[2023] JMSC CIV 138

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2021CV05561

BETWEEN	**NEVILLE DAVIDSON**	**CLAIMANT**
AND	**SERGE ISLAND DAIRIES**	**DEFENDANT**

IN CHAMBERS

Mr. Vaughn Bignall/David Bowes instructed by Bignall Law

Mr. Stuart Stimpson instructed by Hart Muirhead and Fatta

Heard: May 24, 2023 and June 26 2023

Civil procedure - Application to Strike out Claim – Statement of Claim is an Abuse of Process-No reasonable ground for bringing the claim – Civil Procedure Rules, 2002, rule 26.3(1) (b) (c)

Civil procedure - Application for Summary Judgment - Civil Procedure Rules, 2002, rule 15.2

MASTER L. JACKSON (AG)

INTRODUCTION

[1] The claim against the Defendant Serge Island Dairies is one grounded in negligence and or occupier's liability. The Claimant, Mr. Neville Davidson avers in his Claim Form and Particulars of Claim that he is a Mechanic and was an employee of the Defendant. He states that on the 17th of July 2017 he was on

the Defendant's premises which is located at Seaforth in the parish of St. Thomas working as an employee.

[2] Whilst on the premises removing a gearbox from a machine using a backhoe, it fell on his foot and as a consequence he suffered injury to his foot and incurred loss. The Claim Form and Particulars of Claim which were filed on the 31st of December 2021, were served on the Defendant on the 4th of January 2022.

[3] The Defendant filed an Acknowledgment of Service on the 18th of January 2022 and a Defence on the 1st February 2022 both within the requisite time frame as required by the CPR. On the 5th of April 2022, the Defendant filed an Application for Summary Judgment pursuant to rule 15.2 of the CPR and in the alternative that the Claimant's claim be struck out pursuant to rule 26.3(1)(b) and (c) of the CPR. This application was supported by an affidavit sworn to by Ms. Petagaye McCook. The Defendant in addition to this application, filed skeleton submissions in support of its application.

[4] Subsequent to this application being filed by the Defendant for summary judgment, the Claimant's Attorney-at-Law, Mr. Vaughn Bignall on the 18th of July 2022 filed an application to remove his name from the record on the basis that he terminated the retainer between himself and the Claimant. In support of his application an affidavit sworn by him was filed, exhibiting a letter wherein he in essence indicated to the Claimant that it was brought to his attention that a third party had already negotiated the claim he brought against the Defendant on his behalf and if he did not respond within 30 days then the file would be closed and the retainer considered terminated.

[5] The application was served on the Claimant by registered post and an affidavit of service filed by the Claimant's Attorney-at-Law. On the 30th of March 2023, Master C. Thomas ordered that the application for court orders by Mr. Bignall to remove his name from the record is to be served on the Claimant once more who is to appear by Zoom and that both the application for summary judgment and the application for removal of name from the record are to be heard at the same time. She further ordered that if the Claimant did not appear then both applications were to be heard at the same time.

[6] Both applications were however not heard as on the 24th of May 2023 the court noted that the affidavit of service as it concerns the Application to Remove Attorneys' name from the record, had a number of deficiencies and did not comply with the CPR. The matter was adjourned to another date for Counsel to rectify the errors. The court however proceeded to hear the application filed by Counsel for the Defendant for summary judgment and the focus in this ruling, is on that application.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

[7] The Defendant's Attorney Mr. Stimpson by way of written submissions which were amplified orally, argued that the power to decide whether summary judgment should be granted is a discretionary one. In deciding whether to exercise this power, the court is required to assess the relevant party's prospect of success. He relied on **Lorraine Whittingham v Odette McNeil et al [2018] JMSC Civ 5 paragraphs 16 and 17.** There, Palmer-Hamilton J(Ag) as she was then), gave guidance on how a court should address summary judgment applications. She stated;

> *"The long established principle pertaining to Summary Judgments is that the decision whether or not to grant an application for summary judgment is discretionary. As Lord Hutton in the Three Rivers case [2001] stated: "The important words are 'no real prospect of succeeding'. It requires the judge to undertake an exercise of judgment. He must decide whether to exercise the power to decide the case without a trial and give Summary Judgment. It is a 'discretionary' power; that is, one where the choice whether to exercise the power lies within the jurisdiction of the judge. Secondly, he must carry out the necessary exercise of assessing the prospects of success of the relevant party. If he concludes that there is no 'real prospect' he may decide the case accordingly."*
>
> *Also in the case of National Commercial Bank Jamaica Ltd v Owen Campbell and Toushane Green [2014] JMCA Civ. 19 Brooks, JA stated: "In considering applications for summary judgment, the judicial officer is not required to conduct a mini trial but where the case of one party or*

another is untenable that party should not be allowed to go to trial on that case. There is authority for the principle that parties to litigation must know at the earliest opportunity whether their cases have a real prospect of success. The judicial officer considering the application exercises a discretion whether or not to grant the application."

