

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANTIGUA AND BARBUDA

ANUHCVP2018/0019

BETWEEN:

PAUL CHET GREENE

Appellant

and

[1] OMARI SAMUEL

[2] ANSLEY CHARLES

Respondents

Before:

The Hon. Mr. Davidson Kelvin Baptiste

Justice of Appeal

The Hon. Mde. Gertel Thom

Justice of Appeal

The Hon. Mr. Paul Webster

Justice of Appeal [Ag.]

Appearances:

Mr. Hugh Marshall for the Appellant

Ms. Sherrie-Ann Bradshaw for the First Respondent

No appearance for the Second Respondent

2020: May 28;

2021: June 29.

Interlocutory appeal — Insurance law — Section 7(1) of the Motor Vehicles Insurance (Third Party Risks) Act — Permanent stay of proceedings of assessment of damages — Whether the master failed to consider section 7(1) of the Motor Vehicles Insurance (Third Party Risks) Act in arriving at her decision — Whether the master erred in failing to find that upon entry of the default judgment the insurer shall pay to the first respondent any sum payable thereunder in respect of the liability — Whether the appellant was liable to pay the first respondent any sum payable from the default judgment — Whether the master erred in failing to rule that the insurer acted as the appellant's agent both with respect to the Release and the Commercial Motor Bodily Injury Release documents, thereby binding the appellant

who was the insurer's principal — Whether the master erred in failing to find that the insurer had no legal authority to contract on its own behalf with the first respondent to limit its liability for bodily injuries given section 7(1) of the Motor Vehicles Insurance (Third Party Risks) Act — Whether the payment of \$250,000.00 by the insurer to the first respondent, and the construction of the Commercial Motor Bodily Injury Release and the Release documents establish that the claim was fully settled as against the appellant and should be permanently stayed

Omari Samuel ("Mr. Samuel") filed a claim against Paul Chet Greene ("Mr. Greene") for personal injuries, loss and damage sustained in a collision on 23rd March 2013, when a van owned by Mr. Greene and driven by Ansley Charles ("Mr. Charles") collided with Mr. Samuel's car. On 22nd January 2016, judgment in default of defence was entered against Mr. Greene and Mr. Charles. Mr. Samuel thereafter filed an application for assessment of damages.

On 14th August 2017, Mr. Greene applied for a permanent stay of the proceedings on the assessment of damages. The bases of the application were that Mr. Samuel had accepted the sum of \$250,000.00 from Mr. Greene's insurer for personal injuries suffered in the accident; Mr. Samuel's attorney executed a 'Release Form' ("the Release") acknowledging receipt of that sum in full and final settlement of the claim; the payment by Mr. Greene's insurers operates to absolve both Mr. Greene and Mr. Charles from liability for any and or future claims arising out of the accident; and having accepted the settlement, Mr. Samuel pursued the matter and obtained judgment in default of defence. In refusing the stay, the learned master considered the issues of the capacity in which Mr. Greene's insurer acted in relation to the proceedings and whether the Commercial Motor Bodily Injury Release and the Release evidenced an intention to fully settle the claim.

Being dissatisfied with the decision of the master, Mr. Greene appealed on four grounds summarised thus: (i) the master failed to consider section 7(1) of the Motor Vehicles Insurance (Third Party Risks) Act ("MVITPRA") and to find that (a) upon the entry of the default judgment Mr. Greene's insurer shall pay to Mr. Samuel any sum payable thereunder in respect of the liability; and (b) Mr. Greene was not liable to pay Mr. Samuel any sum payable from the default judgment; (ii) the master erred in failing to rule that the insurer acted as Mr. Greene's agent both with respect to the Release and the Commercial Motor Bodily Injury Release documents, thereby binding Mr. Greene who was the insurer's principal; and (iii) the master erred in failing to rule or find that the insurer had no legal authority to contract on its own behalf with Mr. Samuel to limit its liability, given section 7(1) of the MVITPRA.

Held: dismissing the appeal, affirming the order of the learned master and ordering Mr. Greene to pay the costs of the appeal to Mr. Samuel to be assessed by the master if not agreed within 21 days of the date of this order, that:

1. The effect of section 7(1) is to impose liability upon insurers directly to injured third parties. It requires that the insurer shall pay to the person entitled to the benefit of a judgment obtained any sum payable thereunder in respect of the liability as is required to be covered by the policy. The terms and effect of section 7(1) do not preclude the insurer from contracting on its own behalf with Mr. Samuel to limit its liability for bodily injuries. Accordingly, the complaint that the insurer had no legal

authority to contract on its own behalf with Mr. Samuel to limit its liability for bodily injuries, given section 7(1) of the MVITPRA, is not made out. Further, even if the master had considered section 7(1), by reason of sections 4(1)(a) and (b)(v), such a policy shall not be required to cover liability in respect of any sum in excess of \$10,000.00 for any one claim. As for the related complaint that the master failed to find that Mr. Greene was not liable to pay Mr. Samuel any sum payable from the default judgment, section 7(1) does not operate to exclude, neither does it preclude Mr. Samuel's ability to claim payment directly from Mr. Greene to recover damages in excess of \$10,000.00.

