IN THE COUNTY COURT AT LEEDS

Case No. K01LS511

Courtroom No. 19

The Courthouse

1 Oxford Row

Leeds

LS1 3BG

Wednesday, 29th November 2023

Before:

DISTRICT JUDGE ROYLE

B E T W E E N:

PAULLEY

and

RADISSON HOTEL EDINBURGH LIMITED

THE CLAIMANT appeared In Person

MR R QUICKFALL appeared on behalf of the Defendant

JUDGMENT

(Approved)

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DJ ROYLE:

1. This is my judgment in case number K01LS511 on an application made by the defendant dated 26 September 2023 which asks the Court to decline to accept to exercise jurisdiction which it undoubtedly has, to hear a claim by Mr Doug Paulley against the defendant, Radisson Hotel Edinburgh Limited in relation to the non-availability of a wheelchair lift at the defendant’s Edinburgh premises. That claim is brought under the Equality Act 2010 under various heads.
2. Mr Paulley lives in Wetherby in West Yorkshire. For the purposes of section 42 of the Civil Jurisdiction and Judgments Act 1982, although the defendant operates an Edinburgh hotel, it is common ground that it is headquartered in Manchester and, therefore, for all relevant purposes, is domiciled in England and Wales. Mr Paulley issued a claim seeking damages for injury to feelings, declaratory relief and injunctive relief in relation to the matters that I have described which resulted in the defendant filing an acknowledgement of service on 13 September 2023 indicating that it wished to defend the whole claim and contest the Court’s jurisdiction. That is exactly as it had to do under Rule 11.1 in circumstances where, as it does, it seeks to say that the Court has jurisdiction but should not exercise it. Also, in accordance with Rule 11.1(3) and (4), it duly issued its application to contest jurisdiction on 26 September 2023 or, at the very least, presented it for issue at the court.
3. For reasons which I will explain very shortly, it is common ground, and I agree with Mr Quickfall and the parties, that the Court has jurisdiction to deal with this claim. The question is whether it should decline to exercise it. To that end, the application notice seeks a declaration that the County Court, at Leeds, should not exercise its jurisdiction and an order setting aside the claim form and the particulars of claim and an order dismissing the claim. The defendant’s overarching point is that the appropriate form of the claim is the Edinburgh Sheriff Court.
4. It can very easily and quickly be seen that this Court does have jurisdiction. That arises from section 114 of the Equality Act 2010. Subsection (1) provides that:

“The County Court, or, in Scotland, the Sheriff has jurisdiction to determine a claim relating to:

1. a contravention of Part 3 (services and public functions);
2. a contravention of Part 4 (premises)”.

“Premises”, it seems to me, is likely to be the most appropriate categorisation here but I need express no final view.

1. Section 16 of the 1982 Act to which I have referred, is geared at determination of where jurisdiction lies as between England and Wales, on the one hand, and Scotland, on the other and it does so by reference to Schedule 4. Paragraph one of Schedule 4 provides that:

“Subject to the rules of this Schedule, persons domiciled in a part of the United Kingdom shall be sued in the courts of that part”.

As I have explained, for the purposes of the 1982 Act, the defendant is domiciled in England and Wales and, so, paragraph one of Schedule 4 makes sure that they should be sued in England and Wales. I pause, there, to say that is exactly what Mr Paulley has done.

1. However, Schedule 4 goes on at paragraph three, read in conjunction with paragraph two to provide that:

“A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom be sued:

…

1. in matters of tort, delict or quasi-delict in accordance with the place where the harmful event occurred or may occur…
2. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated”.

Since the events in question occurred in Edinburgh, that paragraph provides, effectively, permission for Mr Paulley to sue this defendant in the Edinburgh courts.