[8] He also argued that with respect to the matter at hand, there are two main issues of contention that the court must examine in deciding whether to grant the application for summary judgment. That is, whether the release and discharge was valid, if it was obtained by undue influence or inequitably. He relied on **National Commercial Bank (Jamaica LTD) v Hew and Another [2003] UKPC 51** where the Privy Council defined undue influence at paragraph 29. It stated that *"undue influence is one of the grounds of relief developed by the courts of equity as a court of conscience. The objective is to ensure that the influence of one person over another is not abused…Thus the doctrine involves two elements. First, there must be a relationship capable of giving rise to the necessary influence and secondly, the influence generated by the relationship must have been abused".*

[9] The second issue is whether the Claimant's right to bring a claim against the Defendant has been extinguished by the release and discharge of General Accident Insurance Company (GENAC) signed by the Claimant and the related payments made to him with respect to the same incident the subject matter of the claim filed in the Supreme Court. Counsel for the Defendant pointed the court to the Affidavit in Support of the Application sworn to by Ms. Petagaye McCook attaching a number of exhibits as proof of this release and discharge and payments made pursuant to same. A number of authorities were cited by Counsel for the Defendant on the effect of a release and discharge on any subsequent claims. These include **Alcan Jamaica Company v Delroy Austin and Hyacinth Austin (unreported) Court of Appeal, judgment delivered December 20, 2004 Smith JA** and **Keith Recas and John Johnson v Winsome Wickham (unreported) Court of Appeal, Jamaica, Supreme Court Civil Appeal No 62/2005, judgment delivered July 31, 2006.** The crux of the submissions here is that a signed release and discharge is a binding

agreement between the Claimant and the Defendant. In addition, the words in the release are clear and show an intention to denounce a claim or discharge the Defendant's obligation to the Claimant.

[10] In relation to the alternative request for striking out, the Defendant's Attorney relied on rule 26.3 (1) (b) and (c) of the CPR. Counsel submitted that the court is empowered to strike out a statement of case or part of it, where it appears that the statement of case is an abuse of process and is likely to obstruct, the just disposal of the proceedings or where there are no reasonable grounds for bringing the claim. In support of this aspect of his submissions, he stated that the Claimant was never the employee of the Defendant and he has not proved this.

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[11] Written submissions were filed on behalf of the Claimant on the 17th of November 2022 in response to the Defendant's application for summary judgment. At the hearing date, when the court queried whether Counsel wished to make additional oral submissions in response, Mr. Bowes who appeared for the Claimant, indicated that those written submissions were filed in error and that since their retainer with the Claimant was terminated from August 2022, they are withdrawing their submissions. I will not comment on this approach by Counsel. Notwithstanding this, the Court conducted a careful examination of the Law and the following is the decision of this Court, based on the analysis of the issues to be determined bearing in mind the Law.

ISSUES

[12] The issues which arise in this application are:

(i) Whether the applicant's application for summary judgment should be granted; or

(ii) In the alternative, whether the court should strike out the Claimant's claim?

THE LAW

SUMMARY JUDGMENTS-RULE 15.2

[13] Part 15 of the CPR deals with summary judgment and rule 15.2 of the CPR outlines the circumstances in which the court may grant an order for summary judgment. The rule states:

> ***"Grounds for summary judgment***
>
> *15.2 The court may give summary judgment on the claim or on a particular issue if it considers that- (a) the Claimant has no real prospect of succeeding on the claim or the issue; or (b) the Defendant has no real prospect of successfully defending the claim or the issue…"*

Also of importance for the purposes of determining the issue is rule 15.5. It states;

Evidence for purpose of summary judgment hearing

15.5 The applicant must –

a. file affidavit evidence in support with the application; and

b. serve copies of the application and the affidavit evidence on each party against whom summary judgment is sought; not less than 14 days before the date fixed for hearing the application.

A respondent who wishes to rely on evidence must –

c. file affidavit evidence; and

d. serve copies on the applicant and any other respondent to the application; at least 7 days before the summary judgment hearing.