Sections 7(1), 4(1)(a) and (b)(v) of the **Motor Vehicles Insurance (Third Party Risks) Act** Cap. 288, Laws of Antigua and Barbuda applied; **The Free Lanka Insurance Company Limited v AE Ranasinghe (Ceylon)** [1963] UKPC 37 considered.

2. From the moment of the accident, Mr. Greene's insurer had actual authority, derived from clause 5 of the insurance policy, to take over and conduct the defence and had full discretion in the conduct of any proceedings and in the settlement of the claim. However, clause 5 is not carte blanche to insurers to conduct proceedings in their own interests, without regard to reality or to their insured's account of events or to the fact that here the claim was likely to severely affect the insured as well as the insurer. While the insurer is capable of acting in the dual role of agent for Mr. Greene and in its own interest, there is, however, no evidence that it was acting other than as the agent for Mr. Greene, nor that it acted in a manner that was detrimental to him.

Ramsook v Crossley (Trinidad and Tobago) [2018] UKPC 9 applied; **Groom v Crocker** [1939] 1 KB 194 applied.

3. A disclosed principal may sue or be sued on any contract made on his behalf by his agent acting within the scope of his actual authority or whose acts are validly ratified. There is no doubt that Mr. Greene was a disclosed principal with the rights attendant upon that office, and the insurer was his agent. The master, however, correctly indicated that the Commercial Motor Bodily Injury Release did not state that the receipt of the money acts as a discharge of liability from any proceedings or further proceedings capable of arising out of the consequences of the accident. Furthermore, there were no parties to the Release which was only signed by Mr. Samuel's counsel on his behalf. The master was therefore also correct in finding that the insurer's failure to expressly contract with Mr. Samuel to fully discharge the matter, upon receipt of the \$250,000.00, meant that there was no full and final settlement of the claim and that the purported release of the insurer alone from any further liability cannot be extended to Mr. Greene. In the absence of a release from liability, the payment of the contractual maximum sum can only serve as a measure to reduce the potential financial liability for damages for Mr. Greene. He therefore remains liable for any damages exceeding the sum paid by the insurer.

Basma v Weekes and others [1950] AC 441 applied; Hugh Beale: **Chitty on Contracts** (33rd edition, Sweet & Maxwell UK 2020) considered; **Bowstead & Reynolds on Agency** (Edited by Peter G. Watts & F.M.B. Reynolds: 21st ed, Sweet & Maxwell Ltd. 2018) considered; **Filatona Trading Ltd and another v Navigator Equities Ltd and others**; **Danilina v Chernukhin and others** [2020] 2 All ER (Comm) 851 followed; Hon Professor Francis M.B. Reynolds DCL FBA: **Bowstead & Reynolds on Agency**, (18th Edn, Sweet & Maxwell, 2006) considered.

Per Webster JA (concurring):

4. The meaning of the Release is clear and unambiguous, releasing only the insurance company from further liability. Mr. Greene's liability under the default judgment continued subject only to Mr. Samuel giving credit for the \$250,000.00 paid to him by the insurance company.

Kenneth Kryss and another v New World Value Fund Limited and others [2014] ECSCJ No. 108 (delivered 26th May 2014) followed; **Ramsook v Crossley (Trinidad and Tobago)** [2018] UKPC 9 applied.

5. There is nothing in clause 5 of the insurance policy that suggests that the insurance company could not look after its own interest by paying the \$250,000.00 to Mr. Samuel and securing a release from him. Therefore, the learned master did not err in taking into consideration that the insurance company was acting in its own interest in settling the claim against it for the maximum amount of the policy.

JUDGMENT

- [1] **BAPTISTE JA:** This appeal stems from a master's refusal of an order for a permanent stay of proceedings of an assessment of damages flowing from a default judgment awarded against Paul Chet Greene, the appellant and Ashley Charles, the second respondent. The matter originates in a claim which Omari Samuel filed for personal injuries, loss and damage sustained in a collision on 23rd March 2013, when a van owned by Chet Greene and driven by Charles collided with his car. Upon being served with the claim, Chet Greene delivered it to his insurance company. Samuel also gave notice to Chet Greene's insurer of the commencement of proceedings. An acknowledgement of service was filed on 13th November 2013. On 22nd January 2016, judgment in default of defence was entered against Chet Greene and Charles. Samuel filed an application for assessment of damages.

