[2022] JMSC Civ. 47

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016HCV01797

BETWEEN	**SHAYNE RAYNOR**	**CLAIMANT**
AND	**ANTHONY LEE LLOYD**	**1ST DEFENDANT**
AND	**LESLIE GILBERT ALLISON**	**2ND DEFENDANT**

IN OPEN COURT

Ms. Zuleika Jess instructed by Jess & Associates, Attorney-at-Law for the Claimant

Mr. Stuart Stimpson and Ms. Tashauna Grannum instructed by Hart Muirhead Fatta Attorneys-at-Law for the 1st Defendant

February 28, and April 22, 2022

Release and Discharge - Accord and Satisfaction - Undue Influence

Unconscionable Bargain - Agent and Principal - Subrogation

STEPHANE JACKSON-HAISLEY J

BACKGROUND

[1] The Claimant Steve Raynor claims Damages for personal injury and loss arising out of a collision with the vehicle he was driving and that being driven by the first Defendant Anthony Lee Lloyd who was the agent or employee of the second Defendant Leslie Gilbert Allison (now deceased). This took place on March 27, 2015 along Muirhead Avenue, May Pen in the parish of Clarendon when the vehicle being driven by the first Defendant collided in the rear of another vehicle which then collided with the Claimant's vehicle. He alleges that this collision resulted from the Negligence of the first Defendant and as a result, the Claimant sustained personal injury and his motor vehicle was

damaged. He claims Damages for the personal injury as well as for the damage caused to his motor vehicle.

[2] The first Defendant's Defence is that the collision was not caused by his Negligence. Further that the issue of quantum is also in dispute and the Claimant is put to strict proof of his claim. He further avers that the Claimant's cause of action under Tort was released by a deed dated 4th February 2016 in favour of the Defendants and GK General Insurance Company Limited (GKGI) and executed by the Claimant in consideration for the sum he received from GKGI. In this Release and Discharge the Claimant agreed to accept the sum of One Hundred and Eighty Thousand Dollars ($180,000.00) in full and final settlement, satisfaction and discharge of all claims upon the said GKGI.

[3] The Claimant has not taken issue with the fact that he did in fact sign a "Third Party Release" however, he avers that his signature was owing to the fact of 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. He asserts that he signed without having received legal advice.

[4] He further claims that upon receiving legal advice he became aware of the legal effect of a Release and he immediately informed his insurers the Advantage General Insurance (AGI). His Attorney-at-law on the 12th February 2016 by way of letter wrote to GKGI informing them that he would no longer accept said sum. To date he has not accepted the sum and he has not received any form of compensation in respect of this accident.

ISSUES

[5] The issues raised at trial were as follows:

1. Whether or not the Claimant's right to bring an action against the Defendant in Negligence for personal injury and property damage has been extinguished; and

2. Whether or not the Release and Discharge executed by the Claimant reflected an unconscionable bargain.

THE SUBMISSIONS

[6] Counsel on behalf of the Claimant submitted that whereas there may be accord, there is absolutely no satisfaction. She contended that the terms of the Release are clear and unambiguous in that it specifically stated that payment should be made to the Claimant. The Court is therefore duty bound to apply the ordinary meaning in interpreting the effect, the meaning and the nature of the release. The court should not bring into the words of the Release anything that is not clearly there. She asked that the Court give effect to the clear and unambiguous terms used. Where there exists an ambiguity it should be resolved in favour of the lay person and not the drafters of the Release and Discharge.

[7] In respect of the law on Release and Discharge she relied on the case of **Alcan Jamaica Company v Delroy Austin and Hyacinth Austin** SCCA No. 106/2002 (delivered December 20, 2004) in order to emphasize her point that an essential ingredient of a valid release is actual performance and acceptance of the consideration or satisfaction. She further stressed that where the consideration has not been performed there can be no valid discharge from liability, a principle she submitted was aptly demonstrated in the case of **Spanish Town Funeral Home Limited v Elaine Dotting**, SCCA NO. 47/2008 (Unreported) delivered January 23, 2008.

[8] She pointed out that it was not the pleaded case for the Defendant that payment to AGI was payment to the Claimant. She further argued that payment to an insurance company could not amount to satisfaction in these circumstances and the fact that it is their standard policy to do the Release and Discharge in this way does not mean that it

is right or will stand the scrutiny of a court. She contended that AGI was not the Claimant's agent and was never authorised to collect money for him.

