

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0209

BETWEEN

DEBORAH PATTERSON
Formerly of St. Vincent and the Grenadines
But presently residing in the United Kingdom

CLAIMANT

AND

EMMIE SLATER
(Legal Personal Representative of
the Estate of Rueben Slater, Deceased)

DEFENDANT

Appearances:

Mrs. Mandela Peters for the Claimant

Mr. Duane Daniel with Ms. Chanté Francis for the Defendant

Ms. Deborah Patterson Claimant, present

Mr. Emmie Slater, Personal Representative of the Estate of Rueben Slater, present

2021: 17th February
18th May

JUDGMENT

Byer, J.:

- [1] On 17th November 2013, the claimant was the passenger in a motor vehicle with registration number PK642 owned and driven by Mr. Rueben Slater, deceased (the deceased defendant). The said motor vehicle benefitted from a motor insurance policy issued by the defendant's insurers, Metrocint General Insurance Limited (hereinafter referred to as "Metrocint").

- [2] Whilst driving along the Leeward Highway in the vicinity of Questelles, St. Vincent, an accident occurred. The claimant suffered personal injuries and was transferred to the Milton Cato Memorial Hospital in Kingstown, St. Vincent.
- [3] The claimant initially received treatment for her injuries at the said Milton Cato Memorial Hospital under the care of Dr. Charles Woods until 26th December 2013. Thereafter, she was transported by Air Ambulance from the Milton Cato Memorial Hospital to the West Shore Medical Centre in the Republic of Trinidad and Tobago.
- [4] By a Claim Form and a Statement of Claim filed on 17th November 2016, the claimant issued proceedings against the deceased defendant and Metrocint in the tort of negligence for unspecified general damages and special damages (arising at that time) for \$72,442.92 in respect of the injuries sustained.
- [5] The deceased defendant filed a Defence on 27th January 2017, denying liability and pleaded the defence of *volenti non-fit injuria*. In the alternative, the defendant also sought to rely on a document entitled “*Third Party Discharge Receipt – Motor*” prepared by Metrocint for and on behalf of the defendant.
- [6] The Third Party Discharge Receipt was signed on 24th December 2013 by the claimant, a Mr. Corniel Hendrickson-Gerrick (the claimant’s representative), and Mr. Dwight DaSilva, the Claims Manager employed by Metrocint.
- [7] Subsequent to the signing of the Third Party Discharge Receipt, the claimant received a cheque in the sum of \$43,000.00. Such sum was purportedly paid “*in full and final discharge of all past, present or future claims regarding and arising from the accident*” involving the defendant’s motor vehicle PK642.
- [8] The defendant relies on the Third Party Discharge Receipt and has pleaded that the claimant is estopped from bringing these proceedings due to the existence of the said Third Party Discharge Receipt.
- [9] The claim against Metrocint was discontinued on 3rd February 2017.
- [10] The claimant filed a Reply to the Defence on 6th February 2017 in which she pleaded that the procurement of her signature on the Third Party Discharge Receipt resulted from undue influence, that she had not had the benefit of legal advice before the signing of the same, and that the payment of \$43,000.00 was manifestly unconscionable and unjust.
- [11] Rueben Slater died on 26th January 2019.

- [12] The deceased defendant's wife Mrs. Emmie Slater was substituted in place of Rueben Slater in the capacity as representative of the estate of Rueben Slater deceased, by order of the Court made on 2nd October 2020 and entered on 23rd November 2020.
- [13] The matter went to trial on 17th February 2021 on the separate issue as to whether the sum of \$43,000.00, which was paid to the claimant by Metrocint on behalf of the deceased defendant on 24th December 2013, was in full satisfaction of all liability in respect of the accident.
- [14] Upon the court having heard the evidence and read the submissions of the parties, this court considers that there are essentially two issues that are to be determined by this court:
- i) Whether the release signed by the claimant was a binding document and if the court finds that the same was binding
 - ii) Whether the release should be set aside for having been an unconscionable bargain