[14] An application for summary judgment is a process for ridding the courts of cases that are doomed to fail. In **Sagicor v Taylor-Wright [2018] UKPC 12** summary judgment was described as *"a valuable opportunity (if invoked by one or other of the parties) for the court to decide whether the determination of the question whether the Claimant is entitled to the relief sought requires a trial".* As was pointed by the Board part 15.5 of the CPR makes provision for the filing of evidence where a party intends to rely on that evidence. Parties are therefore obliged to demonstrate, upon such an application that the prospect of their case

succeeding is realistic. **(See Barbican Heights Ltd v Seafood and Ting International [2019] JMCA Civ 1).**

[15] Lord Woolf's MR oft cited statement in the English case, **Swain v Hillman and another [2001] 1 All ER 91** reads: *"… The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success … they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success."*

[16] In **Coghlan v Chief Constable of Cheshire Police*, [2018] EWHC 34*** the judge in discussing English rules dealing with summary judgment and striking out observed that, *"While applications to strike out under r.3.4(2)(a) and for summary judgment have in common the core assertion that the other party cannot succeed on its pleaded case, there is of course a difference in approach. Whereas the focus of the enquiry under r.3.4 is upon the pleading, Part 24 requires analysis of the evidence. That said, the court should be wary of any invitation to weigh competing evidence and make findings upon the papers. Summary judgment is only to be given in clear cases."*

[17] This point was subsequently reiterated by Mrs Justice Yip in a further judgment in the *Coghlan* litigation (*Coghlan v Chief Constable of Cheshire Police*), when she observed (at para [68]):

> *'In* James-Bowen & Others v Commissioner of Police for the Metropolis *[2016] EWCA Civ 1217, the Court of Appeal noted that Defendants seeking to challenge claims at an early stage will frequently seek to rely on both provisions but that it is important to appreciate that they provide different grounds of relief. An application under r.3.4(2)(a) is concerned with striking out defective statements of case. It requires the court to examine the statements of case to decide whether the allegations, if established, are capable as a matter of law of supporting the cl aim. Part 24 is concerned with the prospects of success, in relation to which Moore-Bick LJ said: "It proceeds primarily on the assumption that the statement of case is not defective as a matter of law, but that the pleaded case has no real prospect of being made good at trial. Inevitably the two overlap when the pleaded case is said to be bad in law, because a case which is bad in law has no*

prospect of success, but in principle it is desirable not to confuse the different procedures.”’

STRIKING OUT CLAIM-RULE 26.3(1) (b) (c)

[18] Rule 26.3 (1) of the CPR sets out the circumstances in which the court may strike out a litigant’s statement of case.

The rule states:

“(1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court-
(a) that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;
(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;
(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim;...”

[19] In relation to rule 26.3(1) (b), the Civil Procedure Rules do not specifically define what is meant by an "abuse" of the court's process or a claim that is likely to obstruct the just disposal of the proceedings. Therefore, it is the Court that is to determine what constitutes either, based on the particular facts of each case. The court in **Attorney General v Barker [2000] EWHC 453 (Admin)** defined this terminology to mean “the use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process”.

[20] The Court of Appeal in the matter of **West Indies Petroleum Limited v Wilkinson and Levy [2023] JMCA Civ 2** G Fraser JA (Ag), in examining the concept stated that “the circumstances in which the court may strike out a statement of case on the ground that it amounts to an abuse of the process of the court are varied. There can be no limited or fixed categories of the kinds of circumstances in which the court has a duty to exercise this salutary power since the category of cases in which it may arise is not closed”.

[21] Some of the instances in which the court has viewed a claim as an abuse of process include but not limited to;

(a) litigating issues which have been investigated and decided in a prior case **(see Johnson v Gore Wood and Perkins v Devoran Joinery Company Ltd [2006] EWHC 582);**

(b) inordinate and inexcusable delay **(see Grovit v Doctor and others [1997] 1 WLR 640 and Habib Bank Ltd v Jaffer (Gulzar Haider) [2000] CPLR 438, CA);**

(c) re-litigation of issues already settled by a compromise, which was the point of dispute in **Clarence Ricketts v Tropigas SA Ltd and others (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 109/1999, judgment delivered 31 July 2000**,

[22] Likely to obstruct the just disposal of the proceedings has been viewed as contemplating a situation where a litigant has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial. **(See Arrow Nominees v Blackledge and others [2001] B.C. 591)**

[23] As relates to rule 26.3 (1) (c), the interpretation of this rule has been ably dealt with by Sykes J, as he then was, **in Sebol Limited and Select Homes v Ken Tomlinson etal Claim no HCV 2526/2004**. His approach was endorsed by the Court of Appeal in their judgment in the said case. Sykes J, in interpreting Rule 26.3 (1) (c) at paragraph 24, said this:

> *"Let us look at what rule 26.3 (1) (c) actually says. The rule does not speak of a reasonable claim. It speaks of reasonable grounds for bringing the claim. It would seem to me that simply as a matter of syntax the instances in which a claim can be struck out against a Defendant are wider than under the old rules. The rule contemplates that the claim itself may be reasonable, that is to say, it is not frivolous, unknown to law or vexatious, but the grounds for bringing it may not be reasonable. Clearly the greater includes the lesser. Thus if the claim pleaded is unknown to law then obviously there can be no reasonable grounds for bringing the claim. It does not necessarily follow, however, that merely because the claim is known to law the grounds for bringing it are reasonable. The rule focuses on the grounds for bringing the claim and not on just whether the pleadings disclose are reasonable cause of action."*

[24] Finally, whether it is rule 26.3 (1) (b) or (c), the authorities have indicated that in its consideration of such applications, the Court is mainly concerned with the

adequacy of the statements of case and pleadings, and whether they disclose reasonable grounds for bringing or defending the action. Additionally, the court should not be quick to strike out a statement of case, such a power is one of "last resort".

ANALYSIS

Summary Judgment-Rule 15

[26] I will start my analysis by addressing the Defendant's first issue in its application. That is the application for summary judgment. It is now settled that cases that are hopeless should not be allowed to continue. I agree with the Defendant's submissions that the power to decide whether summary judgment should be granted is a discretionary one and in deciding to exercise this discretion, the court is required to assess the relevant party's real prospects of success.

[27] The starting point for considering whether Summary Judgment should be granted is Part 15 of the Civil Procedure Rules 2002(C.P.R.). Part 15.2 states that:

> *The court may give summary judgment on the claim or on a particular issue if it considers that-*
>
> *i. the Claimant has no real prospect of succeeding on the claim or the issue; or*
>
> *ii. the Defendant has no real prospect of successfully defending the claim or issue.*

[28] The test for real prospect of success as referred to in the English rules(Rule 24.2) was discussed in ***Swain v. Hillman*** **[2001] 1 All E.R. 91**, a decision of the English Court of Appeal. In our jurisdiction, Anderson J in **Caribbean Outlets Limited v. Beverley Barakat C.L. 2002 C145** delivered May 19 2004, adopted the English Court of Appeals test. Lord Woolf MR in elucidating the test in **Swain**, page 92. indicated that in order to dispose summarily of a case, the judge has to be satisfied that there was no realistic chance of the case succeeding. The word "real" is in "contra-distinction" to a fanciful prospect of

success. For the proper disposal of an issue under our summary judgment rules, like the English rules, the judge ought not to conduct a mini-trial. Summary judgment is really designed to deal with cases that do not merit trial at all. In **Swain** page 92 g-h. Lord Woolf discussed the English rule 3.4. which is essentially in the same terms as our Rule 26.3(1) (c) and deals with striking out a statement of case or part of it. He states:

"Clearly, there is a relationship between r.3.4 and r. 24.2. However, the power of the court under Pt. 24, the grounds are set out in r. 24.2, are wider than those contained in r. 3.4. The reason for the contrast in language between r. 3.4 and r. 24.2 is because under r. 3.4, unlike r. 24.2, the court generally is only concerned with the statement of case which it is alleged discloses no reasonable grounds for bringing or defending the claim.

[29] Perhaps, it is because the court has to assess the relevant party's real prospects of success, why the drafters of the CPR included rule 15.5 which deals with evidence for the purpose of summary judgment hearing. That rule states in effect that for an application for summary judgment parties are to file affidavits for or against an argument for summary judgments. However, I remind myself here that I am not conducting a trial and I am restrained from applying the balance of probabilities standard of proof as is usually done in cases tried. See Jackson Haisley J **in Easton Lozane v Junior Beckford [2020] JMSC Civ.106 (paragraph 18)**

[30] For completeness I wish to also refer to Part 30 of the CPR which is entitled "Affidavits" and outlines the applicable practice and procedure in relation to affidavit evidence as well as the parameters to be observed in respect of the content of that evidence. Rule 30.3(1) of the CPR provides that the general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge. As it relates to summary judgments the rule goes on further and state that the affidavit should also indicate which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief AND the source for any matters of information and belief.

