IN THE COUNTY COURT AT PRESTON

Case No: F87YJ767

Courtroom No. 4

The Law Courts
Openshaw Place
Ring Way
Preston
PR12LL

Thursday, 14th May 2020

Before:
HIS HONOUR JUDGE KHAN

B E T W E E N:

HABIBULLAH MUKADAM

and

NEIL NAZIR

MR J P BYRNE appeared on behalf of the Claimant
MS S ROBSON appeared on behalf of the Defendant

JUDGMENT
(Approved)

HHJ KHAN:

1. I have before me two applications. The first application in time is an application dated 13 February 2020 made by the defendant. By that application the defendant seeks to strike out the claimant's claim under CPR 3.4, alternatively, for judgment under CPR 24.2, on the basis that the claimant has no real prospect of success. The application is supported by a witness statement from the defendant's solicitor, a [Curtis Warren?], dated 13 February 2020. The application is opposed, and the claimant's solicitor, [Nina Sumner?], has made a witness statement in response, dated 10 March 2020.
2. The second application in time is an application made by the claimant, dated 3 April 2020. By that application, the claimant seeks permission to withdraw an admission made on 7 December 2017, if I conclude that there was such an admission. The application is supported by two witness statements, both are dated 14 April 2020, one from the claimant himself, and the other by the claimant's solicitor, a Mr Amin[?]. In reaching the conclusion that I have reached in relation to the applications, I have read those witness statements, together with those documents that were drawn to my attention during the course of the hearing.
3. From here on in, I will refer to the parties by their surname, as otherwise might cause confusion in relation to the issues as I explain them. Mr Mukadam is the claimant, and Mr Nazir is the defendant; they are represented by Mr Byrne and Ms Robson respectively. I am grateful to both of them for the assistance that they have provided to me in resolving the issues that I have to decide, and also for the written arguments that were advanced in their skeleton arguments.
4. The claim proceeds by way of remote hearing, which has had some technical difficulties. At the start of the hearing, we could only hear Mr Byrne but not see him, and part way through the hearing, the Skype connection failed. Nevertheless, the hearing proceeded to its conclusion. There was a fair hearing of the applications notwithstanding that they were conducted remotely. To some, this process has been a bit of a learning experience. Sadly, it is a learning experience that we might have to deal with for some considerable time in the future, having regard to the effects of Covid-19.
5. The applications have to be seen in their context. Often that context is partly the factual matrix giving rise to the claims and a chronological context, and it is necessary for me to set that out in some detail.
6. There was a collision on 13 November 2017 between two vehicles. Mr Mukadam was driving a Citroën Berlingo, during the course of his employment. Mr Nazir was driving a Volkswagen Passat. The collision caused damage to the vehicles and caused injury to Mr Nazir and, it is alleged, caused injury to Mr Mukadam.
7. Mr Nazir was, it could be said, quick off the mark. On 20 November 2017, he submitted a CNF through the relevant portal. That resulted in AXA, the insurers for Mr Mukadam's employers, responding. The contents of the response are somewhat controversial, and perhaps I should deal with its contents at this stage. Under the provisions of the Protocol, AXA were obliged to respond to the CNF within 15 days, and 7 December 2017 was, on Ms Robson's calculation, and this is not disputed by Mr Byrne, day 11. The response, which appears at page 93 of the bundle, contains the following relevant information: 'Liability admitted'. There are then some other formal details which are not relevant to the issues that I have to decide, but at the bottom of the document, and so far as the document is produced in paper as opposed to an electronic format, there is a note which has been typed in the following terms:

> '*Note added to MOJ Portal: CNF application'* (the number is given 'CNF phase - response sent: accept response - note title): *Please note that we are dealing with your client's claim on a without admission of liability from our insured.* Note description: notes on 7 December. 2) *We have advised the third-party insurers on a phone call on 7 December 2017 that we are dealing with the third party's claim on a without admission of liability from our insured'.*

8. For convenience, I will refer to the admission made on 7 December 2017 as the admission. Despite the guarded or couched terms of the admission, on 20 December 2017 AXA made - AXA made a payment to Mr Nazir in respect of his vehicle damage claim. A payment was made of £1,909 in full and final settlement of that claim.