Issue #1: Whether the release signed by the claimant was a binding document

- [15] The contention of the claimant in this regard by way of the submissions filed, did not seek to impugn the binding nature of the document. The main contention of the claimant was that even if the same was a binding document, that it should in any event be set aside as it was a bargain that was unfair and oppressive. In that regard this court will consider those submissions of the claimant when it addresses its mind to the second issue identified.
- [16] The defendant on the other hand has submitted that it was clear that the claimant had not only appointed an individual to act in the position of her agent to negotiate a settlement with the insurance company, but that having so negotiated the settlement, the claimant had entered into a binding contract with the insurance company which amounted to a full and final settlement of all her claims against both the deceased defendant and the insurance company.
- [17] The defendant further submitted that the words of the document that had been signed by the claimant were clear and unambiguous and as such it would have been apparent to the claimant that the release was a not just a receipt of payment but also a clear contract that identified the nature of the payment and the ramifications attached to the acceptance of the monies paid under it.

Analysis and Findings

- [18] Before this court embarks on an assessment of this issue, there is a need to ascertain a preliminary matter that was raised at the trial of the matter as to whether the defendant so named, was in fact the proper defendant against whom questions in relation to the validity of the release

[19] In this court's mind, the wording of the release itself clearly signaled that the insurance company, Metrocint was and did act as agent for the deceased defendant.

[20] The release as signed is an integral part and the genesis of this matter presently before the court and as such it is imperative to set it out in its full terms:

- [22] So although this court accepts that Metrocint was acting for the deceased defendant, this court also accepts that it had in this instance been acting in its own interest¹. Acting therefore as it was in this dual capacity, this court is satisfied that Metrocint was acting in a representative capacity and that the deceased defendant and his subsequent administrator for the purposes of this litigation, would be bound by the actions of Metrocint and that in fact they would be responsible for the actions taken by Metrocint and be required to respond to the allegations of the matter.
- [23] That being said, this court must now consider whether the release as signed indeed constituted a binding contract in all the circumstances.
- [24] In the case of **Hilary Bowman v Eudenia Arrindell**² my sister Henry J identified³ the main elements of a contract to enable the finding of the existence of a valid contract. These are stated as an offer, acceptance, an intention to enter into legal relations and that there was some nature of consideration as between the parties.
- [25] In the case at bar, this court is satisfied that all of these elements exist. There was a clear offer which was accepted by the claimant, the claimant made the conscious decision to accept the offer⁴ and there was consideration on the acceptance as she received from Metrocint the sum of \$43,000.00.
- [26] This court is additionally fortified in this view that the requisite elements were satisfied by the signing of the document by the claimant when the court considers the learning in the text Chitty on Contracts⁵ which puts it thusly, "... a party of full age and understanding is normally bound by his signature to a document whether he reads or understands it or not."
- [27] Having signed this document and this court having found that the same was a binding document, it therefore suggests that the meaning attributed to its purport must also be as intended. That is, that the release was meant and was in full and final settlement as between the claimant and the deceased defendant.

¹ **Omari Samuel v Paul Chet Green and anr** ANUHCv2013/0718

² SVGHCv 2016/0029

³ Ibid at para 60

⁴ This was clearly stated by the claimant in cross examination that she exercised control over the sum that she accepted and that she signed the document that was presented to her

⁵ 29th Ed (2004) Vol 1

[28] In the words of the Lord Hope of Craighead in the case of **Melansian Mission Trust Board v Australian Mutual Provident Society**⁶ it is clear that:

“Where ordinary words have been used, they must be taken to have been used according to the ordinary meaning of these words. If their meaning is clear and unambiguous, effect must be given to them because that is what the parties are taken to have agreed to by their contract. ... But it is not the function of the court, when construing a document, to search for an ambiguity. Nor should the rules which exist to resolve ambiguities, be invoked in order to create an ambiguity which, according to the ordinary meaning of the words, is not there. So, the starting point is to examine the words used, in order to see whether they are clear and unambiguous. It is of course legitimate to look at the document as a whole and to examine the context in which these words have been used, as the context may affect the meaning of the words. But unless the context shows that the ordinary meaning cannot be given to them or that there is an ambiguity, the ordinary meaning of the words which have been used in the document must prevail.”

