SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

NOTE

By

M O'GRADY, Sheriff of Lothian and Borders at Edinburgh

in causa

JOHN DUNCAN, 375 Lanark Road, Edinburgh, EH13 0LY

against

CITY OF EDINBURGH COUNCIL, being a local authority constituted by statue and having a place of business at City Chambers, High Street, Edinburgh, EH1 1YL

This is a summary cause action in which the Pursuer seeks £3,782.33 with interest and expenses and arises from an accident on 13 April 2006 at Lanark Road, Edinburgh. A vehicle driven by the Defender's employee struck the Pursuer's vehicle which was parked and unattended at the time. Liability is not in dispute.

Further, certain facts are not in dispute. The Pursuer required a replacement vehicle. He hired such vehicle from Helpline (UK) Ltd for a period of 19 days. The cost of hire was £4,945.58. In addition, costs of repair amounted to £1,743.44 and a further cost of an engineer's report was incurred in the sum of £58.75. The Defender's have thus far made a payment of £2,965.44 towards these heads of claim and the sum sought by the Pursuer represents the balance.

The main issue between each side was whether the whole cost of the credit hire agreement from Helpline (UK) Ltd was recoverable by the Pursuer.

I shall deal firstly with the incidental matter of the cost of the engineer's report. It was argued by the Defender's that, this was not recoverable. However, I regard the cost of an engineer's report as incidental to the cost of repairs and was a means of ensuring that they are reasonably charged. Obtaining such a report is common practice, and not unique to credit hire arrangements. It is a reasonably foreseeable item of expenditure incurred in mitigation of damages by the innocent party and therefore in my view is recoverable.

This leaves the principal argument in relation to the cost of hire. The Defender's advance the argument that under reference to *Lagden against O'Connor* (2004) (1AC1067), the Pursuer was not entitled to recover the full credit hire charges insofar as these exceeded spot hire rates. It was said that recovery under this head should be limited to the figures subsequently obtained by retrospective quotations from Four by Four Hire (Scotland) Ltd, which would have resulted in a 19 day hire figure of £1,678.38.

I should perhaps deal firstly with the question of the nature of the vehicle hired by the Pursuer. I have no doubt that he was entitled to a like for like vehicle having regard to the purposes to which his own vehicle was put. Further, for the reasons advanced by the Pursuer and Mr Welsh (which were both practical and legal) I am persuaded that the vehicle hired was of an appropriate type within the range required by the Pursuer for his purposes. I did not accept submissions to the contrary.

In my view the Pursuer is entitled to decree as craved and the arguments for the Defenders should not succeed.

My reasons for concluding that no deduction should be made from the sum claimed as credit hire charges are as follows.

Firstly, the Defenders maintained that it was for the Pursuer to show that resort to credit hire facilities was justified in this case. However, *Lagden* makes it clear, that when in such a case, a deduction from expenditure in mitigation is claimed, it is for the Defender to show that the Pursuer had a choice and he could have mitigated his loss more cheaply. Further it is for the Defenders to show that in his conduct the Pursuer acted unreasonably.

I begin by observing that the Pursuer in this case appears to have already gone some considerable way to mitigating his loss even prior to the hire of the vehicle. It will be noted that the accident occurred some 28 days prior to the hire of the vehicle. As I understand it, during that time the Pursuer was deprived of attending at least 2 horse shows as a result of the damage to his own vehicle. This was not a situation where he immediately went out and hired a substitute vehicle. He waited until his own vehicle was taken for repair. He did so at the disadvantage to himself which I have just noted.

Further, the Pursuer it seems to me acted reasonably in approaching the matter of hire. He contacted his insurance company and allowed himself to be guided by them when referred to the credit hire company. This, in my view, was a sensible and understandable step and it was not unreasonable for him to put his trust in his own insurance company. I do not consider that he was obliged to engage in a wide ranging search to find an alternative hire company. In any view he required the kind of specialist vehicle I have already set out and, in addition, he required to have a tow hook. Even the enquiries carried out by the Defenders revealed only one company in the whole of the Edinburgh area which appeared to have only one vehicle which satisfied those requirements. One must bear in mind that the Defenders themselves became aware of the existence of such a vehicle only after extensive research on the Internet. I do not consider that the Pursuer should have been expected to carry out a similarly exhaustive exercise and observe in passing that there was no evidence to suggest that he had the facility to do so.

Each case depends upon circumstances. In the circumstances here I am accordingly satisfied that the Pursuer should be granted decree as craved together with expenses. I am further minded to certify Mr Walsh as an expert witness.

Edinburgh 6th November 2009 Sheriff O'Grady QC

Act: Shepherd

Alt: Scott

The sheriff, evidence having been led and concluded and submissions having been completed, grants decree as craved (sheriff's note appended hereto) and in terms thereof decerns against the defender for payment to the pursuer of the sum of THREE THOUSAND SEVEN HUNDRED AND EIGHTY TWO POUNDS AND THIRTY THREE PENCE (£3,782.33) STERLING with interest thereon at the rate of 8% per annum from 13th April 2006 until payment; certifies Mr Charles Walsh, Strange Jeens and Mathieson (North) Limited, 64 Main Street, Cambuslang, Glasgow, G72 7EP, as an skilled witness for the pursuer; finds the defender liable to the pursuer in the expenses of the cause, as taxed, and allows an account thereof to be given in and remits same, when lodged, to the Auditor of Court to tax and to report.

Sheriff of Lothian and Borders at Edinburgh