

ST. CHRISTOPHER

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2024/0232

BETWEEN:

CHERYL PAIGE

Claimant

and

O.D. BRISBANE & SONS (TRADING) LIMITED

Defendant

Appearances:

Sherry-Anne Liburd Charles with Leon Charles for the Claimant

Angelina Gracy Sookoo Bobb with Anthony Gonsalves KC for the Defendant

2025: November 11
December 17

JUDGMENT

[1] **SAUNDERS, M:** In the substantive matter the Claimant's ("*Ms. Paige's*") claim against the Defendant ("*Brisbane*") is in workplace negligence concerning an accident in which Ms. Paige slipped and fell in a warehouse due to fabric softener that had been spilled and covered with cardboard. The core facts and Brisbane's initial negligence are largely admitted. The case primarily concerns apportionment of liability, the severity and permanence of the injuries and mitigation of loss.

[2] On 6 May 2025 Ms. Paige issued an application for an interim payment of \$250,000 ("*the Application*"). At the hearing of the Application on 1 October 2025, Counsel for Brisbane raised the preliminary issue that Ms. Paige had agreed to compromise the Application by accepting a reduced interim payment

of \$100,000 (*“the Interim Payment”*). At the hearing on 1 October, I gave directions concerning the preliminary issue, including for the filing of affidavit evidence and written submissions.

- [3] When the Application was heard on 11 November 2025, counsel for both Ms. Paige and Brisbane sought the enforcement of a litigation agreement (the terms of which differ according to the parties) arising from the Interim Payment which was made to Ms. Paige on 28 July 2025. Having read and heard the parties’ submissions I have decided to dismiss the Application premised on my determination of the preliminary issue for the reasons set out below.

The Litigation Agreement

- [4] Both parties have made submissions that the Court should enforce a Litigation Agreement between them in respect of the Application. Counsel for Ms. Paige contends that the Interim Payment was made pursuant to an agreement for the payment of a mere installment towards the Application whereas counsel for Brisbane contends that the Interim Payment was paid pursuant to an agreement to fully settle and compromise the Application. For sake of brevity, I shall refer to the agreement as being contended for by either party as *“the Litigation Agreement”*.

- [5] Although the parties did not file a statement of agreed facts, they both made their case for and sought enforcement of the Litigation Agreement based on virtually the same correspondence between counsel Anthony Gonsalves KC and Leon Charles from May to September 2025. The only real difference between the parties’ positions, therefore, was the substance of the Litigation Agreement which was formed from the exchange of emails and letters.

Construing the Litigation Agreement within these Proceedings

- [6] There is precedent in the common law for the Court construing and enforcing a litigation agreement without requiring the parties to issue separate proceedings. See e.g. **Jackson (trustee in bankruptcy of Thakrar) and others v Thakrar (a bankrupt) and others** 113 ConLR 58 which was on somewhat similar facts as are before me and the Irish decision **Allied Irish Banks PLC and another v**

Doran [2024] IEHC 522 in which a wealth of jurisprudence was available to the Court in deciding the point there in issue. Construing the Litigation Agreement, that is, deciding whether there was an agreement to settle or compromise the Application and enforcing it in these proceedings, is merited and in support of the Overriding Objective for the following reasons:

- a. There are no factual issues in dispute as both parties rely on the same correspondence, as in **Jackson (trustee in bankruptcy of Thakrar) and others v Thakrar (a bankrupt) and others**, in contending for the enforcement of the Litigation Agreement;
- b. Both parties have asked that the Court construe the Litigation Agreement within these proceedings;
- c. If the Court refused to resolve and enforce a valid agreement in respect of the Application, the parties would be forced to issue additional proceedings concerning an issue relevant to an application which is already being considered by this Court;
- d. As decided in **Allied Irish Banks PLC and another v Doran**, *“there is a clear public interest in promoting the settlement of proceedings and that interest would be significantly undermined if the courts were not also in a position to ensure compliance with the terms of a settlement agreement. Unless there is some significant countervailing issue, the courts should aid the parties in enforcing the terms of a settlement”*.
- e. Under the Court’s general case management powers at 26.1(2)(y) the Court may *“take any other step or make any other order for the purpose of managing the case and furthering the Overriding Objective”*. A decision to enforce a litigation agreement that has arisen is a pragmatic use of this power, treating the rules as a tool rather than a straitjacket.

