IN THE COURT OF APPEAL

MONTSERRAT

Civil Appeal No. 1 of 1970

Between: SYLVIA OSBORNE, BERTRAM OSBORNE and CEDRIC OSBORNE as Administrators of the Estate of M. S. Osborne, deceased — Defendants/Appellants

and

JAMES TEISHEIRA — Plaintiff/Respondent

Before: The Honourable the Acting Chief Justice
The Honourable Mr. Justice P. Cecil Lewis
The Honourable Mr. Justice St. Bernard (Ag.)

K. Allen for Defendants/Appellants
J.C. Kelsick for Plaintiff/Respondent

1970, May 6, 7

JUDGMENT

GORDON, C.J. (Ag.)

This appeal has arisen out of an action brought by the plaintiff/respondent against the defendants/appellants as administrators of the estate of M.S. Osborne, since deceased, in the Supreme Court for $2,725.00 with interest thereon at 5% being the value of a motor car which was damaged on the 8th January, 1966, by a car owned by the deceased and driven by his servant or agent Allen Shinn. Consequent on the accident the plaintiff/respondent brought an action against the defendant/appellant which was heard on the 3rd December, 1969, before Louisy J. The late M.S. Osborne having previously admitted liability, the issue at the trial turned solely on the question of quantum of damages. On the 31st January, 1970, judgment was entered for the plaintiff/respondent for $1,920.00 and costs. The appellant now appeals against this judgment.

On the 25th January, 1966, the late M.S. Osborne paid to the plaintiff/respondent the sum of $710.00 which according to a receipt signed by the latter and tendered in evidence at the trial, was in settlement of the claim for damage to his car M 455. The plaintiff/respondent, while admitting having received this sum of $710.00, stated that the sum in question

/was not by way

was not by way of a full settlement, but only in respect of that portion of his damages which related to the loss of use of his car. This amount he stated was arrived at on the basis of 71 days - the estimated period within which he could have obtained a new car - at $10.00 per day, viz:- $710.00. His claim for $2,725.00 he based on the value of the car at the time of the accident.

In his judgment which the learned trial judge delivered on the 31st January, 1970, he stated thus:

> "I have come to the conclusion on the evidence that there was a misunderstanding as to what was being agreed; whilst the plaintiff was talking about loss of use for his car, M.S. Osborne was talking about settling the matter in respect of damages to the plaintiff's car. It appears to me that the plaintiff and M.S. Osborne were not ad idem, consequently there was no agreement between them for loss of use, nor for the payment of $710 and the plaintiff keeping the wrecked car."

Counsel for the defendants/appellants filed four grounds of appeal but before this Court he argued the single ground that the trial judge was wrong in law in coming to the conclusion that the parties were not ad idem since the agreement was set out in the unambiguous document which was admitted by the plaintiff.

He argued in support of this ground of appeal that although the document was tendered in evidence at the trial by the plaintiff/respondent, it did not support his contention that the amount there mentioned was paid solely in respect of loss of use of his car, but that it indicated in clear and unambiguous language that the amount was in settlement of the damages which resulted from the collision. The document which was signed by the respondent expressed the intentions of the parties to it, and as such the learned trial judge erred when he drew the inference that the parties to the agreement were not ad idem and rejected the agreement.

Counsel for the respondent in supporting the trial judge's inference that the receipt, worded as it was, did not accurately represent the decision arrived at by the parties at their meeting, urged that all the surrounding circumstances strongly supported the inference drawn by the trial judge. Indeed the evidence of Bertram Osborne, one of the appellants, who was present with his father M.S. Osborne, since deceased, when the arrangement was concluded and the receipt drawn up,

/supported

supported the conclusion when he stated "$710.00 was assessed on the basis of loss of use."