Discussion transcribed separately.

9. On 19 January 2018, Mr Mukadam, himself, submitted a CNF through the portal. I have not been referred to nor told of any response made by or on behalf of Mr Nazir's insurers. Notwithstanding the submission by Mr Mukadam of a CNF on 19 January 2018, AXA continued to deal with Mr Nazir's claim as if it was proceeding through the portal. On 24 July 2018, they made a payment to Mr Nazir's solicitors in respect of Stage 2 costs of £360, and on 25 July 2018, they made two payments; one was for £2,750 in respect of general damages, and the other was for a sum of £4,970 in respect of Mr Nazir's claim for hire, recovery, and storage.
10. Mr Mukadam's solicitors wrote to Mr Nazir's solicitors on 1 May 2019. I have not seen the letter, although Ms Robson and Mr Byrne have seen it, but Mr Byrne tells me that nothing turns on its contents for my determination of the applications.
11. On 8 July 2019 Mr Mukadam commenced these proceedings; he issued a Part 7 claim. On 17 July 2019, AXA wrote to Mr Nazir's solicitors confirming that it had settled Mr Naazir's claim in full and final settlement and not on a without prejudice basis. On 25 July 2019, Mr Nazir, through his insurers, filed and served a defence. The contents of the defence are important insofar as it relates to these applications. I say that for the following reasons: Firstly, at paragraph five, the defence refers to the fact that Mr Nazir instructed AMT Lawyers, who successfully recovered payment of his general damages, in full, from Mr Mukadam's motor insurers; a sum of £2,100 is referred to there. The defence, at paragraph six, also refers to the payment in respect of vehicle damage on 20 December 2017, to which I referred earlier in this judgment. At paragraph seven, the defence also refers to the confirmation which AXA made on 17 July 2017, to which I have referred a few moments ago. Paragraph eight of the defence contains an invitation to Mr Mukadam's solicitor; it is prefaced by the words '*As liability is no longer an issue'*. The invitation is to discontinue the claim with immediate effect, Mr Nazir's insurers relying on the case of *Chimel v Chibwana and Williams*, to which I will refer in due course. Mr Mukadam did not take up the invitation that had been offered to them but served a reply in which his solicitors set out the reasons why they did not consider that an admission had been made, nor why the facts and matters set out at paragraphs five, six, and seven of the defence prevented Mr Mukadam from pursuing his claim.
12. Case-management directions were given by the court on 10 October 2019. Those case-management directions were that the claim was allocated to the fast track, and included the standard type of directions of which parties and lawyers involved in this type of litigation commonly see. A notice from the court dated 29 November 2019 informed the parties of the fact that the trial of the claim had been fixed for 18 February 2019. As I stated at the start of this judgment, Mr Nazir's solicitors lodged the application of

13 February 2020 to strike out the claim, or for summary judgment. That application came before Deputy District Judge Harrison on 12 March 2020. For reasons that are not entirely clear from the order that she made, she adjourned the application to be dealt with as a preliminary issue at the trial on 18 March 2020.

13. The trial was listed before Her Honour Judge Beech, the Designated Civil Judge of Lancashire and Cumbria. Having regard to the fact that one of the parties involved in the case, or perhaps their solicitors, was self-isolating, and having regard to the fact that there was insufficient time to deal with the application of 13 February 2020, and, if unsuccessful, the trial, Her Honour Judge Beech adjourned the application and the trial. She gave directions for the exchange of skeleton arguments by 10 April 2020. Following the adjournment of the trial, Mr Mukadam's solicitors lodged the application of 3 April 2020 to seek for permission to withdraw the admission, and, by notice dated 27 April 2020, the parties were informed that both the application of 13 February 2020 and 3 April 2020 would be heard together today, 14 May 2020.

14. It is not entirely clear what direction was given in relation to the trial, but Mr Byrne and Ms Robson both agree that in the event that I refuse the application of 13 February 2020 and grant the application of 3 April 2020, then I should list the trial for hearing, be that by remote, in person, or hybrid hearing.

