IN THE HIGH COURT OF BELIZE A.D. 2023

CLAIM No. 353 of 2022

BETWEEN

JACOB WIEBE d.b.a J. W. GAS SERVICES

CLAIMANT

AND

NORMA QUIROZ

FIRST DEFENDANT

WILBERT VALENCIA

SECOND DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MARTHA ALEXANDER

Submissions Date: March 03, 2023

APPEARANCES:

Mrs. Julie-Ann Ellis Bradley, Counsel for the Claimant

Mr. Allister T. Jenkins, Counsel for the Defendants

DECISION ON APPLICATION TO STRIKE OUT THE CLAIM

INTRODUCTION

1. This is a decision on an application to strike out a claim, which involves a Discharge Form signed by the claimant, as a settlement with RF & G Insurance Company Ltd ("the insurer"). The dispute arose from an accident on October 15, 2021. At the material time both vehicles

were insured with the same insurer. The claimant and the insurer, acting as agent for the first defendant, purportedly "settled" the claim. The claimant received BZ$20,000 under the first defendant's policy and he signed a Discharge Form ("the Discharge"). It is this Discharge that occupies the centre of the application that now engages the court.

2. By his pleadings, the claimant seeks compensation from the defendants, in excess of the settlement figure paid by the insurer to secure the Discharge. The claimant's full losses were stated to be over BZ$63,000 more than the BZ$20,000 paid by the insurer. There is no dispute that the claim is in excess of the settlement figure but the defendants resist it on the basis that the Discharge duly settled all claims against them. Relying on issue estoppel, they ask that the claim be struck for abuse of process and because it discloses no reasonable grounds for bringing it.

3. The main issue raised by the application dated September 23, 2022 was whether the defendants could satisfy the court that they met the tests to get the claim struck out on the pleadings.

4. I find that this is not a fit case for a striking out order and I dismiss it. The reasons for my decision are set out in the following paragraphs.

THE LAW

5. Rule 26.3(1) (b) and (c) of the Supreme Court (Civil Procedure) Rules 2005 empowers the court to strike out a claim that amounts to an abuse of process or discloses no reasonable grounds for bringing it. An application to strike out allows for weak cases that have no reasonable prospect of success to be stopped before incurring huge litigation expenses.[1] Basically, it allows a court to avoid wastage of resources and time spent on preparing and conducting a trial only to discover at the end of the line that there was never any reasonable ground for bringing or defending the claim. For these reasons, such an application is decided

[1] *Swain* v *Hillman* [2001] 1 All E.R. 91

solely on the parties' pleaded case,[2] and requires no additional evidence in order to dispose of it. The court will proceed by assuming that all facts pleaded in the claim are true and not engage in a mini-trial.

6. A party can rightly make such an application on a defective statement of claim where allegations, even if proved, still will not succeed or where a correct statement of claim will fail as a matter of law.[3] The defendants seek to strike out on both the grounds of abuse of process and there being no reasonable grounds for bringing the claim.

ABUSE OF PROCESS

7. The defendants claim that it is an abuse of process to have brought the claim as the matter was settled in its totality by the Discharge. It means that the claim will fail as a matter of law, since the claimant is estopped from pursuing a claim that was duly settled. Counsel for the defendants argues that it is an ideal case for a strike out order as there is no dispute that the Discharge was signed, and the consideration of BZ$20,000 in the settlement agreement was received by the claimant. The combined effect of signing for and receiving payment means that the claimant is estopped from bringing these proceedings and it is an abuse to have brought it. Whilst accepting that the claimant has a clear cause of action, the defendants argue that he is still estopped from proceeding with the claim against them because he signed the Discharge and has received the payment. Therefore, they were released from further liability.

