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AMS ✓

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CL1996/W185

BETWEEN WINSOME WICKHAM CLAIMANT
AND KEITH RECAS 1st DEFENDANT
AND JOHN JOHNSON 2nd DEFENDANT

J. Daley and P. Brown-Rose instructed by Blackridge Covington
for the Defendants/Applicants

A. Campbell for the Claimant/Respondent

Heard: April 21, 2005

Beswick J.

Reasons for judgment

Keith Recas and John Johnson in this Pre-Trial Review applied for the claim against them to be struck out as being an abuse of the process of the Court.

In April 1993, a motor vehicle accident occurred in St. Catherine. Involved were Mr. Recas' motor bus being driven by Mr. Johnson and a motor car driven by Mrs. Wickham and owned by her husband, Mr. Thomas Wickham.

Each driver blamed the other for the damage which resulted . Mrs. Wickham filed suit against Mr. Recas and Mr. Johnson.

Dyoll Insurance Co. Ltd (Dyoll) were the insurers for Mr. Wickham's motor car. United General Insurance (UGI) were the insurers for Mr. Recas' car.

About January 1994 the attorneys-at-law for Dyoll negotiated a settlement with attorneys-at-law for UGI. In February 1994 Dyoll paid to these attorneys the agreed amount in full and final settlement of Mr. Recas' claim for the accident.

Mr. Daley, for Mr. Recas, submits that that settlement is binding on Mrs. Wickham and is a bar to this suit filed by her against Mr. Recas and Mr. Johnson.

Mrs. Winsome Wickham had obtained judgment in default of the appearance of the defendants. Subsequently the judgment was set aside and the defendants filed a defence.

Orders were made at a Case Management Conference and the evidence is that whilst preparing to comply with the Orders the attorneys-at-law for UGI noticed that a settlement had earlier been obtained from Dyoll, in favour of Mr. Recas.

Counsel for Mr. Recas and Mr. Johnson, in this pre-trial review have urged the Court to accept that continuing the suit would be an abuse of process as there is already a settlement. *Jamesonv. Central Electricity Generating Board* [2000] 1 AC 455.

He argued that the settlement was clearly in full satisfaction of all claims, for all parties and Mr. Recas would not be able to counterclaim. Mrs. Wicknam could not therefore properly file a claim. Finality was the aim.

The main question to be determined is whether the Discharge can, without more, bind Mrs. Wickham.

Mrs. Wickham claims for the damage to the car and also to herself. She particularizes several injuries to her legs and arms with the attendant need for medical care for life.

The agreement forming the basis of this application reads:

FINAL THIRD PARTY DISCHARGE

Received from DYOLL INSURANCE COMPANY LIMITED on behalf
.....
.....the sum
of \$500,000.00 (FIVE HUNDRED THOUSAND DOLLARS).....AS AN
ex-gratia payment in full and final settlement of all claims in respect of injury and damage whether
now or hereafter to become manifest arising directly or indirectly from an accident which occurred
on or about 26th April 1994

It is understood that no legal liability is admitted or accepted by DYOLL INSURANCE
COMPANY LIMITED or its Insured or Driver for the accident.

SIGNED
WITNESSED
DATE 26/1/94

A signature on it purports to be that of Mr. Recas.

It is to be noted that the payment is not from Mr. Thomas Wickham himself, but rather, from Dyoll, his insurers.

There is no signature of Mr. Wickham on the document, nor is there any evidence before the Court to show that he agreed to the terms of this discharge purportedly entered into on his behalf.

In my view, Dyoll chose to make this payment. There is no evidence that Mrs. Wickham was aware of it or consented to it.

I reject the submission of Mr. Daley for UGI, that the assumption must be that Mr. and Mrs. Wickham were aware of the agreement because it is for their benefit. He failed to support that submission with any law. He has not even stated the nature of the benefit accruing to the Wickhams.

It is my judgment that Mrs. Wickham is not bound by this discharge and consequently she is able to pursue her suit.

Application for claim to be struck out was dismissed with costs to the claimant to be agreed or taxed. Leave to appeal granted.