[9] She submitted that the right of subrogation did not apply as this only applies where the insured is the defendant and in this case as no legal proceedings were instituted the Claimant was not a defendant and so the right of subrogation did not apply. She placed reliance on the case **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 where the court pointed out, with reference to a passage from para. 675 Vol. 25 of the Halsbury's Laws of England (Fourth Edition 2003 Reissue) at page 5 of the judgment, that that paragraph is of no relevance to these proceedings or to the rights of the respondent. The passage cited at page 4 read as follows:

> ***"The policy usually empowers the insurers to take over, in the name and on behalf of the insured, the conduct and control of the defence of proceedings within the ambit of the policy brought against him. The power enables the insurers to settle the proceedings without consulting the insured, and they can then recover from him any portion of the agreed damages which under the policy he has to bear."***

The Court continued:

> ***"There, the learned authors are referring to the usual provisions in a contract of insurance in England whereby the insurer is authorized to conduct and control the defence of proceedings. So far as the respondent is concerned, no proceedings have been brought against her in respect of the accident so there is nothing for Dyoll the insurer to conduct and control. So far as the appellants are concerned, the conduct and control of the defence of proceedings would depend on the terms of the contract between their insurer and themselves. Even if their insurer had that authority, it would have no bearing on the ability of the respondent to pursue their claim."***

[10] From this case, counsel extrapolated the principle that there being no proceedings the AGI was not acting as the Claimant's agent.

[11] She also submitted that the entire transaction is an unconscionable bargain highlighting this as an equitable doctrine which would apply where a party is less highly educated in the sense of his understanding of the specific nature of a transaction and so

he would fall under the limb of persons entitled to a relief. She contended that the Claimant had no special knowledge of the law of insurance and so he should have benefitted from independent advice. Further that the terms of the Release and Discharge were never explained to him.

[12] She pointed out that the elements required to establish an unconscionable bargain have been proven in that there was ignorance on the part of the Claimant, lack of advice and weakness exploited and a transaction that was oppressive. She stated that Mr. Raynor was at a disadvantage by virtue of the lack of advice which put him at a disadvantage compared to the insurance company.

[13] She relied on **Cresswell v Potter** 1 W.L.R. 255 and submitted that it was clearly seen that the court encourages playing fair, so certain safeguards ought to be implemented. With respect to the absence of independent legal advice she relied on the decision of **Leslie Augustus Watts v Leleith Watts and Watts Investments Limited** [2013] JMCC Comm. 15 to support her contention that the lack of legal advice can affect the validity of the transaction.

[14] Counsel on behalf of the Defendant submitted that there has been accord and satisfaction in accordance with the terms of the signed Release and Discharge and that it is binding because there is an offer and an acceptance of the offer and there has also been consideration.

[15] He highlighted the principles relating to the common ground of subrogation where insurers step into the place of the insured and so payment to his insurers is payment to the Claimant. He contended that there is evidence of the cheque not only being received but also that it was encashed and there is no evidence that this payment was ever returned to GKGI and so the Claimant's insurance agents have had these funds since 2016.

[16] He argued that the **Spanish Town Funeral Home** case is distinguishable as in that case only a part of the sum was paid. He placed reliance on **Rio Brown v NEM Insurance Company (JA) Ltd** [2012] JMSC Civ. 27 where the court stated that a change

of heart is not enough for one to resile from the acceptance of an offer and that it does not vitiate what is set out as binding clear terms.

[17] He submitted that the principles of undue influence and unconscionable bargain do not apply and that the case of **Watts v Watts** is also distinguishable. GKGI was merely exercising its rights to negotiate a settlement so at all times it was two insurers negotiating with each other, a fact which the Claimant has not denied. He submitted further that undue influence does not arise as it is unlike **Watts v Watts** where there was a mentally disadvantaged father being taken advantage by his daughter. This case, he contended, does not fall into that category of cases.

[18] On the other hand, there was no disparity or disadvantage to the Claimant. He had the benefit of his insurers advising him and they had a fiduciary obligation to him. The test is whether he was acting in ignorance or was duped. This is not a case where he is saying he was unaware. GKGI was relying on the position of his insurers who put his position to them and he consented. It is not for the 1st Defendant to look behind these patently clear and pellucid documents. The Release and Discharge was not ambiguous and does not reflect a party who was coerced or under any duress.