8. Counsel for the claimant argues that the claim is for recovery of his actual losses suffered in the accident, which were in excess of what was paid by the first defendant's insurer. The claimant's case is that the BZ$20,000 was the maximum payable under the policy for property damage but this was inadequate to cover his full losses or to settle his claim in its

[2] *Dr. Martin G.G. Didier et al* v *Royal Caribbean Cruise Ltd et al* SLUHCVAP2014/0024
[3] *Channel Overseas Investment Limited et al* v *Belize Telemedia Ltd et al and Keith Arnold et al* v *Belize Telemedia Ltd et al* Civil Appeal Nos. 14 & 15 of 2012

entirety. Further, it was represented to him by the insurer that the balance would have to be recovered from the defendants. He admits that he signed the Discharge but maintains that it operates only as a release of the insurer and not of the defendants. He points to paragraph one where only the insurer's name is listed as being released when the usual practice would be to insert the names of all persons excluded from further liability on the Discharge. The claimant maintains that he at no time agreed to release the defendants from all claims and liabilities arising from the accident and was now pursuing his claim to recover the balance of his losses from the accident.

9. A claim can appropriately be struck out if it is an abuse of process or is defective in law. If the claim has a clear and valid cause of action then it is not an abuse of process to have brought the claim. The defendants admitted that the claim is not defective and, as it has a legally recognizable cause of action, this generally will not constitute an abuse of process.[4] The defendants did not argue that the pleaded facts are incapable of establishing the main ingredients of a cause of action nor that the claim is incoherent. They simply rely on the Discharge to exclude themselves from liability.

10. The claim is clearly grounded in negligence and identifies the central issues in dispute for the court and parties. This is not a statement of claim that is simply bad in law or contains no facts that point to what the claim is about. It is not fit for a strike out order. The defendants have not satisfied the test of abuse of process to have the claim struck out.

NO REASONABLE GROUNDS DISCLOSED

11. The defendants' case is that by signing the Discharge and accepting the payment of BZ$20,000, the claimant is **estopped** from proceeding with the claim against them. The claimant has no reasonable basis for bringing the claim as there is no ambiguity in the document and no further inquiry or law will result in a different interpretation.

[4] *Citco Global NV* v *Y2K Finance Inc*. BVI HCV AP 2008/022

12. Counsel for the claimant argues that the Discharge releases the insurer only and not the defendants. Paragraph one of the Discharge is where the insurer inserts the names exempted from liability, on payment of the maximum for property damage under the policy, and the defendants' names were not inserted there. The claimant exhibits a document where the names of all exempted persons, under a similarly drafted discharge issued by the same insurer, were included at paragraph one. The insurer also made oral representation to the claimant about him being able to recover the balance of his losses from the defendants. Counsel also submitted that after signing the Discharge in contention, the claimant had entered into negotiations with the first defendant, to amicably settle the matter for the outstanding balance, but the first defendant reneged from all promises made.

13. Counsel argued further that any ambiguity as to what was agreed is a factual dispute to be resolved between the parties to the agreement, at a trial. It is the insurer and the claimant who are the parties to that contract and evidence of the parties ought to be led in order for the court to conclusively determine the issue. If there is any ambiguity then extrinsic evidence in the nature of facts would help construe the document. The exercise of determining the facts in dispute is best left for examination at trial. Alternatively, any ambiguity in the Discharge ought to be construed against the defendants and/or the insurer. It is not appropriate for the court to conduct a mini-trial at this stage.

14. The Discharge at the centre of the dispute reads:

"IN CONSIDERATION OF ($20,000) TWENTY THOUSAND DOLLARS I/WE J.W. GAS SERVICES OF COMP 1 SHIPYARD, ORANGE WALK DISTRICT BELIZE HEREBY RELEASE AND FOREVER DISCHARGE RF&G INSURANCE COMPANY LTD. OF AND FROM ALL CLAIM I/WE MAY HAVE AGAINST THEM IN RESPECT OF AN ACCIDENT INVOLVING VEHICLE REG NOS. OWC12916 & OWA 5763. THIS OCCURRED ON OR ABOUT THE 15TH DAY OF OCTOBER 2021.

