

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2017-04267**

BETWEEN

ASHMEER MOHAMMED

Claimant

AND

**DUMORE ENTERPRISES LIMITED
TERRANCE RODRIGUEZ**

Defendants

MARITIME GENERAL INSURANCE COMPANY LIMITED

Co-Defendant

Claim No. **CV2017-04268**

BETWEEN

ZALISHA MOHAMMED

Claimant

AND

**DUMORE ENTERPRISES LIMITED
TERRANCE RODRIGUEZ**

Defendants

MARITIME GENERAL INSURANCE COMPANY LIMITED

Co-Defendant

Before the Honourable Madam Justice Eleanor J Donaldson-Honeywell

Delivered on: 27th August, 2019

Appearances

Mr. Vishnu Bridgemohan, Attorney at Law for the Claimants

Ms. Angel Koonjiesingh, Attorney at Law for the Defendants and Co-Defendants

Ruling

A. Introduction

1. This Ruling determines the preliminary issue whether a 'Final Release', pleaded at paragraph 8 the Defendants' amended defence, is binding on Mr. Ashmeer Mohammed, the Claimant, thereby barring his Claim in CV 2017-04267 for damages against the Defendants and the Co-Defendant. The Ruling also decides this issue for the consolidated Claim –CV 2017-04268 of the Claimant's driver, Zalisha Mohammed [hereinafter referred to with Ashmeer Mohammed as "the Claimants"].
2. The background to the Claim is that there was a motor vehicle accident between the Claimant's vehicle, driven by Zalisha Mohammed and the First Defendant's vehicle which was being driven by the Second Defendant. The Claimant filed a Claim and the Defendants responded in an amended Defence which referred to a Final Release and Discharge signed by the First Defendant company after it approached the Claimant's insurer Sagicor General Insurance Inc. ["Sagicor"] and received a payment.
3. During the disclosure stage of Case Management the Defendants disclosed the said document which was headed Final Release and dated December 11, 2015. There is no dispute that it bears the signature of an employee of the First Defendant. The Claimant's signature is not on the document however, his name is mentioned therein. The Document speaks throughout to "I/we, the undersigned" referring to the First Defendant company Dumore Enterprises, which by the document agreed to accept a payment of \$95,652.17 and to

"release and discharge Sagicor General Insurance Inc. and Ashmeer Mohammed from any and all action, causes of action, claims and demands for upon or by reason of ANY DAMAGE, LOSS OR INJURY to person or property" sustained as a result of the accident.

4. The document further states that *“the said payment is not deemed to be an admission of liability on the part of Sagicor General Insurance Inc. and/or Ashmeer Mohammed”*. Finally it says that the payment is accepted by the First Defendant voluntarily *“for purposes of making a full and final compromise adjustment and settlement of all claims for injuries, losses and damages resulting or to result”* from the accident.
5. During Case Management Conferences the point was made by Counsel for the Defendants that the Claim could not succeed in the face of this Release and Discharge document. It was suggested that it was binding on the Claimants as an admission of Liability and as such they could not pursue damages. Directions were given for this preliminary issue to be determined based on oral submissions which were heard on June 25, 2019.
6. On June 18, 2019 Counsel for the Claimants filed Notice of an Application seeking permission to file a Reply to the paragraphs of the defence pertinent to the issue of the Final Release. The Application was filed in a precautionary manner, so that in the event that the Court determined the preliminary point by finding that the Final Release was *“somewhat binding”* on the Claimant, there would be need to file a Reply. A direction based on that Application was therefore deferred with a view to the Court deciding on both matters. This Ruling sets out the decision on both matters.

B. Submissions, Law and Analysis

7. The Defendants plead, in their amended Defence at paragraph 8, that the Release was the result of an investigation and a finding by the Claimant’s insurance company and that they intend to rely on it for its *“true meaning, purport and intent”*.
8. Counsel for the Claimant submits that the Release should not be deemed binding on the Claimant. He further contends that the reference to the Release in the pleadings should be struck out if the Court agrees that it is not binding. The Claimant’s submission is based on the contentions that -

