The implications of Copley v Lawn

Mohammed Azeem Ali

March 2023

clerksroom

The implications of Copley v Lawn

Mohammed Azeem Ali
March 2023

Introduction

Julia Copley v Kenneth Lawn Ian Maden v D. Haller [2009] EWCA Civ 580 (thereafter referred to as "Copley v Lawn") was a decision by the Court of Appeal as far back as 2009, yet its implications are still felt today. The Court of Appeal case of Sayce v TNT (UK) Ltd [2011] EWCA Civ 1583) confirmed that Copley v Lawn was to be applied by the lower courts. Copley v Lawn is still good law.

The practical importance of Copley v Lawn even today cannot be overstated. However, from my real time experience, there are different interpretations of what precisely the implications of this decision are, and this can cost in terms of cases settling and/or going to court.

The purpose of this article is to provide a greater understanding of what this case actually means. I will deal with this article in the following way: (1) summary of Copley v Lawn; (2) what Copley v Lawn actually means as far as the law is concerned; (3) the practical implications of Copley v Lawn, which is not necessarily the same as (2), and (4) conclusion and summary.

Summary of Copley v Lawn and Maden v Haller

The two appeals had common issues and were dealt with together.

Salient facts of Copley v Lawn: On the 26th of November 2006, Mrs Copley was involved in an accident. On the same date, she made an agreement with a hire company for the hire of a vehicle. On the same day, though after she had signed the hire agreement, she received a cold telephone call from Mr Lawns insurers whereby she was offered a replacement vehicle. A letter written on the same day repeating the offer was received by Mrs Copley two days later, and she immediately asked her solicitor for advice. No advice was given until the 5th of March 2007, though the repairs had been completed by the 2nd of February 2007. A claim was made for 71 days hire. The lower instance judge only allowed 7 days hire as he took the view that Mrs Copley should have taken advantage of the cancellation clause within the hire agreement.

Salient facts of Maden v Haller: There was a road traffic accident on the 26th of July 2006. Within 24 hours, a replacement vehicle was offered by the defendant insurers. The lower court found that Mr Maden had ignored the offer and had subsequently made an agreement with a hire company on the 18th of August 2006. Subsequently 3 days hire was claimed for. The hire claim was dismissed by the lower court on the basis that the defendant insurer's letter, which had a reasonable offer, had been ignored.

Lord Justice Longmore, in paragraph 16 of the judgement, made it clear in "most cases" it was assumed that any individual will send an intervention letter to their own agents, whether they are solicitors, brokers or insurers. Therefore the "combined position" of the claimant and their advisors needed to be considered.

In both cases, the letters by the defendant insurance company did not make clear what the cost of providing a vehicle was to the defendant. Lord Justice Longmore in paragraph 32 of the judgment concluded that:

i) *"that, looking at the matter objectively, it is not unreasonable for a claimant to reject or ignore an offer from a defendant (or his insurers) which does not make it clear the costs of hire to the defendant for the purpose of enabling the claimant to make a realistic comparison with the cost which he is incurring or about to incur ii) ...if a claimant does unreasonably reject or ignore a defendant's offer of a replacement car, the claimant is entitled to recover at least the cost which the defendant can show he would reasonably have incurred; he does not forfeit his damages claim altogether. If this is correct, the general rule that the claimant can recover the "spot" or market rate of hire for his loss of use claim is upheld, unless and until and to the extent that a defendant can show that, on the facts of a particular case, a car could have been provided more cheaply than that "spot" or market rate"*

As the intervention letters by the defendants in both cases did not have information on the costs of providing a vehicle to the claimant, there was no evidence that they could have hired vehicles more cheaply than the claimants did or that the claimants' hire rates were any other than market rates. Therefore, the appeals were allowed.

What Copley v Lawn actually means as far as the law is concerned?

The most important principle which is drawn out in this case by the Court of Appeal is that any purported intervention letter must make clear how much the offer of a vehicle to the claimant is going to cost the defendant. Any letter that does not have this information clearly stated within it, will make the intervention letter effectively redundant for all intents and purposes. A claimant that rejects or ignores any such offer cannot be criticised for this. This is effectively the "ratio decidendi" (the reasons of the decision) of the case.

Further whilst not strictly forming the reason for the decision of the case, any "cold call" by a defendant to offer a vehicle is rejected by the Court of Appeal as being "inappropriate."