- [7] It is a basic principle of the law of contract that whether parties have come to an agreement is an objective test in which a party may be bound regardless of their intentions. See for example the decision **Smit v. Hughes** (1871) L.R. 6 Q.B. 597 at 607 on the point:

*“I apprehend that if one of the parties intends to make a contract on one set of terms, and the other intends to make a contract on another set of terms, or, as it is sometimes expressed, if the parties are not ad idem, there is no contract, unless the circumstances are such as to preclude one of the parties from denying that he has agreed to the terms of the other. The rule of law is that stated in *Freeman v. Cooke* (1). If, whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms”*
(emphasis supplied)

- [8] In construing the parties' emails and correspondence in deciding whether they have come to an agreement, it is settled that the Court must look at the whole course of negotiations¹. However, once it is found that there is an agreement, further negotiations or discussions, without the parties' consent, cannot detract from the agreement previously formed².

- [9] In construing the respective correspondences being relied upon, Thom JA in **Antigua and Barbuda Transport Board v Anderson Carty** ANUHLTAP2020/0005-6 applied the following dicta of Lord Hodge in **Wood v Capita Insurance Services Ltd** [2017] AC 1173, which is helpful:

“The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must

¹ **Global Asset Capital Inc v Aabar Block SARL** [2017] 4 WLR 163 at [28] and **Hussey v Horne-Payne** (1879) 4 App Cas 311 at pg. 316

² **Perry v Suffields** [1916] 2 Ch 187 at pg. 192

consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning.”

- [10] Most recently, in the decision **The Barbuda Council v PLH (Barbuda) Limited** ANUHCVP2024/0030, the Court of Appeal applied the following statements of Baptiste JA in **Grenada Technical and Allied Workers Union v St. George’s University Limited** GDAHCVP2014/0008 (delivered 13 February 2017, unreported) at [23] and [25] regarding the ambit of the relevant background in construing contractual texts:

“[23] The case law clearly demonstrates that the admissible background includes anything known or reasonably available to the parties, which would have affected the way in which a reasonable man understood the language of the document. However, the law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. As Lord Hoffman put it in paragraph 42 of his speech in Charterbrook Ltd v Persimmon Homes Ltd:

‘The [exclusionary] rule excludes evidence of what was said or done in the course of negotiating an agreement for the purpose of drawing inferences about what the contract meant.’

[25] The distinction between relevant admissible background and other statements made in the course of negotiations was stated by Lord Hoffman in paragraph 38 of Charterbrook:

‘Whereas the surrounding circumstances are, by definition, objective facts, which will usually be uncontroversial, statements in the course of pre contractual negotiations will be drenched in subjectivity and may, if oral, be very much in dispute.’”

Was there and if so, what was the agreement between the parties

- [11] In my view, from the exchange of correspondence between 6 May and 18 July 2025, an agreement was formed on 18 July 2025. Ms. Paige then performed the agreement on 28 July 2025 when representatives of Ms. Paige collected the

Interim Payment from Brisbane's counsel. Regarding the correspondence taking place after 28 July 2025, while I have considered it, I do not believe it is relevant to whether there was an agreement, or, what were its terms, considering the following:

- a. That Ms. Paige's counsel intended to make an offer by the 17 July 2025 letter is clear from an objective construction of the correspondence and is, in fact, undisputed by either party. The argument between the parties concerns rather what, specifically, the offer entailed;
- b. The letter of 18 July 2025 from Brisbane's counsel constitutes an acceptance of Ms. Paige's offer but, insofar as there is some ambiguity regarding what the offer entailed, a corresponding argument has arisen in respect of what exactly was accepted.
- c. Brisbane performed the agreement on 28 July 2025 by making payment to Ms. Paige of \$100,000 and nothing that is said after, or indeed, before then suggests that there were any terms left to be agreed by the parties, or, that the agreement reached was in any way uncertain in a contractual sense. The question that arises and which the parties have made submissions about is what, from the construction of the correspondence, was the agreement between the parties;
- d. The further discussions between counsel after 28 July 2025 cannot, without both their consent, change or rescind the agreement already reached³.
- e. The parties' discussions following 28 July 2025 relate primarily to expressions of their subjective intentions in retrospect. It has been repeated time and again that such evidence is not admissible for the purpose of ascertaining the parties' objective intentions⁴.

