

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2003HCV02063**

<b>BETWEEN</b>	<b>FLORETTE DAN</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>GLADSTONE BELL</b>	<b>FIRST DEFENDANT</b>
<b>AND</b>	<b>SANDRA BELL-PRUSSIA</b>	<b>SECOND DEFENDANT</b>

Miss T. Mott instructed by Marion Rose-Green & company for the claimant

Mr. M. Howell and Ms. J. Wilcott instructed by Knight, Junor & Samuels for the defendant

**Heard: November 22, 2010 and January 24, 2011**

**SIMMONS J (Ag.)**

1. This is an application for summary judgment by the Claimant pursuant to Part 15.2 of the Civil Procedure Rules 2002 on the ground that the defendants have no real prospect of succeeding in their defence.

**The Claim**

2. Miss Dan has claimed damages for personal injuries arising out of a motor vehicle accident which occurred on the 2<sup>nd</sup> day of November, 1997 whilst she was a passenger in a motor vehicle owned by the defendants and was being driven by their servant or agent.

3. In the alternative, she has asked the Court to declare that the settlement agreement dated the 13<sup>th</sup> March, 1998 which was signed by her is void in that it was obtained by duress and without the benefit of legal representation or the medical report.

### **The Defence**

4. The defendants admit that the the claimant was travelling in a motor vehicle which was owned by them but deny that the accident occurred as a result of the negligence of their servant or agent. Paragraph 4 of their defence seems to base that denial on the fact that they were not in the vehicle at the time and did not witness any accident.
5. They assert that the claimant agreed to accept the sum of Three hundred and eighty thousand dollars (\$380,000.00) as compensation and that having paid that sum they were released them from any further liability in respect of the said accident.
6. They also deny that the agreement was procured by duress, undue influence or misrepresentation. In addition, they assert that they have paid all of the claimant's medical bills that were presented to them and as such have not breached the terms of the agreement.

### **The affidavit evidence**

7. The affidavit in support of the application was deponed to by Miss Tania Mott, counsel for the claimant. Paragraph 5 states that the claimant signed the said agreement against her will and without the benefit of legal advice because she was unable to work and could not fund her medical expenses or care for her children and herself. It is alleged that the first

defendant told the claimant that the defendants would be migrating and that she should take what she could get as she would not be able to recover any additional sums. It is stated that the claimant would not have signed the agreement had the first defendant not told her of their plans to migrate and had she not been in a financially challenging situation.

8. Paragraph 6 states that the claimant signed the agreement because she felt pressured to do so by the defendants. It is also stated that the claimant had known the defendants for some time and believed that they were of "good repute" and would fulfill their promise to take care of her medical expenses. Miss Mott also states that the claimant felt that she had no choice but to sign the agreement as she was in desperate need for money due to her inability to work and her medical expenses
9. Paragraph 7 states that the defendants are "business people and possess a certain degree of acumen, which the claimant, a labourer, did not ...and as such she was at a disadvantage when she signed the Agreement..." without the benefit of either legal advice or that of someone of "comparable intelligence" as the defendants.
10. The affidavit further states that the defendants have merely denied the particulars of negligence in their defence and have not provided any alternative explanation as to how the accident occurred.
11. The defendants through their attorney Miss Jacqueline Wilcott has admitted that the defendants are unable to speak to the particulars of negligence. They do however, take issue with the medical reports of Dr. Mena and have requested that he be made available for cross examination.

12. It is further stated the all sums due under the Agreement were paid by the defendants, the final one being in March 2000. In addition a further payment of seven thousand dollars (\$7,000.00) was made to cover the cost of special calipers and shoes and that this represented the final payment for medical bills.
13. Miss Wilcott asserts that the existence of the `agreement is a complete defence as it was entered into by all parties of their own free will and is therefore enforceable. She also states that the claimant's assertion that the defendants told her that they were migrating is not true and any allegation of duress is also denied.

### **Submissions**

14. Counsel for the claimant has submitted that that the defendant has no real prospect of successfully defending the claim. In this regard she relied on the case of **Swain v. Hillman [2001] 1 All ER 91**. In that case Lord Woolfe MR sought to define the meaning of the term "real prospect of success" and stated that the prospect of success must be real as against fanciful. It was also submitted that a case will be suitable for summary judgment if there are no complexities or disputes of fact and judgment can be entered on the untested written evidence presented to the court.
15. Miss Mott submitted that there is no defence in relation to liability. This is not disputed as counsel for the defendant has made it clear that their client cannot provide any alternative explanation in respect of the accident.
16. With respect to the issue of duress and/or undue influence counsel for the claimant has submitted that if in fact the court finds that the claimant entered into the agreement under

duress there is no agreement at all. She referred to **Samuels v. Stewart and others Claim No. CL 2001/S 081** in which **Sykes J.** stated that one of the factors which may assist in establishing whether there has been undue influence is whether the “transaction appears to be to the manifest disadvantage” of the party who is seeking to set it aside. In that case the application for summary judgment was refused. Counsel also referred to **Haughton v. Haughton and others Claim No. E 476/2001 and 2003 HCV 1445** in which the issue of undue influence was raised by the claimant and the defendant's application to strike out the claim dismissed. She pointed out that in that case the claimant did not enjoy the best health and had no experience in business matters and did not obtain independent legal advice. However it was argued that the **Haughton** case could be distinguished on the basis that the defendants' failure to comply with orders to produce certain documents was also taken into consideration by the court.