ISSUE ONE

Whether or not the Claimant's right to bring an action against the 1st Defendant in Negligence for personal injury and property damage has been extinguished

[19] The Law on Release and Discharge is explained in the case **of Alcan Jamaica Company v Delroy Austin and Hyacinth Austin** cited by both sides. At page 8 of the judgment Smith JA stated:

> ***"Any person who has a cause of action against another may agree with him to accept in substitution for his legal remedy any consideration. The agreement by which the obligation is discharged is called Accord and the consideration which makes the agreement binding is called Satisfaction- see Clerk and Lindsell on Torts 17th edition 30-06 p. 1559. Thus Accord and Satisfaction is the purchase of a release from an obligation arising under contract or by means of***

any valuable consideration, not being the actual performance of the obligation itself.

When the satisfaction 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. Where the demand is disputed or the amount unliquidated, payment of any sum agreed upon by the parties is a good satisfaction –ibidem."

[20] In order for the Claim to be extinguished or discharged there must be both accord and satisfaction and if these are established this will provide a complete defence to the Defendant. There is no issue here as to whether accord exists, the issue lies in whether or not satisfaction can be established.

[21] It is the 1st Defendant who has raised the Defence of Accord and Satisfaction and so he has the burden to prove. Discharge only occurs upon performance and satisfaction. Payment requires not only delivery but also acceptance and so in order to extinguish the obligation it must be fully executed. The Defendants' insurer has given evidence that the cheque was sent to AGI and that it was encashed and to date they have not received any refund.

[22] **The Spanish Town Funeral Home** case relied on by the Claimant provides guidance in respect of what exactly is required to prove satisfaction. In that case it was seen where the parties intended the settlement to become operative only on the payment of an additional sum. The dicta of the court at first instance is instructive where at paragraph 24 the court said this:

"Where the contract is executory, the consideration is usually found in the mutual performance by each party of his obligations by each party under the contract and the release of each party's rights under it …The critical question, therefore, in seeking to find if there is accord and satisfaction, given there is no agreement under seal, is whether there has been valuable consideration given in exchange for the claimant's agreement to release the defendant from liability."

[23] The Court also referenced the need to use the normal rules relating to the construction of written contract. In this regard volume one of the 27th edition of the Chitty on Contracts, General Principles, provides some assistance to this Court in

determining what is meant by Accord and Satisfaction. At paragraph 22-011 the definition accorded is as follows:

> ***"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 actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative."***

With respect to satisfaction the learned author had this to say at paragraph 22-014:

> ***"…In the modern law, therefore, a claimant may still insist upon the performance of some act by the other party in satisfaction of his claim. In that case, there is no satisfaction until performance, and the other party remains liable on the original claim until the satisfaction is executed…"***

[24] It seems to me from the above excerpt that the question of whether the satisfaction had been executed is a live one. According to the Claimant after he signed the Release and Discharge he contacted an Attorney-at-Law, Miss Zuleika Jess to deal with the personal injury aspect of his claim and it was only after speaking with her that he became aware of the legal effect of a Release and Discharge. His Attorney-at-law thereafter informed GKGI that he would no longer accept the said sum. To date he has not accepted the sum. It is his failure to accept the sum that he argued has resulted in the lack of there being satisfaction.

[25] In these circumstances, can it be argued that the satisfaction has been executed? The terms of the Release and Discharge expressly stated that "it is hereby understood and agreed that payment of the above sum should be made to and received by Shane Raynor". It is undisputed that although this payment was made it was never received by Mr Raynor. It has been argued that the fact that his insurance company received it is not indicative of the fact that he received it.

[26] The main question that arises on this point is whether payment to the insurance company constitutes payment to the Claimant. AGI accepted the cheque on behalf of the Claimant and encashed it and thereafter made another cheque payable to the Claimant.

The Claimant has refused to collect this cheque. The Defendants' insurer has asserted that they had no option but to deal with the insurance company as no deal direct document was signed by the Claimant.

