IN THE CENTRAL LONDON COUNTY COURT Case No. 8CH04296

B E T W E E N:

RICHARD FORD Claimant

-and-

TRANS ALLIANCE (a firm) Defendant

JUDGMENT OF MR RECORDER SUSMAN QC
DELIVERED ON 7 MAY 2010

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1 The issue I have to decide is how much the Claimant Mr Richard Ford should recover as damages for having to hire an alternative vehicle to use after his own Mini Cooper D1.6 motor car was damaged in an accident on the M11 motorway on 18 December 2007. The Defendant has admitted liability for the accident, as a result of which the Claimant's car was knocked off the road and down an incline, and required very extensive repairs. The Claimant says he was nearly killed, and I accept that he was severely shocked, but he fortunately escaped any serious bodily injury. He had been recommended by the company which had sold him his Mini Cooper and which was to repair it following the accident, to hire an alternative car from Accident Exchange Limited, which specialises in hiring replacement cars after road accidents. The Claimant hired a BMW from Accident Exchange Limited which he kept from 19 December 2007 to 10 March 2008, a total of 83 days. He hired it under a consumer credit agreement regulated under the Consumer Credit Act 1974. It is agreed that the total hire charge was £9,578.28 including VAT.

2 It has never been contended by the Defendant that the credit hire agreement was unenforceable for failure to comply with the 1974 Act or regulations made under it. By the end of the hearing before me on 5 May 2010 it had been rightly conceded by the Defendant that it was reasonable for the Claimant to have hired the BMW for the whole period of 83 days. The repairs to his own Mini Cooper took that long to be completed because the legally required Vehicle Identification Number plate had been lost in the accident, and it took some time for a replacement to be provided by the Driving and Vehicle Licensing Authority. The Defendant had already conceded at the beginning of the hearing that if the Claimant was entitled to recover the hire charge as damages, he ought to recover that part of the total hire charge attributable to delivery and collection charges for the BMW, and the premium for waiver of any excess payable for loss of or damage to the BMW.

3 However, the Defendant argued that it was not liable to pay any damages to the Claimant for the hire of the BMW on the ground that the Claimant had been induced to enter into the hire agreement by a misrepresentation on the part of an agent of Accident Exchange Limited that no charge whatever would be made for the hire of the BMW, so that the hire agreement was void or voidable, and the Claimant had no liability for which the Defendant was obliged to indemnify him in damages. I reject that argument. The Claimant's evidence, which I accept as reliable, was that he was told that the hire of the BMW was "at no cost to him", and that he was still too shocked to make any further enquiry, and assumed that he was being provided with a 'courtesy car' for which he was not required to pay. In my judgment his being told that it was "at no cost to him" (or even 'at no charge whatever') did not make the agreement automatically void. Even if it was voidable on his initiative by exercise of a remedy of rescission, there is no evidence that he has ever sought to rescind it, and there is no reason why he should seek to do so now. Therefore what he was told has not precluded him being under a liability against which he may be indemnified by the Defendant in damages. It seems to me that any other conclusion would be inconsistent with the general approval given in *Dimond v. Lovell* [2002] 1 AC 384 (HL) to arrangements in which a claimant victim is not asked to pay the hire charge for an alternative

car. For example, Lord Nicholls of Birkenhead said in that case at page 390G-H:

> "So it comes about that accident car hire companies are fulfilling a real need. They provide replacement cars and additional services as well. The hirer does not have to produce any money, either at the time of the hiring or at all. The hire company pursues the allegedly negligent driver's insurers. The hire company is not deterred by having to bring court proceedings should this become necessary. If the claim is unsuccessful, in practice the hire company does not pursue the hirer."

4 The question remains what proportion of the charge for hire of the BMW was recoverable as damages in accordance with *Dimond v. Lovell*, where it was said by a majority of their Lordships that if such an agreement was enforceable (as it was held not to be in that case), the measure of the damages that could be recovered against the negligent defendant was the 'spot' or market rate for hiring an equivalent car from an ordinary hire company, since otherwise the defendant would be paying for additional benefits afforded under the consumer credit agreement: per Lord Hoffmann at pages 400E to 403B; per Lord Browne-Wilkinson at page 390C; and per Lord Hobhouse at page 407A-F.