- i. The Release is between Sagicor and the First Defendant, the Claimant not being a signatory to the document. Further there is no pleading by the Defendants as to the Claimant's awareness of the contents of the Release.
 - ii. The release specifically states that there has been no admission of liability in the accident by the Claimant or his Insurer, Sagicor.
 - iii. In any event, the document only releases Sagicor and the Claimant from further claims by the First Defendant. On the face of the document there is no reciprocal agreement by Sagicor or the Claimant to release either of the two Defendants or their insurer Maritime from liability to the Claimants, in their personal capacity, for injuries and damage the Claimants sustained in the accident.
9. Counsel for the Claimants relies on the Court of Appeal decision in **Villia Medford v Gulf Insurance CA No. S-2 of 2013**. There Jamadar JA, as he then was, explained at page 36 lines 29 to 38 that where a general release is being construed, the Court must try to give effect to what contracting parties intended and to do that it *"must read the contract as a whole, give their words the natural and ordinary meaning in the context of the agreement, and of the parties' relationship, and all relevant facts surrounding the transaction..."*.
10. The Claimants argue therefore that based on the express terms of the Release in this case it bars only the Defendants from pursuing further relief. Additionally, Counsel for the Claimants emphasises that the Release contract is not binding on them as they neither signed it nor has it been proven that they were privy to it.
11. Counsel for the Claimants further submitted that the paragraph of the Amended Defence that raises the fact of the signing of a Release should be struck out if the Court by this Ruling, decides that the Release is neither binding on the Claimant nor determinative of the matter. However, there was no formal notice of application for such striking out.

12. Counsel for the Defendants submission in response was based primarily on the suggestion that the Court should take judicial notice of the usual procedure when a Motor Vehicle Accident takes place. According to Counsel, usually all parties involved report the accident to their own insurance company. Then the insurance companies come together to engage in settlement discussions. Part of the process would be the conduct of investigations to guide the insurers as to who should accept liability. It is pursuant to such a process that, according to Counsel for the Defendants, Settlement documents such as the Release in this case would bring closure to Claims arising from the accident.
13. Although Counsel on both sides agreed that this may be the usual procedure, in my view no useful purpose would be served by simply taking judicial notice of the way Insurance Companies usually operate. It is my determination that such considerations cannot take the place of either an examination of the actual terms of the Release or a review of evidence as to any knowledge of or involvement by the Claimant in the negotiations that led to the terms in the Release.
14. Counsel for the Defendants second point was in response to the submission of Counsel for the Claimant that the Claimant cannot be bound by the Release since he did not sign it. Citing **McGilvery on Insurance Law 11th Ed. Chap. 22**, counsel contended that in subrogation circumstances an Insurance company and its insured are to be considered as one. Accordingly, the act of Sagicor in signing the Release should be taken as binding on the Claimants, even though they did not sign and may not have been aware of the document.
15. The relevance of this point was questioned however, by Counsel for the Claimant who pointed out that the present case is not a subrogation matter. This is so for two reasons. Firstly, because there is no proof that the Claimants had any knowledge of Sagicor's actions in signing a Release and paying compensation to the First Defendant. Secondly, it is the Claimants in their personal capacity and not Sagicor bringing this Claim. Sagicor is the entity that unilaterally made the payment to the First Defendant. Sagicor did not

then bring this Claim in Court against the Defendants. The Claimants alone did so and as such no issue of subrogation arises. This rule cited by Counsel for the Defendants would therefore not apply in the present circumstances.

16. In deciding on this preliminary point I have taken note of guidance in **Xenos v Wickham [1863] 14 CBNS 435** that the general rule is that possession of an insurance policy is evidence of a broker's authority to act in all matters relating to the claim on the assured's behalf.

17. However, in **Great Western Assurance Co SA and ors [1999] Lloyd's Rep IR 377, CA**. Lord Woolf MR observed:

"While this is the general situation, it also frequently happens that insurance brokers are as to particular activities the agent of the insurer. Whether an insurance broker is at any particular time acting on behalf of the insured or insurer requires careful analysis of the nature of the activity concerned against its factual background."

18. Indeed, in **Kitchen Design and Advice Ltd v Lee Valley Water Co [1989] 2 Lloyd's Rep 221**, Philips J. considered the wording of a specific insurance policy in determining whether insurers were entitled to act on behalf of an insured in executing a release, and under what circumstances. It is clear from these authorities that what is determinative is the specific wording and factual circumstances of each case.

