EASTERN CARIBBEAN SUPREME COURT
ST. CHRISTOPHER CIRCUIT

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2008/0120

BETWEEN:

TRAVIA DOUGLAS

Claimant

And

[1] SHIVOUGHN WARDE
[2] DWIGHT WARDE
[3] NAGICO
(National General Insurance Corporation)

Defendants

Appearances: Mr Patrick Patterson of Caribbean Associated Attorneys for the Claimant
Mr John Cato for the 1st and 2nd Defendants
Mr Sylvester Anthony and Ms Angelina Gracy Sookoo for 3rd Defendant

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2013: April 12th

2013: June 28th

2013: July 4th re-issued

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DECISION

[1] THOMAS J (AG) A decision is required as to the circumstances and the extent to which the court can correct errors or mistakes in a judgment. This arises from an Amended Notice of Application filed on 11th March 2013.

[2] In the Application the following orders are sought:

(1) That time be abridged for the hearing and service of this Application;

(2) That the following clerical errors and/or accidental slips arising in the judgment of the Honourable Justice Errol Thomas handed down on 26th October 2012 be corrected pursuant to Civil Procedure Rules 2000 42.10(1) of the Eastern Caribbean Supreme Court and/or the Inherent Jurisdiction of this Honourable Court:

(a) Page 4, paragraphs 13, item (h) massage therapy 11/08 – 11/07 – 74 massages x $75 = $5,550.00

(b) Page 5 total medical expenses $207,173.14

(c) Page 14 paragraph 54 multiplier of 18 multiplicand $18,528.00 this amounts to $333,504.00

(d) Page 16 paragraph 74 $322.45 with a 3 year warranty to be replaced 6 times over the period of 18 years $1,934.70

(e) Page 17 paragraph 79 according to the submission on this item, the costs is #13,965.20 with a five year warranty to be purchased/replaced 3.3 times over 18 years equals $46,085.16

(f) Page 18 paragraph 85(a) handicapped equipment. Minivan $133,899.24 with a 5 year warranty to be purchased 3.3 times over 18 years equals $441,867.49.

(3) No order as to costs.

[3] The grounds of the application are that:

(1) The Honourable Justice Errol L. Thomas handed down his decision on assessment of damages in the matter herein on 26th October 2012.

(2) Contained in the said judgment there are minor clerical errors and/or accidental slips which stand to be corrected in the said judgment.

(3) The court may at anytime correct an error arising in a judgment from any clerical error and/or accidental slip pursuant to Part 42.10(1) of the Civil Procedure Rules 2000.

[4] The Amended Notice of Application is supported by the Affidavit of Twyla Amory who deposes as to her advice of Mr Patterson and as to what she verily believes concerning the power of the court.

Applicant's Submissions

[5] Learned counsel for the applicant/claimant in his written submissions[1] submits that the judge has such powers under Rule 45.10(1) of the Civil Procedure Rules. In this connection a number of authorities are cited[2] in relation to the court's powers in this regard generally under English rules of court. Special reliance is placed on a dictum of Goff LJ in Mutual Shipping Corporation v Bayshore Shipping Company. The dictum begins with some general observation on the courts powers to correct errors under the slip rule regarding clerical mistakes and errors in judgment or orders. His Lordship continues:

> "Furthermore, there is authority that if a court makes an order in certain words, which do not have the effect which the court intended them to have that order may be corrected under the slip rule to make it accord with the court's actual intention. See: Adam and Hanley Ltd v International Maritime Supplies Co Ltd [1967] I W.L.R 445. I, for my part, can see no reason why if a court gives judgment in, for example, a certain sum, and the order is then drawn up and perfected, and it is afterward discovered that the court has, by accident, miscalculated the figure or omitted an item from it, the error in the order should not be corrected under the slip rule that is just as much an error in the order arising from an accident slip or omission as was the error in the cases I have referred to. The crucial question, under this part of the slip rule, is whether the error does indeed arise from an accidental slip or omission. As Mr. Justice Rowlatt once observed, in Sutherland & Co. v. Hannevig Brothers Ltd [1921] 1 K.B. 336 at p.341, 'here we get upon ground which is almost metaphysical'. That case itself, and Oxley v. Link [1914] 2 K.B. 734, provide examples of the limits within which the courts have confined the concept of accident in this context. Plainly, as the Master of the Rolls observed in R.v. Cripps, ex parte Muldoon [1984] 1 Q.B. 686 at p. 695, the power under the clip rule cannot be exercised to enable a tribunal 'to reconsider a final and regular decision once it has been perfected'. I do not think that it would be right for me to attempt in this judgment to define what is meant by 'accidental slip or omission' the animal is I suspect usually recognisable when it appears on the scene".