The purported intervention letter was also referred to by the Court of Appeal as having an *"unpleasant, threatening tone to it which does not even suggest that the recipient should pass it to his insurer or solicitor..."*. Whilst the Court of Appeal did not specifically say that this renders the intervention letter to be ineffective, it seems that this is the implication of what the Court of Appeal is saying. Whilst this is not strictly ratio decidendi (the reason for the decision), it clearly suggests that letters should be very carefully drafted so as to not be seen as unpleasant or threatening to the recipient. In this case there were references in the offer letters to refusing payment for any claim if their offer was refused, and the claimant being potentially liable to their credit hire/repair company for anything not recovered from the defendant. This was all in the context of the letters not even helpfully suggesting that the letters should be passed to their solicitors or insurance company. It seems that it's a question of fact to be decided by any court as to whether any intervention letter can be considered to be "unpleasant" or "threatening" in its tone. Each case will be fact specific.

Further what the case of Copley v Lawn spells out very clearly is that a rejection of a valid intervention letter by the claimant, will not lead to nil damages being awarded. It will lead to either "spot rates" (now known as Basic Hire Rates) being awarded, or even lower rates if the defendant can show that it could have been provided even cheaper than this. Whilst this is strictly speaking obiter, the Court of Appeal made it clear in Sayce v TNT that this principle should be followed, as it decided a question of principle, for the purpose of clarifying the law for the profession at large. This principle seems to be a common theme in credit hire, namely that even if a claimant cannot be awarded their credit hire rates, they are still entitled to some damages and it's just a question of how to quantify the loss of use.

This could be seen in the case of Bee v Jenson [2007] EWCA Civ 923, in which Lord Justice Longmore stated in paragraph 20):

"In Lagden v O'Connor [2003] UKHL 64, [2004] AC 1067 Lord Scott of Foscote considered it useful to return to first principles and, in so doing said (in para. 78) that a claim for the cost of having a replacement vehicle could be regarded as either a claim for general damages in relation to which: "a fair approach to quantum would be to award a sum based upon the spot hire charge for a comparable vehicle" (para. 76) or a "special damages claim based upon the cost of hire" (para.77). The fact that the claim can be framed as a claim for either general damages based on the spot hire charge for a comparable vehicle or special damages based on the cost of hire echoes the Mediana...".

Please see my article on “Bee v Jenson and the ways to quantify loss of use”, which deals with the general situation as to how to quantify loss. The general theme in credit hire is that the claimant is entitled to some damages, not nil damages. It’s just a question of how you measure that loss. Loss is a key word in hire claims, and as I suggested in my article “Loss and hire: two sides of the same coin”, hire should always be looked at through the prism of “loss”. This seems to be borne out by the decision also in Copley v Lawn.

Indeed, the “loss” is instant when a vehicle is damaged in a road traffic accident – the claimant has lost use of this vehicle (whether it’s because it needs to be repaired and/or is unroadworthy) and then it’s a case of how that loss is quantified, albeit the quantification of that loss is not clear at the time of the damage. In the absence of a valid intervention letter, credit hire is one way of measuring the loss. If there is a valid intervention letter, then the loss can be measured by the cost that the defendant would incur for providing the vehicle.

Practical implications of Copley v Lawn

What is clear is that any intervention letter that does not highlight clearly what the costs of providing a vehicle is to the defendant, will not be a successful intervention letter. What this constitutes, will be a matter of fact for the court to decide. Any such letter which does not state clearly the cost to the defendant of providing a vehicle will be non-compliant with Copley v Lawn.

Further any letter that is “threatening” and/or has an “unpleasant” tone to it, may also be considered to be non-compliant with Copley v Lawn. This again is a question of fact for any court to decide.

Apart from the above two, from my real time experience, courts are not too taxing on intervention letters as long as the cost to the defendant of providing a broadly equivalent vehicle is clear, and they are not threatening and/or unpleasant in nature. From my experience most courts tend to take a rather liberal view on intervention letters, providing a broadly equivalent vehicle to the claimant’s one is being offered. A parallel can also be seen between this situation and the “nit picking” challenge to BHR (Basic Hire rates) that was specifically disapproved of in Bunting v Zurich [2020] EWHC 1807 (QB).