In paragraph 7 of his statement of claim the plaintiff/respondent averred as follows:-

> "On or about the 25th day of January, 1966, the said M.S. Osbourne in the presence of and with the assistance of the third named defendant admitted liability of the late M.S. Osborne for the injury and loss caused to the plaintiff by the negligence of the first named defendant and paid to the plaintiff the sum of $710.00 East Caribbean Currency in settlement of his claim for loss of the use of his motor car."

to which the appellants replied in paragraph 3 of their defence thus:-

> "The defendants deny paragraph 7 of the plaintiff's Statement of Claim and instead the second third and fourth defendants say that on the said 25th day of January, 1966, the plaintiffs negotiated and settled with the third named defendant for the said sum of $710 East Caribbean currency and accepted the said sum on the understanding that this said sum was payment in full for damage done to the plaintiff's car by the car owned by M.S. Osborne, deceased, and further say that no further or other consideration was mentioned or contemplated for the payment of the said sum."

From these pleadings it was manifest that the main issue between the parties would revolve around the receipt and what its significance was. When in the course of his evidence the respondent produced the receipt, albeit by consent, it did not support his contention or what he had pleaded, for the receipt read thus:

> "Plymouth, Montserrat
> 25th January, 1966.
>
> Received from M.S. Osborne the sum of Seven Hundred and ten Dollars ($710.00) in settlement of claim for damage to Car M 455 caused in accident with Car M 294 on Richmond Road on 8th January, 1966.
>
> Sgd. Jas. P. E. Teisheira"

By way of explanation as to how he came to sign the document, the respondent stated, inter alia:

> "I read the receipt but I had just come out of the sun" (a statement which I am unable to understand) - "Receipt satisfied me". "When I signed receipt I did not understand that I was receiving $710.00 for damage to car including loss of use."

It seems passing strange that a man such as the respondent was at the time, a foreman of the Public Works

/Department

Department, who, as he stated, went to the appellant with one Fenton for the sole purpose of negotiating the quantum of damages for the loss of use of his car, should have signed the document, worded as it was in fact worded, if it misrepresented the agreement which had been concluded.

In the absence of any pleading alleging mistake, fraud or any such kindred allegation, the proper approach of a Court to the construction of a document is to collect the intention of the parties from the instrument as a whole, but where by the use of general words such intention is clearly and unequivocally expressed every Court is bound by it.

In this case the trial judge without making any finding of fact as to the credibility of the witnesses, proceeded to draw inferences from the evidence which was before him, but in so doing, as counsel for the appellants with justification submitted, he did not give the necessary consideration to the effect of the receipt.

This Court is in an equally good position as the trial judge to draw inferences from the primary circumstances which have been disclosed by the evidence.

Here, despite the respondent's contention that he went to the meeting solely to discuss the question of damages relating to the loss of use of his vehicle, he left the meeting after having collected a cheque for $710.00 and after having signed a receipt which made no reference to the sole purpose which took him to that meeting. Having regard to the standard of intelligence which would normally be ascribed to a foreman of the Public Works Department, I would be inclined to infer that the respondent knew and appreciated what he had signed. His explanation as to why he signed it is unconvincing. In my view the result of the negotiations was that the $710.00, although based on 71 days loss of use at $10.00 per day, was intended to be in full settlement for the damage to the car as the receipt clearly indicates. If this were not so, then the respondent's conduct in not immediately questioning the receipt which he read and testified that he was satisfied with, is unexplainable. A reasonable man must have understood the significance of that receipt, and accordingly the respondent must be bound by it.

I would, for the reasons set out above, allow this appeal with costs.

(K. L. Gordon)
Acting Chief Justice
/CECIL LEWIS

CECIL LEWIS, J.A.

On January 8th, 1966, the respondent's car collided with another car belonging to one M.S. Osborne and was severely damaged. The respondent reported the matter to his insurers who agreed to compensate him in the sum of $2,725, the cost of his vehicle. His policy was what is known as a comprehensive insurance policy and covered damage to his car and to third parties, but did not include payment for loss of use of his vehicle.