[29] I therefore satisfied that the release that was signed by the claimant was a legally binding document that intended to represent full and final settlement between the claimant and the deceased defendant.

[30] However having said so, that is not the end of the matter, as the more important question now is, should this document stand or be set aside in all the circumstances of its execution in that the same can be said to have amounted to an unconscionable bargain.

Issue #2: Should the release be set aside as amounting to an unconscionable bargain

[31] Once again before this court delves into this issue, it was argued before this court in the submissions of the defendant that the pleadings and examination in chief of the claimant had suggested the defence of *non est factum* and in so determining had submitted on this issue to the court.

[32] However this court is of the view that in order for the claimant to have raised this issue it would have been necessary to have specifically pleaded the same and state the circumstances under which the document was signed and the extent of the reasonable care taken in affixing her signature⁷.

[33] In this court's mind that was not the nature of the case that unfolded before it at trial. Indeed, on the evidence elicited from the claimant at trial, this court is satisfied that at no time did the claimant state that the release she signed was fundamentally different from what she had intended to sign.

⁶ [1997] 2 EGLR 128 at 129

⁷ Halsbury's Laws of England Vol 22 (2019) para 85

Only that she did not “realise” what she was signing as “when you are in pain you are not really paying attention.”⁸ Further she went on to say that her authorized agent witnessed her signature and that he never objected to the document as not representing what he negotiated on her behalf⁹ and finally that it was during the same hospital period when she appointed her agent to negotiate on her behalf that she also signed the document and said that it “was only when I communicated that the \$43,000.00 was acceptable that the insurance agents came with the cheque for the \$43,000.00. I had the presence of mind despite the pain to reject \$25,000.00 and \$30,000.00 and in spite of the pain I decided having made the calculation that \$43,000.00 was acceptable to clear my bills.”

- [34] Having heard this evidence and the requirements that must be met to rely on the plea of *non est factum*, this court accepts that this plea does not arise on the factual matrix or the pleadings and it will now examine whether the release should stand or be set aside.
- [35] The crux of the claimant’s case is that the court is empowered under the doctrine of unconscionability to intervene and set aside contracts which are “unjust, unfair or oppressive in circumstances where a contracting party by reason of bargaining weakness was not in a position to protect his or her interests.”¹⁰
- [36] In saying so, the claimant relied on the oppressive nature of the bargain in that it was clear that the sum that was paid to the claimant could not have even come close to cover damages that she would have been entitled to and that Metrocint knew that it was inadequate to cover any compensation for the injuries suffered.
- [37] The claimant further submitted that it was clear at the time of the release that the claimant had been in a weak bargaining position relative to Metrocint. In particular the inequality in bargaining position was due to the fact that it was a sole claimant as against the insurance company and their commercial savvy, the intense pain and heavy medication under which the claimant was labouring, the fact that the claimant needed the funds desperately to leave the island to obtain further medical care, the fact that she was unaware as to the manner in which negotiations should be handled and the lack of independent legal advice before having signed the release by the claimant.
- [38] The final submission by the claimant on this issue was also that Metrocint had acted in a morally reprehensible manner taking advantage of the claimant in her weakened state knowing that she was signing to an “improvident bargain”¹¹ and by allowing that to be done in all circumstances, this contract should be set aside and the matter should now proceed to trial on liability.