Proceedings Below

- [2] On 14th August 2017 Chet Greene filed an application for a permanent stay of the proceedings on the default judgment, particularly the assessment of damages. The bases of the application were that on 28th January 2014, Samuel accepted the sum of \$250,000.00 from Chet Greene's insurer for personal injuries suffered in the accident; Samuel's attorney executed a 'Release Form' ("the Release") acknowledging receipt of that sum in full and final settlement of the claim; the payment by Chet Green's insurers in full and final settlement of the claim operates to absolve both Chet Green and Charles from liability for any and or future claims arising out of the accident; and having accepted the settlement, Samuel pursued the matter and obtained judgment in default of defence.
- [3] Chet Greene relied on two documents, a 'Commercial Motor Bodily Injury Release' and the Release, as evidencing the full settlement of the matter and consequently, the preclusion of further proceedings therein. The Commercial Motor Bodily Injury Release certified the payment of \$250,000.00 by the insurer to Samuel, and was executed by the insurer and Samuel's counsel on 28th January 2014. The Release, dated 10th February 2014, was issued and signed by Samuel's counsel only and stipulated that the insurer was released from liability. While acknowledging the payment, Samuel denied that he was precluded from continuing action against Chet Greene in circumstances where the sum received was insufficient to cover the damages he sustained. He also denied that the two documents were tantamount to a release from liability.

The master's decision

- [4] In refusing the stay, the learned master considered the issues of the capacity in which Chet Greene's insurer acted in relation to the proceedings and whether the Commercial Motor Bodily Injury Release and the Release evidenced an intention to fully settle the claim. She examined Chet Greene's submission that the insurer was his agent by virtue of clause 5 of the insurance policy and also noted the wide scope of the clause. It enabled the insurer to put forward any defence or take any steps Chet

Greene would by law be entitled to advance, including a reduction of damages or a settlement of the proceedings.

- [5] The master stated that the ability of the insurer to act as Chet Greene's agent did not preclude it from also acting in its own interests. She noted that clause 5 gave the insurer the right to take over proceedings and or decide on an appropriate course of action provided that it also takes cognizance of the interest of the assured. The master reasoned that as it is not contended that the insurer acted to the detriment or without Chet Greene's knowledge and authority, the insurer was therefore also capable of acting in its own interest and as Chet Greene's agent.
- [6] Having found that the insurer was capable of acting in a duality of roles, the master considered whether the evidence presented by the Commercial Motor Bodily Injury Release and the Release was sufficient to establish that the matter was fully settled as against Chet Greene and should be permanently stayed. Citing the insurer's capacity to act as agent and in its own interest, the master held that its failure to expressly contract with Samuel to fully discharge the matter upon receipt of the maximum payable under the policy, left the court to conclude that there was no full and final settlement of the claim. Further, the Release cannot extend to Chet Greene as a release from liability, but operates to exempt the insurer from any further liability if damages are found to have exceeded the sum paid by the insurer. The master concluded that in the absence of a release from liability, the payment of the contractual maximum of \$250,000.00 under the policy only served as a measure to reduce the potential financial liability for damages. Chet Greene therefore remained liable for any damages exceeding the sum paid by the insurer. The stay was accordingly refused.

The Appeal

- [7] Chet Greene advanced four grounds of appeal; summarised thus:

- (1) The master failed to consider section 7(1) of the **Motor Vehicles Insurance (Third Party Risks) Act**¹ (“MVITPRA”) and to find that (i) upon the entry of the default judgment Chet Greene’s insurer shall pay to Samuel any sum payable thereunder in respect of the liability; and (ii) Chet Greene was not liable to pay Samuel any sum payable from the default judgment.
- (2) The master erred in failing to rule that the insurer acted as Chet Greene’s agent both with respect to the Release and the Commercial Motor Bodily Injury Release documents, thereby binding Chet Greene who was the insurer’s principal; and that the insurance policy did not limit the insurer’s liability for third party loss or damage and therefore the insurer could not lawfully negotiate on its own behalf, as distinct from as agent for Chet Greene, to limit its liability to Samuel.
- (3) The master erred in failing to rule or find that the insurer had no legal power, authority or right to contract on its own behalf with Samuel to limit its liability for bodily injuries, given section 7(1) of the MVITPRA.

Discussion

- [8] In his written submissions, Mr. Marshall - Chet Greene’s counsel - asserted that the appeal is mainly on the basis that the master, having found that the insurance company in dealing with Samuel was a disclosed agent for Chet Greene, went on to conclude, in the absence of evidence, that it was acting in and for its own interest.
- [9] Samuel’s counsel argued in favour of the correctness of the master’s decision and invited this Court to uphold the master’s conclusion and dismiss the appeal.

