years and that they were close friends prior to the accident and for a couple of years thereafter. He had then lost touch with Mr. Gentry. He also rented a unit on Folly Farm where he stored VW cars and vehicle in which he has a keen interest. In his oral evidence in chief he said that on the day of the accident he had been working on one of his cars at his unit. He needed to get home and asked Mr. Gentry for a lift home. He said the accident occurred at the entrance of Folly Farm when a car came off the carriageway and collided with the near side of Mr. Gentry's car. The weather was drizzly and damp. It was dark. He said he made a statement shortly after the incident; he thought some 3-6 months afterwards. He said the insurance company sent a form which he had filled out. No such statement was disclosed by the Claimant. (Mr. Grant informed me that the Claimant did not have such a statement.)

37. When cross-examined he was asked about several matters.

38. First, he said that (until the day before the trial) he had last spoken to Mr. Gentry 9 months or so previously. He said that on that occasion he had been asked about his shift patterns in December 2017 (which determined when he was available to give evidence at the trial) as a firefighter. He had not been asked about them in the last week.

39. Second, he was asked about meeting Mr. Bellis in December 2016. He had been at work and his mother rang him to tell him that someone wanted to speak to him about the car crash. He later spoke to Mr. Bellis but he said that Mr. Bellis was quite rude and spoke down at him. He said that he told Mr. Bellis that he had already made a statement and Mr. Bellis agreed that he had. Mr. Bellis asked whether he would make a new statement which could be used against Mr. Gentry in court. Mr. Voller explained why the conversation came to an end. He said that Mr. Bellis laughed at him when Mr. Voller said that he had already made a statement and that he had been advised not to speak to a private investigator. He said he could not name the person ("a personal friend") who had advised him. He said that it was not Mr. Gentry.

40. Third, he was asked about his employment at the time of the accident. He was a "retained" fire-fighter which meant that he was on call. But on Thursday evening and Saturday morning he worked at Halfords. Because of his injuries suffered in the accident (a pain down his left shoulder and neck which stiffened up the next morning) he had taken some 4-5 days off from being on call as a firefighter but that he had not taken off time from Halfords where he worked behind a till. He said he did not attend a hospital but did see his physiotherapist at his rugby club.

41. Fourth, he was asked about the settlement of his claim and the stopping of the cheques. He said he was annoyed but did not insist on payment. He agreed that

Armstrongs (the solicitor who had acted for him) might have said that they could no longer represent him. He said that he was told that he would have to sue Mr. Gentry at his own expense but he could not afford to do so.

42. Fifth, he was asked whether he agreed with the account given by Mr. Gentry in his witness statement of 15 March 2014 of what was said between him and Mr. Miller (in particular that Mr. Miller's infant son had died, his girlfriend had left him and that he was verge of suicide). He replied that although he heard them speaking he was not involved in the conversation and was concerned to make sure the engines of the cars were switched off. The only thing he heard was that "something ran across the road". He left to return to his unit to get a torch. He returned in his car (the one he had been working on) and he drove Mr. Gentry home.

43. Sixth, he was asked whether he knew that the driver of the other vehicle was a friend of Mr. Gentry. He said he did not. That was not mentioned. But he added that it may have come up later.

44. Seventh, when it was put to him that he had conspired with Mr. Gentry to make a false claim he denied that allegation. He said that there had been an accident. He could not remember the air bags going off.

45. Mr. Grant submitted that Mr. Voller was an unreliable witness. He gave six reasons for this submission.

46. First, he said that his evidence that he did not know that the driver of the other vehicle was a friend of Mr. Gentry defied belief. He said that it was inconceivable that Mr. Gentry did not mention that to him at the time or when they drove home together or at some time thereafter. There does appear to me to be considerable force in this submission. If a genuine accident had taken place it is very likely that Mr. Gentry would have mentioned to Mr. Voller, his close friend, that the driver of the other vehicle was another friend of his, indeed, someone with whom he had taken part in a cross-country race the day before.

47. Second, he said that his evidence that he had not spoken to Mr. Gentry in the week before the trial about his shifts as a fireman but had done so about 9 months ago also defied belief. Mr. Grant said that he must have spoken to Mr. Gentry about his shift patterns (which "changed frequently") shortly before the trial. There is also force in this submission.