15. Against that background, it falls for me to decide the following issues:
    a. Firstly, did Mr Mukadam admit liability as contemplated by the procedure set out in the portal?
    b. Secondly, did the wording endorsed on the admission of 7 December 2017 take Mr Nazir's pursuit of the claim outside the portal procedure?
    c. Thirdly, if the admission was a binding admission within the provisions of the portal, was the admission made by an entity who had the actual ostensible authority of Mr Mukadam?
    d. Fourthly, if so, should Mr Mukadam be given permission to withdraw from the admission?
    e. Fifthly, if not, it seems to be accepted by Mr Byrne that if I do not give permission to withdraw and if the admission is binding, then Mr Nazir's application of 13 February 2020 should succeed.

16. It is important to identify the procedural framework within which Mr Nazir's claim was made when he submitted his CNF on 20 November 2017. In her skeleton argument, Ms Robson reminded me that the procedure set out in the Pre-Action Protocol for low value personal injury claims was a self-contained code and the primary source governing party behaviour in the claim to which the Protocol applies. She referred me to paragraph C15A-099 in the preamble to the Employers' Liability or Public Liability Protocol, which refers also to the RTA and EL/PL Protocols, in which there is set out the following:

> '*This Protocol and the similar RTA Protocol are, in reality, the only two Pre-Action Protocols with real teeth. Whereas normally the rules of court rank first and the Protocols last, here the process is reversed; the Protocol is most important. The rules and practice directions exist to support the Protocol rather than the other way round*'.

Equally, the preamble to the RTA Protocol at C13A-005 states the following:

> '*Normally, CPR rules are supplemented directly by Practice Directions and indirectly by Pre-Action Protocols; here these relationships are reversed. The RTA Protocol is the primary source governing any party behaviour in*

> *the claim to which it applies. Practice Direction 8B builds on Protocol Stage 2 processes and provides special and limited court procedures for the purpose of determining the claim if settlement is not achieved (and for some other purpose); and Section 2 of CPR Part 36 and Section 6 of Part 45 provide the legal framework not only for the Stage 2 procedure but for the pre-action negotiating processes, in effect supplementing Practice Direction 8B and the RTA Protocols*'.

Ms Robson describes the Protocols as kings.

17. There is no dispute that normal common law principles do not apply to claims that are proceeding within the Protocol. The type of common law principles that I have in mind are those in relation to, for example, principles of offer and acceptance, mistake and the doctrine of waiver and affirmation. That is a summary of a number of the decisions which Ms Robson identifies at paragraph five of her skeleton argument, and Mr Byrne does not take issue with that as a principle of practice or law.
18. Moreover, there are the provisions of the Protocol at 4.5, which make certain exclusions: '*It does not apply to a claim in respect of a breach of duty owed to a road user by a person who is not a road user'.* In this case, it is unarguable that Mr Mukadam and Mr Nazir were both road users.
19. The meaning of 'admission' and the meaning of 'defendant' are defined in the Protocol. An 'admission' under paragraph 1.1(1) of the Protocol admits:

> *'(a) the accident occurred; (b) it was caused by the defendant's breach of duty; (c) it caused some loss to the claimant, the nature and extent of which is not admitted; and (d) the defendant has no accrued defence to the claim under the Limitation Act 1980'.*

'Defendant' is defined under 1.1(10) as:

> '*the insurer of the person who is subject to the claims under this Protocol unless the context indicates that it means: (a) the person the subject of the claim; (b) the defendant's legal rep; (c) the MIB; (d) a person falling within the exceptions to Section 144 of the Road Traffic Act 1988'.*

20. As for the principles governing the circumstances in which the court would give permission to a party making an admission to withdraw, these are set out in Practice Direction 7 to Part 14. I will address those issues when I come to my analysis of the application of 3 April 2020.
21. One other matter that I need to identify is this: it is the extract from the speech of Lord Neuberger in the case of *Willers v Joyce & Anor* No 2 [2016] UKSC 44.

