

**EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SLUHCV 2018/0170

BETWEEN:

**[1] CLEIOUS DETERVILLE
[2] PERNETTE JN. MARIE DETERVILLE**

Claimants

and

TELIS JOSEPH EDWARD

Defendant

Before:

Mrs. Michelle John-Theobalds

Master [Ag]

Appearances:

Mr. Dexter Theodore, QC for the Claimants
Mr. Kareem Alleyne for the Defendant

Present:

Mr. Cleious Deterville, the 1st Claimant
Mr. Telis Joseph Edward, Defendant
Mr. Ross Gabriel, representative for St. Lucia Motor and General Insurance Limited

2019: May 14;
2020: June 24.

JUDGMENT

[1] **JOHN-THEOBALDS M (AG.):** This matter concerns the issue of whether summary judgment should be entered against the defendant in accordance with rule 15.2 of the **Civil Procedure Rules 2000** (the “CPR”).

Background

- [2] Mr. Cleoious Deterville, the first claimant is the owner of motor vehicle registration number 4720. On Friday 10th April 2015 at about 7:30 pm Mr. Deterville's vehicle was parked off the southbound side of the Bexon Highway (the "highway") near the Marc junction; Mr. Deterville was in the driver's seat and Mrs. Pernette Jn. Marie-Deterville was seated in the front passenger seat. On the opposite northbound side, motor vehicle registration number PJ950, driven by the defendant Mr. Telis Edward ("Mr. Edward"), was also positioned off the highway but facing the southerly direction, waiting to make his way onto the highway going southbound. Mr. Edward stated that after signaling to show that he wanted to move out from where he was, the driver of a white SUV who was travelling northbound, stopped, put on his hazard lights and motioned to him to proceed onto the highway. He explained that, after assessing that it was safe to do so, he proceeded to turn left onto the highway, moving directly across the road, into the Marc junction on the opposite southbound side of the road. Mr. Edward then stated that, as he approached the junction, his vehicle collided with a minibus, registration number M1176 ("the minibus") driven by Mr. Albert Abbott, as the minibus was overtaking the white SUV which had stopped to allow him to pass. The impact of that collision caused the minibus to ricochet off the road and collide with the vehicle occupied by Mr. and Mrs. Deterville ("the Detervilles"), which was still parked off the southbound side of the highway.
- [3] The Detervilles filed a claim against Mr. Edward on 6th April 2018 seeking special damages, interest and costs. Mr. Edward filed a defence on 8th May, 2018, strongly denying liability and advancing that the claim should be dismissed against him as the accident occurred as a result of the negligence of Mr. Albert Abbott, the driver of the minibus. It is important to note however that Mr. Abbott has not been made a party to these proceedings, neither by the Detervilles nor by Mr. Edward, despite Mr. Edward's heavy reliance on Mr. Abbott's role in the accident.

The Summary Judgment Question

- [4] The matter first came up for case management conference before another master. On 25th June 2018, the master referred the parties to mediation. However, the mediation was unsuccessful. The matter came up for further case management before the master on 19th November 2018. On that date the master noted that although Mr. Edward contends that the accident was caused by Mr. Abbott he has failed to add him as a party. The master, being of the view that Mr. Edward's defence had no realistic prospect of success, gave directions for the parties to file submissions on the issue of whether the defence should be struck out and summary judgment entered in favour of the claimants. It is from these directions that the determination before me has arisen.

Power to Grant Summary Judgment

- [5] The power of the court to grant summary judgment against a defendant is governed by CPR 15.2(b). This rule permits the court to enter summary judgment on a claim or on a particular issue if it considers that the defendant has no real prospect of successfully defending the claim or the issue. Equally, it outlines the test and the threshold which the defendant in any such case must attain.
- [6] Lord Wolf in **Swain v Hillman**¹ explained the test quite succinctly when he said:
- “The words ‘no real prospect of being successful or succeeding’ do not need any amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success...they direct the court to the need to see whether there is a ‘realistic’ as opposed to a “fanciful” prospect of success.”
- [7] To place the process of the court in considering whether summary judgment should be granted into greater context, in **Saint Lucia Motor and General Insurance Co. Ltd. v Peterson Modeste**,² George-Creque JA, as she then was, explained:

¹ [2001] 1 ALL ER 91.

