



[2020] JMSC Civ.252

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

**CIVIL DIVISION**

**CLAIM NO. 2016HCV02654**

<b>BETWEEN</b>	<b>ALAIN BECKFORD</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MILTON O'CONNOR</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>ISLAND CAR RENTALS LIMITED</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN CHAMBERS**

Mr. Lawrence Phillpotts instructed by Lawrence Phillpotts, Brown & Co. for the Claimant

Mr. Monroe Wisdom instructed by Nunes, Scholefield, DeLeon & Co. for the 2<sup>nd</sup> Defendant

Heard: December 9, 2020 and December 18, 2020

**Summary Judgment – Negligence - Vicarious Liability – Agency**

**CARR, J (AG.)**

**Introduction**

[1] The Claimant, Alain Beckford, brought an action to recover damages for negligence as a result of a motor vehicle accident which occurred on the 24<sup>th</sup> of September 2012. Mr. Beckford was driving his motor vehicle along a road in the parish of St. Mary when the 1<sup>st</sup> Defendant, Milton O'Connor, collided with his

vehicle. The Claim form states that the 1<sup>st</sup> Defendant was either acting in his own capacity or as an agent and or servant of the 2<sup>nd</sup> Defendant.

- [2] Service of the claim form, which was filed on the 27<sup>th</sup> of June 2016, was only effected on the 2<sup>nd</sup> Defendant.

### **The Application**

- [3] The 2<sup>nd</sup> Defendant filed a notice of application for court orders on the 1<sup>st</sup> of October 2019 seeking the following:

- a) That referral to mediation in the civil jurisdiction of the court is dispensed with.
- b) That summary judgment is entered against the Claimant in favour of the Applicant/2<sup>nd</sup> Defendant.
- c) In the alternative, that the Claimant's statement of case as against the Applicant/2<sup>nd</sup> Defendant be struck out.
- d) That costs of this application be costs borne by the Claimant.
- e) Such further and other relief as this Honourable Court deems fit.

- [4] The grounds on which the Applicant is seeking the orders are as follows:

- a) Summary judgment is being sought on the ground that the Claimant has no real prospect of succeeding on the claim against the Applicant/2<sup>nd</sup> Defendant pursuant to Part 15.2 (a) of the Civil Procedure Rules, 2006.
- b) Alternatively, the claim ought to be struck out against the Applicant/2<sup>nd</sup> Defendant pursuant to Rule 26.3 (1) (b) and/or (c) as it discloses no reasonable grounds for bringing the claim against the Applicant/2<sup>nd</sup> Defendant.
- c) That the Applicant/2<sup>nd</sup> Defendant was at all material times a limited liability company duly registered under the Laws of Jamaica and operating as a rental company.

- d) That motor vehicle registered 0637 BH was subject to a rental agreement entered into on September 21, 2012 by the Applicant/2<sup>nd</sup> Defendant and the 1<sup>st</sup> Defendant, Milton O'Connor.
- e) That at the time of the accident, the 1<sup>st</sup> Defendant was not acting as a servant and/or agent of the Applicant/2<sup>nd</sup> Defendant.
- f) Furthermore, at the material time of the said incident, the Applicant/2<sup>nd</sup> Defendant had no interest in the purpose for which the said motor vehicle was being used by Milton O'Connor.
- g) Accordingly, the Applicant/2<sup>nd</sup> Defendant cannot be held vicariously liable for the actions of the 1<sup>st</sup> Defendant.

## **Submissions**

### **On behalf of the Applicant/2<sup>nd</sup> Defendant**

- [5] Counsel, Mr. Wisdom, referred to the Affidavit of Mr. Martin Gutzmore in support of the application. At paragraphs 5 through to 7 he averred that there was a signed rental agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant which was exhibited and marked "MG" for identification. The rental agreement was entered into on the 21<sup>st</sup> of September 2012 and the vehicle was to be returned on the 24<sup>th</sup> of September 2012. An application fee was also paid. On the date the vehicle was to be returned the 1<sup>st</sup> Defendant reported an accident with the Claimant's motor vehicle in the parish of St. Mary.
- [6] The sole issue to be determined it was argued, is whether or not the 2<sup>nd</sup> Defendant being renters of a motor vehicle can be held to be vicariously liable for the negligence of the 1<sup>st</sup> Defendant?
- [7] In answer to this question, Counsel relied on the authority of **Avis Rent-a-Car v. Maitland (1980) 32 WIR 294**. The principle gleaned from this decision was

restated in the case of **Island Car Rental v. Headley Lindo (2015) JMCA App. 2** where at paragraph 1 of the judgment Brooks, J (as he then was) stated:

*“Avis Rent-a-Car Ltd. v. Maitland...has long been accepted as the authority for the principle that a person who lets a motor vehicle out on hire, is not, by virtue of that transaction, vicariously liable for the negligent driving of the person to whom he hires the vehicle.”*

[8] In the circumstances, it was submitted, the law on the matter having been clearly set out, the Claimant has no real prospect of successfully establishing a claim in negligence against the 2<sup>nd</sup> Defendant as the actions of the 1<sup>st</sup> Defendant are not attributable to the 2<sup>nd</sup> Defendant.

