

REPUBLIC OF TRINIDAD AND TOBAGO

Claim No. CV 2017-00656

**Between
MARLON CABRAL SAMAROO**

Claimant

AND

**LYNDON SANKAR
GUARDIAN GENERAL INSURANCE LIMITED**

First Defendant

Second Defendant

Before the Honourable Mme Justice Jacqueline Wilson

Appearances:

Mr. Rajiv Rickhi instructed by Ms. Natasha Baiju-Patrick for the Claimant

Ms. Tiffany Ali holding for Mr. Roger Kawalsingh instructed by Mr. Javed Mohammed for the Defendants

RULING ON PRELIMINARY OBJECTION

1. This ruling is a written record of the oral decision delivered on 21 March 2018 in respect of a preliminary objection raised by the Defendants that the Claimant is estopped from bringing these proceedings.
2. In these proceedings the Claimant seeks damages for injuries sustained on 8 February 2014 in a motor vehicular accident between the Claimant's vehicle and the First Defendant's vehicle.
3. The Defendants, in their defence, contend that the Claimant is estopped from bringing these proceedings by virtue of his acceptance of the sum of \$8000.00 from the Second Defendant in full and final settlement of all damage, loss or injury sustained as a result of the accident

and pursuant to which a Final Release was signed by the Claimant and the Second Defendant.

4. The Claimant alleges that the said release is void by virtue of mistake of fact as he was unaware of the full extent of his injuries at the time the Final Release was signed and that, in the circumstances, it would be unconscionable for the Second Defendant to rely on the release. The Claimant also alleges that he signed the release without the benefit of independent legal advice and that the effect of the release was not explained to him by the Second Defendant.
5. The question that arises is whether the Claimant's acceptance of the \$8000.00 is a complete defence to the claim and should debar further inquiry by the Court.
6. The Defendants assert that the legal principle of accord and satisfaction is hereby engaged and gives rise to an estoppel preventing the Claimant from bringing any further claim in relation to the collision. The Defendants' written submissions cited a number of authorities on the principles to be applied in construing the terms of a release. Relevant principles include the policy interests of freedom of contracts, finality of settlement and unconscionability – whether arising from estoppel, mistake or other otherwise.
7. The Claimant, in reply, asserts that the validity of the release is a triable issue and should not be determined as a preliminary point. As in the case of the Defendants, the Claimant's submissions correctly identify and discuss the legal principles that apply to the construction of the release and the determination whether the release is void or voidable.
8. It is not in dispute that a release may be set aside in appropriate circumstances. These include cases where it would be unconscionable to rely on the release or where the release is void for mistake. The question for consideration is whether those principles, correctly identified by the parties in their written submissions, apply to the circumstances of this case.
9. This issue, being fundamental to the determination of the claim, cannot properly be resolved at this preliminary stage of the proceedings where witness statements have not

been filed or the evidence tested on cross examination but requires full ventilation at the trial.

10. In the circumstances, the Defendants' preliminary objection is dismissed and the application of the principle of estoppel raised by the Defendants would be determined at the full hearing of this matter.

11. There would be no order as to costs.

Dated this 2nd day of May 2018.

Jacqueline Wilson

Judge