On January 25th, 1966, the respondent went to M.S. Osborne to negotiate a settlement. Present at the negotiations were the respondent and his friend J.D. Fenton, and M.S. Osborne and his son Bertram Osborne. M.S. Osborne admitted liability for the damage to the respondent's car and a settlement was arrived at. This settlement took the form of a payment to the respondent by M.S. Osborne of the sum of $710 which the respondent says was for loss of use of his car for a period of 71 days at $10 per day; the period of 71 days being the estimated time it would take to get a new car from England.

The terms of the agreed settlement were evidenced by a receipt given by the respondent to M.S. Osborne when he was paid the sum of $710. This receipt is dated January 25th, 1966.

A little over three years after the settlement the respondent issued a writ dated March 8th, 1969, against the present appellants who are the personal representatives of M.S. Osborne who had died in the interim. By this writ the respondent claimed the sum of $2,725 as compensation for damage to his car. In paragraph 7 of his statement of claim he recited that the late M.S. Osborne had admitted liability for the damage and stated "that the said M.S. Osborne had paid to the plaintiff (i.e. the respondent) the sum of $710.00 East Caribbean Currency in settlement of his claim for loss of use of his motor car".

The appellants in their defence denied paragraph 7 of the respondent's statement of claim and asserted that the payment of $710.00 was accepted by the respondent "on the understanding that this said sum was payment in full for damage done to the plaintiff's car by the car owned by M.S. Osborne, deceased", and they also said "that no further or other consideration was mentioned or contemplated for the payment of the said sum".

/The respondent's

The respondent's evidence at the trial was to the effect that the payment of $710.00 was for loss of use of his car and nothing else, whereas the appellants contended that the agreement reached between M.S. Osborne and the respondent was that the respondent should keep his wrecked car and in addition accept $710.00 in settlement of his claim for damages.

The trial judge, after reviewing the evidence of the respondent and Bertrand Osborne as to the agreement reached between the parties, said:

> "I have come to the conclusion on the evidence that there was a misunderstanding as to what was being agreed, whilst the plaintiff was talking about loss of use for his car, M.S. Osborne was talking about settling the matter in respect of damages to the plaintiff's car. It appears to me that the plaintiff and M.S. Osborne were not ad idem, consequently there was no agreement between them for loss of use, nor for the payment of $710 and the plaintiff keeping the wrecked car."

He then proceeded to assess damages as the appellants had admitted liability and awarded the respondent $1920 damages and costs.

On behalf of the appellants one ground of appeal was argued, viz:

> "The learned trial judge was wrong in law in coming to the conclusion that the parties were not ad idem, since the agreement was set out in the unambiguous document which was admitted by the plaintiff."

He contended that the receipt did not support the respondent's statement (as indeed it did not) that the amount therein specified was paid in respect of loss of use of his car only, but that it in fact indicated in unambiguous language that the money paid was in settlement of the claim for damage to the respondent's car. He further urged that the document which was signed by the respondent correctly recorded the intention of the parties and the agreement arrived at between them, and consequently the trial judge came to the wrong conclusion when he said that the parties thereto were not ad idem and ignored the agreement.

For the respondent it was contended that the receipt did not correctly record the agreement arrived at by the parties, and particular stress was laid on a statement by Bertram Osborne in cross-examination that the sum of "$710 was assessed on the basis of loss of use".

/In arriving

In arriving at his conclusion that the parties were not ad idem, the learned trial judge merely drew an inference from the evidence. He expressed no opinion as to the credibility of the respondent or of Bertram Osborne, nor did he say which of the two conflicting versions given by these witnesses he preferred. He made no findings of fact on the evidence relating to the receipt. In approaching the matter in the way he did the learned trial judge prevented himself from giving due and sufficient consideration to the effect of the receipt and its true significance in the particular circumstances of this case. One circumstance which is of importance is that the respondent is in effect attacking the authenticity of the receipt and he is seeking to do this without having specifically pleaded that it did not correctly show the intention of the parties.