1. Section 49 of the 1982 Act then provides various causes of action which can occur if jurisdiction is declined or on the basis of *forum non conveniens* which, properly translated, I am told means “the appropriate forum”. “Convenient”, apparently, is not a good translation of it. Those include striking out the claim. I have no doubt that I have power if I accede to the defendant’s application to grant the relief sought on the application.
2. A case on similar but not identical ground was dealt with by the Court of Appeal in 2015: *Cook & Others v Virgin Media & Another* [2015] EWCA Civ 1287. In that case, the Court of Appeal upheld a district judge’s striking out on the second appeal, that decision also having been upheld on the first appeal, on the basis that it was a perfectly lawful order. However, that was in different circumstances. First, it is important to remember that, in substance, these are case management decisions and, therefore, there can be more than one right answer providing that both right answers lie within the legitimate, properly exercised discretion of the district judge. Accordingly, it is worth observing that although the Court of Appeal said that strike out in *Cook v Virgin Media* was correct, that does not mean that refusing to strike out would not, also, have been equally correct, at least, potentially.
3. Mr Quickfall, who appears for the defendant as counsel, quite rightly, does not seek to suggest to me that because a strike out was upheld in *Cook v Virgin Media* that that is the inevitable answer to his application. He would have been wrong to submit that and he, very properly, did not. In any event, *Cook v Virgin Media* is on different facts because, as I understand it, the claimant in *Cook v Virgin Media* was domiciled in Scotland, complaining about an act in Scotland and sued the defendant, in that case, in the Carlisle County Court. Beyond that, and with all proper respect for the Court of Appeal, I am not sure that I can take much from *Cook v Virgin Media* on these circumstances.
4. What is clear, though, is that the decision about whether the Leeds County Court is the appropriate forum for Mr Paulley’s claim turns on an application of the overriding objective within the Civil Procedure Rules in this jurisdiction. Mr Quickfall submits that this is not the appropriate jurisdiction. He has not suggested, and I would not have agreed with him had he done so, that this is, in any way, a particularly complex claim or has any great degree of import. What he does say is that this is a claim about the functioning or otherwise of a lift and the defendant seeks to call seven witnesses to give evidence. Whatever track this claim is ultimately allocated to, they wish to rely on the evidence of seven witnesses, and they are all in Scotland. He says that in order for them to give their best evidence, they may wish to give it in person and that evidence, for example, by remote video is second best. He points to the fact that, on the defendant’s calculation, it will, in direct travel costs and wages cost £4,000 or thereabouts for those witnesses to come to court in this jurisdiction, which, he argues, is disproportionate to a claim valued, potentially, up to £10,000, being the lower *Vento* bracket.
5. The overriding objective is certainly well known to the lawyers. I suspect Mr Paulley is familiar with it but just in case, it requires me to deal with the case justly and at proportionate cost. That includes, so far as is practicable:

“(a) ensuring that the parties are on an equal footing and can participate fully in proceedings and that parties and witnesses can give their best evidence

(b) saving expense;

(c) dealing with the case in ways which are proportionate:

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues;

(iv) to the financial position of each party;

1. ensuring that it is dealt with expeditiously and fairly;
2. allotting to it an appropriate share of the Court’s resources while taking into account the need to allot resources to other cases; and
3. enforcing compliance with rules, practice directions and orders”.
4. I also have in mind that a more recent part of the CPR, Practice Direction 1A which is “participation of vulnerable parties or witnesses”. Mr Paulley has not suggested, in terms, that he is vulnerable but it does seem to me that in a wide sense, this has application. For example, paragraph two of that practice direction says:

“(2) Vulnerability of a party or witness may impede participation and diminish the quality of evidence. The Court should take all proportionate measures to address these issues in every case.

(3) A person should be considered as vulnerable when a factor which could be personal or situational, permanent or temporary, may adversely affect their participation in proceedings or the giving of evidence.

(4) Factors which may cause vulnerability in a party or witness include but are not limited to:

…

(c) physical disability or impairment or health condition”.