Section 7(1) of the MVITPRA

¹ Cap. 288, Laws of Antigua and Barbuda.

- [10] The statutory requirement for third-party insurance finds expression in the MVITPRA. Subject to the provisions of the MVITPRA, section 3 requires users of a motor vehicle to be insured against third-party risks in compliance with the requirements of the MVITPRA. Sections 4(1)(a) and (b)(v) provide that in order to comply with its requirements, a policy of insurance must be a policy which is issued by a person who is an insurer, and insures such person as may be specified in the policy in respect of any liability which may be incurred by him in respect of the bodily injury to any person caused by or arising out of the use of the motor vehicle on a public road: provided that such a policy shall not be required to cover liability in respect of any sum in excess of \$10,000.00 arising out of any one claim by any one person.
- [11] Section 7(1) provides that if after a certificate of insurance has been issued under section 4(3) in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under section 4(1)(b) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and interest.
- [12] In essence, the user of a motor vehicle must be insured with respect to injuries resulting to third-parties from accidents, generally called third-party risks. A third-party injured by the insured person is given upon certain terms and conditions, the right to claim payment of the amount of his damages direct from the insurance company concerned. This is a statutory right exclusively based on section 7(1) of the MVITPRA. The effect of section 7(1) is to impose liability upon insurers directly to injured third parties. It requires that the insurer shall pay to the person entitled to the

benefit of the judgment any sum payable thereunder in respect of the liability as is required to be covered by the policy.²

- [13] This takes me to Mr. Marshall's complaint concerning the master's failure to consider section 7(1) and consequent failure to find that: (i) upon entry of the default judgment Chet Greene's insurer shall pay to Samuel any sum payable thereunder in respect of the liability; (ii) Chet Greene was not liable to pay Samuel any sum payable from the default judgment and (iii) the insurer had no legal authority to contract on its own behalf with Samuel to limit its liability for bodily injuries given section 7(1) of the MVITPRA.
- [14] The liability referred to in section 7 is, by the terms of subsection (1), a liability which is required by section 4(1)(a) and (b) to be covered by a policy of insurance. Sections 4(1)(a) and (b)(v) state that such a policy shall not be required to cover liability in respect of any sum in excess of \$10,000.00 for any one claim. Having regard to the terms and effect of section 7(1), it does not preclude the insurer from contracting on its own behalf with Samuel to limit its liability for bodily injuries. Accordingly, the complaint that the insurer had no legal authority to contract on its own behalf with Samuel to limit its liability for bodily injuries given section 7(1) of the MVITPRA is not made out. Further, even if the master had considered section 7(1), by reason of sections 4(1)(a) and (b)(v) such a policy shall not be required to cover liability in respect of any sum in excess of \$10,000.00 for any one claim. The learned master could not therefore have found that upon entry of the default judgment Chet Greene's insurer should pay to Samuel any sum payable thereunder in respect of the liability.
- [15] The related complaint that the master failed to find Chet Greene was not liable to pay Samuel any sum payable from the default judgment also has to be looked at in the context of the MVITPRA. Samuel obtained a default judgment and as such was the person entitled to the benefit of the judgment. Pursuant to section 7(1) of the

² Per Lord Evershed in *The Free Lanka Insurance Company Limited v AE Ranasinghe (Ceylon)* [1963] UKPC 37, in which the Board considered the effect of a kindred provision to section 7 in Ceylon (Sri Lanka), namely, section 133 (1) of the 1938 Ordinance.

MVITPRA, Chet Greene's insurer was required to pay to Samuel damages for the injury sustained subject to the statutory limit imposed by sections 4(1)(a) and (b)(v). Section 7(1) however, does not operate to exclude, neither does it preclude Samuel's ability to claim payment directly from Chet Greene to recover damages in excess of \$10,000.00. Were it not for section 7(1), Chet Greene's insurer would not have been directly liable to Samuel.

- [16] For the reasons indicated, the grounds of appeal pertaining to section 7(1) of the MVITPRA are not well founded and are accordingly dismissed.

The Agency Relationship

- [17] The question of agency arising from clause 5 of the insurance policy between Chet Greene and his insurer, falls to be considered. Clause 5 states:

“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 its own benefit any claim for indemnity or damages 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.”

- [18] A similar clause (clause 15 of an insurance policy in Trinidad and Tobago) was addressed by the Privy Council in **Ramsook v Crossley (Trinidad and Tobago)**,³ at paragraph 22. Useful guidance is obtained from Lord Mance's analysis. Clause 5 is not limited to situations where proceedings ever come into existence. Its opening words, 'No admission offer promise or payment shall be made by or on behalf of the Insured without the written consent of the Corporation', make this clear. They must bite from the outset, indeed from the moment of the accident. The words entitling the Corporation 'to take over and conduct in its name the defence and settlement of any claim' must also apply in relation to any third party claim, irrespective of whether proceedings have yet or are ever begun. The further words, giving 'full discretion in

³ [2018] UKPC 9.

the conduct of any proceedings and in the settlement of any claim' also point to the distinction between a claim and any proceedings. The final provision that 'the insured shall give all such information and assistance as the Corporation may require' applies from the moment of the accident onwards, but is not limited to a situation in which proceedings have begun.

