



[2019] JMSC CIV 90

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013 HCV04564

BETWEEN	ALEX MITCHELL	CLAIMANT
AND	MARVEN MCDONALD	DEFENDANT

IN OPEN COURT

Lemar Neil instructed by Bignall Law for the Claimant.

Deandra Butler instructed by Samuda and Johnson for the Defendant.

Heard: 14th January, 15th January and 1st March 2019

Negligence - Motor vehicle accident - Breach of duty of care.

THOMAS, J

INTRODUCTION

[1] This claim arises out of a motor vehicle accident which occurred along Hagley Park Road, Saint Andrew on the 30th March 2012. By Amended Claim Form and Amended Particulars of Claim filed on the 25th July 2016 the Claimant alleges negligence and claims damages for personal injury and damage to motor cycle.

[2] The Claimant Mr. Alex Mitchell claims that on or about the 30th March 2012 along Hagley Park Road, in the parish of Saint Andrew the Defendant whether by herself,

servant and/or her agent, so negligently drove, managed or controlled a Mitsubishi Lancer motor car registered 9070 FW owned by the Defendant from a private property onto the roadway without due care and without warning, that it collided into the pedal cycle aboard which the Claimant was the cyclist, causing him to suffer injury, loss and damage and incur expenses.

[3] The Defendant in her defence filed on the 25th April 2014, in denying liability, states that:

The accident was solely caused or in the alternative, significantly contributed to by the negligence of the Claimant. She pleaded the particulars of the Claimant's negligence as follows:

- (a) Rode his pedal cycle into the path of the Defendant's motor vehicle registered 9070FW;
- (b) Rode his pedal cycle at too fast a rate of speed in the circumstances;
- (c) Collided into the Defendant's motor vehicle;
- (d) Failed to keep a proper look out for vehicles using the road;
- (e) Riding while apparently intoxicated;
- (f) Failed to stop, swerve, or in any way control the pedal cycle so as to avoid the collision.

The Evidence of the Claimant

[4] Mr. Alex Mitchell testifies that:

On or about the 30th of March 2012 about 5:20 in afternoon he was riding a pedal cycle along Hagley Park Road heading home from Half Way Tree. There were two lanes of traffic along the roadway heading in opposite directions. He kept to the left of the road as he pedalled. As he passed the vicinity of NHT a Mitsubishi Lancer motor car numbered and lettered 9070 FW exited a business place on his

left hand side. The driver didn't indicate that he was going to make a right turn, neither did he make proper checks to see that he was coming along the road way. The angle of that particular portion of the road is shaped like a V and the driver of the Mitsubishi Lancer would have had to make his way out into the road significantly to see him coming. As the driver of the Mitsubishi Lancer proceeded right he tried to slow down but because of the speed at which he was pedalling he could not stop and the front of the car where the bumper is, collided into his bicycle.

[5] He further testifies that he was thrown off the bicycle and onto the street. He sustained bruises to his knees, elbows, legs toes and shoulder. An elder that was in the vicinity of the accident came to assist him off the ground. He also took up his bicycle. The elder spoke to the driver of the Mitsubishi and asked that he take him to the doctor. The partner of the driver of the motor car at the time insisted that they leave because they were late in getting somewhere. He just took down the license plate number and allowed them to go. He took a taxi and went to a private doctor on Hagley Park Road in close vicinity, but it was closed. He was now in excruciating pain. He left the doctor's office and went to the Half Way Tree Police Station to report the accident. He left the station and took a taxi to the Kingston Public Hospital. At the hospital he was thoroughly examined and treated

[6] His evidence on cross examination is as follows:

He was riding at about 15kmph. The Defendant's car was about 4ft away when first saw it. It was positioned to turn up Half Way Tree Rd. The driver had started to turn right. From the time he first saw the car to the of time of the accident one (1) second had passed. There was traffic heading to Half Way Tree and towards Three Miles. The traffic was bumper to bumper in both directions. He was in the middle of the left lane going down. The Defendant's car did not hit any other traffic. A JUTC bus was behind him. He had come around the bus. He went on the right side and got back in line. About three (3) seconds after that, the accident occurred. He does not agree that the accident happened in the middle of the road. He agrees that it happened on the white line. The JUTC bus did not stop to let out the

Defendant's car. A car did not stop to let out the Defendant's car. He agrees that the Defendant's car was moving slowly. The car was driven out at a speed of approximately 10kmp per hour.