The receipt referred to is in the following terms:

> "Plymouth, Montserrat
> 25th Jan. 1966
>
> Received from M.S. Osborne the sum of Seven hundred and ten dollars ($710.00) in settlement of claim for damage to car M. 455 caused in accident with car M. 294 Richmond Road on 8th January, 1966.
>
> (Sgd) Jas. P.E. Teisheira"

It should be here observed that the respondent has not pleaded "non est factum", nor has he asserted in his statement of claim that he was induced to sign the receipt either by reason of fraud or misrepresentation. All he has alleged is that the sum of $710.00 was in settlement of his claim for loss of use and this being so the burden of establishing this allegation is on him.

In his evidence in chief the respondent said at p.16 of the record:

> "I signed a receipt on 25th January, 1969, which reads as follows:
> 'Received.....8th January, 1966'. Copy of receipt tendered by consent and marked Ex. I.
> "When I signed receipt I did not understand that I was receiving $710 for damage to car including loss of use. I read the receipt."

In cross-examination at p.17 of the record he said:

> "I made a receipt. I am a Montserrattian. At time I was foreman of Public Works. I read receipt but I had just come out of the sun. Receipt satisfied me. I say receipt was for 71 days at $10. I never thought receipt should have loss of use."

/That is all

That is all the evidence by the respondent which appears on the record in connection with the receipt and one wonders at its paucity in view of the importance of the receipt to the respondent's claim.

Now it is obvious that the receipt produced by the respondent is inconsistent with his statement on oath that the settlement was in respect of loss of use only, and it in fact supports the appellants' story that the agreement was in settlement of the damage to the respondent's car. In the light of the clear and unambiguous language in which the receipt is couched the respondent has a somewhat heavy burden to discharge in establishing his contention. The respondent is not an illiterate man. He was at the relevant time a foreman of the Public Works Department. He admittedly read the receipt before signing it and said he was satisfied with it. His statement that he never thought the receipt should have any reference to loss of use is difficult to understand in the light of the fact that this was the very thing, according to him, which he went to see M.S. Osborne about and it was the one and only question which he wanted settled.

If his statement is to be believed then one would have expected him to protest on reading the receipt and to say that it did not mention the most essential term of the settlement from his point of view, i.e. that the settlement was in respect of loss of use only, but he said nothing and signed the receipt without comment. The only conclusion to be drawn from his action is that he agreed with the contents of the receipt which correctly stated the agreement between the parties.

In this case there is no mistake as to the nature of the transaction. On the contrary the respondent knew that he was signing a receipt which contained the terms of the settlement arrived at between himself and M.S. Osborne; he read the receipt and expressed satisfaction with it before signing it. Further, he received a substantial benefit under the settlement and he cannot now be heard to say that there is a mistake in the agreement which would make it void.

In Bristow v. Eastman (1794) 1 Esp. Reports 172, N.P., it was held that a receipt in full is conclusive evidence, when given under a knowledge of all circumstances then depending between the parties. In the instant case all the relevant

/circumstances

circumstances were known to the respondent and M.S. Osborne when the former signed the receipt. There has never been any suggestion that any material fact was concealed from the respondent and I am therefore of the opinion that the principle enunciated in the case cited above applies to this case. Further in Alner v. George (1808) 1 Camp. 392, N.P., Lord Ellenborough, C.J. stated that a receipt in full, where the person who gave it was under no misapprehension and could complain of no fraud or imposition, is binding upon him. This statement in my opinion is applicable to this case also and on the authority thereof I would hold that the respondent is bound by his receipt.

I would allow the appeal and enter judgment for the appellants with costs here and in the court below.

(P. Cecil Lewis)
Justice of Appeal

ST. BERNARD, J.A. (Ag.)

I agree that the appeal should be allowed

(E. L. St. Bernard)
Justice of Appeal

GORDON, C.J. (Ag.)

The appeal is allowed. The order of the Court below is set aside and judgment entered for the defendants/appellants with costs in this Court and the Court below.

(K. L. Gordon)
Acting Chief Justice