

**IN THE SUPREME COURT OF BELIZE, A.D. 2013**

**CLAIM NO. 311 of 2012**

**JIMMY ROBINSON**

**CLAIMANT**

**AND**

**PRINSELSIO RIVERO**

**DEFENDANT**

Hearings

2013

21<sup>st</sup> January

20<sup>th</sup> February

22<sup>nd</sup> March

Mr. Hubert Elrington SC for the claimant.

Ms. Naima Barrow for the defendant.

LEGALL J.

**JUDGMENT**

1. On the 16<sup>th</sup> June, 2011 at about 7:30 p.m., the claimant was driving his motor vehicle bearing licence plate No. D-6526 on Princess Margaret Drive, Belize City when another vehicle, Nissan Altima No. D-6903

driven by Jose Barrera collided to the claimant's vehicle from behind causing physical injuries to the claimant. The Nissan Altima was owned by the defendant and one Jose Mendez and insured by RF & G Insurance Company of Coney Drive, Belize City. Jose Barrera was at all material times authorized by the defendant to drive the Nissan Altima. In relation to the injuries suffered by the claimant as a result of the accident, the insurance company paid to the claimant \$21,882.64 for medication, therapy, doctor visits, hospital services and loss of earnings. On 27<sup>th</sup> October, 2011, the claimant signed a document, entitled "Deed of Release And Discharge" in which the insurance company; the owners of the Nissan Altima, the driver Barrera, and the claimant are named as parties, all of whom signed the Deed which was witnessed by others.

2. In accordance with the Deed, it was agreed that the further amount of \$17,500 was paid to the claimant in full satisfaction of all claims which may be made as a result of the personal injuries sustained by the claimant on account of the accident. This is how the matter is stated in the Deed:

"NOW THIS DEED WITNESSES as follows:

1. In pursuance of the said agreement and in consideration of the sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00) now paid by the Insurer, for and on behalf of the Insured and the Insurer, to the Releasor in full satisfaction as aforesaid (the receipt of which sum the Releasor hereby acknowledges), the Releasor hereby releases and discharges the Insurer and the Insured

from all actions, proceedings, claims, demands and costs whatsoever which he now has or at any time hereafter may have or but for the execution of this deed could or might have had against the Insurer and/or the Insured for personal injuries suffered as a result out of the accident which occurred on the 16<sup>th</sup> June, 2011 or in respect of any matter or thing in anywise relating thereto.

2. No error, omission or misstatement or any statement made in the course of the negotiations leading to the compromise and discharge and release herein before set forth shall annul the said compromise or discharge or release or entitle the Releasor the Insured or the Insurer to be discharged therefrom.”

According to the Deed, the insurance company is the Insurer, the defendant and Mendez are the Insured, and the claimant is the Releasor.

3. The claimant says that the Deed is not enforceable because it was signed under duress; that there was “no privity of contract,” and no consideration. In cross-examination, the claimant said that “no one ever forced me to sign the document.” Mr. Hubert Elrington SC in his written submissions, submitted as follows:

“The behaviour of the defendant’s insurance company was offensive and bordered on extortion. There is ample evidence that the claimant was in serious pain, needing medical attention abroad urgently and needed his money to look after his health and to get some relief from his pain.”

4. The claimant filed a witness statement and also gave evidence and not once did he mention anything about extortion. I do not find evidence that he signed the Deed because he was in serious pain, or needed medical attention abroad urgently. He disclosed and attached to his witness statement photocopies of medical reports with the names of Dr. Cervantes and a physiotherapist, but neither Dr. Cervantes nor the physiotherapist was called to testify concerning the injuries and pain of the claimant. The claimant, the sole witness in his claim, did not describe his injuries and pain. It also has to be noted that the claimant signed a receipt dated 28<sup>th</sup> October, 2011 which attached a cheque for \$17,500, and the receipt stated “paid in full and final settlement of all claims by Mr. Jimmy Robinson.” And, as we saw above, the claimant said no one forced him to sign the document. Considering the evidence, I am not satisfied on a balance of probabilities that the claimant has proven that he signed the Deed or receipt under duress or undue influence.
  
5. In relation to the privity of contract point, the Deed clearly shows that the claimant and the defendant were parties named in the Deed. The driver Jose Barrera was not made a defendant in the claim. I do not see merit in the privity point.
  
6. It is submitted for the claimant “that the Discharge and Release is not an enforceable contract in law ... it was not supported by any consideration.” Consideration is not necessary in respect of contracts under seal: see Halsbury Laws of England, 4<sup>th</sup> Edition, Volume 9 at paragraph 309. A Deed usually falls under the head of contracts

under seal. Historically a formal seal attached to the written contract was required; but presently, such “sealing has become largely a fiction, an adhesive wafer simply being attached to the document in place of a genuine seal”: see PS Atiyah, An Introduction to the Law of Contract, 3<sup>rd</sup> Edition at p 31. In addition, the Deed in this matter before me has the words “signed, sealed and delivered,” and below the signatories to the Deed appears the common seal of the insurance company.

7. Apart from the above, there is consideration. The evidence shows that the money was paid by the insurance company on behalf of the defendant for the benefit of the claimant, and that the claimant shall in return release and discharge the defendant from any and all obligations for any claim resulting from personal injuries sustained by the claimant as a result of the accident: see Clause 5 of the Deed. In my view, there is also no merit in this submission.
  
8. Costs follow the event. The court also has a discretion as to an award of costs. I therefore make the following orders:
  1. The claims in the claim form are dismissed.
  2. The claimant shall pay costs to the defendant in the sum of \$5,000.00.

Oswell Legall  
JUDGE OF THE SUPREME COURT  
22<sup>nd</sup> March, 2013