Outside of these examples, I have seen many parties wrongly state that an intervention letter is Copley v Lawn “non-compliant”. For example, I have commonly come across arguments that as the intervention letter was received after the hire started, the intervention letter is “non-compliant” with Copley v Lawn. This in my view is one of the most common misconceptions on intervention letters.

It is correct that in Mrs Copley’s case, the intervention letter was sent after hire had started. This was however *not stated* to be a reason for finding that the intervention letter was not valid in her case. The Court of Appeal merely stated that if an intervention letter does not have clear information as to how much the vehicle is costing the defendant, then the intervention letter is not effective. The Court of Appeal also seemed to suggest that any letter that was “threatening” and “unpleasant” may also be considered not to be a valid intervention letter.

Indeed, if one looks more carefully at the language of the Court of Appeal, it is contemplated that *even if the hire has already started* then an intervention letter may be considered to be effective. In paragraph 22 of the judgment, the Court of Appeal stated that: *“...if a defendant or his insurers does make an offer of a replacement car to an innocent claimant and he makes clear that he is going to pay less for such a car than the claimant is intending to pay (or is paying) for a car from a company such as Helphire, then (other things being equal) it may well be the case that a claimant should accept that lower costs replacement”* - underline are my emphasis only. The words “or is paying” contemplates situations whereby the claimant has already started hire by the time the intervention letter is received. The claimant has a duty to mitigate and conduct themselves reasonably in this regard. So, the question of whether an intervention letter is effective in a situation where the claimant has already hired a vehicle, depends on the courts view of whether it was reasonable for the claimant to end their hire arrangements. From my real time experience, most judges do not find it reasonable that a claimant should have ended their already started hire in order to accommodate the defendants offer of a vehicle. However, there are some judges, albeit in the minority that do find that the claimant should have ended their hire, in order to accommodate the offer in the intervention letter, especially when the hire rates are high.

Conclusion and summary

In summary and conclusion: (1) the ratio decidendi (the reasons for the decision) of Copley v Lawn is that any intervention letter must have clear information on how much it *will cost the defendant* to provide a vehicle, and a failure to have this information in the letter effectively invalidates any intervention letter. Any such letter that breaches this principle can be considered to be Copley v Lawn non-compliant; (2) In Copley v Lawn, it is also remarked that a threatening and unpleasant letter is not appropriate, with the obvious implication being that this may also render any intervention letter ineffective. Any such letter may also be considered to be Copley v Law non-compliant. This would be a question of fact for any court to decide upon, (3) cold calls offering a vehicle are inappropriate; (4) in Copley v Lawn it was stated obiter that if the intervention letter is valid, then the claimant should still receive spot rates or lower rates if the defendant can prove they could have supplied at that rate. Whilst this is obiter, the Court of Appeal in Sayce v TNT made it clear that it expected this principle to be followed by the lower courts. A parallel can be seen between this situation and the case of Bee v Jenson, whereby it was made clear that a claimant would receive either credit hire or spot rates (later called BHR): the claimant should not be left with nil damages; (5) from my experience, courts take a rather liberal view of what constitutes an effective intervention letter, providing the first two conditions referred to paragraph 1 and 2 of this conclusion and summary are met, and a broadly equivalent vehicle is being offered. A parallel can also be seen between this situation and the "nit picking" challenge to BHR that was specifically disapproved in relation to hire rates in the case of Bunting v Zurich; (6) it is simply wrong to say that an intervention letter that is received after hire has started is Copley v Lawn "non-compliant", which I have seen on countless occasions in correspondence. It is however a question for the court to decide in each case whether the claimant's refusal in these circumstances can be considered to be reasonable, which is a question of fact. From my experience most courts find that such a refusal from a claimant once hire has started is reasonable, though a few courts will hold that that such a refusal is not reasonable, particularly where the daily rate of hire is very high. It is essentially a question of fact for each court to decide; (7) in deciding whether a claimant's behaviour was reasonable in rejecting or ignoring an intervention letter in any case, a court should look at the "combined position" of the claimant and their agents.

It is very much hoped that this article clarifies the issues in a fairly old, though still very important and relevant case.

Azeem Ali

Please note this article does not constitute legal advice for any specific case or cases.

29/03/2023

contact the author:

Azeem Ali (1997)
Barrister

Contact:
Email: **ali@clerksroom.com**
Call: **01823 247 247**

Join Azeem on LinkedIn

Follow Azeem:
@Azeemali1Ali

clerksroom.com