



27 June 2012

## PRESS SUMMARY

**Fairclough Homes Limited (Appellant) v Summers (Respondent)**

**[2012] UKSC 26**

*On appeal from the Court of Appeal [2010] EWCA Civ 1300*

**JUSTICES:** Lord Hope (Deputy President), Lord Kerr, Lord Clarke, Lord Dyson, Lord Reed

### BACKGROUND TO THE APPEALS

On 13 May 2003 the Respondent was injured in an accident at work. In May 2006 the Respondent issued a claim against the Appellant, his former employer, alleging breach of duty and/or negligence. In August 2007 the county court gave judgment for the Respondent on liability, with damages to be assessed at a later date.

Between October 2007 and September 2008 the Appellant subjected the Respondent to undercover surveillance. This revealed the Respondent was grossly exaggerating the effect of his injuries and his incapacity to work.

In December 2008 the Respondent served his first schedule of loss. He claimed damages of £838,616 including a claim for loss of earnings up to October 2008. Soon afterwards the Appellant disclosed the surveillance evidence to the Respondent. At the same time it served a re-amended defence asserting that the Respondent's claim was dishonestly exaggerated and should be struck out in its entirety. The Respondent subsequently served two further schedules of loss valuing the claim at approximately £250,000. All of the Respondent's pleadings and schedules of loss were supported by statements of truth.

The trial on damages took place in January 2010. The Respondent did not challenge the surveillance evidence. The judge held there was no doubt the Respondent had suffered serious fractures which required at least two operations. However he also found that the evidence established beyond reasonable doubt that the Respondent had fraudulently misstated the extent of his injuries and had deliberately lied to the medical experts and to the Department of Work and Pensions. The judge found that the Respondent had been fit for work and able to get work since the end of June 2007. Before that date he had been unable to work, but was not as housebound and incapable of activity as he claimed. On the basis of these findings the judge awarded the Respondent damages for loss of earnings between the date of the accident and 30 June 2007. In addition, he awarded general damages of £18,500 and damages for additional care and assistance. The total award was £88,716.76.

The Appellant submitted that the court had power to strike out the claim in its entirety on the ground that it was tainted by fraud and was an abuse of process. Both the judge and the Court of Appeal (Ward and Smith LJ) held they were bound by the decisions of the Court of Appeal in *Ul-Haq v Shah* [2009] EWCA Civ 542 and *Widlake v BAA* [2009] EWCA Civ 1256 to refuse the application on the ground that the court had no power to strike out a statement of case in such circumstances.

### JUDGMENT

The Supreme Court unanimously holds that the court does have jurisdiction to strike the claim out for abuse of process, but declines to exercise the power in the present case. The judgment of the Court is given by Lord Clarke.

### REASONS FOR THE JUDGMENT

The issues in the appeal are (1) whether, following a trial at which the court has held that the defendant is liable in damages to the claimant in an ascertained sum, the court nevertheless has power to strike out the claimant's

statement of case on the basis that it is an abuse of process; and (2) if so, in what circumstances that power should be exercised [1].

In *Ul-Haq v Shah* the Court of Appeal held there is an invariable rule that a person cannot be deprived of a judgment for damages to which he is otherwise entitled on the ground that he is guilty of an abuse of process [25]-[28]. The principles in *Ul-Haq* were restated by the Court of Appeal in *Widlake v BAA* [31].

Notwithstanding those decisions, the court does in fact have power to strike out a statement of case even after the trial of an action where the court has been able to make a proper assessment of both liability and the amount of damages [33]. The language of the Civil Procedure Rules supports the existence of a jurisdiction to strike a claim out for abuse of process even where to do so would defeat a substantive claim. The express words of CPR 3.4(2)(b) give the court power to strike out a statement of case on the ground that it is an abuse of the court's process. It is common ground that deliberately to make a false claim and to adduce false evidence is an abuse of process. It follows from the language of the rule that in such a case the court has power to strike out the statement of case. There is nothing in the rule itself to qualify this power. The only restriction is that contained in CPR 1.1 and 1.2 that the court must decide cases in accordance with the overriding objective of determining cases justly [41]. The position is the same under the inherent jurisdiction of the court, so that in future it is sufficient for applications to be made under the CPR [42]

However as a matter of principle the court should only exercise this power in very exceptional circumstances [36], [65]. Under the CPR the court has a wide discretion as to how its powers should be exercised. The power to strike out a claim at the end of a trial should only be exercised if the court is satisfied that the party's abuse of process was such that he had thereby forfeited the right to have his claim determined. This is a largely theoretical possibility. It must be a very rare case in which, at the end of a trial, it would be appropriate for a judge to strike out a case rather than dismiss it in a judgment on the merits in the usual way. The same is true where, as in this case, the court is able to assess both the liability of the defendant and the amount of that liability [43].

This conclusion is compatible with the European Convention on Human Rights (ECHR). In deciding whether or not to exercise the power to strike out the court will examine the circumstances of the case scrupulously. It will only strike out the claim if this is a proportionate means of achieving the aim of controlling the process of the court and dealing with cases justly [46] - [48]. It is very difficult to think of circumstances in which such a measure would be proportionate. However they might include a case where there had been a massive attempt to deceive the court but the award of damages would be very small [49].

The Court rejects the submission that unless exaggerated claims are struck out, dishonest claimants will not be deterred. There are many other ways in which deterrence can be achieved. These include ensuring that the dishonesty does not increase the award of damages, making orders for costs (including indemnity costs), reducing interest, proceedings for contempt and criminal proceedings. In appropriate cases adverse inferences can also be drawn against the claimant [52],[61].

In the present case the Respondent accepts that in making statements of truth which he knew to be false and in presenting a dishonest case as to the effect of his injuries and on quantum, he was guilty of a serious abuse of process [24]. Nevertheless, as a matter of substantive law the Respondent did suffer significant injury as a result of the Appellant's breach of duty. In all the circumstances it would not be proportionate or just to strike the claim out. The appeal is therefore dismissed [63] - [65].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.**

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