⁸ Cross examination of the Claimant at trial on the 17/2/2021

⁹ Ibid

¹⁰ Paragraph 38 of the Claimant’s Submissions filed 2/3/2021

¹¹ **Medford v Dhanpath and Gulf Insurance Limited** Trinidad and Tobago Civ App Number CA No S-2 of 2013

- [39] The defendant's position was clearly and consistently to the contrary. The defendant submitted that when the factual matrix is considered, it was clear that the claimant at every step of the way had access to and could have availed herself of the opportunity to seek any independent advice that she required or thought she needed. In fact, they contended in their submissions, that the claimant, contrary to her suggestion that she was unable to understand what she was signing and that she only signed to access the funding to pursue medical attention off island, knew exactly what she was doing and that there was no evidence of any incapacity on her part by virtue of pain or a drug regime.
- [40] Additionally the defendant submitted that the claimant having appointed her agent to negotiate with Metrocint on her behalf had been clearly cogent enough to have sought any legal advice that she may have wished. Having failed to do so and there having been no evidence of any undue influence on the part of Metrocint, it was now not open to the claimant to seek "to invoke the equitable jurisdiction of the court to save her from the consequences of her own folly ..."¹²
- [41] The defendant further submitted that the bargain had not been oppressive, it was the claimant who had been in the driving seat of the negotiations and it was her who had made the decision to accept that sum. It was also clear, in the defendant's submissions that since it was the claimant who had the mental capacity to determine the sum that she was prepared to accept and that Metrocint having paid without a determination of liability, ultimately meant that the parties were on an equal footing in taking and accepting the risks of payment and acceptance. Finally, there was never any action taken by Metrocint that tried to overcome the will of the claimant to import any impropriety on the part of Metrocint and certainly the transaction itself was not indicative of any wrongdoing on the part of Metrocint.
- [42] The defendant's clear position was therefore that the release had been properly executed by the claimant and as such should stand, binding the claimant to its terms and conditions.

Analysis and Findings

- [43] "If a contract is stigmatized as "unfair", it may be unfair in one of two ways. It may be unfair by reason of the unfair manner in which it was brought into existence; a contract induced by undue influence is unfair in this sense. It will be convenient to call this "procedural unfairness". It may also be "unfair" by reason of the fact that the terms of the contract are more favourable to one party than to the other. In order to distinguish this "unfairness" from procedural unfairness, it will be convenient to call it "contractual imbalance". The two concepts may overlap. Contractual imbalance may be so extreme as to raise a presumption of procedural unfairness, such as undue influence or some other form of victimization. Equity will relieve a party from a contract which he has been

¹² Paragraph 134 of the submissions of the defendant filed 1/3/2021

induced to make as a result of victimization. Equity will not relieve a party from a contract on the ground only that there is contractual imbalance not amounting to unconscionable dealing.¹³ (My emphasis added)

- [44] Therefore in this court's mind, the evidence that was led in this matter and the pleadings support the contention of what the Privy Council termed contractual imbalance and it is that that this court will consider under this issue.
- [45] Thus the claimant must show this court that "...there was an inequality in the position of the parties due to the ignorance, need or distress of the weaker, which would leave [her] in the power of the stronger, coupled with proof of substantial unfairness in the bargain."¹⁴
- [46] The claimant must therefore prove that a) the bargain was oppressive to her, b) that she was suffering from a certain type of bargaining weakness and c) that Metrocint acted unconscionably in the sense that they knowingly took advantage of her¹⁵. For the claimant to do so, she must prove to the court on a balance of probabilities from the factual matrix that the manner in which the release was obtained established those elements. In doing so this court must bear in mind that "the resulting transaction must not simply be hard or improvident but overreaching and oppressive so that its terms, together with the conduct of the stronger party 'shock the conscience' of the court."¹⁶
- [47] The claimant's argument that the release was oppressive surrounds the contention that having signed the release the claimant at the time not only signed away her present and future rights to claim any further damages but that she did so when the insurers were aware¹⁷ that there was no indication as to prognosis and whether there would have been the need for future care. This is especially so when it was clear that the claimant could well have been entitled to much more than the sum accepted under the release.
- [48] When this is considered it is necessary to understand that to establish this element, the contract must be oppressive in overall terms, not just unreasonable looking at all the facts as they existed at the time of the contract¹⁸.
- [49] This court accepts that at the time that the claimant signed the release she had been the one who initiated the negotiations with Metrocint. It was on the attendance at the office of Metrocint by one Mr. Corniel Hendrickson-Gerrick that Metrocint began the consideration of a payment to the