48. Third, he said that it defied belief that he could not remember the name of the person who, he said, advised him not to speak to a private investigator. Since this advice was apparently given in December of last year by a close friend there is also force in this submission.

49. Fourth, he said that Mr. Voller had been caught out in his lies because whilst he gave evidence that he had not attended hospital after the alleged collision his RTA form, signed by his solicitor on the basis of information given to him by Mr. Voller, claimed that he had. Mr. Voller suggested that his solicitor may have confused the rugby physiotherapist with the hospital. This seems unlikely.

50. Fifth, he said that his evidence about the immediate aftermath of the collision was untrue. He must have heard the conversation between the two drivers and his evidence that he drove himself and Mr. Gentry home in his car must have been untrue because he had been working on his car and had requested a lift home from Mr. Gentry. The former point is supported by Mr. Voller's evidence that he heard that "something had run across the road" (though Mr. Grant said that this must have been something that he was later told was the explanation for the accident given by Mr. Miller). The latter point also has some force.

51. Sixth, he said that Mr. Voller's account must be untrue because he said that he had no recollection that the air bags went off in Mr. Gentry's car. Mr. Gentry told the medical examiner that he had received air bag burns so they must have gone off. I agree that this shows inconsistency between the case of Mr. Gentry and the evidence of Mr. Voller.

52. My conclusion, having considered these criticisms of Mr. Voller's evidence, is that it would be unsafe to rely upon his evidence where it is not corroborated by other evidence. Mr. Grant's first, second and third points support such an approach because aspects of his evidence are difficult to accept. His fourth point suggests inconsistency in his evidence and the sixth point suggests inconsistency between the case of Mr. Gentry and the evidence of Mr. Voller. However, it does not follow that his evidence that there was a genuine collision must be rejected. That can only be determined after having considered the whole of the evidence and the story as a whole.

Discussion

53. In the present case the contemporaneous documents (the invoices, the damage report on the Range Rover, the transcript of the telephone conversation between Mr. Miller and the Claimant on 18 March 2013 and the proof of payments by the Claimant) show or suggest the following:

> (i) Mr. Miller promptly reported the collision on 18 March 2013. His car was recovered by Green Flag and taken to NCR Bodyshop who must have examined the car and advised the Claimant that it was appropriate to pay Mr. Miller the value of the car. There is no suggestion that Green Flag or NCR Bodyshop saw anything to suggest that there had been no collision. If there had been the Claimant would have been expected to adduce evidence of such concerns from NCR Bodyshop and it has not done so.
>
> (ii) Mr. Gentry's car was recovered on the instruction of Mr. Ebbs by P. S. Auto's. The damage was inspected by Assess Direct on 26 March 2013 and their report enabled the Claimant (after some delay) to pay Mr. Gentry the value of his car. Again there is no suggestion that Assess Direct saw anything to suggest that there had been no collision. If there had been the Claimant would have been expected to adduce such evidence from Assess Direct and it has not done so.

54. Thus the contemporaneous documents are at least consistent with there having been a collision on 17 March 2013. Further, what Mr. Gentry told Dr. Tidy as to his injuries was consistent with the collision he described to the doctor. However, it has been the suspicion of the Claimant since 2014 that the collision was staged. The contemporaneous documents are consistent also with a staged collision; either in

circumstances where Mr. Gentry's car was already damaged or in circumstances where neither car was not already damaged.

55. There is, in my judgment, cogent circumstantial evidence that the collision was staged: (i) Mr. Gentry and Mr. Miller were friends at the time of the collision; (ii) neither Mr. Gentry nor Mr. Miller informed the Claimant that they were friends; and (iii) when the Claimant discovered that they were friends Mr. Gentry denied that that was the case and told the Claimant, untruthfully, that they had become friends after the collision.

56. Of course it is possible for two friends to suffer a collision when driving their respective cars. It would however be a striking and unlikely coincidence. Another explanation for the collision is that the two friends had staged the collision; that would explain the apparent but unlikely coincidence.