The Defendant's Case

- [7] The main witness for the Defendant is Mr Hugh Jonson. He states that he was the authorized driver of the Mitsubishi Lancer motor vehicle registered 9070 FW, which met in an accident with a bicycle. He indicates that he was leaving his former workplace, Genesis Stationery and Supplies located at 19 Hagley Park Road. These premises are on the left side of Hagley Park road. He proceeded to come through the gate unto the main road, in the vicinity of where the accident occurred. The road is a straight road; one lane goes down Hagley Park Road, towards Three Mile and two lanes going up towards Half Way Tree. The lane to Three Mile is a small lane which can only accommodate one vehicle at a time.
- [8] He further indicates that just before the accident there was traffic travelling in both lanes. As he waited for a few minutes at the gate of the premises, a JUTC bus heading towards Three Mile stopped and the driver indicated with his hand for him to come out. He was planning to turn towards Half Way Tree. He came out slowly because he was not sure if the traffic going towards Half Way Tree would also give him a 'bly'. A car that was heading towards Half Way Tree also stopped to allow him to drive out onto the road. He slowly proceeded to go out onto Hagley Park Road. Just as he was about to drive past the front of the bus, he saw a shadow and slammed on the car brakes. The Claimant on his bicycle rode past the bus on its right side and collided with the front section of the motor vehicle he was driving.
- [9] Mr. Johnson in continuing his evidence states that: The Claimant fell on the opposite side of the road in front of the car which had stopped to let out the car he was driving. Someone took up the bicycle and assisted the Claimant. He took time, came out onto Hagley Park Road and went over to the side and stopped. There was no damage to the car. The Claimant then walked over to the car he

was driving and said that he 'dash weh' his beer. He took up the empty bottle of Heineken from the ground which was not broken. He asked the Claimant if he wanted to go to the doctor. The person who was assisting the Claimant was the caretaker for the premises which has the doctor's office. He and the Claimant went to the doctor and knocked on the door. The doctor came out and they explained to him what happened. The doctor was unable to assist because the nurse had already left. He observed that the Claimant had a little bruise but no cut. He asked the Claimant if he wanted to go to a doctor by Clock Tower. He started to get miserable and started to complain about him mashing up his bicycle. All that had happened to the bicycle is that the chain fell off and the Claimant put it back on. After the Claimant started fussing, he decided to leave. The Claimant was walking about fine. He watched the Claimant push the bicycle away from the premises, at which point he was walking normally. He then began to ride up Hagley Park Road towards Half Way Tree.

[10] On cross examination, Mr. Johnson's evidence continues as follows: At the time of the accident it was a busy road. It was a Friday. The JUTC bus stopped as he got to the gate. The main road is right by the gate. His saying in his statement that he waited for a few minutes is not inconsistent with saying as he got to the gate the bus stopped. He was waiting on a, "bly" to get out. He would not come out like that on a busy street. The driver of the bus indicated he could come out. He could not rely on him alone. He relied on him from one end. There are two sides of traffic. Based on where he was at the gate, he could not see behind the bus. He was taking his time to go out when the bus stopped. He went out in front of the bus. He could not see behind the bus because of the length of the bus. When he was at the gate he could not see much. There is not much to see unless you are in the road. When the bus is there, there is not much space between the lanes. If the bus was not there he would be able to see the other traffic. The road is a straight road. Just the nose of the car had passed the bus before the collision occurred. A car on the other side of the road had stopped for him before the collision occurred. He was about a foot in the other lane. All the traffic had stopped. When he saw the

shadow he slammed his brakes. The Claimant did not ride past the car. There was about 24 inches between the car and the bus just before the collision. At the time of the collision the Claimant did pass the bus. He would have had to pass the bus to hit the car. There is no bus stop there. He first saw the Claimant when he hit the car.

Liability

[11] The issues as they relate to liability in the instant case, simply stated are as follows:

- (i) Whether the Defendant, through the driver of her motor vehicle owes a duty of care to the Claimant a pedal cyclist
- (ii) Whether the Defendant through her agent has breached any duty of care owed to the Claimant.