[19] The position is that from the moment of the accident, Chet Greene's insurer had actual authority derived from clause 5 of the insurance policy to take over and conduct the defence and had full discretion in the conduct of any proceedings and in the settlement of the claim. However, as Lord Mance stated in **Ramsook v Crossley**, clause 5 'is not carte blanche to insurers to conduct proceedings in their own interests, without regard to reality or to their insured's account of events or to the fact that here the claim was likely severely to affect [the insured] as well as [the insurer]'. That is also clear from **Groom v Crocker**.⁴

[20] Mr. Marshall took issue with the master's statement that the capacity of the insurer to act as Chet Green's agent did not preclude it from also acting in its own interest, and submitted that the unchallenged facts are that the insurer was Chet Greene's agent. Chet Greene handed the claim form served upon him to the insurer and the insurer made payment. Given the circumstances, he argued that any finding that these activities by the insurer were for its own benefit and not for Chet Greene's is without legal basis.

[21] Mr. Marshall argued that the master correctly found that an agency relationship existed between Chet Greene and the insurer but took no steps to examine if the acts of the insurer during that agency affected the legal position of Chet Greene - the principal. Counsel submitted that the inescapable conclusion is that the insurer's acts bound Chet Greene on the bases that: (i) the claim was issued against Chet Greene only; (ii) Samuel understood that the insurer was acting on Chet Greene's behalf; and (iii) the Commercial Motor Bodily Injury Release was in the name of Samuel and

⁴ [1939] 1 KB 194.

Harney Motors Ltd. Given the above, Mr. Marshall submitted that there can be no doubt that the insurer acted on Chet Greene's behalf when making the payment of \$250,000.00. He stated that the sole issue is whether those acts can inure to Chet Greene's benefit, and relied on the passage in **Bowstead & Reynolds on Agency**,⁵ at page 331, stating that: 'A disclosed principal ... may sue or be sued on any contract made on his behalf and in respect of any money paid or received on his behalf, by his agent acting within the scope of his actual authority or whose acts are validly ratified...'.

- [22] Mr. Marshall submitted that in paying the money to Samuel and entering into the arrangement with him, the insurer created legal rights and liabilities for Chet Greene, who is able to enforce Samuel's promise not to take any further action. Further, the Release and the Commercial Motor Bodily Injury Release amounted to a contract between Samuel and the insurer and, by extension, its principal - Chet Greene. There is also accord and satisfaction of the debt. The documents speak for themselves and clearly purport to be a release of liability from any further obligation to meet the claim.
- [23] Mr. Marshall argued that the Release dated 10th February 2014, which purports to be a release for the insurer only, has to be seen against the background that the claim is against Chet Greene; the insurer is acting as agent for a disclosed principal - Chet Greene; and the insurer as agent is under a fiduciary duty.
- [24] The critical issue is whether the payment of the sum of \$250,000.00 by the insurer, as Chet Greene's agent, to Samuel, and the construction of the Commercial Motor Bodily Injury Release and the Release documents establish that the claim was fully settled as against Chet Greene and should be permanently stayed.
- [25] In light of the arguments, it becomes necessary to consider the relevant law. The identity of parties to a contract is generally a factual question which does not give rise

⁵ Hon Professor Francis M.B. Reynolds DCL FBA: *Bowstead & Reynolds on Agency*, (18th Edn, Sweet & Maxwell, 2006).

to any question of legal principle.⁶ A disclosed principal to a contract is a principal, whether identified or unidentified, whose interest in the transaction is known to the counterparty at the relevant time in question.⁷ As such, a disclosed principal may sue or be sued on any contract made on his behalf by his agent acting within the scope of his actual authority or whose acts are validly ratified.⁸ There is also a well-established principle that an agent acting within the scope of an express or implied authority binds his principal to the contract.⁹

- [26] There is no doubt that Chet Greene was a disclosed principal with the rights attendant upon that office, and the insurer was his agent. The master's treatment of that agency falls to be considered. The master correctly determined that the issues arising were: (i) the capacity in which the insurer acted in relation to the proceedings; and (ii) whether the various release documents evidenced an intention to fully settle the claim. In determining the first issue, the learned master noted that the insurer can act in the dual role of agent for Chet Greene and in its own interest. While an insurer is capable of acting in such duality of roles, there is no evidence that the insurer was acting other than as the agent for Chet Greene, nor that it acted in a manner that was detrimental to him.