> *'So far as the High Court is concerned, puisne judges are not technically bound by decisions of their peers, but they should generally follow a decision of a court of coordinate jurisdiction unless there is a powerful reason for not doing so'.*

I identify this extract because Ms Robson relies on the decisions of two circuit judges, namely the decision of His Honour Judge Wood, Queen's Counsel, the Designated Civil Judge in the case of *Maddocks v Lyne*, and, secondly, the decision of His Honour Judge Simpkiss in the case of *Chimel v Chibwana and Williams,* to which I referred a few moments ago. There is no reason not to follow Lord Neuberger's dictum,

when I consider the decisions of circuit judges who have a coordinate jurisdiction to mine.

22. Insofar as the arguments advanced by Ms Robson and Mr Byrne orally before me supplemented that which they set out in their written skeleton arguments, their points were as follows:

    a. Ms Robson's overarching point is the admission of 7 December 2017 is binding; the additional words have no meaning or effect; the Protocol does not contemplate the possibility that the admission could be qualified in some way; the words endorsed on the admission do not amount to an agreement between the parties so as to clarify the manner in which they have agreed to deal with some future event. That might arise in circumstances, for example, where, on the facts of this case, Mr Nazir was submitting a claim, Mr Mukadam was making a counterclaim, and the parties, through solicitors/insurers or the like, had agreed that once the claim exited the portal because there was an issue in relation to liability, there would be no need for Mr Mukadam to raise a counterclaim as well as defend, because the parties would be content to deal with the issue of liability first, and the question of quantification of the counterclaim could be held over until the issue of liability as between the parties had been resolved.

    b. Additionally, Ms Robson submitted that it was only possible to withdraw the admissions in the circumstances set out in CPR 14.1B. That provides as follows under subparagraph (2):
    '*A defendant may, by giving notice in writing, withdraw an admission of causation - (a) before commencement of proceedings - (i) during the initial consideration period; or (ii) at any time, if the person to whom the admission was made or agrees; or (b) after the commencement of proceedings - (i) if all the parties to the proceedings consent; or (ii) with the permission of the court'.*

    c. Ms Robson submits that that is not a provision which Mr Mukadam can pray in aid, because it deals with the question of withdrawal of issue in relation to a causation, not in relation to liability.

    d. Moreover, she submits that the authorities to which I have referred a few moments ago support her submission that the admission is a true admission within the Protocol, and it binds Mr Mukadam notwithstanding the circumstances in which it was given. She referred in particular, and I do not propose setting them out at this stage, to the following paragraphs in *Maddox*: paragraphs 50 and 51, and in *Chimel* to paragraphs 51, 62, 63, 65, 66, and 68. I will return to some of those paragraphs in due course.

    e. Furthermore, Ms Robson reminded me that there were policy decisions concerning the finality of litigation and that those policy considerations supported the stance that she was taking, namely that Mr Mukadam should remain bound by the admission. Ms Robson submitted that such approach furthers the overriding objective, particularly in circumstances where the court is concerned in the context of the claim of Mr Nazir and the claim that Mr Mukadam has advanced of claims which are relatively low value.

    f. As for Mr Byrne he submitted that having regard to the fact that AXA were the insurers for Mr Mukadam's employer, and not Mr Mukadam, they had no authority to bind him. To the extent that it could be argued that, in circumstances where an agent exceeds the authority of the principal and a principal would ordinarily have a claim against the agent for breach of warranty of authority, he reminded me that there was no privity of contract between Mr Mukadam and AXA, and, accordingly, he would not have a cause of action against them.

g. Moreover, he reminded me that the circumstances of Mr Mukadam's pursuit of his claim were that the CNF was submitted in a relatively short period of time after the collision - the collision being on 13 November 2017 and the CNF being submitted on 19 January 2018.
h. He maintained that the endorsement on the admission rendered the provisions of the portal so the manner in which a claim is pursued post admission inoperative, and that, perhaps, with the benefit of hindsight, the parties should have agreed that the claim should have dropped out of the portal.
i. He said that, accordingly, the effect of holding Mr Mukadam to the admission would be that, having regard to the accident's circumstances, Mr Nazir will have achieved a windfall because. Mr Byrne submitted that the circumstances surrounding the collision were such that Mr Nazir would probably be held partially to blame for the collision if the evidence was tested at trial.
j. Moreover, he said that applying the factors in PD14, and in particular the evidence of Mr Amin, that I should accede to the application of 3 April 2020, if I concluded that the admission was binding.