The LAW

[12] It is now settled law that all road users owe a duty of care to other road users (see ***Esso Standard Oil SA Ltd & Another v. Ivan Tulloch*** (1991) 28 JLR page 557). Further, **Section 32 (1) of the Road Traffic Act** also imposes a statutory duty of care on all motorist for all other road users. It reads:

“if any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence”

[13] Reasonable care is defined in the case as; “the care an ordinary skilful driver would have exercised in all the circumstances including the avoidance of excessive speed, keeping a proper look out and observing traffic rules and signals” (See of ***Bourhill v. Young*** [1943] AC 92).

Submissions

By Lemar Neil on behalf of the Claimant

[14] Mr. Neil submits that:

The versions of the accident given by the Claimant and Mr Johnson, witness for the Defendant are diametrically opposed. The issue in this case turns on credibility. The burden of proving negligence is the Claimant's. The collision was caused by the negligence of the Defendant's authorized driver, Hugh Johnson; and the Claimant was not contributory negligent. A lot turns on inconsistency since credibility is at the root of this matter. The court should assess the Claimant as a truthful witness on the totality of the evidence given. The Claimant has not seriously been challenged under cross-examination and his credibility has not been eroded. The cross-examination revealed an apparent inconsistency about the Claimant going to the doctor across the road and taking a taxi and letting the Defendant and Mr. Johnson drive off. This was clarified by the Claimant saying they went to the doctor across the road but that office was closed and so he took a taxi, a station wagon, put his bicycle in the taxi and went to another doctor on Hagley Park Road. He said Mr Johnson's companion was rushing them to leave as she had to get somewhere so he took the plate number and let them leave.

[15] Mr. Johnson, on the other hand was inconsistent in his statement and cross-examination when he said that as he got to the gate a JUTC bus had stopped to let him out. In his statement he said he waited a few minutes. He denied that there was an inconsistency. He later clarified by sticking to what was in his statement. A lot turns on this inconsistency since credibility is at the root of this matter. The question is whether Mr. Johnson just drove out of the premises and onto the main road and into the Claimant's path. There is a big difference in saying he waited at the gate a few minutes and that as he got to the gate the bus stopped. Mr. Johnson's demeanour is such that his credibility has been undermined. He was aggressive, sometimes argumentative, reluctant to answer at times and was sometimes vague. The Claimant on the other hand was composed and remained

consistent despite rigorous cross-examination from the Defendant's counsel. His version is more believable than Mr. Johnson's. It is more probable than not, that the collision occurred in the manner described by the Claimant. Even if Mr Johnson's version were to be believed, he was negligent in relying on the signal of the bus driver and failed to keep a proper look out for himself. It is not clear how the bus driver indicated to Mr. Johnson to come out. The Court should therefore find that the Claimant was not contributory negligent.

By Ms. Butler on behalf of the Defendant

- [16] Ms. Butler submits that the Claimant sought through his evidence to deceive the Court. The Claimant admitted in cross-examination that there was bumper-to-bumper traffic at the time of the accident. The parties agree that the accident took place in what would be described as peak hours on a Friday evening. In his witness statement, the Claimant said he kept the left of the road as he pedalled. In cross-examination he indicated that he was riding in the middle of the left lane. It is highly improbable that the Claimant could have been riding in the middle of the left lane. If the Claimant was in fact riding in the middle of the left lane the accident could not have occurred "right on the white line". His evidence in the witness box is more consistent with the Defendant's account that the accident happened in the middle of the road because the Claimant rode on the outside of a JUTC bus which had stopped to allow the Defendant to make a right turn onto Hagley Park Road. The court should reject the Claimant's evidence that the JUTC bus had stopped to let off school children and that he had ridden around the bus and was back in line.
- [17] The Claimant only mentions the presence of the JUTC bus in cross-examination. He makes no mention of it in his witness statement even though in cross-examination he claims that the accident occurred only three seconds after he had gone around the JUTC bus. That is very grave omission, and a deliberate attempt by the Claimant to mislead the court. In his witness statement the Claimant says that the driver of the Defendant's motor vehicle did not indicate that he was going to make a right turn, neither did he make proper checks to see that I was coming

along the road way. This suggests that the Claimant had sufficient time to observe the Defendant's motor vehicle to see that it had no indicator light on. In cross-examination however, the Claimant's evidence was that only one second passed between when he first saw the Defendant's car and when the collision took place. He admits was presence of the bumper-to-bumper traffic along Hagley Park Road. The fact that the driver did not hit any of the cars in the line of traffic; the driver could not exit the business place into bumper-to-bumper traffic if he was not allowed to come out by a vehicle that was in the said traffic.