[27] Throughout the course of the negotiations AGI always acted on behalf of the Claimant. It was through them that he signed the document indicating that he no longer wished to pursue the personal injury claim. It was through them that he signed the Release and Discharge. In fact, there is no indication that he ever had any direct dealings with GKGI. It is only now that this issue has arisen that he is seeking to say the payment made to them is not payment made to him but it seems it was always his understanding that this is how the money was to be paid. The Claimant had never expressed that he had an issue with how the affairs were conducted.

[28] In determining the question whether the insurance company AGI was acting as an agent of the Claimant when they received the money, I find it necessary to examine the law governing subrogation as well as that governing the law of agents and principals.

[29] In the text The Modern Law of Insurance, Andrew McGee at page 297, paragraph 22.1 the principle of subrogation is defined as follows:

> ***"Subrogation may be expressed as being the doctrine that a person who undertakes a contractual obligation to another to provide indemnity against loss is entitled to stand in the shoes of that other in relation to that other's rights to receive or claim any money which would go to diminish the loss"***

[30] Counsel on behalf of the Claimant has submitted that subrogation only applies to the Defendant and has suggested that the **Keith Recas** case is supportive of this view. On an examination of the **Keith Recas** case, it is clearly distinguishable. It related to the usual provisions in a contract of insurance in England whereby the insurer is authorized to conduct and control the defence of proceedings and in that case no proceedings were brought in respect of the accident so there was nothing to conduct and control. That situation is not applicable to the situation in the instant

case and so cannot assist the Court in its deliberations here. The principle of subrogation seems wider than suggested by the counsel for the Claimant and so I find favour with the submissions of counsel for the Defendants that it would have some applicability to the instant case in that the insurer would step into the shoe of the insured.

[31] Even if I am wrong in that view, the Claimant may still be bound by the principle of agency. In the Halsbury's Laws of England, 2008, Volume 1, 5th edition, at paragraphs 29 and 30 the nature of the relationship of agency is explained as follows:

> ***"The terms 'agency' and 'agent', in popular use, have a number of different meanings, but in law the word 'agency' is used to connote the relation which exists where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties. The relation of agency arises whenever one person, called the 'agent', has authority to act on behalf of another, called the 'principal', and consents so to act. The authority of the agent may be derived expressly from an instrument, either a deed or simply in writing, or may be conferred orally. Authority may also be implied from the conduct of the parties or from the nature of the employment. It may in certain cases be due to the necessity of circumstances, and in others be conferred by a valid ratification subsequent to the actual performance. In addition, a person may appear to have given authority to another, and acts within such apparent authority may effectively bind him to the third party."***

[32] In this case it appears that the authority of AGI to act on behalf of the Claimant can be implied by the conduct of both the AGI and the Claimant himself. Throughout the course of the negotiations the Claimant had no direct contact with GKGI. It was AGI who negotiated on his behalf. He admitted in cross-examination that he at no time had any direct contact with GKGI. Ms. Jones who testified on behalf of the insurance company indicated that it was her understanding that payment should go to Mr. Raynor upon receipt of a deal direct letter from Advantage General absolving any financial responsibility from the claim. The deal direct letter is a permission from another insurance company stating that they can deal with their client or pay the money straight to their client. Before dealing directly with the client, it is important to get a deal direct letter because the insurance association made

certain rules to protect insurers to ensure that their subrogation rights are not infringed. She further stated that efforts were made to get a deal direct letter but none was received.

[33] From these facts, it is clear that at the very least based on the relationship that existed between the Claimant and the insurance company that AGI had the authority to receive money on behalf of the Claimant. Under these circumstances, it was the clear understanding that GKGI would pay the sum to the AGI and the Claimant would thereafter be paid the sum by AGI. In light of the absence of any indication on the part of the Claimant that he was opposed to this arrangement, he had by implication accepted this as the natural course of how the funds would be paid.

[34] The remaining issue on this point is whether the Claimant has opted out of this agreement before the agreement had been concluded. In other words, did he resile from it before the satisfaction was executed. Timing is critical to the determination of this issue. I accept that on February 12, 2016, the same day that the cheque was dated and was in fact sent to AGI, the Claimant's Attorney-at-law wrote to GKGI indicating that he was no longer prepared to accept the agreed sum. The difficulty that the Claimant faces here is that he cannot prove that when the cheque was dispatched GKGI had received the letter from his Attorney-at-law.