The Release Documents

- [27] The learned master critically assessed both the Commercial Motor Bodily Injury Release and the Release documents in arriving at her conclusion that the matter was not fully settled as against Chet Greene and should not be permanently stayed.
- [28] The Commercial Motor Bodily Injury Release was on the letterhead of the insurance company. It named the insured as Chet Greene / Harney Motors Ltd and was signed

⁶ See Hugh Beale: Chitty on Contracts (33rd edition, Sweet & Maxwell UK 2020) at 18-004.

⁷ See Article 2(1) of Bowstead & Reynolds on Agency (Edited by Peter G. Watts & F.M.B. Reynolds: 21st ed, Sweet & Maxwell Ltd. 2018) at 1-039.

⁸ Supra No. 4; See also Filatona Trading Ltd and another v Navigator Equities Ltd and others; Danilina v Chemukhin and others [2020] 2 All ER (Comm) 851, at paragraphs 35-37 and 41.

⁹ See Basma v Weekes and others [1950] AC 441 at 454.

on behalf of Samuel and witnessed by the insurer. The substance of the document is pellucid. It states:

"I OMARI SAMUEL received on Tuesday, January 28, 2014 from the PEOPLE'S INSURANCE CO. LTD. (PIC) the sum of TWO HUNDRED AND FIFTY-THOUSAND 00/** DOLLARS, for bodily injury done to me as a result of a motor vehicle accident on 23-Mar-2013: Claim No: 2013-03-00034."

[29] The master dismissed the Commercial and Bodily Injury Release document as not rising to the level of a contract and found that it was not indicative of an agreement releasing from liability but rather was a receipt for moneys paid and received. She pointed out that it contained no terms of agreement which meant that it was unenforceable as an agreement.

[30] It is clear to me that the Commercial and Bodily Injury Release acknowledged receipt by Samuel of the payment referred to therein for bodily injury he suffered as a result of the accident. As the master correctly pointed out, that document did not say that the receipt of the money acts as a discharge of liability from any proceedings or further proceedings capable of arising out of the consequences of the accident. She reasoned that if it were the intention of the insurer, it being the drafter of the document, the same would have been included. I am of the view that the terms of the Commercial Motor Bodily Injury Release do not provide any release to the insurer; it was not indicative of an agreement releasing the insurer from any further liability but was a receipt for moneys paid and received for the purpose indicated therein.

[31] The Release dated 10th February 2014 was signed by Samuel's lawyer acknowledging receipt of the sum of \$250,000.00 paid to him on behalf of Samuel. The document further states:

"I agree to accept the same in full and final satisfaction and discharge of any part or future claims, actions, proceedings or accounts wheresoever and howsoever arising in connection with or arising against PEOPLES INSURANCE COMPANY LTD from Suit ANUHCV2013/0718."

[32] The master made some critical and valid observations about that release document. She noted that there were no parties to it. Unlike the Commercial and Bodily Injury

Release document, the Release was only signed by Samuel's counsel on his behalf. I agree with the master's finding that the insurer's failure to expressly contract with Samuel to fully discharge the matter, upon receipt of the maximum payable under the policy, left the court to conclude that there was no full and final settlement of the claim.

[33] I agree with the master's construction and interpretation of the two documents and her finding that the purported release of the insurer alone from any further liability cannot be extended to Chet Greene as a release from liability, but rather operates to exempt the insurer from any further liability if damages are found to have exceeded the sum paid by the insurer. In the absence of a release from liability, the payment of the contractual maximum sum of \$250,000.00 under the policy can only serve as a measure to reduce the potential financial liability for damages in the circumstances. Chet Greene therefore remains liable for any damages exceeding the sum paid by the insurer. The appeal is accordingly dismissed.

[34] The general rule is that costs follow the event, i.e., the unsuccessful party will be ordered to pay the costs of the successful party in accordance with rule 64.6 (2) of the **Civil Procedure Rules 2000**. There is no reason to depart from the general rule. Samuel, as the successful party, is entitled to his costs on the appeal to be paid by Chet Greene.

[35] It is ordered that the appeal is dismissed. The master's order refusing the application for a permanent stay of proceedings is affirmed. Samuel is awarded costs on the appeal to be paid by Chet Greene. These costs are to be assessed by the master, if not agreed within 21 days of the date of this order.

[36] **WEBSTER JA [AG.]:** I have read the judgment of my learned brother, Baptiste JA, and I agree with his reasoning and conclusions. I would just like to add a few comments.

[37] The background to the appeal is set out in my brother's judgment and does not need to be repeated.

