

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2015/0116

BETWEEN:

PATTY WILLIAMS

Applicant/Claimant

and

THE ADMINISTRATOR OF THE MOUNT GAY HOSPITAL

THE ATTORNEY GENERAL

Respondents/Defendants

Appearances:

Ms. Herricia Willis for the Applicant/Claimant

Ms. Maurissa Johnson for the Respondents/Defendants

2017: April 11

DECISION

[1] WALLACE, M.: This is an application for Interim Payment made by Patty Williams (hereafter "the Applicant") against the Administrator of the Mount Gay Hospital and the Attorney General (hereafter "the Respondents"). The Application was vigorously opposed by the Respondents.

Background

[2] On the 22nd September 2014 the Applicant, a Registered Nurse employed by the Respondents, sustained injuries arising from an attack by a patient while she was on duty at the Mount Gay Mental Hospital.

[3] The Applicant filed a claim against the Respondents on the 23rd March 2015 for special and general damages for the injuries which she claimed was due to the negligence of the First-named Respondent.

[4] The Applicant says she sustained numerous injuries to her face, knee, neck, right hand and wrist. And while the injuries to her face, neck and knee have fully healed the injuries to her right hand and wrist have deteriorated considerably.

[5] The Respondents filed their Defence to the Claim on the 4th August 2015 and the Applicant filed a Reply to the Defence on the 17th September 2015.

[6] At the first Case Management Conference on 14th October 2015 the Master ordered mediation. However, mediation has not yet occurred as the parties are of the view that mediation would be futile at this juncture given that despite the Applicant having been attended by several doctors, she has not yet obtained a clear diagnosis or prognosis of her injuries.

[7] The parties have agreed to refer the Applicant to a Hand Specialist of the Respondent's choice although that too is proving difficult to implement.

[8] The Applicant states that in the meantime she has been experiencing financial hardship directly as a result of the injuries sustained and while she has remained an employee of the Respondents she has not received a salary since October 2016 and has no other income to take care of her loans, domestic and other commitments.

[9] Against that background the Applicant has applied for an interim payment to assist in alleviating the financial hardship she now suffers as a result of the significant lapse of time and delay the Applicant has experienced in waiting for the Respondents to refer her to a suitable and competent Hand Surgeon.

SUBMISSIONS

Applicant's submissions

[10] Learned Counsel for the Applicant Ms. Herricia Willis did not address the Court on legal basis for the Court exercising its jurisdiction in making the order in favour of the Applicant.

[11] Instead, Counsel submits that while the Respondents have not admitted liability they have agreed to refer the Applicant to a hand surgeon of **their** choice for a full consultation. This, she posits, will ensure the applicant has the relevant treatment and also for the parties to negotiate at mediation, the relevant compensation payment.

[12] Ms. Willis states the Applicant cannot put forward comparable case law or other evidence as the Applicant has not yet received full consultation from a hand surgeon. The contents of the medical reports cannot be relied upon as they do not specify a diagnosis or recommendation of treatment to assist in arriving at a likely figure.

[13] Having said that, Counsel then proceeds to refer to a case to assist the Court in determining a quantum for an award of damages which she opined that the Applicant's injuries are more severe than that case and therefore she is likely to recover more.

[14] Ms. Willis concludes that although no comparable information is available in which to advance the Applicant's contention for Interim Payment, the Applicant is requesting that the Court consider that the Applicant was employed with the Respondent at the time of the accident and the Respondents' agreement to refer the Applicant to a hand surgeon and that those factors advanced credence that the Respondents have accepted responsibility for the Applicant's injuries.

[15] Additionally, if the Court accepts the Respondents liability any award agreed upon should take into consideration the considerable delay experienced by the Applicant and such delay caused the Applicant to suffer financial hardship.

Respondents' Submissions

[16] Learned Counsel for the Respondent Ms. Maurissa Johnson states that in the present application the Court must first consider whether the conditions of Rule 17.6 of CPR 2000 are met so to allow it to exercise its jurisdiction to make an order of interim payment in favour of the Claimant.

[17] Ms. Johnson submits that the language of Rule 17.6 (1) (d) obligates the Court to determine first "the likely amount of the final judgment"; second, what is a reasonable proportion of that amount; and third, to address any other matters it considers material to the exercise of the overall discretion whether or not and if so in what amount to order payment. She posits **Spillman v Bradfield Riding Centre** · [2007] EWHC 89 (QB) as the authority.

[18] Ms. Johnson further referenced the Court to the case of **Her Majesty's Revenue and Customs v The GKN Group**¹ as the proper judicial approach to the making of interim payment orders. While this was a decision of the Court of Appeal of England and Wales, the court was construing an identical provision as Rule 17.6

(1) (d) of our CPR 2000 and is therefore instructive.

[19] Learned Counsel Ms. Johnson summarised the essence of the decision in **Her Majesty's Revenue and Customs v The GKN Group** as follows:

¹ [2002] EWCA Civ 57

In order to establish that the Applicant will obtain judgment for a substantial sum the Claimant must show that, at trial:

(a) She is bound to win;

(b) That she will win a substantial amount of money;

(c) The Court will have to decide, on the material before it, what sum it thinks that Applicant would obtain at trial {which will involve an inquiry (or assessment) as to the likely amount of final judgment at trial and not merely the Claimant's calculation of damages};

(d) It is not enough to show that the Claimant is likely to succeed at trial; the court must be satisfied that she is bound to succeed (to the standard of a balance of probabilities) and that she would in fact obtain a substantial amount of money.