² SLUHCVP2009/0008 (delivered 11th January 2010, unreported) at para. 21.

“...Summary judgment should only be granted in cases where it is clear that a claim on its face obviously cannot be sustained, or in some other way is an abuse of the process of the court. What must be shown in the words of Lord Woolf in **Swain v Hillman** is that the claim or the defence has no “real” (i.e. realistic as opposed to a fanciful) prospect of success. It is not required that a substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at trial. From this it is to be seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the court arrives at the view that it would be difficult to see how the Claimant or the Defendant could establish its case then it is open to the court to enter summary judgment.”

- [8] What is also pertinent is that the court should be reluctant to exercise its power to grant summary judgment in circumstances where there are conflicts of fact in relation to the issues raised in the case. In the exercise of the court’s summary judgment jurisdiction, the court is not permitted to conduct a mini-trial of the claim and defence. In the words of Mummery LJ in **Doncaster Pharmaceuticals Group Ltd and Others v Bolton Pharmaceutical Company 100 Ltd.**³

“17. It is well settled by the authorities that the court should exercise caution in granting summary judgment in certain kinds of case. The classic instance is where there are conflicts of fact on relevant issues, which have to be resolved before a judgment can be given...A mini-trial on the facts...without having gone through normal pre-trial procedures must be avoided, as it runs a real risk of producing summary injustice.

18. In my judgment, the court should also hesitate about making a final decision without a trial where, even though there is no obvious conflict of fact at the time of the application, reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.”

- [9] Given the directions of the master from which the arguments of counsel have been spurred, the issue which falls to be determined is narrow one. It is, whether Mr. Edward has a real prospect of successfully defending the claim, in light of the fact that the substance of his defence is that he is not negligent and defers liability to Mr. Abbott who is not, in any way, a party to the proceedings.

³ [2006] EWCA Civ 661.

[10] Having regard to the principles outlined above, I am therefore required to consider the suitability of summary judgment in the context of the pleadings and any evidence before me to determine whether Mr. Edward's defence has a real prospect of success. Additionally, my jurisdiction is limited to the extent that I am not empowered to interrogate disputes of fact and evidence, which would be best suited for a trial judge.

Should Summary Judgment be Granted.

[11] Learned Queen's Counsel for The Detervilles, Mr. Theodore contends that this is a fitting matter to be granted summary judgment. He submits that both the defence and Mr. Edward's written submissions fail to show that he has a real prospect of successfully defending the claim. Mr. Theodore, QC submits that the Detervilles fall into the category of persons whose injury may have reasonably been anticipated if the duty of care owed by Mr. Edward was not observed. Further that Mr. Edward breached the duty of care owed to the Detervilles by proceeding onto the highway at a time when it was unsafe to do so. Learned Queen's Counsel further contends that the injury and damage caused could have been foreseen by Mr. Edward as a consequence of his breach of duty. As opposed to setting out his case in his pleadings as required by the CPR, Mr. Edward has sought to rely on an "overwhelming amount of evidence" which he intends to present at trial. Mr. Theodore, QC submits that this court should take into account the deficiency in the pleadings and find that the defence is unlikely to meet with any success.

[12] In his written submissions, Mr. Edward agreed that the duty of care owed to the Detervilles extended to him ensuring that the highway was clear of approaching traffic. He explained that he surveyed his surroundings before he availed himself of the opportunity given to him by the driver of the white SUV to enter onto the road, to perform the manoeuvre of driving right across the highway into a junction on the opposite side of the road. Mr. Edward posited that it was unreasonable for him to have foreseen that the minibus, heading in a northerly direction, would have

overtaken the white SUV when it was unsafe to do so. He therefore submitted that he did in fact exercise the duty of care required by law. Mr. Edward contended that in any event, even if the court were to find that he was negligent, the damage to the Detervilles was not caused by him but caused by the driver of the minibus, Mr. Abbott. It is apparent that Mr. Edward has placed strict reliance on the fact that he “surveyed his surroundings” before he availed himself of the opportunity given to him to enter onto the highway by the white SUV and that he intends to produce an “overwhelming amount of evidence” at trial to prove that he was not responsible for the accident.