[31] In support of its application for summary judgment, the Defendant has attached an affidavit from Ms. McCook exhibiting a number of documents. They are as follows;

PM1-copy of letter dated 18th March 2018 from Natalie Kerr of Direct Services to GENAC

PM2-copy of letter dated 27th of March 2018 from GENAC to Direct Claims

PM3- copy of letter dated 24th of May 2018 from Direct Claims to GENAC

PM4-letter of authorization

PM5-Third Party Release

PM6-copy of CIBC wire transfer to Direct Claims

[32] The crux of the Defendant's submissions as supported by the affidavit of Ms. McCook and the exhibits labelled PM1-6 to the application is that the Claimant having signed a release and discharge has extinguished his right to now bring a claim against the Defendant.

[33] The Claimant did not file any affidavit in response against the application. which would be the proper thing to do as required by rule 15.5 if they sought to challenge any aspect of the application filed by the Defendant.

[34] The Defendant in indicating that there is a signed release and discharge in this matter is in effect saying there has been accord and satisfaction. The learned authors of **Halsbury's Laws of England Volume 22 (2019)** state that accord and satisfaction is the purchase of a release from an obligation, whether arising under contract or tort, by means of any valuable consideration, not being the performance of the obligation itself. The accord is the agreement by which the obligation is prima facie discharged: it no longer needs to be in any particular form.

[35] Subject to any question of illegality, parties are free to negotiate and to compromise their disputes as they wish. This compromise can be in the form of a release and discharge. Whether or not it is a term of the compromise that the original obligation will be discharged upon performance of an obligation will normally be a matter of the construction of the compromise into which the parties have entered, to which the normal rules of interpretation of contracts will apply.

[36] In the matter of **BCCI SA v Ali [2001] UKHL 8, [2001] 1 All ER 961)**the issue as to whether signing a release could bar a subsequent claim by an employee who brought the claim was discussed. The court ruled that although a party could, at any rate in a compromise agreement supported by valuable consideration, agree to release claims or rights of which he was not, and could not, be aware, the court would be slow to infer that he had done so in the absence of clear language to that effect. In that case, the court ruled that *"neither the bank nor N could have realistically supposed that a claim for stigma damages lay within the realm of practical possibility. On a fair construction of the document, it was impossible to conclude that the parties had intended to provide for the release of rights and the surrender of claims which they could never have had in contemplation at all. If the parties had sought to achieve so extravagant a result, they should have used language which left no room for doubt and which might at least have alerted N to the true effect of what (on that hypothesis) he was agreeing"*.

[37] The concept of what constitutes a valid release and discharge and the principles surrounding same have been examined in a number of authorities in our local courts. These authorities also confirm the principles highlighted above. In **Keith Recas and John Johnson v Winsome Wickham (unreported) Court of Appeal, Jamaica, Supreme Court Civil Appeal No 62/2005, judgment delivered July 31, 2006,** Panton JA stated that *"so far as a release is concerned, there is no particular form of words that is necessary to constitute a valid release. Words which show a clear intention to renounce a claim or discharge are sufficient".* In analysing the facts of the appeal, he went on to say, *"in the instant case, there is nothing to indicate that the respondent has*

released the appellants from liability from the accident or has agreed to the waiving of any rights that may have accrued to her".

[38] In **Elaine Dotty v Carmen Clifford (Executrix of the Estate of Dr. Royston Clifford) and the Spanish Town Funeral Home Ltd (unreported) Supreme Court, Jamaica Claim no. 2006 HCV 0338** McDonald-Bishop J(Ag) (as she then was), in examining whether the release in that matter satisfied the principles of accord and satisfaction had this to *say "the authorities are all agreed that it is the satisfaction that discharges the tort and is a bar to further action in respect of it."* In that case she noted that there was no satisfaction and therefore it would stand to reason that the tort had not been discharged as sums that were to be paid were outstanding. In that regard she went on to say, *"It is clear on whatever analysis is employed, for there to be a release and discharge in the circumstances of this case, there must be satisfaction."*

[39] From the foregoing, it is evident that the court must examine the documents attached to the affidavit of Ms. McCook to determine whether they constitute a valid release and discharge. If the answer is that they do, then the court must then examine the effect of same and whether the application by the Defendant for summary judgment should be granted.

[40] From the documents it is shown that the first correspondence in relation to any request from the Defendant came from Direct Claims Services (a claims negotiator) to General Accident Insurance Company (GENAC) by way of letter dated the 18th of March 2018. In that letter reference is made to Mr. Neville Davidson as being their client and Serge Island Dairies as "your insured". The letter made reference to an incident that occurred the 17th of July 2017. However, it went on to speak about an accident along Race Course Road.

[41] By way of letter dated the 27th of March 2018 GENAC responded to Direct Claims Services indicated that they acknowledged and noted the contents but were not aware of any motor vehicle accident involving Mr. Davidson.

