



PREME COURT LIBRARY
WESTERN COURT LIBRARY
300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

[2013] JMSC Civ 206

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2012 HCV 06852

BETWEEN	DAYNE SMITH	CLAIMANT
AND	WILLIAM HYLTON	1 ST DEFENDANT
AND	ANNMARIE HYLTON	2 ND DEFENDANT

Richard Reitzin instructed by Reitzin and Hernandez for the Claimant

Sherry-Ann McGregor instructed by Nunes Scholefield DeLeon & Company for the Defendants

Heard: November 19, 2013

Assessment of Damages

C. Brown J (Ag.)

Reasons for Judgment

[1] On the Assessment of Damages coming on for hearing on the 19th November 2013, Counsel for the defendants submitted that the Assessment of Damages against the 2nd defendant should not proceed as there was a triable issue outstanding against the 1st defendant. In the circumstances, the claimant was required to elect to discontinue against the 1st defendant, otherwise the Assessment of Damages must await the outcome of the trial.

[2] The 2nd defendant relied on the authority of **Rukhmin Balgobin v South West Regional Health Authority** [2012] UKPC 11, a judgment of the Privy Council from the Court of Appeal of the Republic of Trinidad and Tobago.

NOT

[3] The claimant contended that not to proceed would render the order by Marsh J as nugatory. It was submitted further that where one defendant admits liability and the other doesn't, that there is no automatic stay of proceedings against the other defendant.

[4] The court considered that the practical issues that arose were:

1. Would the 1st defendant have an amount awarded against him in proceedings that he could not participate in?
 2. Would the judge subsequently determining the matter be bound by the same quantum of damages upon hearing different evidence
- and went on to consider the relevant law.

[5] Paragraph 833 of **Halburys Laws of England** Volume 12 (1) relied on by the 2nd defendant states:

"The damage that results from one and the same cause of action must be assessed and recovered once and for all"

and would support the 2nd (defendant's contention).

[6] The 2nd defendant also relied on the case of **Rukhmin Balgobin v South West Regional Health Authority** [2012] UKPC 11, a Privy Council judgment on appeal from the Court of Appeal of the Republic of Trinidad and Tobago. In paragraph 11 dealing with the principle of merger, Lord Kerr quoted from the judgment of Parke B in **King v Hoare** [1844] 13 M and W 494, 504-505:

"If there be a breach of contract, or wrong done, or any other cause of action by one against another, and judgment be recovered in a court of record, the judgment is a bar to the original cause of action, because it thereby reduced to a certainty, and the object of the suit attained, Thus it has been held, that if two commit a joint tort, the judgment against one is, of itself, without execution, a sufficient bar to an action against the other."

[7] In the same case of **Balgobin**, Lord Kerr goes on to say at paragraph 16:

“...As a matter of principle, where a claim against two possible defendants can be made and the espousal of a case against one defendant is necessarily inconsistent with the maintenance of a claim against a second defendant, a deliberate choice of one should preclude the continuance of a claim against the other.”

[8] I would therefore agree with Counsel, Mr. Reitzin that this was not an instance, it concerning vicarious liability, in which an election had to be made.

[9] The Notice of Application for Court Orders filed on November 28, 2012 included Case Management Orders. It must have been an oversight on the part of Counsel not to have sought the Case Management Orders against the 1st defendant, judgment having been entered for the 2nd defendant only.

[10] The possible trial date for the 1st defendant would therefore not have been in the contemplation of the judge when fixing the date for the Assessment of Damages and so it could not have been contemplated by the judge that the Assessment of Damages would proceed prior to the trial of the matter against the 1st defendant.

[11] After considering all the authorities cited by Counsel, I accept as a correct statement of the law, the earlier quotation from **Halsburys Laws of England** as applicable in this jurisdiction.

[12] In that event, there cannot be two Assessments of Damages in one action. Assessment of Damages against the 2nd defendant cannot proceed before the trial against the 1st defendant.

[13] Concerning the question of costs, it is my view that the 2nd defendant though successful could have made the application sooner than the date of Assessment.

[14] It is therefore ordered as follows:

1. Assessment of Damages against the 2nd defendant be adjourned to be heard at the same time as the trial between the claimant and the 1st defendant.
2. No order as to costs.
3. Permission to appeal is refused.
4. Defendants' attorney to prepare, file and serve Order.