I/WE ACKNOWLEDGE THAT WE FULLY UNDERSTAND THAT THIS DOCUMENT IS A COMPLETE AND FINAL DISCHARGE FROM ALL LIABILITY OF THE SAID INSURANCE COMPANY AND/OR ITS ASSURED, AND/OR EMPLOYEES, CONNECTED DIRECTLY OR INDIRECTLY WITH THE SAID

ASSURED AND THAT I/WE AM/ARE PRECLUDED FROM MAKING ANY OTHER CLAIMS WHATSOEVER AGAINST THEM HEREIN."

DISCUSSION

15. The Discharge at paragraph one expressly names **only** the insurer as being excluded from liability but paragraph two makes a blanket reference to the assured, servants and agents as being covered. I considered that if the usual practice of the insurer is to insert the full names of all parties excluded from liability on the document, then there is an arguable case. Further, there is evidence of representations made to the claimant directing him to pursue recovery of the balance of his actual losses from the defendants.

16. The defendants relied on the natural and ordinary meaning of the words "*the assured and their agents*" in paragraph two as sufficient to cover them from all liabilities. The ordinary meaning of "assured" in the context of insurance law[5] includes "*the persons whose interests are to be protected by the policy*."[6] Counsel also relied on ***Melanesian Mission Trust Board*** v ***Australian Mutual Provident Society***[7] where Lord Hope of Craighead stated that while the context may affect the meaning of words, where ordinary words are used with clear, unambiguous meanings then effect must be given to them as being what the parties intended to have agreed to in the contract. Thus, "*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.*"

17. Counsel for the defendants submitted, further, that the Discharge was an absolute release of the insurer and defendants so the court must self-caution and not search for ambiguity or invoke the rules of construction to resolve ambiguities where there is none. On executing the Discharge, the claimant must have agreed and understood that he was providing an absolute release to the insurer and defendants of all claims and liabilities connected directly

[5] *ABI Insurance Ltd* v *Cheryl Gore T/A Eden's Place Apartments* ANUHCV2015/0476
[6] *Great Britain 100 A1 Steamship Insurance Association* v *Wyllie* [1889] QB pages 710-727
[7] UKPC No 58 delivered December 17, 1996

or indirectly with the accident. Both paragraphs are equally operative and the claimant's attempt now to limit the terms of the Discharge only to the first paragraph is erroneous and misconstrued. By signing the Discharge and receiving the payment, the claimant is estopped from bringing these proceedings or making any other claims whatsoever against them.

18. The claimant disputes that the Discharge is intended to operate as an absolute release of the defendants for all claims in the accident. His counsel submitted that based on his actual claim, the limits under the policy, the insurer's oral representations before signing the Discharge, and the usual practice of the insurer when issuing the Discharge, there was ambiguity. Applying the rules of construction, the meaning of the document must be construed, "*as a whole against the backdrop of the factual matrix which birthed the document.*" She relied on the case of ***Stann Creek Development Ltd*** v ***Lighthouse Reef Resort Ltd***[8] which stated that though the document being construed was not a model of clarity or draftsmanship, the court must, "*try to give meaningful effect to the agreement in all the known circumstances of the case*." In ***Stann Creek***, Justice Morrison outlined the modern principles of interpretation as being what a reasonable person would have understood the parties to mean by the actual language used in the document, against the backdrop of the factual matrix reasonably available to them at the time, having due regard to the purpose of the agreement and the circumstances in which it was made. All parts of the document is to be given effect, with no part to be dismissed as "*inoperative or surplus.*"[9] Context is important, so even words whose "natural" meaning might appear clear must be viewed "*in the landscape of the instrument as a whole.*"[10] However, *"If one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had*". Particularly with commercial agreements, these should be construed to reflect, ***"business common sense."*** [Emphasis added]

[8] Civil Appeal No. 10 of 2008
[9] Halsbury's, paragraph 174
[10] *Charter Reinsurance Co Ltd* v *Fagan* [1997] A.C. 313, 384

19. Counsel for the claimant acknowledges that the cardinal rule of construction applies where words in a document are given their natural and ordinary meaning unless the context dictates otherwise. The Discharge gives rise to ambiguity since if it was intended for the assured to be released from all liabilities, her actual name too would have been inserted in the first paragraph along with that of the insurer. The first paragraph sets the premise upon which the Discharge is based and contains the qualifying provisions and conditions upon which the second paragraph is to be construed i.e. that the Discharge relates to the insurer only, whose name alone is expressly released. The defendants whose names are not expressly included as parties to the release ought not to benefit from it. Counsel pointed to evidence attached to the affidavit in opposition that shows the insurer's practice of inserting its name together with the other parties to be released in the first paragraph.