(e) There is only one civil standard of proof to which the requisite conditions must fulfill, that is upon a balance of probabilities which the Claimant must meet.

[20] Counsel also referred to the case of **Joseph Pinder v Trishell Wetherm**² in which Pereira JA (as she then was) at paragraphs 5 and 6 had this to say:-

"[5] ...The principles guiding the exercise of the court's discretion in such circumstances are clear. The court must be satisfied that the Claimant would obtain judgment for a substantial amount of money based on more than the making out of a prima facie case although the evidence meeting the criminal standard of proof

{beyond reasonable doubt} is not required, the burden, (on a balance of probability) is high.

[6] ...The interim payment procedure is not suited to cases of serious disputes on issues of fact or of law..."

² HCVAP 2011/041, Eastern Caribbean Supreme Court of Appeal (Antigua & Barbuda)

[21] Learned Counsel.Ms. Johnson in conclusion submitted that given the state of the evidence on this application, it would be difficult for the Court to conclude that the conditions of CPR 17.6(1)(d) has been satisfied so as to allow it to make an interim payment order. .

Analysis and Conclusion

[22] The starting point must be the terms of Rule 17.6 of CPR 2000. The Respondents have not admitted liability and the Applicant has not obtained judgment against the Respondents. Therefore, the relevant Rule to the case at bar is Rule 17.6 (1)(d) which reads as follows:

"(1) *the court may make an order for interim payment only if satisfied that-*

*(d) ...if the claim went to trial **the claimant would obtain judgment** against the Defendant from whom an order for an interim payment is sought for a **substantial amount of money** or for costs."* (My emphasis)

[23] Rule 17.6 (4) further provides that "*the court must not order interim payment of more than **a reasonable proportion** of the likely amount of the final judgment. Further, upon considering an application for interim payment pursuant to Rule 17.6*

*(5) "the court must take into account **contributory negligence** (where applicable) and any relevant set off and counter claim."* (My emphasis)

[24] The general rule is that if the Court is satisfied that the conditions in Rule 17.6 (1)(d) have been fulfilled, then the Court should order that an Interim Payment be made unless there is sufficient reasons not to do so.³

[25] The onus is on the Applicant to satisfy the Court that the necessary conditions have been fulfilled for it to consider exercising the power to grant an Interim

³ Supra, note footnote 1, paragraph 47

Payment order and I accept Counsel for the Respondents' submission that the usual standard of proof in civil proceedings, which is upon the balance of probabilities, would apply.

[26] The Court must therefore be satisfied that, if the claim went to trial here and now, on the material before it, the Applicant would succeed on her claim and, as a result, she would actually obtain a substantial amount of money⁴.

[27] The question therefore is whether the Conditions in Rule 17.6 (1)(d) have been fulfilled by the Applicant. Unfortunately, the Applicant has not satisfied this Court that this is a suitable case for an Interim Payment order. As stated in the **Pinder!** decision, the interim payment procedure is not suited to cases of serious disputes on issues of fact

or of law. Based on the facts as pleaded and the state of the evidence (or lack thereof) thus far, the degree of the Respondents' liability is in serious issue and this cannot be resolved at this stage.

[28] Moreover, even if the Court were to accept that the Respondents' agreement/request that the Applicant see a Hand Specialist amounted to some acceptance of liability, the Respondents have raised the issue of contributory negligence of the Applicant. In the exercise of my discretion I "must take into account contributory negligence (where applicable) and any relevant set off and counter claim."⁶ Unfortunately, this issue cannot be determined based on the material currently before the Court. In fact, based on the material before the Court there are several possible results: (i) that the Applicant could be found to be totally responsible for her injuries, (ii) the Respondents could be held liable, or (iii) the Applicant could be found to be guilty of contributory negligence, with the resultant uncertainty as to the proper apportionment of damage.

⁴ See *Her Majesty's Revenue and Customs v The GKN Group*, paragraph 39

⁵ See note 2, paragraph 6.

⁶ Rule 17.6 (5) CPR 2000.

[29] Even if I am wrong on the issue of liability, no figure was put forward by Ms. Willis as a fair calculation of the overall Claim. In fact, the Claimant has not yet obtained a medical diagnosis for her injuries. Instead, she contends, without the benefit of any medical report on which the Court can rely, that the injuries of the Claimant were more severe than the injuries in the single authority she cited⁷. In that case the award, when updated to 2016, would be \$12,466.47. Given that "the Applicant's injuries are more severe, her request for 'at least \$10,000' as interim payment, she submits, is reasonable.

[30] Under Rule 17.6 (4), the Court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment. In the case at bar, it is impossible to say what the likely amount of the final judgment would be at this time. Consequently, the Court has no way of determining whether the request for \$10,000.00 or any other sum would constitute a "reasonable proportion of the likely amount of the final judgment".

[31] With there being so much uncertainty as to the degree of liability, likely amount of the final judgment, any contributory negligence on the part of the Applicant or what would amount to a "reasonable proportion" of the final judgment, the Applicant has failed to satisfy the Court at this stage of the proceedings, that she would obtain judgment against the Respondents for a substantial amount.

⁷ *Alexander v Baptiste & Ryan*, HCA No. S 271 of 1985, Trinidad and Tobago.

IT IS HEREBY ORDERED:-

[32] The Applicant's application for interim payment against the Defendants is refused.

[33] Costs to be costs in the cause.

Yvette Wallance

Master (Ag.)