[42] It would appear from the letter dated the 24th of May 2018 from Direct Claims that the reference to a Motor Vehicle Accident in their letter dated the 18th of March 2018 was incorrect. The court is of this view because, in the same letter dated the 24th of May 2018, Direct Claims clarified that the incident they are referring to, that occurred on the 17th July 2017, is in relation to a job site accident. They stated that they represent Mr. Neville Davidson and that from their instructions he was injured while working on a backhoe when a section of it fell on his leg resulting in injuries. From the affidavit of Ms. McCook, the parties reached a settlement and the Claimant purportedly signed a release and discharge which is exhibited to the said affidavit.

[43] I am of the view that the details given by Direct Claims could have only come from the Claimant, as the specifics of what took place on the 17th of July 2017 are exactly what was put in his Claim Form and Particulars of Claim filed on the 31st of December 2021. Whether Direct Sales was authorized to negotiate any claim on his behalf is also evidenced by exhibit PM4 headed "letter of authorization" attaching a TRN and National ID purported to be signed by the Claimant indicating that Direct Claims Services is authorised to act on his behalf in relation to an accident that occurred July 17, 2017 and that no one else is acting on his behalf. This was signed March 31, 2018. If they were not so authorised, evidence to the contrary would have had to be submitted by the Claimant by way of a reply to the defence or an affidavit in response to the application. None was submitted.

[44] Exhibit PM5 entitled "third party release" states that

> *"I Neville Davidson hereby agree to accept the sum of One Million ($1,000,000) which is paid to me by General Accident Insurance Company Insurance Company Jamaica Limited on behalf of Seprod Limited and Serge Island Dairies Limited and Serge Island Farms Limited and in respect of personal injury and loss or damage to property or any loss of any nature sustained by me from an incident which occurred at SIFL Farm 8 (Belvedere) on or about July 17, 2017."*

"I accept this sum in full and final settlement, satisfaction and discharge of all claims upon the said General Accident Insurance Company Insurance Company Jamaica Ltd on behalf of Seprod Limited and Serge Island Dairies Limited and Serge Island Farms Limited or any other person or persons…"

[45] The wording of the document is indeed characteristic of a typical release and discharge. Although the Claimant's Claim Form concerns an incident that occurred at Serge Island Dairies Limited and the release speaks to an incident that occurred at SIFL Farm 8, the release and discharge undoubtedly concerns the same location and incident as reference is not only made to the incident that occurred on the 17th of July 2017 on SIFL Farm but also that the settlement is made on behalf of Seprod Limited and Serge Island Dairies Limited (the Defendant in the claim).

[46] The document went on to say;

"further I accept this sum only by way of compromise of the claim that I have made and it is not an admission of liability on the part of the aforesaid persons and in consideration therefore I hereby release and discharge them from all claims costs and demands whatsoever arising directly or indirectly out of the said accident. And I do hereby agree not to file or pursue any action or suit against the said General Accident Insurance Company Insurance Company Jamaica Ltd, Seprod Limited and Serge Island Dairies Limited and Serge Island Farms Limited a and or any other person or entity with respect to this accident and that other persons be absolutely and finally exonerated and discharged from all future and other claims of every nature and kind whatsoever by me or on my behalf arising out of or in connection with or traceable to the said occurrence".

It is therefore understood and agreed that payment of the above mentioned sum should be made to and received by Direct Claim Services"

[46] In addition, to this document, PM6 shows that on the 10th June 2019, one million dollars was transferred to Direct Claim Services.

[47] This appears to be unlike the situation in **Keith Recas v John Johnson and Winsome Wickham,** where Ms. Wickham had no idea that a compromise was reached between her husband and the insurance company. From the documents submitted it appears that although the release and discharge was originally negotiated between Direct Services and the Defendant, a signature purporting to be the Claimant's signature and ID and TRN is attached. The release and discharge is between himself and the Defendant and two other groups of companies associated with the Defendant. In addition, it appears as though the condition was satisfied as evidenced by the wire transfer submitted as exhibit PM6. If this were not so, the proper thing would have been for the Claimant to file a reply to the defence or an affidavit in response to the application at the very least. None were filed.

[48] As it concerns Direct Claims Services acting on behalf of the Claimant, there is no evidence that contradicts that they had no authority so to do. There are various letters between Direct Claims Services and GENAC who acted for the Defendant and the other related companies. It was also clear from the release and discharge that the sums were to be paid to Direct Claims Services directly on behalf of the Claimant. If, the Claimant was opposed to this, or any other arrangements existed, it would have been in his interest to indicate this through an affidavit in response to the application for summary judgment. He has not done so, and thus in the absence of anything from the Claimant refuting the Defendant's claim, his claim would not have any real prospect of success.