5 In reaching a conclusion on the recoverable 'spot' rate, I have adopted the following as the approach which higher courts have indicated that I ought to take:

5.1 once the actual hire charge has been established (as it has been in the present case), it is for the Defendant to adduce evidence of the 'spot' rate: *Clark v. Ardington Electrical Services* [2003] QB 36 (CA); [2002] EWCA Civ 510 at paragraph [148]: I accordingly reject the Defendant's submission that it was for the Claimant to adduce evidence of the 'spot' rate;

5.2 it is not sufficient for the Defendant to show that the Claimant could on undertaking careful research have hired a replacement car at a particular low rate, and thus preclude the Claimant from recovering any higher rate as damages; still less is it sufficient for the Defendant to show what the average cost of hiring a replacement car would have been, and to restrict the Claimant to that average rate; in each case the

principle is that the Claimant recovers his actual loss subject to a duty of reasonable mitigation: *Clark v. Ardington Electrical Services* at paragraphs [145] to [147];

5.3 it is impracticable for the Court to require proof of actual 'spot' rates at the time of hire of the replacement vehicle, but rather than permit recovery of the actual rate, in the absence of any other reliable evidence the Court should do its best to make appropriate inferences from available evidence as to the 'spot' rate at a later date: *Bent v. Highways and Utilities Construction Ltd* [2010] EWCA Civ 292 per Jacob LJ at paragraphs [8] and [9].

6 The Defendant relied upon the independent expert evidence of Mr Duncan Sadler of Autofocus Limited. He was cross-examined on behalf of the Claimant so as to define the scope of his evidence, but neither his expertise nor his methodology were criticised as such. I accept his evidence, so far as it goes. All of the figures he gave included VAT. The effect of his evidence as I understood it was as follows:

6.1 the replacement BMW hired from Accident Exchange Limited from 18 December 2007 was hired at a rate that was equivalent to a daily rate of £115.40: Mr Sadler's witness statement dated 2 March 2010, Exhibit DCS 2 at Supplemental Bundle, page 11, column 1;

6.2 the UK national 'spot' daily rate for a Mini Cooper or equivalent car hired from 18 December 2007 was equivalent to a daily rate which was at most £88.75, on average £73.81, and at least £39.96: his Exhibit DCS 4, at Supplemental Bundle, page 18, column 1;

6.3 one year after the actual hire period, the 'spot' rate for such a car in the local area in Kent where the Claimant lived, judged from quotations by 4 ordinary rental companies, was equivalent to significantly lower daily rates ranging from £67.76 (where a car had to be supplied from London) down to £29.00: Trial Bundle, page 86;

6.4 two years after the actual hire period, the 'spot' rate for such a car in that local area, again judged from quotations by 4 ordinary rental companies, was equivalent to even lower daily rates, ranging from

£37.41 down to £25.30: Exhibit DCS 2, Supplemental Bundle, page 11.

7 It will be apparent that no evidence was adduced to show the local 'spot' rate during the actual hire period. It was no surprise to me that this evidence was not available, because although Mr Sadler told me that his company Autofocus Limited collects and preserves national rates, it would be unrealistic to expect it to collect rates for each locality in the UK.

8 Doing the best I can on the evidence available to me, as summarised above, I have concluded first that I cannot fairly and realistically assess the local 'spot' rate at the time of actual hire as being higher than the recorded national maximum of £88.75, because although it is possible, it is improbable that there was an unrecorded local rate higher than that recorded national maximum. I accordingly reject the Claimant's submission that I ought to assess a higher figure, either by starting with the actual rate charged by Accident Exchange Limited and deducting a notional discount; or by extrapolating back from the evidence that local rates reduced in the period from one to 2 years after the accident, that the local rate must have been much higher at the time of the actual hire. I could not reach that conclusion without some evidence of the effect of the current economic recession on hire rates in general.

9 Secondly, I have concluded that I cannot fairly and realistically assess the local 'spot' rate at the time of actual hire as being lower than the recorded national maximum of £88.75 at the time. To my mind doing so would be to fall into the error of saying that with more careful research the Claimant could have found a better rate, or the error of restricting the Claimant to recovery of an average rate, each of which the Court of Appeal said in its judgment in *Clark v. Ardington Electrical Services* in the passages cited above that I ought not to do. This is not a case where there is no other available evidence, as in *Bent v. Highways and Utilities Construction Ltd*. I accordingly reject the Defendant's submissions that I ought to take one or other of the later local 'spot' rates as likely to be representative of the local 'spot' rate either one or two years earlier.

10 Consonant with those conclusions, I approach the assessment of recoverable damages as follows (again with all figures including VAT). The actual charge was £9,578.28 over 83 days. That represents a charge of £115.40 a day when the recoverable rate was £88.75 a day. The difference represents the value of the additional benefits afforded by Accident Exchange Limited at £26.65 a day for 83 days, or £2,211.95. I must therefore deduct £2,211.95 from £9,578.28 and assess damages in the sum of £7,366.33.

11 I shall invite written submissions on interest, costs, and permission to appeal.

I hereby certify this Judgment as the authentic version without the need for a transcript.

Peter Susman QC
Recorder