[18] In the Amended Particulars of Claim, the Claimant alleges that the driver drove at an excessive or improper speed. In cross-examination the Claimant's evidence was that he was riding 15 km/hour before the accident and the Defendant's driver was going about 10 km/hour. By his own evidence, he was going faster than the motor car. It is therefore he who was speeding at the material time and not the Defendant. The court is invited to take the inconsistencies identified above when viewed in the light of the Claimant's demeanour as evidence of his attempt to deceive the court. The Claimant was not a witness of truth. The court is asked to find that the accident did not occur in the manner suggested by the Claimant. The Claimant did not have due regard for his own safety. He did not keep a proper lookout and rode around the JUTC bus at a time when it was manifestly unsafe to do so.

[19] In relation the evidence of Mr. Hugh Johnson she submits that: Mr. Johnson's evidence remained consistent during cross-examination despite counsel's best attempts to discredit him. He insisted in cross-examination that one could not just drive out onto Hagley Park Road for it was a busy street and there was traffic. One would have to wait for a 'bly' in order to safely come out onto the roadway. This makes practical sense for it would be impossible for Mr. Johnson to speed out onto the roadway without checking and not collide with the line of traffic which both parties agree was present. Counsel made heavy weather of the fact that Mr. Johnson said in cross-examination that as he got to the gate the JUTC bus stopped to allow him to exit whereas in his witness statement he said that he waited for a

few minutes by the gate. Mr. Johnson maintained that he waited at the gate before being allowed to come out onto Hagley Park Road. This is consistent with his evidence that he did not just drive out. Any perceived inconsistency does not take away from the crux of his evidence that he only ventured out onto Hagley Park Road when the JUTC bus driver stopped and allowed him to come out. His unchallenged evidence is that he proceeded out slowly and just the 'nose' of his vehicle was in the other lane when the accident occurred. He said he was only about a foot over into the other lane. These are the actions of a driver who is taking due care in his use of the road. Of the two, Mr. Johnson was the more consistent witness. His account of the accident was simple and credible quite unlike the evidence of the Claimant.

- [20] She invites the court to accept Mr. Johnson's evidence and find that the accident did in fact occur in the manner described by him. She asserts that based on the evidence of both the Claimant and the Defendant there was no further care which Mr. Johnson could have taken which was reasonable and sensible in the circumstances. Liability ought to lay squarely at the feet of the Claimant in the instant case. (She refers to ***Joshua Tucker v Lascelles Chin and Neil Chin*** Supreme Court Civil Appeal No. 30/2000. & ***Clarke v Winchurch & Others*** [1969] 1 W.L.R. 69)

ANALYSIS

- [21] The undisputed facts are:
- (i) The motor vehicle of the Defendant was being driven on the road by Mr. Hugh Johnson as her agent.
 - (ii) The Claimant Mr. Alex Mitchell was riding his pedal cycle on the road at the time of the collision.
- [22] On these uncontested facts there is no dispute that the Defendant through her agent Mr. Johnson owed a duty of care to Mr. Mitchell. Therefore, the only issue

which lies to be determined as it relates to liability is whether this duty of care has been breached, and if it has been so breached, whether the Claimant suffered injuries as a result.

[23] As I conduct the analysis of the evidence in this regard, I do so with the knowledge and application that the Claimant has the burden to prove on a balance of probability that the accident that caused his injuries was a result of the Defendant's failure, through her agent, to discharge her duty of care towards him as a fellow road user. Additionally, I also bear in mind that where contributory negligence is pleaded it is the responsibility of the defendant to prove that the claimant failed to have regard to his own safety (See **Caswell v Powell Duffryn Associated Collieries Ltd.** - [1940] A.C. 1). The motor vehicle of the Defendant was being driven on the road by Mr. Hugh Johnson as her agent. The Claimant Mr. Alex Mitchell was riding his pedal cycle on the road at the time of the collision. As both counsel have correctly pointed out, the major issue in this case is one of credibility. On the Claimant's version as pleaded and his evidence in chief the picture that is portrayed is that he was properly positioned in the left lane on the left side of the road when the Defendant exited from the premises without any indication or warning. Further, it is the case of the Claimant that he was unable to avoid a collision as a result of the speed he was travelling.