17. Miss Mott asked the court to take the following matters into consideration:-
  - i. the defendants experience as business persons;
  - ii. the claimant's financial circumstances;
  - iii. the nature and duration of the relationship between the parties;
  - iv. the absence of legal advice;
  - v. whether the transaction was to the manifest disadvantage of the claimant.
18. Counsel for the defendant also relied on the cases cited by counsel for the claimant. Mr. Howell submitted that no

evidence had been presented to the court to suggest that the agreement entered into by the parties was unfair or that the claimant did not do so of her own free will. He argued that having perused the witness statements the parties came from the same community and there is no indication that they did not possess the same level of education. It was submitted that the fact that the defendants are business persons is insufficient to establish that the claimant was at a disadvantage. He further stated that the defendants had honoured the terms of the agreement. In addition to this he pointed out that the defendants have denied telling the claimant that they were migrating.

### **The law**

19. In order to succeed in its application, the claimant must satisfy the court that there is no real prospect of the defendants successfully defending the claim. The test as to whether there is a real prospect of success was examined in **Swain v. Hillman** [2001] 1 All ER 92 in which it was stated that the defendant must have "a 'realistic' as against a 'fanciful' prospect of success". This, according to the court in **International Finance Corporation v. Utexafrika S.P.R.L.** [2001] EWHC 508 means that the case must be more than just arguable. However, this does not require the defendants to convince the court that their defence must succeed as the prospect of success may be real even if it is improbable.
20. The defence in this matter raises two issues. The first is a mere denial in respect of the accident and the particulars of negligence. This is clearly insufficient and is not accordance with **Rule 10.5 (4)** of the **CPR** which states:-

*"Where the defendant denies any of the allegations in the claim form or the particulars of claim-*

- (a) the defendant must state the reasons for doing so; and*
- (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence."*

In addition, paragraph 2 of the defence contains an admission that the defendants owned the vehicle in which the claimant was traveling although the particulars of negligence are denied. The defendants state that they were not in the vehicle on the day in question and did not witness the accident. This in effect means that they are unable to prove a different version of the events than that put forward by the claimant. If this is where the defence ended, the application for summary judgment would clearly succeed.

21. The second limb of the defence is that the issue between the parties was settled by an agreement dated the 31<sup>st</sup> March 2000 which was executed by both parties in the presence of a Justice of the Peace.
22. The existence of the agreement is not in dispute. However the claimant has asserted that she did not enter into the said agreement of her own free will and that its terms were to her disadvantage in circumstances where she had no legal advice. The issues of duress and undue influence have been raised by her and have been answered by the defendants who have sought to negative the existence of such circumstances.
23. The essence of a contract is that it is an agreement arrived at with the consent of the parties. It is established that equity will

intervene where a contract has been entered into as a result of duress or undue influence. This intervention is aimed at protecting persons from those who may attempt to take advantage of them especially where those persons wield a certain amount of power or are trusted by the disadvantaged party.

24. A contract is voidable by a party if he entered into the said contract by reason of duress or undue influence as the existence of any of these factors interfere with the free consent of that party. In equity, where there is undue influence the contract is voidable and not void. With respect to duress the position is not as clear. Duress has been defined by the authors of **Halsbury's Laws of England, 4<sup>th</sup> edition, volume 9** at paragraph 297 as "the compulsion under which a person acts through fear of personal suffering."
25. Undue influence has been defined at **paragraph 298** as "*the unconscientious use by one person of power possessed by him over another to induce the other to enter into a contract.*"
26. The burden of proof is on the party who alleges that the contract is either void or voidable as a result of either of these reasons.
27. In this matter, the claimant appears to be saying that since liability for the accident is not in issue, there can be no "real" defence. At the same time, counsel has argued that the agreement between the parties is void and cannot be relied on by the defendants. The facts in this matter are fairly similar to those in **Samuels** in which the principle in **British Russian Gazette and Trade Outlook limited v. Associated Newspapers Limited [1933] 2 K.B. 616** was cited with approval. In **Samuels** the claimant who had been severely injured in an accident



brought an action against the defendants after he had signed a release in their favour. The defendants applied for summary judgment on the basis that the claim had no real prospect of success. The claimant on the other hand argued that the release was signed as a result of undue influence. The court looked at a number of factors in order to determine whether there was sufficient evidence to ground the allegation of undue influence. The court found that Mr. Samuels was an "unlettered man" who had trusted the defendants as he thought they had his best interests at heart. The court was also of the view that for an allegation of undue influence to succeed the relationship between the parties need not fall within a particular category. The important factor in such cases is whether there is sufficient evidence capable of supporting the allegation. The court also stated that where the agreement appears to be to the "manifest disadvantage" of one party that is evidence which may assist in establishing undue influence. The court went on to examine the injuries suffered by the claimant and to compare the settlement sum with the amount of damages likely to be awarded in such a case.