20. Counsel submitted, further, that the second paragraph is in the nature of a standard form document that clearly contemplates an election of the appropriate inconsistent options. It is not open to the defendants simply to elect from the "I/WE" or "And/OR" options that work in their favour to the prejudice of the claimant and to determine which is applicable, the document is to be construed as a whole. In the present scenario, the court should apply the *contra proferentem rule* to construe the document against its maker, the insurer. Use of the *contra proferentem rule* is inapplicable only if there is no ambiguity or need for clarification, which is clearly required in the present case.

21. The court is minded to agree with the claimant's counsel that there is ambiguity, and the document must be construed as a whole against the backdrop of the factual matrix from which it emerged. Further, since the parties to the Discharge were the claimant and the insurer (and not the assured), the factual dispute ought to be clarified by leading evidence from them. To reach a fair conclusion, the court ought to examine the facts surrounding the execution of the Discharge and the pleaded case, and hear and evaluate witnesses, including evidence of the representations made to the claimant.

22. Having considered the arguments of both parties, there is an arguable case that can benefit from a trial on the issues. Generally, if a claimant has an arguable case, it ought to be allowed to proceed to trial rather than to be subjected to early disposal by striking out. In ***Didier*** v ***Royal Caribbean Cruise Ltd***[11] the Eastern Caribbean Court of Appeal stated that the jurisdiction to strike out should not be used where the case involves a substantial point of law that does not admit of a plain and obvious answer or the law is developing or the strength of the case is not clear because it has not been fully developed or fully investigated. The Court of Appeal reaffirmed that the jurisdiction to strike out deprives a party of its right to a fair trial so should be used sparingly and in the clearest of cases. Before striking out a matter, it ought to be borne in mind that a case can be strengthen or its complexion changed by disclosure, requests for more information, further investigation or through cross-examination of witnesses.[12]

23. The defendants relied on ***Patterson*** v ***Slater***[13] where there was a Third Party Discharge Receipt and estoppel was raised. The Receipt expressly stated the full names of the insurer, and insured, the vehicle number and details of the accident. The court held that the release was a complete discharge and a full and final settlement of the claim. It was found that the insurance company did not only expressly sign the release on its own behalf but also as agent for the insured so the claimant was estopped from bringing the proceedings. In ***Patterson***, unlike our case, the receipt included all names of those excluded from liability.

24. In concluding, the court considers that a strike out application can bring an abrupt end to proceedings so should be used as a last resort. The claimant raises an arguable case that could be helped by further investigation into the factual dispute and/or through an examination or cross-examination at trial. Striking out is not suitable if its use will deprive a party of the right to a trial on the issues;[14] and there is need for an investigation into disputed facts. At the very least, the claimant's case is arguable and requires extraneous materials and

[11] *Didier*, supra note 2
[12] *Didier*, supra note 2, page 275
[13] SVGHCV2016/0209
[14] *Swain* v *Hillman* [2001] 1 All E.R. 91

testing at trial for its resolution. Where the evidence of witnesses can ultimately affect the outcome of the case or reveal the intentions of the parties to an agreement, a strike out order is misplaced.[15]

25. This is a matter that is not suitable for a strike out order and ought to proceed to trial.

26. Costs should follow the event and I would order that costs be in the cause.

DISPOSITION

27. It is ordered that the application to strike out dated September 23, 2022 is dismissed with costs to be in the cause.

Dated April 25, 2023

Justice Martha Alexander
Judge of the High Court of Belize

[15] *Doncaster Pharmaceuticals group Ltd* v *Bolton Pharmaceutical Co* 100 Ltd [2007] FSR 63