19. In the present case, to determine whether Sagicor as the Claimants' insurers were acting on behalf of the insured in entering into the Release agreement with the First Defendant, further evidence including as to the terms of insurance policy and witness testimony on the Claimant's involvement, if any, would be required.

20. There is merit to the submissions made by Counsel for the Claimants on the lack of potency in the Defendants' contention that the actions of Sagicor in signing the Release are binding on the Claimants. At the very least that allegation must be borne out by evidence that the insured Claimant agreed that this was the tenor of his relationship with Sagicor before a determination can be made on it.
21. The issue that weighs more persuasively in my determination of this point is the submission of Counsel for the Claimants as to the need to interpret the literal terms expressed in the Release as explained in the **Villa Medford** judgement. It is clear to me that the terms of the Release in no way of themselves bar any claim by the Claimants in their personal capacity against the Defendants.
22. Furthermore, the Release expressly says that it is not an admission of any liability in the accident by the Claimants. It is also clear that the Claimants did not sign the Release. On the face of it the Release is not determinative of the Claimants' recourse to seek relief for their own injuries and loss arising from the accident.
23. Counsel for the Defendants, in her submissions, sought to distinguish the **Villia Medford** judgment relied on by the Claimants from the present circumstances. She argued that in that case there was a caption "constructive total loss" included in the Release and Discharge document which qualified the release as to what the payment covered. Counsel stated that the wording of the Release in the instant case was the same except for that caption. It is noted that the present claim is one for damages for loss of use, reduction in value of MV, wrecking fee and a police report.
24. However, as Counsel for the Claimant emphasised, citing the Court of Appeal's explanation, the wording of the specific Release must be considered. In **Villia Medford**, the Claimant herself executed the Release and the document indicated that there was a full release and discharge by the claimant of the Second defendant for "all liability causes of actions claims and demands by reason of any damage loss or injury to person or

property thereto that had been or thereafter may be sustained in consequence of or in any way attributed”.

25. On the other hand, in the present case the document is **a Release by the First Defendant alone** of the Claimant, Ashmeer Mohammed and his insurance company Sagicor from further claims. Therefore, even if the Insurer Sagicor was acting on behalf of the insured, Ashmeer Mohammed, the terms of the Release and Discharge do not release or discharge the Defendants from any possible claims that could be made by the Claimants against the Defendants.

C. Conclusion

26. The Release as pleaded by the Defendants is therefore neither determinative of the case nor evidence of any bar against the Claims pursued by the Claimants. However, the inclusion of information about the Release will not be struck from the Amended Defence as there has been no formal application before the court.

27. Additionally, the existence of the document may be relevant to determining liability and have some probative value as the Trial proceeds. The details of any investigation and finding by the relevant insurance companies that led to the Release may be relevant to the Court’s determination on the issue of liability.

28. Although the application for permission to file a Reply to the part of the Amended Defence that spoke to the Release has not yet been heard, it is my view that a Reply will be necessary. This would allow for the insured Claimant to put forward an account of what, if anything, happened between himself and the insurers giving rise to the Release.

29. There is no indication on the face of it that the Claimants would have known of the Release. Based on the submission of their Attorney the Release was only a contract between Sagicor and the First Defendant. Therefore, it would not have been necessary

or even possible for the Claimants to plead the circumstances of its creation in the Statement of Case.

30. Now that the existence of the Release has been raised as an issue, the Claimant must have an opportunity to respond by way of pleadings and if necessary further full disclosure of documents. Any resulting pleading in the Reply must address the Claimants' relationship with its insured Sagicor. This may be of assistance in determining issues relevant to the matter.

31. IT IS HEREBY ORDERED THAT –

- i. Counsel for the Claimant is to send a Draft Reply to counsel for the Defendant for review with a view to there being an agreement as to the paragraphs of the Defence to be replied to and the extent of the Reply that will be filed.
- ii. Once the parties have agreed the Reply can be filed forthwith.
- iii. Failing an agreement between the Parties as to the filing of the Reply, directions will be given for the filing of a Reply and for further disclosure at the next hearing.
- iv. Costs in the cause.

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Eleanor Joye Donaldson-Honeywell

Judge

Assisted by: Christie Borely JRC 1