Discussion transcribed separately.

23. Having set out the context of the applications, the procedural framework within which I am to determine the applications, and the parties' arguments, I turn to my conclusions in relation to the parties' applications. As I have indicated earlier there is no powerful reason for me not to follow the decision of His Honour Judge Wood, Queen's Counsel, or His Honour Judge Simpkiss, in particular the decision of His Honour Judge Simpkiss. I have derived particular assistance from the following paragraphs in the decision of His Honour Judge Simpkiss: Paragraph 51,

> '*The insurer is conducting the negotiation under the portal and, for those purposes, must be taken to have apparent or ostensible authority to make an admission. The insurer or its solicitors are handling the claim as agent for the insured and must be taken to have authority to compromise it as a solicitor would acting in proceedings. Therefore, any admission made in the portal must, at the very least, be made by the portal defendant's insurer with the apparent or ostensible authority'*.

24. Pausing there, there was an issue in relation to the case before His Honour Judge Simpkiss similar to the argument advanced by Mr Byrne in relation to authority, but His Honour Judge Simpkiss concluded that the admission was made with the apparent or ostensible authority of the defendant's insurer, but at paragraph 52, he identified the following:

> '*The real issue is not authority but the extent to which the admission applies outside the portal, and this I now turn to, to the construction of any admission and whether it applies to uninsured losses and to claims against third parties'*.

25. At paragraph 68, he said the following in relation to the effect of a claim which had been pursued through the portal and settled: '*What happens if the portal claim settles? In my judgment, the settlement in the portal claim is binding as between the portal claimant and the portal defendant in the same way as any other settlement. A settlement agreement "in full and final settlement of all claims between parties" is the end of the matter between them'*.
26. He then goes on to identify what occurred in the case before him in the following way:

> '*The problem here is that the portal defendant is making a claim which is completely inconsistent with the admission in the portal claim. There is a distinction between the settlement of a claim to insured losses, in terms of express or implied, which allow the claimant to make a subsequent claim for insured losses, and the settlement of claim which leaves it open to the other party to make a wholly inconsistent claim against the original claimant. That is blowing hot and cold and is inconsistent with the whole ethos of litigation and the portal'.*

27. In my judgment, when AXA, on 7 December 2017, responded to Mr Nazir's CNF of 20 November 2017, its response amounted to admission as defined by the Protocol. It was an admission that the accident occurred, that the accident was caused by Mr Mukadam's breach of duty, and that Mr Mukadam had caused some loss to Mr Nazir. The issue of limitation was not an issue in this case, having regard to the timing of the collision and the timing of the admission. It was an admission by a defendant as defined in rule 1.1(10) of the Protocol, namely by or on behalf of a person who is the subject of the claim.
28. The words unilaterally written on the admission, to which I referred earlier in this judgment, have no effect; they do not amount to or evidence an agreement between Mr Mukadam and Mr Nazir to deal with some discrete issue separate from other issues of the type in relation to a counterclaim, as I identified earlier in this judgment. The Protocol does not contemplate a situation in which an admission can be partial or provisional or in some way subject to certain conditions being satisfied.
29. The words written do not amount to reasons contemplated in paragraph 6.16. Rule 6.16 provides that where a defendant does not admit liability under paragraph 6.15(3), the defendant must give brief reasons in the CNF response. To my mind, this contemplates an explanation as to why, for example, liability is disputed. It is not difficult for a party, when a claim is submitted through the portal by the submission of a CNF, to drop out of the portal. They can do so by proceeding in the manner contemplated in 6.15: by way of example, by admitting liability but alleging contributory negligence; by not completing and sending the CNF response; by not admitting liability; or by notifying a claimant that it considers that there is inadequate mandatory information in the CNF, or if proceedings are issued, the small claims track would be the normal track for the claim.
30. AXA could have done any of those things, but they chose to do none of them. Moreover, it conducted itself in a manner which is consistent with a claim remaining within the portal by proceeding to the Stage 2 and making the various payments to Mr Nazir in the circumstances I have described earlier. It seems to me that it is no answer that the effect may be in circumstances in which Mr Nazir may have been to blame for the collision that he has received a windfall thereby.
31. AXA had a judgment call to make up until 11 December 2017 in the absence of any information Mr Mukadam had provided to them as to the circumstances surrounding the collision. They decided to proceed by admitting liability; the additional words on the admission are ineffective. It is no answer that AXA had no actual or ostensible authority. Even taking into account the factual difference between this case and that which was presented to His Honour Judge Simpkiss in *Chimel*, I agree entirely with his analysis at paragraphs 51 and 52, to which I have referred above.
32. On that basis, as I have said, I am satisfied that the admission of 7 December 2017 was an admission within the Pre-Action Protocol for low-value PI claims in RTAs, and the unilateral endorsement by AXA of the words that I have identified in no way dilutes or affects that admission having been made.