³ **Perry v. Suffields, Limited** [1916] 2 Ch. 187 pg. 192.

⁴ **The Barbuda Council v PLH (Barbuda) Limited** ANUHCVP2024/0030 and **James Miller & Partners Ltd. v Whitworth Street Estates (Manchester) Ltd.** [1970] A.C. 583

[12] I have set out below the major events and correspondence taking place between 6 May and 28 July 2025 which are relevant to ascertaining the objective intention of the parties.

Date	Event	Activity of Litigants
6.5.2025	Claimant's Application for an Interim Payment of 250,000 is issued	The Application is premised on, among other things, the allegation that Ms. Paige requires two (2) further major medical expenses that she is unable to undergo arising from her lack of financial resources caused by her alleged disability.
9.5.2025	Email from Anthony Gonsalves KC to Leon Charles	<i>"In relation to the Claimant's application for an interim payment, we have been authorized to propose an interim payment of EC\$100,000.00. This is without prejudice to our claim for contributory negligence. Please let us have your response."</i>
13.5.2025	Email from Leon Charles to Anthony Gonsalves KC	<i>"Thanks for your email and the interim payment offer. On the instructions of our client, we hereby make a counterproposal of EC\$200,000.00 as an interim payment, premised on the fact that our client is in urgent need of surgical intervention, the costs of which were outlined in the application. Our client has very limited means and your client's proposed offer does not adequately assist our client in meeting these medical expenses"</i>
14.5.2025	Email from Anthony Gonsalves KC to Leon Charles	<i>"Thank you for your reply. I will seek instructions and respond at the earliest"</i>
16.5.2025	Email from Anthony Gonsalves KC to Leon Charles	<i>"My instructions are to maintain the interim payment offer of EC\$100,000.00"</i>
16.5.2025	Email from Leon Charles to Anthony Gonsalves KC	<i>"Thanks for advising on this. Please note that we will accept the amount of EC\$100,000.00 as part payment only. We will pursue the application for the remaining EC\$150,000.00 requested/applied for. Kindly indicate how soon the payment of EC\$100,000.00 will be made"</i>
16.5.2025	Email from Anthony Gonsalves KC to Leon Charles	<i>"I am not certain whether my client will agree to this approach. I will seek instructions"</i>
16.5.2025	Email from Anthony Gonsalves KC to Leon Charles	<i>"I must inform you that my instructions are to rescind the WOP offer and to resist the application"</i>
15.7.2025	The Court gives Summary Judgment for the Defendant in	The Summary Judgment application had the effect of disentitling Ms. Paige to loss of future earnings on her claim

	relation to Claimant's claim for loss of future earnings	which she had estimated in the Application as totaling \$400,000.
17.7.2025	Letter from Anthony Gonsalves KC to Leon Charles	<i>"I refer to your pending application seeking an interim payment. My instructions are to repeat the offer previously made of EC\$100,000.00 as an interim payment. Please note that this is an open letter for all purposes including costs. By this letter the Defendant does not in any way alter its filed defence including its claim of contributory negligence. Please let us have your reply"</i>
18.7.2025	Letter from Leon Charles to Anthony Gonsalves KC	<i>"We write in response to your client's offer for an interim payment. We have taken instructions and our client has accepted the offer. Kindly indicate when the cheque will be forwarded to our office. We note your reference to the previous offer for an interim payment. However, for the record, that offer was withdrawn by your client on 16th May 2025. We look forward to receiving the payment."</i>
28.7.2025	The Interim Payment (a \$100,000 cheque) is collected by Ms. Paige's representatives from Brisbane	