¹³ Per Lord Scarman, Lord Bridge of Harwich, Lord Brightman and Sir Denys Buckley in **Thomas Hart v Joseph O'Connor** [1985] AC 1000 at 1017 -1018

¹⁴ **Harry v Kreutziger** 95 DLR (3d) 231 at para 14

¹⁵ **Bank of St Lucia v Anne Felicien and anr** SLUHCM2018/0028 per St Rose Albertini J

¹⁶ **Multiservice Bookbinding Ltd v Marden** [1978] 2 All ER 489

¹⁷ By correspondence from Dr Charles Woods 25/11/2013

¹⁸ **Strydom v Vendside** [2009] EWHC 2130

claimant. Metrocint by its witness Dwight DaSilva made it clear that there was correspondence from Dr. Charles Woods dated 25th November 2013 that was used to discuss the claimant's matter. It was this letter that he said his superior utilized to formulate the offers that were made to the claimant. This court accepts, as the claimant accepted, that two offers were made to her previous to the final offer of the sum of \$43,000.00 which she felt free to reject and which she did in fact reject. The claimant clearly stated that she accepted the sum under the release having made the calculation that that sum would cover her bills. It must however be noted that the correspondence from Dr. Woods did not in any way indicate what may have been the future outcome of the surgery that the claimant required but simply that he was referring her for further evaluation and management.

[50] In cross examination of the witness for Metrocint Mr. DaSilva, he was questioned extensively as to his knowledge of other heads of damage that may arise on a personal injury case and indeed this court accepts that if this matter had or does proceed to trial the claimant may have been awarded sums in excess of the sum paid to her by Metrocint. However, can that fact alone possibly make a contract oppressive? In this court's mind, the answer to that must be no. It is necessary, that in order for the same to amount to oppression, that the contract must be more than merely unreasonable. The bargain must be so improvident that it was clear that the party in whose favour the contract was knew of the improvidence and utilized that to strike the bargain. Additionally, this court is satisfied that the question of oppression must be considered at the time that the bargain was struck and what was known at that time¹⁹. In the case at bar, Metrocint had the information as to the required care of the claimant to go to Trinidad, she presented information to that effect and there was no indication that she would have required ongoing treatment for the effects from the accident. Metrocint acted on that information and the claimant accepted the same after, it must constantly be noted, she had considered previous offers. In hindsight the bargain was unreasonable but in this court's mind this does not and cannot amount to the threshold of oppression to "shock the conscience" of the court.

[51] The claimant also raised the issue that there was bargaining weakness as against Metrocint in that she was in distress due to the pain and was under the influence of pain medication, that there was an urgency to obtain funds to leave the island for further medical attention and that she was not afforded independent legal advice.

[52] When this court considers these complaints, despite the court's acceptance that indeed the claimant was hospitalized at the time of this release, it was clear from the inception of the interaction as between the claimant and Metrocint that the claimant always acted in control of her decisions and her ability to consent. It was not lost on this court that shortly after the accident the claimant was collected enough to sign an authorization for Mr. Hendrickson-Gerrick to negotiate on

¹⁹ **Cougle v Maricevic** [1992] 3 W.W.R 475 at 479 para 18

her behalf and was collected enough to reject the offers prior to the sum of \$43,000.00. Indeed, on cross examination the claimant made it clear that at the signing of the release:

- Mr. Hendrickson-Gerrick was there to represent my interests as I authorized.
- Mr. Hendrickson-Gerrick was there to protect and represent my interests as authorized by me.
- I was exercising control over the sums that I accepted at that time.
- No one forced me to accept the previous sums.
- It was only when I communicated that the \$43,000.00 was acceptable that the insurance agents came with the cheque for that sum.
- I had the presence of mind despite the pain to reject the previous offers.
- In spite of the pain I decided having made a calculation, that \$43,000.00 was acceptable to cover my bills.
- I had presence of mind to make the decisions. I made the decisions.
- My pain did not prevent me from making the decisions.