[24] The Defendant's driver, Mr. Johnson, admits that he did exit from premises, that is, a place that is not a road unto a road. Therefore, as a motorist who owes a duty of care to all other road users, he had a responsibility, before entering the road, to ensure it was safe to do so before entering the roadway. However, it is his evidence that he entered the road way at the invitation of the driver of a JUTC bus who had stopped and allowed him to enter the road on the left, essentially yielding his right of way to him. Both the Claimant Mr. Alex Mitchell and the Defendant's driver Mr. Johnson agree that based on where the Claimant's pedal cycle was positioned Mr. Johnson would not have been able to see him when Mr. Johnson first entered the road way. However, each party has given different reasons for Mr. Jonson's inability to see Mr. Mitchell at the time. The reason Mr. Mitchell gives is the shape

of the road. The reason Mr. Johnson gives is that he could not see behind the JUTC bus that had stopped to allow him to enter the road.

[25] However, whereas Mr. Mitchell testifies that Mr. Johnson could not have seen him, his evidence is that he could have and did see Mr. Johnson when Mr. Johnson entered the road. He indicates that he observed that Mr. Johnson did not indicate that he intended to turn right.

[26] At this juncture I will address certain apparent inconsistencies on the Claimant's case. In spite of the fact that there may be inconsistencies on the Defendant's case it is the Claimant that bears the burden of proof. I must examine the inconsistencies on the Claimant's case in light of his burden with a view to determine whether they go to the root of his case and whether they can be resolved. Where they go to the root of his case and remain unresolved he would not have discharged his burden. That is, the Claimant, as the party who bears the burden of proof cannot take refuge in the inconsistencies in the Defendant's case where he fails to resolve those which go to the root of his own case.

[27] In his evidence in chief Mr. Mitchell states that he kept to the left as he pedalled. On cross-examination he states that he was in the middle of the left lane going down. On cross-examination he further indicates that the collision took place close to the white line. It is common knowledge that the white line is the dividing line that divides the roads into lanes. Based on the evidence of both parties the road is a dual carriage way. Therefore in this case the white line or the dividing line would be positioned in the middle of the road. There is no evidence that the Claimant, Mr. Mitchell swerved.

[28] Therefore the inescapable inference is that at the time of the impact the Claimant was not travelling in the middle of the left lane or to the left of the left lane but in fact to the right of that lane or in the right lane. Consequently, I find that he lacks credibility on this material aspect of his case. I take account of the nature of his motor vehicle, that it was a pedal cycle. Therefore, if there was no other vehicle in

front of him, I see no reason why he would be travelling in the right of left lane of the road, close to the white line and contrary to what he alleges in his evidence in chief. The position of Mr. Mitchell's motor cycle does not accord with Mr. Mitchell's version that he went around the bus on the right side of the road and got back in line and about three (3) seconds after that the accident occurred. In fact, Mr. Mitchell admitted that there was bumper to bumper traffic on both sides of the road. He denied that a car in the right lane had stopped to allow Mr. Johnson to enter the right lane. Yet he has not explained how he himself was able to enter the right lane in the bumper to bumper traffic. He has not mentioned any car stopping on the right to allow him safe passage on that side.

[29] Therefore, I find that it is more probable that at the time of the collision based on the position of his vehicle at the time of impact he was in the process of overtaking or passing another vehicle. Additionally, I find that his failure to mention the presence of the JUTC bus in his evidence in chief, is a significant omission that goes to the root of his case. I observe that he particularized in his witness statement, the timing of the collision, indicating that just as he passed NHT he saw the Defendant exit the premises. However on cross-examination he indicated that the accident occurred just three seconds after he had passed the bus. Therefore the presence of the bus should have factored significantly into his statement of case and on his evidence as it relates to the timing of the collision. However, he has offered no explanation for this significant omission. I find that it seriously affects the credibility of Mr. Mitchell's case.