[49] Finally, as it relates to the issue of undue influence or whether the bargain was unfairly conducted, there is no evidence before the court to support any such contention. Direct Services appears to be an independent third party specialising in negotiating claims that acted on behalf of the Claimant. There is no evidence on affidavit from the Claimant to say that he was coerced into signing any document or that he did not get the necessary guidance from Direct Services. In fact, a signature purported to be his signature is affixed to a letter

of authorisation being given to Direct Services, with his TRN and National ID and a release giving Direct Services the "go ahead" to collect these funds on his behalf. I am reminded at this juncture of what Mangatal J stated in **Rio Brown v N.E.M Insurance Company [2012] JMSC Civ 27,** *"There is a reason why one must be very careful what one signs. Appending one's signature to the document can signify authorship or adoption of its terms, and render the signatory the maker of the document".*

The Legal Effect of Release and Discharge

[50] It is clear from the authorities that once a release and discharge has been signed in good faith the rights of the parties are extinguished. In this regard I rely on the oft cited **Alcan Jamaica Company v Delroy Austin and Hyacinth Austin (unreported) Court of Appeal, judgment delivered December 20, 2004 Smith JA** stated that once the agreed consideration had been accepted then *"the original right of action is discharged and the accord and satisfaction constitute a complete defence to any further proceedings upon that right of action".*

[51] The release and discharge signed by Mr. Davidson states that he accepted the sum of one million dollars *"in full and final settlement, satisfaction and discharge of all claims upon the said General Accident Insurance Company Insurance Company Jamaica Ltd on behalf of Seprod Limited and Serge Island Dairies Limited and Serge Island Farms Limited or any other person or persons…".* It further states that the acceptance of this was *"only by way of compromise of the claim that I have made and it is not an admission of liability on the part of the aforesaid persons and in consideration therefore I hereby release and discharge them from all claims costs and demands whatsoever arising directly or indirectly out of the said accident. And I do hereby agree not to file or pursue any action or suit against the said General Accident Insurance Company Insurance Company Jamaica Ltd, Seprod Limited and Serge Island Dairies Limited and Serge Island Farms Limited"*.

[52] Undoubtedly, the acceptance of this sum under the release and discharge is in relation to the incident that occurred on the 17th of July 2017, the very same incident for which he filed a claim against the Defendant in this court.

[53] The final question therefore is whether the court ought to enter summary judgment against the Claimant and whether the criteria for entering summary judgment have been met. The test in this regard is whether, the Claimant would have no real prospect of succeeding on the claim. (See principles enunciated in **Barbican Heights** and **Taylor-Wright (Marvalyn) v Sagicor**

[54] There are a number of authorities that demonstrate that *"when the satisfaction has been agreed upon, has been performed and accepted, the original right of action is discharged and the accord and satisfaction constitute a complete defence to any further proceedings upon that right of action".* Of note are the following authorities that I have summarised here.

(a) Rio Brown v NEM Insurance Company (Ja) Ltd [2012] JMSC Civ 27-Claimant sought to pursue relief having executed the form of acceptance and received sums from NEM pursuant to the release and discharge. The court ruled there was accord and satisfaction and he was not entitled to file a claim with respect to same.

(b) Ralph Graham v Guardian General Insurance Company Limited [2021] JMSC Civ 44-Claimant sought a declaration that the insurance company should honour a default judgment and that he did not sign a release to cover his personal injury. Court ruled that the Claimant knew that the release covered all his personal injury and ought not to have brought an action in the lower court after the execution of the release.

(c) Raynor v Lloyd and Allison [2022] JMSC Civ 47 after signing a release and discharge, the Claimant filed a claim in the basis that his signature placed on the document due to his desperation and financial constraints and the advice that he

received that in order to speed up the process he had to sign a document stating that he was no longer pursuing a claim for personal injuries. Further, that at no point prior to signing was it ever explained to him that he would no longer be able to pursue his personal injury claim separately and at a later date. The court held that the Defendant proved on a balance of probabilities that there has been accord and satisfaction and that the satisfaction has been performed and there has been through the Claimant's insurance company an acceptance of the consideration provided. As a consequence, the Claimant's right to bring an action against the Defendant in Negligence for personal injury and property damage has been extinguished. There was also no evidence that he was not aware of what he was signing to when he signed the release and discharge.