- [13] From the correspondence and the events set out above, what strikes me as most significant, is that Brisbane's counsel couches the offer on 17 July 2025 (*"the Offer"*) by referring to a previous offer of 9 May 2025 that was made for \$100,000. There is no dispute in the evidence, and, my understanding of the exchange of correspondence at the material time, is that the 9 May 2025 offer:
- Was understood by both parties to be a payment towards the compromise and satisfaction of the Application;
 - Was the subject of a counter-offer by Ms. Paige in the sum of \$200,000, which Brisbane refused (13.5.2025);
 - Was the subject of another counter-offer by Ms. Paige when counsel proposed that she would accept \$100,000.00 as part payment with Ms. Paige endeavoring to seek an additional sum by way of the Application (16.5.2025). That counter-offer was also rejected by Brisbane (16.5.2025).

- [14] Considering the foregoing, I cannot help but understand Brisbane's reference in the Offer to the prior 9 May negotiations as being a very clear statement to Ms.

Paige that Brisbane was seeking to restart discussions to settle the Application in full. No other useful purpose is served by Brisbane referring to the negotiations started on 9 May 2025 in the Offer.

- [15] When the Offer was accepted in correspondence of 18 July 2025 (*“the Acceptance”*), Counsel for Ms. Paige stated as follows:

“We write in response to your client's offer for an interim payment. We have taken instructions and our client has accepted the offer.

...

We note your reference to the previous offer for an interim payment. However, for the record, that offer was withdrawn by your client on 16th May 2025. We look forward to receiving the payment”.

- [16] Submissions were made by counsel for Ms. Paige that the second statement above dispels any reference to the prior negotiations in those following the making of the Offer. With respect, I disagree. I do not understand from that statement that it was being suggested or implied that the Offer was accepted with a caveat, or, as a part payment. The prior offer and ensuing negotiations are a very important part of the factual matrix or background to the agreement between the parties.

- [17] Counsel for Ms. Paige has also argued that the correspondence cannot be understood to be an agreement to compromise the Application for \$100,000 because that sum is less than one half of the sum sought in the Application and the same had been previously refused by Ms. Paige. In that regard, it is important to also understand that the Offer was made almost immediately after this Court gave Summary Judgment to Brisbane in relation to Ms. Paige's claim for loss of future earnings. The fact of the summary judgment decision contextualises why Brisbane would bother at all to attempt to compromise the Application with the same \$100,000 payment considering the previously failed negotiations in May.

- [18] In coming to my decision, I have also relied on the following observations:

- a. The Construction contended for by Ms. Paige does not explain why the Court should understand the Offer as being one in relation to a part payment whereas, from the correspondence supplied, both parties readily operated on the basis that the 8 May offer was one in relation to the settlement of the Application in full. Both offers (8 May and 17 July) were virtually the same in content except the Offer referenced the prior negotiations. That is, “*we have been authorized to propose an interim payment of EC\$100,000.00*” vs “*My instructions are to repeat the offer previously made of EC\$100,000.00 as an interim payment*”.
- b. The agreement contended for by Ms. Paige seems to be devoid of adequate consideration. Ms. Paige gets \$100,000 and is free to pursue an additional sum in the Application, whereas Brisbane’s consideration appears to be that it gets the privilege of paying \$100,000 in advance of the Application. Without being facetious, Brisbane does not need Ms. Paige’s agreement to make an interim payment in advance of the Application and if it does so without an agreement in place, it will be entitled to contend that the \$100,000 should be taken into consideration if any compensatory damages are awarded. If no further sums are awarded to Ms. Paige, Brisbane would be entitled to contend that the \$100,000 should be returned by way of resulting trust.

[19] For all of the reasons set out above I have decided to dismiss the Application on the basis that it was fully compromised by Ms. Paige when she accepted the sum of \$100,000 on 17 July 2025. The issue concerning the costs of the Application is reserved to the next hearing of the matter pending the parties’ submissions.

Yuri Saunders

Master

Registrar