[38] The issues that I will address in this judgment are:

(a) the ability of the insurance company to make decisions and take actions in the claim that are in its own interest.

(b) The interpretation of the release documents.

(c) The Privy Council decision in **Ramsook v Crossley**.

Scope of the Insurance Company's duty

[39] The source of the insurance company's ability to act for Mr. Greene and to be his agent is clause 5 of the insurance policy which is set out at paragraph 17 of the judgment of Baptiste JA. The learned master set out the clause in her judgment and found that –

"[13] Based on the above it is clear that the insurer was entitled to put forward any defence or take any steps that [Paul Chet Greene] would by law be entitled to advance including a reduction of damages or a settlement of proceedings.

[14] However the ability of the insurer to act as agent for [Paul Chet Greene] 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. As it is not contended that the insurer acted to the detriment or without the knowledge and authority of [Paul Chet Greene] the insurer was therefore capable of [acting] in its own interest and as agent for [Paul Chet Greene]." ¹⁰

[40] I agree with the finding of the learned master that the insurance company could look after its own interest while acting as the agent of Mr. Greene and looking after his interest. There is nothing in clause 5 that suggests that the insurance company could not look after its own interest. What it cannot do is act in a way that is detrimental to the interests of Mr. Greene. In this case there is no evidence that it did so. The

¹⁰ Paragraphs 13 and 14 of the master's decision.

documents issued by the insurance company to settle Mr. Samuel's claim against it for the limit of the policy are not detrimental to Mr. Greene and his position is not affected by the payment of the \$250,000.00 to Mr. Samuel. He is liable to Mr. Samuel under the default judgment for any amount awarded by the court. The insurance company's liability is for any amount that is awarded up to \$250,000.00 and no more. The release serves the purpose of settling the maximum amount of the insurance company's liability to Mr. Samuel. It would have been commendable if the insurance company had secured an agreement with Mr. Samuel to settle all claims in the matter for the policy limit of \$250,000.00 or less. But it is not bound under the policy and the terms of the agency to do so. I will also mention in passing that if Mr. Samuel had agreed to a settlement or judgment of \$250,000.00 or less, the insurance company would be obliged to pay the full amount of that settlement or judgment. Conversely, the receipt of the \$250,000.00 does not affect Mr. Samuel's claim against Mr. Greene. What Mr. Samuel will have to do is to give credit for the payment in any resolution of the claim.

- [41] It follows that the learned master did not err in taking into consideration that the insurance company was acting in its own interest in settling the claim against it for the maximum amount of the policy of \$250,000.00. It had no further financial interest in the claim and would have been content, if not keen, to ensure that Mr. Samuel could not come after it for any greater amount. This conclusion was open to the master on the evidence and I see no reason to treat the finding as having an adverse effect on her assessment of the case.

Construction of the release documents

- [42] The critical issue in this appeal, as it was in the court below, is whether the acceptance of the \$250,000.00 by Mr. Samuel and the signing of the two documents that I will now deal with, establish that the claim was fully settled as against Mr. Greene and should therefore be stayed.

[43] In the process of accepting the payment from the insurance company Mr. Samuel signed two documents. The first document is on the insurance company's letterhead and is styled 'Commercial Motor Bodily Injury Release' and reads –

"I OMARI SAMUEL received on Tuesday, January 28, 2014 from the PEOPLE'S INSURANCE CO. LTD. (PIC) the sum of TWO HUNDRED AND FIFTY THOUSAND 00/** DOLLARS, for bodily injury done to me as a result of a motor vehicle accident on 23-Mar-2013: MC-2013-03-00034."

The learned master treated this document as a receipt for money and not as a release of liability for any consequences arising out of the accident. I agree with the master. The document does not assist in treating the payment as a release of liability.

[44] The second document is headed 'Release Form' and reads:

"I, R. DEXTER WASON, Attorney at Law of Chambers situate at Suite# 5 Gambles Medical Centre, Friars Hill Road, St. John's, Antigua HEREBY ACKNOWLEDGE receipt of the sum of TWO HUNDER AND FIFTY THOUSANT DOLLARS EASTERN CARIBBEAN CURRENCY (EC\$250,000.00) which amount is paid to me on behalf of my client Omari Samuel of Fort Road, St. John's, Antigua and I agree to accept the same in full and final satisfaction and discharge of any part (sic) or future claims, actions, proceedings or accounts wheresoever and howsoever arising in connection with or arising against PEOPLES INSURANCE COMPANY LTD from Suit ANUHCV2013/0718.

