

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
CLAIM NO: ANUHCV 2013/0718
BETWEEN:

OMARI SAMUEL
Claimant/Respondent

and

PAUL CHET GREEN
1st Defendant/Applicant

ANSLEY CHARLES
2nd Defendant

Before:

Master Jan Drysdale

Appearances:

Hugh Marshall and Kema Benjamin of counsel for the first defendant/applicant

Raymond Dexter Wason of counsel for the claimant/respondent

2018: March 19

May 11

DECISION

- [1] **Drysdale, M.:** The matter for consideration is an application by the first defendant for a permanent stay of proceedings.

BACKGROUND

- [2] On 6th November 2013 the claimant instituted proceedings against the defendants for damages for personal injuries sustained as a consequence of a motor vehicular accident. The first defendant is the

owner of the vehicle which at the material time was being driven by the second defendant. The first defendant asserts that he upon being served with the claim immediately took the documents to his insurance company pursuant to the terms of his policy for the Corporation to either settle or defend the claim.

- [3] The claimant pursuant to section 7(2) of the Motor Vehicles Insurance (Third Party Risks) Act Cap. 288 of the Revised Laws of Antigua and Barbuda on 11th November 2013 also gave notice to the first defendant's insurer of commencement of proceedings against him in the instant claim.
- [4] On 13th November 2013 the first defendant filed an acknowledgment of service signalling his intention to defend the claim. However no defence was filed and on 22nd January 2016 judgment in default of defence was entered against both defendants.
- [5] The matter thereafter proceeded for assessment of damages and the requisite directions were issued. Subsequently on 14th August 2017 the first defendant filed an application for a permanent stay of the proceedings. The basis of the application is that the acceptance of the sum of \$250,000.00 by the claimant from the first defendant's insurer released the first defendant from liability from claims for compensation consequent on the accident.
- [6] The claimant relies on a two documents in particular "Commercial Motor Bodily Injury Release" and a "Release" to evidence that the matter was settled fully and thereby precludes further proceedings in the matter.
- [7] The "Commercial Motor Bodily Injury Release" was executed by the insurer and counsel for the claimant on 28th January 2014 and certified the payment of the sum of \$250,000 by the insurer to the claimant. The "Release" which was issued and signed by only counsel for the claimant was dated 10th February 2014 and stipulated that the insurer alone was released from further liability.
- [8] The claimant in defence of this application acknowledges payment but denies that this precluded him from continuing an action against the first defendant in circumstances where the sum received was not sufficient to cover the damages sustained. The claimant also denies that either of the two documents are tantamount to a release from liability. The claimant asserts that both documents were only referable to the insurer and not the first defendant. Moreover the claimant

contends that the release dated 10th February 2014 was issued on the basis that the policy of the first defendant was limited to a statutory maximum of \$250,000.00. The claimant contends that this limitation continued to render the first defendant liable for any additional damages.

ISSUES

[9] The issues for consideration are as follows:

- [i] In what capacity did the insurer act in relation to these proceedings?
- [ii] Whether the various release documents evidence an intention to fully settle the claim?

CAPACITY OF THE INSURER TO ACT

- [10] It has been contended that the Insurer acted as agent for the first defendant in the instant matter. Bowstead and Reynolds on Agency defines agency as a “fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf.¹”
- [11] This assumes a consensual agreement wherein the agent is authorised to act for and on behalf of the principle within the confines of the agreement.
- [12] The first defendant submits that the insurer was his agent in the matter and has submitted the insurance policy to establish this contention. Clause 5 of the policy reads as follows:

“No admission offer promise or payment shall be made to or on behalf of the Insured without the consent of the Corporation which shall be entitled if it so desires to take over and conduct in its name the defence or settlement of any claim or to prosecute in its name for his own benefit any claim for indemnity or damage or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the insured shall give all such information and assistance as the Corporation may require.”