[1] No written submissions were received by the court from learned counsel for the 3rd defendant but there were oral submissions made at the chamber hearing

[2] Halsbury's Laws of England, 4th Ed. Vol. 26 para. 557, Mutual Shipping Corporation v Bayshore Shipping Co. [1985] Lloyd's LR 626

[6] Based on the foregoing the following submissions are made by learned counsel for the applicant/claimant:

> "13. We submit that this is clearly a case in which the intention of the Learned Judge was to give judgment in a certain sum in respect of various heads of damage. The corrections fall into two classes first, simple inadvertent errors in calculation and secondly the transposition of certain figures in relation to the award of damages for future medical care.
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> 14. We submit that the fact that the application is properly made and that the circumstances of this case fit the principle is clearly demonstrated by reference to the award for future medical care which we contend was based on identifiable figures, but an error arose in using as the multiplicand the salary of the Claimant instead of the clearly stated intention of the Learned Judge that the calculation be based on the salary of her caregiver Mrs. Griffin, the Claimant's mother".

[7] The authorities show that even before the advent of Rule 45.10(1) of CPR 2000, there existed a power in the court to correct errors pursuant to rules of court or by virtue of the inherent jurisdiction of the court.

[8] A general overview is contained in Halsbury's Laws of England[3] follows:

> "After judgment or order has been entered there is power, both under rules of court and inherent in the judge or master who gave the judgment or order, to correct any clerical mistake in it or some error arising from any accidental slip or omission or to vary the judgment or order so as to give effect to his meaning and intentions. The power applies in the case of mistake or to accidental slips made by officers of the court...or [where] there has been a miscalculation of interest, or a mistake in a date, or accidental omission from a bill of costs, or neglect to ask for certain costs.... A judgment or order will not be varied, however, when it correctly represents what the court decided and where the court itself was wrong, nor can the operative and substantive part of the judgment be varied and a different form substituted... The discretion to amend should be exercised when something has happened since the date of the oral judgment which renders it inexpedient or inequitable to amend".

[3] 4th ed. Para. 557

[9] Rule 42.10(1) says that: "The court may at anytime (without appeal) correct any clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission".

[10] The words of Rule 42.10(1) are clear and simple and are reflected in Goff LJ dictum quoted above.

[11] Learned counsel for the respondent has characterized the errors or matters identified by the applicant as being substantive and reliance is placed on the Saint Christopher Club Ltd case[4]. In that case the Learned Justice of Appeal (as he then was) was faced with an application to vary an order of the court to reflect (contrary to what appeared in the order) the representation and the filing of submissions as ordered by the court.

[12] In dealing with the issue the Learned Justice of Appeal referred to a number of authorities, including the equivalent provision of the English CPR Rule 40.12(1). Also quoted by the Learned Justice of Appeal is the following while Book 2007 giving a commentary on the slip rule:

> "The so-called 'slip rule' is one of the most widely known but misunderstood rules. The rule applies only to 'an accidental slip or omission in a judgment or order'. Essentially it is there to do no more than correct typographical errors (e.g. where the order says claimant when it means defendant; where it says 70 days instead of seven; where it says 'January 2001' instead of 'January 2002'. Of course, such error ought not to occur in important documents like a court order but they are regrettably common). ...the rule is limited to genuine slips and cannot be used to correct an error of substance nor in an attempt to get the court to add to its original order (e.g. to add a money judgment where none was sought, and none was given at the trial). ...the slip rule cannot be used to enable the court to have second thoughts or to add to its original order (see para 4.2.1 above). A judge does have the power to recall his order before it is issued but cannot afterwards. Once the order is drawn up, judicial mistakes have to be corrected by an appellate court. However, the court has an inherent jurisdiction to vary its own order to make the meaning and intention of the court clear and can use the clip rule to amend an order to give effect to the intention of the court. See Bristol-Myers Squibb v Baker

[4] Saint Christopher Club Ltd v [1] Saint Christopher Club Condominiums [2] Baris Jarisic [3] Dr Debbas and Dr Azer [4] John C. Lowe [5] Alex Cinputa [6] Reginald Ward [7] Aurielia Trestrail [8] Alberto Franconeri [9] Alghnim

Norton Pharmaceuticals Inc [2001]EWCA Civ. 414; applied in Foenander v Foenander [2004] EWCA Civ 1675 (Wall L.J.) (correction or order referring to civil restraint order)".