[55] The Claimant, Mr. Davidson's claim concerned an incident that occurred on the 17th July 2017 at the Defendant's premises. The release and discharge exhibited by the Defendant in its application for summary judgment that is purported to have been signed by the Claimant in essence accepting the sum of one million dollars and absolving the Defendant and other named subsidiaries from any further liability, concerns the very same incident. This has not been challenged. From the authorities examined on the area, undoubtedly, the Claimant would have no real prospect of succeeding on the claim if the matter went to trial.

Striking out-Rule 26.3 (1) (b)

[56] Though the Defendant's application for summary judgment from the analysis has succeeded and usually, there would be no need for me to address his alternative orders sought. I have decided for completeness to address them.

[57] The Defendant's application had prayed in the alternative that the Claimant's claim be struck out and relied on rule 26.3 (1) (b) which deals with striking out on the basis that the claim is an abuse of process or obstruct the just disposal of the proceedings. It is clear that the latter contemplates a situation where the

litigant will frustrate any trial proceedings to be conducted fairly and justly. There is no such evidence presented before the court that the Claimant would frustrate or as the rule states "obstruct" the just disposal of the proceedings. As such, the application to strike out the Claimant's claim would fail on this ground.

[58] The Defendant argues that the basis for seeking the order to strike out on the ground of abuse of process is that the Defendant was never the employer of the Claimant. They also argued that this cannot be proved against the Defendant. The Claimant in his Particulars of Claim and Claim Form indicate that his claim is one grounded in negligence and or occupier's liability. It is his claim that he was an employee of Serge Island Diaries Limited and was invited on the premises in this capacity when he was injured.

[59] From the pleadings by the Claimant and the Defendant's defence, there are contending issues between the parties. On one hand the Claimant is asserting that there was an employee and employer relationship and when he was injured the Defendant owed him a duty of care. The Defendant is denying any such relationship existed and denies owing the Claimant a duty of care. It cannot be said that, from the face of the Claimant's pleadings that it is an abuse of process in light of these contending issues. The authorities have long decided that it is inappropriate to strike out a statement of case if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence. Based on the foregoing contending issues, the application in the alternative for striking out on this ground would fail.

Striking out-rule 26.3 (1) (c)

[60] Rule 26.3 (1) (c) states that if a cause of action discloses no reasonable grounds for bringing the claim the Court should act to have the statement of case struck out and the same is true where the defence provides no reasonable grounds on which the claim can be defended.

[61] This provision was examined by Batts J in **City Properties Limited v New Era Finance Limited 2013 JMSC Civ 23** where he stated; *"On the issue of the applicable law, the section is clear and means exactly what it says. There must be reasonable grounds for bringing or defending a claim. These reasonable*

grounds must it seems to me be evident on a reading of the statement of case. It is well established and a matter for which no authority need be cited, that upon an application to strike out pleading, no affidavit evidence need be filed, the issue is determined by reference to the pleadings."

[62] The court will not strike a claim out lightly. A claim is only to be struck out if it is clear and obvious that the claim, as pleaded, cannot succeed. The United Kingdom has a similar provision which is to be found in paragraph 3.4 (2) of Civil Procedure, 2016, Volume 1 (the White Book). The explanatory notes which accompany that provision state that striking out may be appropriate where the *"…Particulars of Claim disclose no reasonable grounds for bringing the claim: - 9 - those claims which set out no facts indicating what the claim is about; those claims which are incoherent and make no sense; and those claims which contain a coherent set of facts but those facts even if true, do not disclose any legally recognisable claim against the Defendant…". They include Particulars of Claim "which raise an unwinnable case where continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides…".*

[63] The application in the alternative would also fail on this ground as from the statement of case of the Claimant, assuming that the facts pleaded are true, it cannot be said that there are no reasonable grounds for bringing the claim against the Defendant.

CONCLUSION

[64] In light of the above analysis, the order for summary judgment by the Defendant would succeed. Having regard to the unchallenged release and discharge exhibited by the Defendant in its application for summary judgment, purportedly signed by the Claimant accepting the sum of one million dollars and absolving the Defendant and other named subsidiaries from any further liability, concerning the very same incident. From the authorities examined on the area, undoubtedly, the Claimant would have no real prospect of succeeding on the claim if the matter went to trial. I therefore make the following orders.

ORDERS

1. Application for Summary judgment is entered in favour of the Defendant/Applicant against the Claimant/Respondent.

2. Costs of the application are awarded to the Defendant/Applicant to be agreed or taxed.

3. Applicant's Attorney-at-Law to prepare file and serve formal order herein