- [13] It is clear that this matter is heavily reliant on facts, which each party will have to present as evidence and prove. In order to properly make a factual determination in the face of such conflicting evidence, at the minimum, a full trial providing the parties an opportunity to test the credibility of the evidence is necessary. Indeed, the primary stage that the matter is at has not proffered the parties an opportunity, one way or another, to set out their evidence, or for that evidence to be tested.
- [14] As stated earlier, Mr. Edward in his submissions spoke of his intention to produce an overwhelming amount of evidence at trial which would prove that he was not the party responsible for causing the collision and that he should not be held liable for the actions of a third party, who both sides have failed to join as a party to the proceedings. If I am to take the view that the circumstances of this case justify the exercise of the court’s power to grant summary judgment, this would be tantamount to a conclusion that the pleadings disclose no real possibility of being sustained without a joinder of Mr. Abbott; or, stated otherwise, that based on Mr. Edward’s defence, there would be no real prospect of him denying liability for the accident without Mr. Abbott first having been joined as either a defendant or an ancillary defendant. This is a position I am unwilling to take.
- [15] Firstly, there is nothing before me that leads me to conclude that a trial judge could not make a determination on whether to accept Mr. Edward’s defence, without Mr.

Abbott having first been joined as a party to the proceedings. To my mind, the trial judge would have the benefit of at least the Detervilles and Mr. Edward's evidence, on the basis of which the strength of the claim could be assessed against Mr. Edward's averments that Mr. Abbott's negligence was the cause of the accident. On that assessment, the trial judge would be well-positioned to determine whether Mr. Edward is wholly liable to the Detervilles in damages, partly liable (in which case the trial judge would determine the extent of his liability and make an award to that effect) or not liable at all. This does not at all depend on Mr. Abbott's joinder to the claim and his ability to marshal evidence in either his or Mr. Edward's defence.

- [16] Secondly, all the cases which were cited before me suggest that it is in fact a possibility that, after a thorough examination of the evidence contained in the witness statements filed on behalf of the parties, and the testing of the evidence adduced at trial, a trial judge could conclude that Mr. Abbott is partly liable for the damage sustained by the Detervilles. I note that in the **Brian St. Catherine v Earl Cenac**⁴ case referred to by Mr. Theodore, QC the learned judge reached his decision after a trial on the many issues, including who was responsible for the accident and to what degree. The learned judge, having conducted a trial, was well-placed to examine the evidence as well as the demeanor of the witnesses and ultimately to make an assessment as to liability; finding that the claimant and the defendant were equally to blame for the accident and apportioning liability at 50% each. Even if such an assessment could be made on the basis of the witness statements alone, without any examination or cross-examination of witnesses, the circumstances of this matter do not facilitate such a course. As stated earlier, this matter originates from the directions of a master made at a case management conference. This is undoubtedly an early stage in civil proceedings, and as a consequence the appropriateness of summary judgment is being considered without the benefit of filed witness statements, without standard disclosure having taken place, and before the exchanging of any other relevant

⁴ Saint Lucia Suit No. 146 of 1997 (delivered 3rd April 2001, unreported).

pre-trial material. To make such an assessment at this stage would: (i) deprive Mr. Edward (who indicated his intention to rely on an “overwhelming amount of evidence” in support of his defence) of the opportunity to marshal evidence in support of his defence; (ii) not be in furtherance of the overriding objective; and (iii) in any event, toe the line of conducting a mini-trial of the substantive claim and defence, which I would not be empowered to do.

Conclusion

[17] The effect of my findings is that there remains factual issues which are appropriate for determination by a trial judge, fully seized of the relevant evidence. In the absence of such evidence which would be adduced at the trial, no proper determination can be made as to where liability for the collision lies. Accordingly, this case is not suitable for disposal by way of summary judgment.

[18] Bearing in mind that the request for written submissions on the question of summary judgment came at the direction of the court, as opposed to on an application made by any of the parties, I would order that each party bear its own costs.

Order

[19] For the reasons advanced above, it is hereby ordered as follows:

- (1) Summary judgment is refused.
- (2) Each party shall bear its own costs.
- (3) The matter shall be listed by the court office for further case management.

[20] I am grateful to counsel for their helpful submissions in relation to this matter. I also wish to express my deep regret at the delay in the delivery of this judgment and for any inconvenience that this delay has caused to parties.

Michelle John-Theobalds
Master [Ag.]

By the Court

Registrar