57. That explanation gains support when it is born in mind that when Mr. Miller reported the collision on 18 March 2013 he made no mention of the fact that the driver of the car with which he had collided was a good friend of his with whom he had been running only the day before. Mr. Miller gave every impression in his telephone call on 18 March 2013 that he did not know the other driver. He referred to him as "the bloke I hit" and that he only knew his name, address and telephone number because he had written it down on a piece of paper after the collision. Similarly, when he spoke by telephone to the Claimant (or its associated company) on 19 June 2013 he said that he seen Mr. Gentry in the supermarket without disclosing that he in fact knew him very well. The fact that Mr. Miller sought to hide his friendship with Mr. Gentry from the Claimant suggests, at the least, that he knew that knowledge of their friendship would arouse justifiable suspicions in the mind of the Claimant as to the genuineness of the alleged collision.

58. The same can be said of Mr. Gentry. Although he did not say anything in his RTA form which conveyed the impression that the driver was a stranger to him he failed to disclose that the driver was in fact a friend of his. He had the opportunity to disclose that fact in his RTA form (either in Section G – brief description of the accident – or Section M – other relevant information) but he did not do so. Although he was not specifically asked in the form whether he knew the driver his failure to mention his friendship suggests, when one bears in mind that Mr. Miller very clearly hid his friendship from the Claimant, that he, like Mr. Miller, knew, at the least, that disclosure of that fact would arouse justifiable suspicions as to the genuineness of the alleged accident.

59. When in February 2014 the Claimant learnt of the friendship between the two drivers Mr. Gentry, in his witness statement dated 15 March 2014, chose to lie and to deny that the friendship had pre-dated the collision. That lie suggests that Mr. Gentry was very keen indeed to dissuade the Claimant from believing that he and Mr. Miller were friends before the allege collision.

60. Does that lie support the Claimant's claim ? That depends upon whether he lied for an innocent reason, as he suggests, not to slow down the payment of a genuine claim (in circumstances where he had incurred hire charges of in excess of £50,000), or because he feared that knowledge that he and Mr. Miller were friends would reveal to the Claimant that the collision was not genuine because it was too much of a coincidence

to be true. In short, was the lie told to "mask guilt or fortify innocence"; see *R v Lucas* [1981] QB 720 at p.724, *The Grecia Express* [2002] 2 Lloyd's Reports 88 at p.119 col.2 and *The Atlantik Confidence* [2016] 1 Lloyd's Reports 525 at paragraph 301.

61. If Mr. Gentry had not revealed the fact of their friendship in March 2013 for an "innocent" reason one would have expected Mr. Gentry to admit the relationship when the allegation was put to him in March 2014. But he did not. In circumstances where Mr. Miller had clearly hidden their friendship in March 2013 I consider it very likely indeed that Mr. Gentry lied in March 2014 because he feared that the fact of their friendship prior to the collision would show that the collision was not genuine. I therefore consider the lie to be evidence of a staged collision.

62. In addition, there is the circumstance that Mr. Voller gave evidence that he was unaware that the driver of the other car was a friend of Mr. Gentry's. He said that they did not talk about the accident when driving home. If the collision between the two cars was a genuine accident it is, as I have already said, inconceivable that that was not mentioned by Mr. Gentry to Mr. Voller either at the scene or when they drove home. Why did Mr. Voller say that he was not aware that the driver of the other car was a friend of Mr. Gentry's ? In circumstances where Mr. Miller hid the friendship from the Claimant and where Mr. Gentry denied the friendship even after it had been discovered by the Claimant it appears to me that the only realistic explanation is that Mr. Voller was privy to the plan to stage an accident and feared that admitting that he knew of the friendship would in some way undermine Mr. Gentry's claim.

63. Thus all three persons who were present at the time of the alleged collision have, in their different ways, been reluctant to admit that the two drivers were friends.

64. The fact that the two drivers were friends and the circumstance that each of the persons present at the time has been reluctant to disclose that friendship are matters which, in my judgment, cogently suggest that the collision was staged. In addition there is the odd and unexplained circumstance that Mr. Gentry made no claim on his own insurance policy. Form RTA 1 stated that that he had comprehensive insurance but that he was not making a claim on it. This is not a factor which, by itself, would suggest that the accident had been staged but, when taken together with the fact that the two drivers were friends and that all persons present at the scene have been reluctant to disclose that information, lends support to Claimant's case; cf *The Atlantik Confidence* at paragraph 299. Whilst it is possible that he did not want to lose a "no claims bonus" it must be borne in mind that his car had suffered substantial damage. His failure to claim on his own policy in respect of that substantial damage suggests, in my judgment, that Mr. Gentry knew that he would be unable to recover on his own policy for the substantial damage which his car had, at some stage, suffered.