33. I now need to address whether or not I should accede to the application of 3 April 2020 and give Mr Mukadam permission to withdraw from the admission. The short answer to that point can be found in two paragraphs in His Honour Judge Simpkiss' decision in *Chimel*, namely paragraph 65 and 68. I have set out earlier the sections in paragraph 68 which are relevant.

34. In paragraph 65, His Honour Judge Simpkiss said the following: *'If an admission is made by a portal defendant, that should be treated as any other admission', although on the facts of this case, it cannot now be withdrawn because the portal claim was settled, and there is no claim to which the claimant in these proceedings is a defendant'.*

35. That, alone, would be a reason for me to exercise my discretion against Mr Mukadam and refuse the application of 3 April 2017. Nevertheless, and for the sake of completeness, I need to and will deal with the checklist set out in 14PD7.2, which is the checklist which sets out the circumstances or the factors which the court take into account in deciding whether or not permission should be given to withdraw an admission.

36. When I address these matters, I do not propose reading out each of the subsections, but I will identify them by the letters as appears in the 2020 White Book at pages 587 and 588.

37. The conclusion that I have reached is that I should refuse the application of 3 April 2020. These are my reasons:

    a. I have taken into account all the circumstances and the fact that Mr Mukadam has an independent witness to support his claim. Even if that were to weigh in favour of Mr Mukadam, it does not outweigh the other considerations which I have taken into account. I have also taken into account what I will describe as Mr Byrne's authority point, but for the reasons that I have identified by reference to the decision of His Honour Judge Simpkiss, there is no mileage in that.

    b. 7.2 (a): it is wrong for Mr Mukadam's solicitors to suggest, as he did in his witness statement, that the claim was settled on a without prejudice basis; it was not so settled. There was an admission, and subsequent to the admission being made, payments were made by AXA to Mr Nazir in full and final settlement of his claim. That is what AXA maintained in their letter of 17 July 2019. What AXA did in Mr Mukadam's name when they endorsed the admission of 7 December 2017 was wholly ineffective. The circumstances in which Mr Mukadam seeks to withdraw the admission do not arise out of any new evidence which has come to light which was not available at the time the admission was made. This weighs against the grant of the application.

    c. 7.2(b): Mr Nazir cannot be blamed for the circumstances in which AXA admitted liability; for example, he did not trick them into doing so. Even taking into account that the admission may have been made in circumstances in which Mr Mukadam had not reported the accident circumstances to AXA, they were not obliged to make the admission; it could have procured that the claim exit the portal by not responding because, for example, it had not received a narrative account from Mr Mukadam as to the circumstances in which the collision occurred. There is therefore no conduct, certainly on behalf of Mr Nazir, which weighs in favour of giving permission; the conduct weighs against it.

