IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO 2006 HCV 00745

BETWEEN	JEFFERY GORDON	CLAIMANT
A N D	DEVON OWEN CAMPBELL STEDMAN A. WALTERS AND ROBERT L. HYLTON T/A GLOBAL BUREAU OF INVESTIGATIONS	1ST DEFENDANT
A N D	ROBERT HYLTON	2ND DEFENDANT

Racquel Dunbar for Claimant

Defendants not appearing or represented

Practice and Procedure – Application for Summary Judgment – Defendant failing to respond to application – Statement of Defence reveals issues of fact to be decided - Whether summary judgment may be granted

BROOKS, J.

4th and 8th October, 2007

Claims involving motor vehicle collisions do not readily lend themselves to applications for summary judgment. Nonetheless, Miss Dunbar, on behalf of Mr. Jeffery Gordon urges the court to grant such a judgment in this case. Mr. Robert Hylton is the only defendant who has been served with the Claim Form. He has filed a defence but has done nothing to resist Mr. Gordon's application for summary judgment. The question to be decided is whether, in light of Mr. Hylton's default, the court

may properly grant summary judgment where the pleadings clearly reveal that there are issues of fact to be adjudicated.

The Background Facts

On November 18, 2004 a collision occurred between the motor vehicles driven by Messrs. Gordon and Hylton respectively. Later, Mr. Hylton paid to Mr. Gordon the sum of $100,000.00 towards the cost of repairing the latter's vehicle. The sum was not sufficient to cover that cost and this claim is to recover the balance.

Issues of Fact

Two main issues of fact arise. The first is that, on the pleadings, each driver alleges that the other was the negligent party. Mr. Gordon alleges that while **the vehicles were travelling in opposite directions** along the roadway Mr. Hylton made a sudden right turn across his path and struck his vehicle. Mr. Hylton counters that **Mr. Gordon's vehicle, while overtaking Mr. Hylton's,** struck the latter while it was stationary in the centre of the roadway. Mr. Hylton says he was then waiting to execute a right turn.

The second issue arises from Mr. Hylton's alleged admission of liability and payment as **a deposit toward the cost of the repair**. Mr. Hylton's account is that the parties "came to an arrangement as to each

other's liability" and based on that arrangement he paid the money **as, the total balance that would be due to Mr. Gordon to settle the matter**.

The Evidence

In a witness statement, Mr. Gordon details the damage done:

> "It was the front right side of my car that was hit. It was the front middle section of his van that hit into mine....My car sustained damage to its right front headlamp, right fog lamp, front bumper, right front fender, front griller (sic) and front bonnet."

Miss Dunbar on behalf of Mr. Gordon submits that that physical damage makes it clear that Mr. Hylton's case is doomed to fail. If the collision had occurred as Mr. Hylton claims, she says, the damage would have been to the left side of Mr. Gordon's vehicle and not to the right.

On the second issue of fact, Mr. Gordon repeated in his witness statement the terms of the arrangement between the two men. In his affidavit in support of the present application he exhibits the counterfoil stub of a receipt which he says he gave to Mr. Hylton in exchange for the payment made by the latter. The stub is not said to be written by Mr. Hylton, and so carries very little, if any, weight, as it is purely self-serving.

Analysis of the Evidence

Mr. Gordon's account is more credible than that set out in Mr. Hylton's pleadings. I accept Miss Dunbar's submission that the physical damage to Mr. Gordon's vehicle supports his account and belies that of Mr.

Hylton. Secondly, if Mr. Hylton's vehicle was struck while it was stationary waiting to turn right, then Mr. Hylton would be a totally innocent party. Why then would he be making any payment to Mr. Gordon? When these inconsistencies are coupled with the fact that Mr. Hylton has failed to place any evidence before the court, the inevitable conclusion is that Mr. Hylton's defence has no real prospect of success at trial.

The Law

On the matter of applications for summary judgment in negligence claims, Stuart Sime in *A Practical Approach to Civil Procedure* 7th Edition, at paragraph 19.6.6 opines that:

> "Although there is nothing in principle preventing a claimant from applying for summary judgment in claims seeking damages for negligence, such cases invariably involve disputed factual issues, so it is rare for a court to find that there is no real prospect once liability is denied. An exception was *Dummer v Brown* [1953] 1 QB 710, where summary judgment was given against a defendant, a coach driver, who had previously pleaded guilty of dangerous driving in respect of the accident giving rise to the claim."

Rule 15.3 of the Civil Procedure Rules 2002 (CPR), specifies that the "court may give summary judgment in any type of proceedings except" for certain specific cases. None of the exceptions apply to this case. The test, in applications of this type, is whether the defendant has a real prospect of defending the claim. Their Lordships in the case of *E.D. & F. Man Liquid Products Ltd. v Patel and* Another T.L.R. April 17, 2003 opined that in these applications the burden rested on "the claimant to establish that...the

respondent had no real prospect of success". They however went on to say that in practice the burden of proof was of only marginal importance in the assessment of the evidence. In that regard, the view of Jones, J. (Ag.) (as he then was) expressed in *Jamaica Creditors Investigation & Consultant Bureau Ltd. v Michmont Trading Ltd.* C.L. J 015/2002, is instructive.

> "...once it is accepted that the defendant filed no defence to the claim, and gave no evidence to answer the claimant's application for summary judgment – it seems to me, that there is no issue of fact and of interpretation to be resolved by trial in this matter. So then, in giving effect to the overriding objectives in CPR Part 1, of enabling the court to deal with cases justly, saving expense, achieving expedition, and ensuring that the court's resources are not used up on cases which are unmeritorious; this court cannot resist the inevitable conclusion that the claimant is entitled to summary judgment on its claim." (pages 4 -5)

I have already rendered an opinion in respect of the evidence in this case and it accords with the view quoted. I therefore turn to rule 15.6 (3) of the CPR which deals with consequential orders. Since a grant of summary judgment will not bring the matter to an end, I must now treat the matter as a case management conference. This requires me to address the matter of assessment of the damages to be awarded.

Mr. Gordon only claims for property loss. Based on the pleadings and the evidence provided to support the application, it appears that Mr. Gordon is ready to proceed to assessment of damages. Orders may therefore be made in line with the requirements of rule 16.2 of the CPR (albeit that that rule provides for the process subsequent to a default judgment).

Conclusion

Although it is unusual to have orders for summary judgment in motor vehicle negligence cases, this case is an exception. This is because the physical damage done to Mr. Gordon's vehicle supports his account and contradicts Mr. Hylton's. The payment of a sum of money to Mr. Gordon by Mr. Hylton similarly indicates his liability. The court is also influenced by the fact that Mr. Hylton has failed to respond to the application. It has only Mr. Gordon's account and it is a credible one. Summary judgment must be granted with damages to be assessed. Having filed a defence, it would seem that Mr. Hylton is entitled to attend the assessment of damages and participate therein in accordance with rule 16.3 (6) of the CPR.

The orders therefore are:

1. Summary judgment is hereby granted to the Claimant on the Claim and the Counterclaim, with damages to be assessed.

2. There shall be standard disclosure on or before 31st October 2007, and inspection, on or before 14th November, 2007, of the documents so disclosed.

3. Witness statements must be filed and served on or before 31st October, 2007.

4. The Claimant must file a listing questionnaire on or before the 30th November, 2007.

5. The Registrar shall fix a date for the assessment of damages.

6. Costs to the Claimant to be taxed if not agreed.