IN WITNESS THEREOF I have hereunto set my hands this 10th day of February, 2014"

[45] The Release Form ("the Release") was signed by Mr. R. Dexter Wason as Mr. Samuel's attorney and there is no dispute that he was authorised to receive the money on behalf of Mr. Samuel and sign the Release. The issue is the proper interpretation of the Release. Did it represent a settlement of all claims by Mr. Samuel against Mr. Greene and the insurance company and release both parties from any further liability whatsoever arising out of the accident on 23rd March 2013 and the resulting claim in the lower court by Mr. Samuel for damages for personal injury? Or did it release only the insurance company as stated in the Release?

[46] In my opinion the meaning of the Release is clear and unambiguous – Mr. Samuel received payment of the full amount under the insurance policy and released the insurance company, and only the insurance company, from further liability. If it was intended to release Mr. Greene as well it would have been a simple thing to include his name in the Release. This is the natural meaning of the documents and it is unnecessary to strain the meaning of the words used to come to a different interpretation. This is the guidance that was given by this Court, based on the modern authorities on the interpretation of contractual documents, in **Kenneth Kryz and another v New World Value Fund Limited and others**¹¹ where Pereira CJ opined:

“Where the parties have used unambiguous language, the court must apply it. A court can only consider the commercial purpose where the language used is ambiguous. Further, a court is only justified in departing from the plain meaning of words if it leads to an absurdity – that is, where the court is satisfied that a mistake has been made and is satisfied as to what has to be done to correct it.”

This decision of the Court of Appeal was upheld by a four to one majority of the Privy Council.

[47] Applying the principles in **Kenneth Kryz**, I am satisfied that the language in the Release is clear and should be applied without straining the meaning of the words used, or introducing additional wording. The result of applying the plain meaning of the Release will not defeat the commercial purpose of the document or produce an absurd result. The commercial background to the documents is that Mr. Greene purchased insurance to cover himself up to \$250,000.00. The insurance company paid out this amount and had no further liability in the matter. It therefore took the obvious step of getting a release of liability from Mr. Samuel. That is all that the Release was meant to achieve. The function of the court is to give effect to the language in the Release and not to rewrite the terms of the document.

¹¹ [2014] ECSCJ No. 108 (delivered 26th May 2014) at paragraph 26.

Ramsook v Crossley

[48] Learned counsel for Mr. Samuel did not rely on the Privy Council decision of **Ramsook v Crossley**, but it was referred to in the master's decision and by my brother judge Baptiste JA in his judgment. I will deal with it briefly because I think it supports Mr. Samuel's position. The case deals with the relationship created between the insurance company, Trinidad and Tobago Insurance Limited ("TATIL") and its own insured person, Mrs. Carol Crossley. TATIL had the right under the insurance contract to take over the defence of the claim by Mr. Ramsook against Mrs. Crossley, and she was bound by any decision made by TATIL. TATIL, through the attorney that it engaged, Mr Gosine, conceded liability on the claim and the matter proceeded to assessment of damages. The concession and the consequential assessment of damages were done without Mrs. Crossley's knowledge or consent. However, the Privy Council found that she was bound by the award of damages because TATIL was acting under the powers granted to it by the terms of the insurance contract, and, through Mr. Gosine, was acting within the terms of the insurance contract and as Mrs. Crossley's agent. The conduct of TATIL had nothing to do with Mr. Ramsook's claim and he was not affected in any way by the actions of TATIL or Mr. Gosine.

[49] I agree with the dictum of Lord Mance that the relevant clause in an insurance policy was not *carte blanche* for TATIL to conduct the proceedings in their own interest without regard to reality or to their insured's account of events. Lord Mance went on to make the point, which is directly relevant to the facts in our case, that:

"However, bearing in mind that TATIL's and Mr Gosine's actual and apparent authority deriving from clause 15, any complaint which Mrs Crossley has on this score is a matter between her and TATIL and/or Mr Gosine. It cannot affect Mr Ramsook's position as a claimant pursuing proceedings unsuspecting of any such breach of duty". (Underlining added).¹²

[50] Applied to the facts of this appeal, the agency relationship between Mr. Greene as principal and the insurance company as agent created binding obligations as between those two parties but it cannot bind or affect Mr. Samuel's claim against Mr. Greene.

¹² *Ramsook v Crossley* (Trinidad and Tobago) [2018] UKPC 9 at paragraph 27.

The only way that the claim could have been affected by the conduct of the insurance company, in its negotiations with Mr. Samuel, is if Mr. Samuel had agreed with the company that the payment of the \$250,000.00 was in full and final settlement of all claims. The company would then include Mr. Greene in the release document as a party being released from liability. But this was not done because there was no evidence of such a complete settlement agreement.

Conclusion

[51] I agree with the master's order that Mr. Greene is not entitled to a stay of the assessment of damages. I would dismiss the appeal, affirm the learned master's order and order Mr. Greene to pay the costs of the appeal.

I concur.
Gertel Thom
Justice of Appeal

By the Court

Chief Registrar