[30] In accordance with my assessment of his demeanour and his *viva voce* evidence, I find that Mr. Mitchell fell short of being forthright to this court. It is my view that he deliberately did not mention the bus because he intended to withhold the truth as to how the accident in fact occurred. That is, while he was overtaking the bus that had stopped to allow the Defendant's driver to exit the premises. Therefore, based on Mr. Mitchell's own evidence and the inference as to the position of his vehicle at the time of the impact, it is more probable that the collision occurred on the

version given by Mr. Johnson. That is, that Mr. Mitchell was going around the JUTC that had stopped to allowed Mr. Johnson to enter the road way.

[31] Therefore, in the circumstances, the Claimant was obligated to observe the provisions of the **Road Traffic Act** and in particular **S.51** while overtaking. **Subsection 1 (g)** states that a motor vehicle:

“shall not be driven so as to overtake other traffic unless the driver has a clear and unobstructed view of the road ahead; “overtaking” includes passing or intending to pass any other vehicle proceeding in the same direction.”

While breach of this statutory duty by itself is not synonymous with negligence, it is evidence that a court is entitled to use it in the determination of the issue of negligence.

[32] I make the following findings of fact based on Mr. Mitchell’s evidence:

- (i) Based on the speed that he was traveling he could not stop.
- (ii) When he pulled out he could not have seen in front of the bus.
- (iii) He saw the Defendant’s car enter the road at a point and angle and knew that the Defendant’s driver could not see him. That is, he knew that the driver of the Defendant’s vehicle could not have seen him unless he came way out in the road.
- (iv) He made no attempt to cut his speed until the driver of the Defendant’s car “proceeded right “.

[33] Mr. Mitchell stated that he could not slow down because of the speed he was pedalling. However, he has proffered no reason as to why he only attempted to cut his speed at the point when Mr. Johnson proceeded to turn right. Nonetheless, I draw the inference that this was so because Mr. Mitchell did not anticipate that there was any danger of a collision if Mr. Johnson had turned left. Consequently,

it is my view on the evidence that if Mr. Johnson had in fact driven in the path of Mr. Mitchell, the danger of collision would have been there regardless of where Mr. Johnson intended to turn. The Claimant would have applied his brake the moment he saw him drive out in his path.

[34] Therefore, I find that Mr. Johnson did not drive in the path of the Claimant but the path of the JUTC whose driver had yielded its right away. I find that Mr. Mitchell, on seeing Mr. Johnson, exited the premises in front of the JUTC bus assumed that Mr. Johnson was going left. This finding is based on his complaint in his evidence that Mr. Johnson did not indicate that he was turning right. I find that he went around the JUTC bus on this assumption, without first making sure it was safe to do so.

[35] In fact, in the case of case of **Clarke v Winchurch & Others** [1969] 1 W.L.R. 69 cited by counsel for the Defendant, the defendant was not faulted for entering the road way at the invitation of the bus driver. The debate which raged in that case was whether the defendant should have poked his nose beyond the bus. Although that case is somewhat similar to the instant case, there is in fact an additional factor for me to consider. That is, in the instant case, the Claimant actually saw the Defendant's car before *and* when it entered the road way. However, the Claimant having seen the Defendant's car enter the road way not only failed to cut his speed but decided to overtake on an assumption that Mr. Johnson intended to proceed left. He did not take time to ride slowly and verify where Mr. Johnson was proceeding.

[36] In fact, it was the Claimant's responsibility to ensure he had a clear view ahead and that it was safe to go around the bus. I find that it was a combination of Mr. Mitchell's speed and his failure to ensure that the way was safe that caused the collision. On both accounts, I find that the Defendant entered the road way slowly. Mr. Mitchell indicated 10 KMPH. The fact is that he could not see behind the bus and it is not expected that he should wait all day. I accept Mr. Johnson's evidence that he was over by only one foot in the right lane when the collision occurred. I

find that he has exercised all the care that is expected of the ordinary reasonable driver in the circumstances. (See **Clarke v Winchurch & Others** [1969] 1 W.L.R. 69.)

[37] Therefore, I find that the collision was wholly caused by the Claimant failing to ride with due care and attention. Therefore, the Claimant's injuries and damages arising from the collision were wholly due to his own failure to have due regard and due care and attention to other road users and for his own safety.

ORDERS

Judgment for the Defendant.

Cost awarded to the Defendant to be agreed or taxed.