28. The claimant in her witness statement has given an account of how she came to sign the agreement. The chronology of events as stated by her are as follows:
  - i. The defendants visited her in hospital;
  - ii. They visited her two weeks later at her home asking to "compromise" the case. She told them to wait until she was better.
  - iii. They came back on several occasions and made a first offer of eighty thousand dollars (\$80,000.00)

- iv. A subsequent offer of three hundred and eighty thousand dollar (\$380,000.00) was made;
- v. Three days later, the first defendant and two of his friends came to her home and she was told by Mr. Bell that she should take what she could get as he was going away. He also told her that she should take the money or get nothing.
- vi. She says that she felt pressured and when the first defendant and his friends returned on the following day she accepted the offer;
- vii. She further stated that she was a single mother with young children and was unable to help herself;
- viii. The first defendant and his son took her to Mr. W. Grant a Justice of the Peace and the agreement was signed.
- ix. She agrees that the sum negotiated was paid but states that as time went on she realized that she could not use her left hand to do certain tasks and that she could not stand on her left foot. She received treatment and required special shoes.
- x. The defendants through their Attorney-at-law paid the sum of seven thousand dollars (\$7,000.00) which represented the cost of the shoes.
- xi. She was requested to sign a release which she did on the 31<sup>st</sup> March 2000.
- xii. She then sought legal advice. She asserts that at the time when she signed the release she did not understand that the defendants would not be

responsible for her expenses as they had promised to continue paying her medical bills.

29. This evidence needs to be fully ventilated in order to determine whether there was any duress or undue influence.
30. The issue of whether the agreement was to the "manifest disadvantage" of the claimant is directly linked to the amount of damages which may be recovered in respect of the injuries suffered by the claimant. The particulars of injuries are quite extensive and include :-
  - i. Severe destruction of the ankle joint;
  - ii. Left ankle deformed joint;
  - iii. Impairment due to ankle motion 12% of the whole person, 20% lower extremity, 43% of the foot;
  - iv. Impairment due to osteo- arthritis , 8% of the whole person, 20% of the lower extremity and 28% of the foot;
  - v. Impairment due to limb length discrepancy of 6% of the whole person and 15% of the lower extremity.
29. The sum of three hundred and eighty thousand dollars clearly could not compensate the claimant and is far out of line with any award that would be made by the court once liability is established. The agreement is therefore to the manifest disadvantage of the claimant.
30. In addition, it is important to note that at the time when the release was signed it is clear that the defendants had the benefit of legal representation and so the parties were not on equal footing.

31. The issue of whether the application for summary judgment should be granted rests on the determination of whether the agreement between the parties was obtained as a result of duress and/or undue influence.
32. The first defendant in his witness statement agrees that he and the second defendant visited the claimant whilst she was in hospital and that they entered into an agreement on the 13<sup>th</sup> March 1998. He states that some time after the 31<sup>st</sup> March 2000 the claimant came to him for more money and he refused her request and later placed the matter in the hands of his Attorney after an incident between himself and the claimant.
33. There are two documents which are relevant in this matter. The first is the Agreement for out of Court Settlement dated the 13<sup>th</sup> March 1998 and the Release dated the 31<sup>st</sup> March 2000 to which the claimant and the first defendant are signatories.
34. The Agreement, in addition to setting the amount of compensation also contains a clause in the following terms: "the said defendant will be responsible for all medical expenses incurred during the time of the accident."
35. The court in **Swain v. Hillman** made it clear that the court is not required at the hearing of an application for summary judgment to embark on a mini trial of the matter. The merits of the respondent's case are therefore only relevant to determine whether there is sufficient evidence to proceed to trial.
36. In this matter, the existence of a settlement agreement and a signed release are sufficient to satisfy the requirement that the defence has a real prospect of success as they indicate without more, that the claimant has been fully compensated. The fact that the issues of duress and undue influence have been raised does not make the prospect of success any less

“real”. The claimant has placed those issues before the court for a determination and must prove their existence.

37. Whether the agreement and the release should be set aside depends on the credibility of the witnesses and an interpretation of the scope of the agreement. This can only be done at a trial where the witnesses can be cross examined and their demeanour assessed by the court.
38. In the circumstances, the application for summary judgment is refused.
39. Leave to appeal granted.
40. Costs to be costs in the claim.