[9] Counsel pointed out that although the court of appeal upheld the decision not to grant summary judgment the case could be distinguished from the matter now before the court. He highlighted the fact that in the cited case there were two issues for determination.

A) That of vicarious liability and;

B) Whether or not the vehicle provided by the rental company was defective.

In this case there was only one issue that of vicarious liability, and the Claimant was not in a position to satisfy the court as to that fact.

#### **On behalf of the Respondent/Claimant**

[10] Counsel, Mr. Phillpotts resisted the application. In his written submissions he set out the grounds of the Respondent/Claimant:

- a) That Rule 1.1 of the Civil Procedure Rules (2002) as amended provides that these rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.
- b) That Rule 1.1 of the CPR provides that the court must seek to give effect to the overriding objective when interpreting these rules or exercising any powers under these rules.

- c) That the discretionary power to strike out a claim pursuant to Rule 26.3 (1) of the CPR must be exercised judicially with extreme caution.
  - d) That this claim is not a plain and obvious case which warrants the severe sanction of having his statement of case struck out at the first and only occasion.
  - e) That the Claimant has a real prospect of succeeding on the claim hence summary judgment should not be entered.
  - f) That summary judgment is not usually granted in negligence claims and this claim is a negligence claim.
  - g) That where there are significant differences between the parties so far as factual issues are concerned, the court is in no position to conduct a mini trial of the issues which is the position in the instant case hence summary judgment should not be entered.
  - h) In considering an application of summary judgment, the court must bear in mind that granting summary judgment is a serious step.
  - i) That despite the 2<sup>nd</sup> Defendant/Applicant stating that the First Defendant is not its agent yet they filed a Defence disputing the issue of negligence by the 1<sup>st</sup> Defendant.
  - j) That the grant of the relief sought by the 2<sup>nd</sup> Defendant/Applicant would prejudice the Claimant/Respondent.
- [11]** Counsel began his oral submissions at the point of the burden of proof. It was stressed that it was the Applicant who bore the burden of establishing that there was no real prospect of success. The fact that a Defence challenging the particulars of negligence was filed underscored the point that there was a serious factual issue to be tried. It would be for the court to determine after hearing the evidence whether or not there was in fact a relationship of agency.
- [12]** The back page of the exhibit he pointed out was blank and was of no assistance to the court in determining the terms and conditions of the rental agreement. There

was nothing on the face of the document that refutes the relationship of agency. There was nothing to indicate its use or mixed use between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant. This he said was a vital piece of evidence which was necessary in light of the burden of proof resting with the Applicant/2<sup>nd</sup> Defendant.

[13] It was submitted that the court rarely gives summary judgment in negligence cases especially in circumstances where the defence has denied liability.

[14] The 1<sup>st</sup> Defendant, Counsel argued, could very well attend court and speak to the issues of agency and contradict the 2<sup>nd</sup> Defendant. The terms of the 2<sup>nd</sup> Defendant's insurance policy were never put before the court either. At this stage the court was not seized of sufficient information to make a decision on summary judgment. The Claimant therefore had a right to have his case heard.

## The Law

[15] Rule 15.2 (a) of the CPR provides that:

*“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.”*

Rule 15. 3 sets out the cases for which summary judgment may not be given.

*“The court may give summary judgment in any type of proceedings*

*except –*

*(a) Proceedings for redress under the Constitution;*

*(b) Proceedings against the Crown;*

*(c) Proceedings by way of fixed date claim form;*

*(d) Proceedings for –*

*(i) False imprisonment;*

*(ii) Malicious prosecution; and*

(iii) *Defamation;*

(e) *Admiralty proceedings in rem, and*

(f) *Probate proceedings (other than under rule 68.56 (summary proceedings)).*

[16] The Privy Council decision of **Sagicor Bank Jamaica Limited v. Taylor Wright [2018] UKPC 12** at pages 6 and 7 emphasized the utility of the court's jurisdiction to enter summary judgment. It was stated:

*“Part 15 of the CPR provides, in Jamaica as in England and Wales, 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. Those parts of the overriding objective (set out in Part 1) which encourage the saving of expense, the dealing with a case in a proportionate manner, expeditiously and fairly, and allotting to it an appropriate share of the court's resources, all militate in favour of summary determination if a trial is unnecessary.”*

[17] The rules provide for the granting of summary judgment in specific cases. A claim in negligence does not fall within one of the exceptions to the rule. Although the authorities indicate that such claims should rarely be the subject of summary judgment the court also has to be guided by the overriding objective of the CPR which was so clearly set out in the **Sagicor Bank** case.