[53] This evidence clearly belies the contention that the claimant was under any weakness due to her injury which put her at a disadvantage in the negotiation. The court is satisfied on a balance of probabilities that there was no bargaining weakness due to the claimant's²⁰ hospitalization or the drug consumption during that period.

[54] As it relates to what may have been considered economic duress in that the claimant was in so dire need of funds that she signed the release to enable that payment, this court also relies on the evidence that was documented above.

[55] This court accepts that the most that can be said is that the claimant needed funds for her further medical treatment however this court does not find that there was any evidence that could support a finding by this court that there were any circumstances that occurred that amounted to a vitiation of the consent that the claimant gave to the said contract based on any such need.

[56] Finally the question of whether the lack of independent legal advice created a disadvantage to the claimant must also be addressed.

[57] This court having already determined that the factual matrix did not give rise to an issue of undue influence the question must therefore be whether there was any obligation on Metrocint to indicate to the claimant that she should obtain independent legal advice. When this court considers that the claimant in evidence admitted that she understood the terms of the release and that she had an opportunity to secure legal advice but she chose not to, it is clear that this decision had nothing to do with Metrocint. Rather this court is satisfied that the claimant acted wholly within her rights and conducted herself as she chose to do. This court finds that the claimant having had more than one

²⁰Pao On v Lau You Long [1979] 3 All ER 65

interaction with regard to the settlement through her attorney, she was not taken by surprise as to how the claim process unfolded and unfortunately this court cannot now protect her from the folly of her ways. I do not accept that this claimant was under the power or direction of Metrocint, or that her will was dominated or that she was not acting as a free agent for which the court must now save her²¹.

[58] The final element which this court must consider on the question of whether a bargain is unconscionable is to assess the conduct of the party that is said to be the stronger party in the transaction, in this instance Metrocint.

[59] The conduct of the party however must be "...morally reprehensible...in a way to affect his conscience..."²²

[60] When this court considers all the circumstances of how this release came into being, the quantum that was offered and accepted, and whether Metrocint may have considered that there were other claims by the claimant, the claimant, in this court's mind drove this entire process. The failure of Metrocint to divulge a nebulous claim that may or may not have been pursued does not in this court's mind amount to "morally reprehensible" conduct on the part of Metrocint. At the end of the day, this court is satisfied that "the question of whether the transaction seen as a whole is sufficiently divergent from community standards of commercial morality that it should be rescinded"²³ must be answered in the negative.

[61] When this court therefore contemplates the entirety of this transaction, as much as the court may empathize with the position that the claimant now finds herself, I am not satisfied on a balance of probabilities that the release signed by the claimant should be set aside.

²¹ **Evans v Llewellyn** 29 ER 1191

²² **Boustany v Piggott** [1993] 42 WIR 175 at 180

²³ **Morrison v Coast Finance Ltd** (1965) 54 W.W.R 257; *Cogle v Maricevic* Supra

The order of the court is therefore as follows:

1. The Third Party Discharge Receipt signed on 24th December 2013 therefore stands and the claimant is barred from any further action against the deceased defendant or Metrocint.
2. Prescribed Costs to the defendant pursuant to Part 65.5 CPR 2000.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar

POST SCRIPT:

I wish to take this opportunity to indicate to both sides that while the closing addresses in this matter were voluminous, this court accepts that this was indicative of the hard work and research that went into this matter by both counsels. The Court is grateful for the immeasurable assistance rendered.