[35] GKGI on the other hand has given undisputed evidence that it was after the cheque was dispatched that they received the Claimant's letter. Initially they said it was the same day however in the evidence given in court that it said that it was some time after on February 26 that they received this. I hasten to say that I did not find this new position to be a forceful one. This was after one position was clearly stated in the witness statement.

I did not accept Ms. Jones' belated evidence on this point. I am more inclined to the view and the evidence that they received it on the same day. Regardless of that though, in order for the Claimant to prove that the contract was not fully executed he would have to provide some evidence that GKGI sent off the cheque even after they received his letter

of withdrawal which he has failed to do. He has therefore failed to prove that at the time they received his letter the contract had not by then been fully executed.

[36] It is also the evidence which I accept that the cheque was in fact cashed by AGI and a sum paid to another party and a cheque was prepared in the name of the Claimant herein. There is no indication on the part of the Claimant that he took any steps to ensure that this money was returned to GKGI. All that was left to be done was for him to go and collect the cheque which he has failed to do. In these circumstances his argument of a lack of satisfaction does not find favour with the Court. I am of the view that the satisfaction had been executed. The Defendant has therefore 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 his insurance company an acceptance of the consideration provided. As a consequence, I am of the view that the Claimant's right to bring an action against the Defendant in Negligence for personal injury and property damage has been extinguished.

ISSUE TWO

Whether or not the Release and Discharge executed by the Claimant reflected an unconscionable bargain.

[37] There was some concession on the part of counsel for the Claimant that undue influence did not arise, however it was argued that what arises is an unconscionable bargain. It is not difficult to see how it would have been a challenge to prove undue influence.

[38] In the Privy Council decision relied on by counsel for the Defendant of **National Commercial Bank (Jamaica) Ltd v Hew and Another** [2003] UKC 51 at paragraphs 29 to 31, the court pointed out that undue influence arises whenever one party acted unconscionably by exploiting the influence to direct the conduct of another which he has obtained from the relationship between them. This case of **Watts v Watts** demonstrates

the fine distinction between undue influence and an unconscionable bargain. The doctrine of undue influence 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. The relationship shared by the Claimant and GKI clearly does not fall into that category.

[39] The law on unconscionable bargain is reflected in a number of judicial authorities. In the case of **Cresswell v Porter** the court had to consider whether a Release was executed in circumstances which amount to unfair dealing. The Court considered the case of **Fry v Lane** (1888) 40 Ch.D. 312 where the judge laid down three requirements as follows:

> ***"What has to be considered is, first, whether the plaintiff is poor and ignorant; second, whether the sale was at a considerable undervalue; and third, whether the vendor has independent advice."*** The court continued:
>
> > ***"I am not, of course, suggesting that these are the only circumstances of oppression or abuse of confidence which will invoke the aid of equity. But in the present case only these three requirements are in point. Abuse of confidence, though pleaded, is no longer relied on; and no circumstances of oppression or abuse of confidence which will invoke the aid of equity"***

[40] The case of **Gordon Stewart, Andrew Reid and Bay Roc Limited v Merrick (Herman) Samuels** delivered November 18, 2005 is a classic case on unconscionable bargain in which the elements are clearly evident. Harris J in that case at page 42 outlined:

> ***"In dealing with "unconscionable transactions", the learned authors of Modern Equity by Hanbury and Maudsley 12th Edition 1985 at page 803 stated:***
>
> > ***"Equity intervenes to set aside unfair transactions made with "poor and ignorant" persons. It is not enough to show that the transaction was hard and unreasonable. Three elements must be established: first, that one party was at a serious disadvantage to the other by reason of poverty, ignorance, lack of advice or otherwise, so that circumstances existed of which unfair advantage could be taken; secondly, that this weakness was exploited by the other in a morally culpable manner; and thirdly, that the transaction was not merely hard, but oppressive."***

> ***Alec Lobb (Garages) Ltd. and Others v Total Oil G.B. Ltd.*** *[1983] 1 W.L.R. 87* ***was cited by the authors in support of this statement. In that case, there was no pressure, impropriety, and separate legal advice had been taken.***

The learned author of Snell's Equity (29th edition) at page 559 in recognition of the principle declared:

> ***"Under a well-established jurisdiction, equity will set aside a purchase from a poor and ignorant vendor at a considerable undervalue, where the vendor acts without independent advice (see Butlin-Sanders v Butlin*** *(1985) 15 Fam. Law 126****) unless the purchaser satisfies the court that the transaction was fair, just and reasonable (Fry v Lane*** *(1888) 40 Ch.D. 312 at 322****; How v. Weldon (1754) 2 Ves.Sen. 516; Wood v. Abrey (1818) 3 Madd. 417) It has been said that "poor and ignorant" may nowadays be understood as "member of the lower income group" and less highly educated," the latter requirement being applied in particular to the person's understanding of property transactions. (Cresswell v. Potter*** *(1968) [1978] 1 W.L.R. 255n. at 258,* ***per Megarry J. (Post Office telephonist). Cf. Backhouse v. Backhouse*** *[1978] 1 W.L.R. 243****)."***

[41] In **Watts v Watts** the principles of unconscionable bargain are discussed at paragraph 43 of the judgment as indicated below:

> ***"There is a well-established equitable jurisdiction to set aside a purchase from a poor and ignorant man at a considerable undervalue unless the purchaser satisfies the court that the transaction was fair, just and reasonable. The doctrine is distinct from undue influence because it does not require a pre-existing relationship between the parties and may arise between parties that are completely unknown to each other. However, "a bargain cannot be unconscionable unless one of the parties has imposed the objectionable terms in a morally reprehensible manner; that is to say, in a manner which affects his conscience. All of the leading authorities stress the importance of a finding not only that there is an imbalance in the relationship between the parties and the terms agreed but also that the party who imposed them was guilty of morally culpable or reprehensible terms."***
>
> ***"The respondent was a fisherman. He was injured in an accident with the 2nd appellant, the 3rd appellant's employee. The 3 rd appellant operates a hotel in the vicinity in which the respondent was injured. The 3 rd appellant admitted being the owner of the boat which was involved in the accident. It has been shown from the Statement of Claim that the respondent's injuries were extensive. He was hospitalized for over a year. For a period during his illness he received gifts of groceries, toiletries, payments of medical expenses, and***

> ***payment of rental amounting to $103,833.03, which the appellants acknowledged were given to him."***

[42] The court took into account the impecuniosity of the respondent as well as his inability to read and write and said:

> ***"In all the circumstances of this case, it would be within the province of a trial court to decide whether a properly advised, uneducated, indigent, physically handicapped claimant would have accepted $483,883.00 and a cellular telephone as compensation for his injuries and whether the appellants had gained an unfair advantage over him by unconscientious use of power, he having an urgent need of resources."***

[43] The instant case is clearly distinguishable. The Claimant herein is a police officer and although on his part he has spoken about the impecunious state in which he had found himself, it is not clear that he fits into the category of poor and destitute. His evidence is that he was employed. There is also no evidence that the transaction was at any undervalue. Prior to preparing the Release and Discharge the GKGI sought to ascertain whether the Claimant intended to pursue the personal injury claim and the Claimant signed a letter indicating that he was no longer interested in doing so. He signed to the fact that he was no longer pursuing the personal injury case and although he claims to not have understood the significance of this, this does not seem credible to me. The letter dated January 15, 2016 was very brief and to the point. The words were:

> ***"In relation to the accident that I was involved in on March 27, 2015 in Denbigh clarendon with Leslie Allison, Please be advised that I Shane Raynor is no longer interested in pursuing an injury claim."***

[44] On the face of it there is nothing ambiguous in this letter. It is clear to me that anyone who is literate should be able to understand it. The Claimant here being a police officer is assumed to be more than just barely literate.

[45] I do note that there is however no evidence that he had independent legal advice. However, he had the benefit of his insurance company and their expertise guiding and advising his as well as advancing negotiations on his behalf. I am in agreement with counsel for the Defendant that in these circumstances there is no disparity or disadvantage to the Claimant. The Claimant had the benefit of the guidance of his

insurers with whom he was in constant contact. He also had the benefit of them negotiating on his behalf. In all the circumstances, the Claimant is therefore hard pressed to prove that the element of an unconscionable bargain existed. The Claimant has failed to prove on a balance of probabilities that the Release and Discharge executed by him reflected an unconscionable bargain.

[46] The Claimant's claim fails and Judgment is for the Defendant with costs to the Defendant to be taxed if not agreed.

S. Jackson-Haisley
Puisne Judge