### **Analysis and Discussion**

[18] The sole basis upon which the 2<sup>nd</sup> Defendant was made a party to these proceedings, rests on the contention that the 1<sup>st</sup> Defendant was their agent and/or servant. That is what is contained in the pleadings of the Claimant. It is for this reason that the Claimant contends that the 2<sup>nd</sup> Defendant is liable to him in negligence because they are vicariously liable for the acts of their servants and/or agents.

- [19]** The principle of vicarious liability holds another person responsible for the injury or damage caused by someone else. The liability will only arise if the Claimant can show that the driver of the motor vehicle was using it for the owners' purpose or under delegation of a task or duty. The 2<sup>nd</sup> Defendant would therefore have to demonstrate by their pleadings, and any other evidence upon which they are relying in support of their application for summary judgment, that there is no relationship between their company and the 1<sup>st</sup> Defendant that would make them liable for the damage and or injury caused by the 1<sup>st</sup> Defendant.
- [20]** The 2<sup>nd</sup> Defendant averred at paragraph 2 of their Defence that they were in the business of renting vehicles and that the 1<sup>st</sup> Defendant was an authorized driver of the subject motor vehicle in accordance with a rental contract. They denied that the 1<sup>st</sup> Defendant was its servant and/or agent and stated that at all material times he was on his own business.
- [21]** In furtherance of their application for summary judgment and in proof of this averment the 2<sup>nd</sup> Defendant exhibited a copy of the rental agreement to the Affidavit of Martin Gutzmore. The agreement contains the name of the 1<sup>st</sup> Defendant, the registration plate of the vehicle, the deposit amount as well as the statement that the renter is liable for the first 1200.00 damage to the vehicle. The 2<sup>nd</sup> Defendant has therefore put forward evidence upon which the court can at this stage find that there is no relationship between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, since the contract was one for hire.
- [22]** The fact that the 2<sup>nd</sup> Defendant went on to deny the particulars of negligence and suggest that the Claimant was responsible for, or materially contributed to the collision, does not, as Counsel for the Respondent submitted, mean that there is a real issue to be tried between the Claimant and the 2<sup>nd</sup> Defendant. The Claimant would still have to address the issue of liability on the part of the 2<sup>nd</sup> Defendant.
- [23]** The Claimant's response to the application rested on the overriding objective, however, Counsel agreed that the main issue was that of agency. This could only

be determined, he argued, after a full trial of the matter. Based on the overriding objective the court has a duty to assess the value of cases in order to save the time and expense of a trial. The Claimant has provided no evidence to rebut the contract relied upon by the 2<sup>nd</sup> Defendant. It is their duty in the face of credible evidence, to put forward evidence of their own to satisfy a court that they have a case that has a reasonable prospect of success. Counsel suggested that the evidence **could (my emphasis)** either come from an insurance policy or from the 1<sup>st</sup> Defendant himself. This cannot be sufficient.

**[24]** It is apparent from the evidence presented by the 2<sup>nd</sup> Defendant that the Claimant has no real prospect of succeeding on the claim as stated against them. Unlike the **Island Car Rentals Ltd.** case, the sole issue in this matter as between the Claimant and the 2<sup>nd</sup> Defendant is one which has been previously addressed and determined before the court in the **Avis Rent-A-Car v. Maitland** case. Following that principle, the 2<sup>nd</sup> Defendant having let a motor vehicle for hire cannot be held vicariously liable for the negligent driving of the 1<sup>st</sup> Defendant.

**[25]** The 1<sup>st</sup> Defendant has never been served and therefore is not a party to the action. The only other evidence upon which a court could rely as to the relationship between the Defendants would have to come from him, it is unlikely in these circumstances that after eight years the 1<sup>st</sup> Defendant will make himself available to any court adjudicating on this case.

## **Conclusion**

**[26]** It is accepted that the exercise of the discretion to grant summary judgment in negligence claims should be exercised sparingly, it is a serious step and should not be taken lightly. However, in light of the reasoning above and in keeping with the overriding objective of the CPR to deal with matters expeditiously, consideration must be given to summary judgment in claims that cannot successfully be pursued against a defendant.

**[27]** The pleadings of the Claimant have attributed liability on the part of the 2<sup>nd</sup> Defendant based on the principle of vicarious liability. The 2<sup>nd</sup> Defendant has shown by the evidence contained in the affidavit in support of the notice of application that there was no relationship between itself and the 1<sup>st</sup> Defendant upon which a court could hold that they are liable for the actions of the 1<sup>st</sup> Defendant. The Respondent/Claimant having put forward no evidence in rebuttal, has placed nothing before this court to say otherwise.

**[28]** In the circumstances therefore I cannot find that the Respondent/Claimant has a real prospect of succeeding on the claim against the Applicant/2<sup>nd</sup> Defendant.

**Order**

1. Summary Judgment is granted to the Applicant/2<sup>nd</sup> Defendant.
2. Costs to the Applicant/2<sup>nd</sup> Defendant to be agreed or taxed.