65. Mr. Grant also relied upon the circumstance that although Mr. Gentry was offered a free hire car by the Claimant on 24 March 2013 he in fact hired a car himself at considerable cost. I agree that that is odd and unexplained but I am not persuaded that this adds to the case against Mr. Gentry. It is to be noted that he entered into the hire agreement on 26 March 2013. Perhaps he misunderstood the letter of 24 March 2013. Mr. Grant also relied upon the fact that the registration number of the Range Rover was changed on 2 May 2013 and that the vehicle was put back on the road with a new

MOT certificate on 11 June 2013. Again, whilst these matters were unexplained I was not persuaded that they added to the Claimant's case.

66. Two further matters are consistent with the Claimant's case. First, Mr. Gentry's Range Rover had only travelled 807 miles between 3 May 2012 and 11 June 2013. That is consistent with it having been off the road or used very sparingly as a result of damage for a substantial period. Second, Mr. Miller's Peugeot was an old car. It had first been used in 1995 and by 10 April 2012 it had travelled 152,235 miles. It was worth very little; Mr. Miller received £225 in respect of it. Its MOT expired on 10 April 2013 and was not renewed. These matters are consistent with a staged collision between the Range Rover, already damaged, and the Peugeot, receiving some damage in the collision.

67. It may be said that to stage a collision and make a false claim requires boldness on the part of the fraudster. But Mr. Gentry has shown himself to be a bold liar. When the Claimant discovered the truth of his friendship with Mr. Miller he did not merely deny the allegation but gave a detailed account of how they had become friends after the accident as a result of Mr. Miller telling him of the tragic death of his son (at the scene of the accident) and how Mr. Gentry had supported a charity which supported families affected by Sudden Infant Death Syndrome. It was true that Mr. Miller had suffered the tragic death of his son but Mr. Gentry knew of that in 2011. He used that information to construct a particularly bold lie.

68. Mr. Grant on behalf of the Claimant invited the Court to draw adverse inferences from the failure of Mr. Gentry to give evidence (or to call evidence from Mr. Miller, Mr. Ebbs, and Mr. Toms). The circumstances in which inferences may be drawn have been summarised by the Court of Appeal in *Wisnewski v Central Manchester Health Authority* [1998] PIQR P324 at p.14 in these terms:

> "(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.
>
> (2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
>
> (3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
>
> (4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."

69. Thus, in order to lay the foundation for the drawing of inferences in the present case there must first be "some evidence, however weak …….on the matter in question". In the present case that means that the Claimant must adduce some evidence which suggests that Mr. Gentry's claim that there had been a collision in the circumstances which he described was untrue and deliberately so. It is plain from my review of the evidence so far that there is such evidence, primarily, the circumstance that the driver of the vehicle which crashed into his car was someone whom Mr. Gentry knew very well and with whom he had been running the day before the suggested collision. That was an unlikely coincidence. I note in this regard the evidence of Ms. Khatun, the solicitor at Keoghs LLP with conduct of this claim. In her witness statement dated 26 February 2014 in support of the Claimant's application to set aside the judgment in default she said that the Claimant's allegation of fraud "is based primarily on the fact that [the Claimant] is now in position to demonstrate that [Mr. Gentry] and [Mr. Miller] are known to each other and were known to each other prior to the alleged accident"; see paragraph 17 of that witness statement and the draft Defence at paragraph 4.

70. In these circumstances the fact that Mr. Gentry chose not to give evidence about the collision (and thereby refused to submit himself to being cross-examined on the subject) serves to strengthen the Claimant's case. Mr. Gentry did not in terms explain why he chose not to give evidence. He had said in a letter to the court dated 14 December 2017 that he had "offered to wave the white flag in the proceedings in relation to the Tort of Deceit" which he explained to me at the beginning of the trial did not mean that he admitted liability but that he simply wished to get the matter over quickly. It may therefore be that he chose not to give evidence because he wanted the trial over quickly. However, if this was his explanation I am unable to accept it. He in fact adduced evidence in support of his defence from Mr. Voller and thereby lengthened the hearing. In circumstances where he knew that there was an application to commit him for contempt it is remarkable that, if his account of the collision was true, he did not wish to tell the court that on oath from the witness box. There is therefore a cogent argument for inferring that he did not give evidence because he feared that he would not be able to give an account of the collision which withstood cross-examination. However, Mr. Gentry was a litigant in person. It is plain from his letter to the court that he was concerned at the prospect of losing his liberty. It is possible that he thought that in circumstances where he had already, as he put it, pleaded guilty "for the contempt of court charge" his best interests were served by taking no part in the trial. Although this explanation also sits uneasily with his decision to call Mr. Voller to give evidence the possibility that it explains his absence from the witness box is just about credible. To that extent the extent to which his absence from the witness box strengthens the Claimant's case is reduced, though not nullified.