¹ Bowstead and Reynolds on Agency 18th edition

- [13] Based on the above it is clear that the insurer was entitled to put forward any defence or take any steps that the first defendant would by law be entitled to advance² including a reduction of damages or a settlement of proceedings.
- [14] However the ability of the insurer to act as agent for the first defendant does not preclude it from also acting in its own interest. Clause 5 of the policy gives the insurer the right to take-over proceedings and or decide on an appropriate course of action provided the insurer also takes cognisance of the interest of the insured.³ As it is not contended that the insurer acted to the detriment or without the knowledge and authority of the first defendant the insurer was therefore also capable of in its own interest and as agent for the first defendant.

WHETHER THE VARIOUS RELEASE DOCUMENTS EVIDENCE AN INTENTION TO FULLY SETTLE THE CLAIM

- [15] Having accepted that the insurer was capable of acting in the dual role of the agent of the first defendant and in its own interest consideration must be given to whether there is sufficient evidence to establish that the matter was fully settled as against the first defendant and therefore should be stayed permanently.
- [16] At the heart of this matter are two purported releases. The first is a document which was signed between the claimant and the first defendant's insurer. That document is titled Commercial and Bodily Injury Release. It is a well-known principle of law that notwithstanding the title of any document the court is entitled to examine the contents thereof to determine its true nature. Accordingly the court will undertake an examination of the same to determine whether the document is in fact indicative of an agreement and/or a release from liability.
- [17] The document in its entirety comprises a total of three lines. The brevity of the document is not significant provided it contains all the essential elements of an agreement. An examination of the same reveals a reference to an acknowledgment of the sum of \$250,000.00 "for bodily injury done to me as a result of motor vehicle accident on

² Ramsook v Crosley [2018] UKPC 9

³ Groom v Cocker [1936] 1 KB 194; Ramsook v Crosley [2018] UKPC 9

23rd March 2013: Claim No MC-2013-03-00034” and the signature of counsel for the claimant (on his behalf) and the insurer. The heading of the document also indicates that the insured is the first defendant.

- [18] The document is deficient in that it contains no terms of agreement. The court therefore cannot determine on the face of it whether there was any mutuality of obligations or a meeting of the minds of the parties. Also there being no terms there is nothing contained in the document which would render it enforceable in a court of law as an agreement.
- [19] The Court also notes that the document does not state that the receipt of the money acts as a discharge of liability from any proceedings or further proceedings capable of or arising out of the consequence of the accident. Clearly if it were the intention of the Insurer it being the drafter of the document that the same would have been included in the document. Therefore the document notwithstanding its title therefore does not rise to the level of a contract and further is not indicative of an agreement releasing the claimant from any further liability but rather is a receipt of moneys paid and received.
- [20] Chitty on Contracts provides that where a document is not a formal agreement, extrinsic evidence is admissible to ascertain or interpret the intention of the parties⁴. Accordingly an examination of the second document also titled Release is imperative. That document unlike the first was only signed by counsel for the claimant on his behalf. It was not notarised and there were no parties thereto. That document acknowledges the payment of the sum of \$250,000.00 and purports to be in full and final satisfaction and to operate as a discharge of the insurer from any part or future claims or proceedings in connection with suit ANUHCV2013/0718.
- [21] Having established that it is possible for the insurer to act in the dual capacity as agent and in its own interest, the failure of the insurer to expressly contract with the claimant to fully discharge the matter upon receipt of the maximum payable under the policy, leaves the court to conclude that there was no full and final settlement of the claim. Further the second purported release of the insurer alone from any further liability cannot be extended to the first defendant as a release from liability but rather operate to exempt the insurer from any further liability if damages are found to have exceeded the sum paid by the

⁴ Chitty on Contracts 32 edition

insurer. In the absence of a release from liability the payment of the contractual maximum of \$250,000.00 under the policy can only serve as a measure to reduce the potential financial liability for damages in the circumstances. The first defendant therefore remains liable for any damages exceeding the sum paid by the insurer.⁵

Order

[22] Based on the foregoing the application of the first defendant for a permanent stay of proceedings is refused.

Jan Drysdale

Master

By The Court

Registrar

⁵ Ramsook v Crosley [2018] UKPC 9