    d. 7.2 (c) and (d): Even taking into account the circumstances in which the application to withdraw the admission was made, and the fact that Mr Mukadam's claim was proceeding to trial and that Mr Nazir had provided a witness statement in opposition to the claim, Mr Mukadam had been on notice since the defence was served that Mr Nazir was taking a point in relation to the admission. I bear in mind that Mr Mukadam will be prejudiced if the application for permission is refused, and I

bear in mind the fact that, given that Mr Nazir was preparing for trial, it could be said that he would not be prejudiced if the application were granted, but that has to be seen in the context of the point taken in the defence, namely that an issue was taken in relation to the steps taken by AXA in Mr Mukadam's name and that Mr Mukadam was invited to discontinue the claim but chose not to do so.

e. 7.2 (e): The application of 3 April 2020 was made at a very late stage. If it had not been for the circumstances in which Deputy District Judge Harrison adjourned the application of 13 February 2020, one would never know whether or not the application of 3 April 2020 would ever have seen the light of day. No or no adequate explanation is contained in the evidence in support of the application for the delay in making the application. That alone would be a strong and powerful reason to refuse the application. It weighs against any factors that weigh in favour of granting the application.

f. 7.2 (f): The claim was proceeding to trial on the basis that the accident circumstances were in dispute. Even taking into account the fact that there was an independent witness who supported Mr Mukadam, I approach this part of the checklist on the basis that there were equal prospects of success and failure. It cannot be said that Mr Mukadam was bound to succeed in whole or in part. It seems to me this is not a reason to exercise my discretion in favour of Mr Mukadam, or alternatively, it is a factor outweighing the other considerations that I have identified which weigh in favour of refusing the application.

g. 7.2 (g): The interests of the administration of justice chime with some of Ms Robson's submissions earlier today, namely the need for finality in litigation, the need to avoid conflicting decisions being made where one half of a claim proceeds through the portal and the flipside of it proceeds by way of Part 7 claims; this is particularly so in low value claims. The interests of the administration of justice and furthering the overriding objective seem to me to weigh in favour of refusing the application.

38. Additionally, I go back to what His Honour Judge Simpkiss said in *Chimel* at paragraph 68. I will not read it, as I have done earlier, but I would say the following: there was a settlement agreement in full and final settlement of all claims between the parties. That, seen in the context of the admission, must be that on the basis that it was accepted that the collision was caused by the negligent driving of Mr Mukadam rather than caused or contributed to by the negligent driving of Mr Nazir. It would not be in the interests of the administration of justice to reopen that factual scenario in all the circumstances.

39. Those are the reasons why I have reached the conclusion I have reached to dismiss the claimant's application dated 3 April 2020.

40. Given the conclusions that I have reached, and having regard to Mr Byrne's position, I am satisfied that, having decided that I should decline to give Mr Mukadam permission to withdraw the admission, that Mr Nazir's application on 13 February 2020 must succeed. Accordingly, I am satisfied that I should strike out the statement of case on the basis that the statement of case discloses no reasonable grounds for bringing or defending the claim.

41. Whilst ordinarily the facts of the matter set out in the particulars of claim, namely a collision between two vehicles causing one of the claimant injury, is a statement of case disclosing reasonable grounds for bringing the claim, those facts have to be seen in the context of the admission. By admitting liability following the response to the CNF submitted on 20 November 2017, Mr Mukadam has no reasonable grounds for bringing the claim. Moreover, having regard to that admission, he has no real prospect of succeeding in the claim, and, accordingly, having decided that the statement of case discloses no

reasonable grounds for bringing the claim, I should also dismiss the claim under CPR 24.2.

42. To the extent that the application has succeeded under CPR 24.2, it is arguable that the evidence in support, and/or the application, does not comply with the Practice Direction to Part 24 which identifies matters which the evidence in support should contain and/or draws the attention of Mr Mukadam, as respondent, to the provisions of 24.5(2), namely the obligation to serve evidence at least seven days before the hearing. However, that procedural failure is not a reason for me not to grant the application of 13 February 2020.

43. Those are my reasons for reaching the conclusions that I have reached in relation to the applications.

End of Judgment

Transcript from a recording by Ubiqus
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