71. I was also asked to draw an adverse inference from Mr. Gentry's failure to adduce evidence from Mr. Miller, Mr. Ebbs and Mr.Toms.

72. Mr. Miller was not traced by the Claimant in December 2016. He was not found at any of the addresses linked to him. Given their friendship it is possible that Mr. Gentry had the means to contact Mr. Miller and to adduce evidence from him. His failure to do so is therefore some additional support for the Claimant's case. But where it is also possible that he cannot be traced that support is limited.

73. Mr. Grant said that adverse inferences should be drawn from Mr. Gentry's failure to call either Mr. Ebbs or Mr. Toms in order to clear up uncertainties as to who recovered the Range Rover and why the damage was surveyed at unit no. 6 rather than no. 32. However, it is not all clear that Mr. Gentry would have thought it necessary to call either gentleman to give evidence about what they recalled as to the movements of the Range Rover between 17 and 26 March 2013. The contemporaneous documents, together with the evidence obtained from Mr. Ebbs in December 2016, show that what probably happened was that the Range Rover was collected from the site of the alleged collision on 17 or 18 March 2013 by Mr. Toms (P.S.Auto's) and taken to Mr. Ebbs' unit no.32 (Perfect Match) and that it was surveyed by Assess Direct on 26 March 2013 at unit no.6 where P.S.Auto's gave an estimate of the repair costs. Thereafter it probably returned to unit no 32 until about 6 April 2013. I am not persuaded that any adverse inference should be drawn from the failure of Mr. Gentry to call either Mr.Ebbs or Mr. Toms. Had the Claimant wished to add to what the documents suggested the Claimant could also have called them.

74. In cases of this nature it is necessary to stand back and have regard to the whole of the evidence. I have sought to do so and to take the story as a whole. Having done so I am persuaded that the accident was staged. I have asked myself whether there is a real or substantial possibility that the collision was genuine which the Claimant has been unable to exclude. Having considered all the circumstances of this case I do not consider there is. The only credible explanation for the steps *both* drivers took to hide their friendship from the Claimant is that they knew that it was a staged collision and that to reveal that they were friends would give the game away. Also, if the collision had been genuine Mr. Gentry would surely have told Mr. Voller at the time. Mr. Voller's denial that Mr. Gentry did so is a cogent indication that he was part of the conspiracy.

75. The Claimant does not have to establish a motive for the alleged fraud if the facts are sufficiently unambiguous. In my judgment they are. But if a motive is required it is that Mr. Gentry wished to recover something in respect of the substantial damage carried by his car (and which had led to it being little used in the previous year) and, for whatever reason, was unable to recover from his own insurers in respect of that damage. Mr. Miller was willing to assist his friend because his vehicle was very old and worth very little. It is likely that Mr. Voller attended so that he could be an "independent witness" to the collision.

76. For these reasons I have the required very high level of confidence that the Claimant's allegation is true and I am not left in doubt as to what happened. The Claimant is therefore entitled to judgment on its claim.

Damages

77. Although the claim is said to be in the sum of £226,458 plus interest, the bulk of that claim concerns sums, including costs, which the Claimant has been ordered to pay Mr. Gentry by the various courts which have been involved with this matter. However, such orders have been stayed and so those sums have not been paid out. The orders will remain stayed. That leaves as damages the sums in fact paid out by the Claimant as a result of the Claimant's deceit. They are particularised in paragraph 38 of the Particulars of Claim and are proved by the witness statement of Mr. Akhtar

and the schedule of payments annexed to that statement as MA4. They total £19,179. There will therefore be judgment for that sum together with interest and costs.