[13] Justice of Appeal Rawlins ended up with the following conclusions on the matters before him:

> "26. In effect, then, the face of the order of 30th May 2007 shows 2 errors. One error was that Mr. Eddy represented 'the respondents" when he represented the 1st respondent only. The other error was that no submissions were filed on behalf of the respondents when Mr. Eddy and Mr. Hamilton filed the submissions in a timely manner in compliance with the case management directions of the court. in my view, these were not genuine slips in drawing up the order that permit this court to amend the errors under the slip rule. These were errors of fact and therefore errors of substance. The costs order was made in favour of the appellant because of a conscious determination by this court, on information mistakenly conveyed by the file, that the respondent had all failed to comply with the court's directions to file written submissions.
>
> 27. Since the errors complained of are errors of substantive the application cannot succeed under part 42.10 of CPR 2000. In that regard it would have been more appropriate to challenge the order by way of an appeal rather than on an application to vary or amend the order under the slip rule. It also appears to me that inasmuch as the proceedings before this court on 30th May 2007 disposed of an appeal an application may have been made under the rule 63.22 of CPR 2000 to set aside the order on the ground that the 2nd to 9th respondents, through no fault of their own, were not present of represented at the appeal hearing. In the premises, I have no choice but to dismiss the application to vary the order to the extent that it is prayed under rule 42.10 of CPR 2000"

[14] In the end the Learned Justice of Appeal granted the orders sought under the inherent jurisdiction of the court.

The Comparison

[15] In the Saint Christopher Club Ltd case the issues were characterized as being substantive in that they related to representation, the filing of submissions and costs. On the other hand in this case the matters related to miscalculation of the

relevant damages. And for this reason the court considers that the two circumstances are distinguishable. Indeed the issue of miscalculation is expressly mentioned by Geoff LT in the Mutual Shipping Corporation case.

[16] Therefore, it is the courts' determination that the two circumstances are clearly distinguishable. But while the matters relate to damages, in all instances a quantum was awarded and the amounts ordered may either be errors or miscalculations.

## Consideration of the matters

[17] The matters raised in the application must now be considered:

> "Page 4[5] paragraph 13 item (h) massage therapy, 11/08 – 11/07 – 74 massages x $75 = $5,550.00". The amount reflected in the judgment is $12,825.00 and the submission is that the actual calculation is $5,550.00. The court agrees.

[18] "Paragraph 2(b), page 5 total medical expenses $207,173.14." This is the claimant's submission but with the reduction of the massage therapy by $7,275.00 this in turn reduces the total of the special damages. The total special damages is now $198,719.20 (medical expenses) plus $40,383.50 (claimant's loss of earnings) plus $52,496.00 (loss of earnings for claimant's mother). The total is now $291,598.79.

[19] "Page 14 – paragraph 54 multiplier of 18 multiplicand $18,528.99. This amounts to $333,504.00". The court determines that an error was made as to the multiplicand that was relevant to the matter. This is borne out by the fact that in the previous paragraph of the judgment, being paragraph 53, the monthly income is stated factually as $1,672.67. And when this is multiplied by 12 this yields $20,072.00 as the multiplicand and then by the multiplier of 18. This yields $361,296.72 as the appropriate quantum of damages.

[5] The pages refer to pages of the judgment

[20] "Page 16 paragraph 74, $322.45 with a 3 year warranty to be replaced 6 times over 18 years $1,934.70". The court agrees that the amount of $20,967.96 is a typographical error and the correct amount is $1,934.70.

[21] "Page 17 paragraph 79 according to the submission on this item, the costs is $13,965.20 with a five year warranty to be purchased/replaced 3.3 times in 18 years equals $46,085.16". The court agrees that the figure of $50,274.72 at paragraph 79 represents either a typographical error or a miscalculation and agrees further that $46,085.16 is the appropriate award.

[22] "Page 18 paragraph 85(a) handicapped equipment minivan $133,899.24 with a 5 year warranty to be purchased 3.3 times over 18 years equals $441,867.49". The court agrees that the quantum of $482, 037.26 represents either a typographical error or a miscalculation and agrees further that the correct awards is $441,867.49.

ORDER

[23] IT IS HEREBY ORDERED as follows:

(1) The clerical errors, accidental slips or miscalculations as contained in the Judgment of this court dated 26th October, 2012, identified in the claimant's application shall be corrected pursuant to Rule 42.10(1) of CPR 2000 as follows:

(1) at paragraph 13 item (h) substitute $5,550.00 for $12,825.00

(2) at the said paragraph 13 total medical expenses substitute $198,719.20 for $205,184.29

(3) at paragraph 54 substitute $361,296.72 for $256,590.00

(4) at paragraph 74 substitute $1,934.70 for $20,967.96

(5) at paragraph 79 substitute $46,085.16 for $50,274.72

(6) at paragraph 85(a) substitute $441,867.49 for $482,037.26.

(2) As a consequence of the foregoing the total special damages is $291,598.79 (being $198,719.20 for medical expenses plus $40,383.50 for claimant's loss of earnings and $52,496.00 for claimant's mother loss of earnings).

(3) The total award of general damages is $1,927,270.70

(4) There is no order as to costs.

Errol L Thomas
High Court Judge [Ag]