1. Mr Paulley, as I understand matters, is a permanent wheelchair user. It follows, as he did submit, that travel to Edinburgh to litigate this case is more fraught for him. Inevitably, it will involve cost as well, but the same might be said for the defendant’s seven witnesses. It is certainly unacceptable and cumbersome for Mr Paulley to have to travel to Edinburgh but I bear well in mind that he appears to be one of, potentially, eight witnesses and the other seven would, if they were giving their evidence in Leeds, have to travel in the opposite direction. I will return to that apparently central question in a moment.
2. Some other issues have been put to me such as the potential costs recovery being different in here versus in Scotland, depending on what track the matter is allocated to here. Those two things, largely, it seems to me, run in tandem. There is an unresolvable dispute between the parties as to whether there is an equivalent of a small claims mediation service in the Scottish jurisdiction. It seems to me, as I indicated during the hearing that to try to look too far ahead in terms of what the costs recovery position may be, what track this may end up being allocated to, is a bridge too far for this hearing because until the issues are more clearly known, the question of track is very much up in the air, and that dictates costs for recovery starting point as a position in this jurisdiction. I have little or no information about what the costs recovery position in Scots law may or may not be. I decline to speculate about any of those matters.

It seems to me, therefore, the central question is, is this an appropriate forum for the case, and, whether it is appropriate is to be determined by whether it can be disposed of justly and fairly within the factors that I have identified.

1. Mr Quickfall pressed upon me that the idea of seven witnesses giving evidence remotely effectively meant that it was unfair and that it was equally unfair for them to have to travel given the expense and proportionality of expense, to give evidence in this jurisdiction. As to precisely why remote evidence would be unfair for the witnesses, when I asked him to deal with that in more detail, he said that there can be technical difficulties with remote evidence, the witnesses can feel rather dislocated from what is going on in court and it is more difficult for them to be assisted by the lawyers, obviously, when they are not actually giving their evidence and can be more difficult for instructions to be given. These things are always a balancing act.
2. I would make the following observations: witnesses, indeed significant witnesses, can and do give evidence remotely as a matter of routine. I accept it may not be the perfect scenario. However, I do not see why they cannot give evidence remotely and why that would be unfair. If they wish to give evidence from Scotland and, presently, nobody has told me of an impediment to do that in terms of any permissions required, or local law, there is no reason, for example, why they could not do so gathered in one place where there can be assistance, if thought appropriate, given by a local lawyer. It is the party who needs to give the instructions. There is no reason why it would be disproportionate for somebody from the party to attend in Leeds. If all of the witnesses wish to be appraised of what is going on in court, though I am not convinced that that would be necessary, there is no reason why the proceedings could not be watched by them in Edinburgh and instructions given. Indeed, in some ways, given that, presumably, they would be on mute while they were doing that, it might be easier for them to give instructions to a solicitor attending them locally, even if that were to be a relatively junior lawyer.
3. Giving evidence remotely would also minimise their absence from the business, thus, rendering the whole process rather cheaper for the defendant. I say that because it is only an estimate at present but the parties are both suggesting, it seems to me, that this is likely to be a one-day hearing. If there are eight witnesses and a judgment to be given, the evidence is not going to take very long from any of them. It might be, that I am not sure I necessarily accept this, disproportionate for them all to come to Leeds. They can easily give brief evidence by remote video link and, if they so wish, and their employer is happy for them to do so, watch the entire day by that means. I do not attach great weight to the idea that one of the defendant’s seven witnesses is not an employee and may not come if it is required to give evidence in Leeds. Firstly, I see no reason why they cannot give evidence by remote means and, if there are difficulties with that, then there is a procedure for summonsing them.
4. The giving of evidence remotely by the defendant’s witnesses minimises travel costs for everybody, helps to increase the probability that Mr Paulley can give his best evidence and minimises the disruption and expense to the defendant at what I regard as a minimal disadvantage in the quality of the evidence and ability to give instructions insofar as witnesses might be participating in that.
5. In short, I consider that a fair hearing within the meaning of the overriding objective and its subcomponents can occur in this jurisdiction and, since the Court has jurisdiction, I, therefore, find that there is no reason why I should decline to exercise it. For those reasons, I decline to accede to the defendant’s application and, instead, I will give a direction for a defence. I will observe that there was an order requiring Mr Paulley to file evidence that he had notified the Equality and Human Rights Commission of his claim. He may well have done. I just have not seen it yet, and, perhaps he can tell me when he did it.

**End of Judgment.**

Transcript of a recording by Ubiqus (Acolad UK Ltd)

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This transcript has been approved by the judge.