COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2022/CLE/gen/868

BETWEEN

PRECIOUS THOMPSON-CURRY

Claimant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

First Defendant

AND

THE COMMISSIONER OF POLICE

Second Defendant

Before:	**Her Ladyship The Honourable Madam Senior Justice Deborah Fraser**
Appearances:	**Ms. Christine Galanos for the Claimant**
	Dr. David Whyms for the First and Second Defendants
Hearing Date:	**18 December 2024**

Civil Procedure – Supreme Court Civil Procedure Rules 2022 – Part 14.1 - Application for Judgment on Admissions – Whether Admission constitutes an Admission of Liability or Negligence

RULING

FRASER, SNR. J:

BACKGROUND

[1.] The Claimant filed a Writ of Summons and Statement of Claim on 7 June 2022 claiming damages for negligence against the Attorney General of the Commonwealth of The Bahamas ("First Defendant") and the Commissioner of Police ("Second Defendant") as a result of being shot by an agent of the Second Defendant on 26 June 2021. The Claimant is seeking the following relief: (i.) Special damages in the sum of $53,481.98; (ii) Damages; (iii) Exemplary Damages; (iv) Aggravated Damages; (v) Punitive Damages; (vi) Interest; (vi) Further or other relief as the Court deems fit; and (vii) Costs.

[2.] In paragraph [5] of the Statement of Claim, the Claimant particularized the claim of negligence, as follows:

> **"4. On or about 26th day of June, A.D., 2021, the Plaintiff was lawfully in the yard of her residence, which is situated on Amos Ferguson Street on the Island of New Providence one of the Islands of the Commonwealth of The Bahamas when a police officer, under the direction and control of the second Defendant in the performance of the purported performance of his duties, negligently shot the Plaintiff with a firearm.**
>
> **PARTICULARS OF NEGLIGENCE**
>
> **The said police officer was negligent in that he:-**
>
> **a. failed to take adequate or any care for the safety of the Plaintiff;**
> **b. exposed the Plaintiff to a foreseeable risk of injury and death."**

[3.] On 29 June 2022, the Writ of Summons was served on the First and Second Defendant.

[4.] On 5 July 2022, the First and Second Defendants entered a Memorandum of Appearance and Notice of Appearance.

[5.] On 30 September 2022, the Defendants filed their Defence.

[6.] On 6 September 2023, the Claimant filed an application for Request for Entry of Judgment on Admission along with an Affidavit in support.

[7.] On 13 December 2024, the Claimant filed a Supplemental Affidavit in support of application for Judgment on Admissions pursuant to Part 14 of the Civil Procedure Rules, 2022 ("CPR").

EVIDENCE

Claimant's Evidence

[8.] On 6 September 2023, the Affidavit of Precious Thompson–Curry ("the Claimant Affidavit") was filed. The Claimant Affidavit stated that on 26 June 2022, she was shot by an agent of the Second Defendant while in her yard situated at Amos Ferguson Street on the Island of New Providence.

[9.] The Plaintiff/Claimant's Affidavit, avers that on 30 September 2022, the First and Second Defendants filed a Defence wherein they admitted at paragraphs 5 (c) to (e) and paragraph 6, the following:

> ***"c. That as the agent became fearful for his life and the safety of other persons in the community, he un-holstered his service firearm and discharged a single shot in the direction of the suspect in order to prevent his escape and to immobilize and or thwart his efforts in discharging his firearm at the police.***
>
> ***d. That notwithstanding the agent's appreciation of discharging his firearm in the direction of the suspect with a view to stop him, the Plaintiff was inadvertently wounded by the discharged shot.***
>
> ***e. That the agent of the Second Defendant was not negligent nor reckless in the performance and execution of his duties as he reasonably and objectively performed those duties pursuant to Force Order D4 25 and 26 and Section 103 of the Penal Code, CH. 84, Statute Laws of the Bahamas.***
>
> ***6. The Defendants repeat the contents of paragraph 5 herein and admit only to the fact that the plaintiff sustained injuries and has suffered loss and damage."***

[10.] The Claimant further states that, on or about 9 August 2021, the former Commissioner of Police, issued a letter to Ms Terrell Stuart, the Claimant's previous attorney, which included the following apology: "*I extend my sincere apology for* the *unfortunate incident that led to your client's injury*". A copy of the letter was exhibited in the Claimant's Affidavit.

[11.] The Claimant states in her Supplement Affidavit that, on 27 March 2023, a letter from Counsel for the Defendants, Dr. Whyms, was sent in response to the Claimant's settlement proposal letter dated 20 January 2023. The letter presented a counter proposal and included the following admission:

> **"Having considered the contents of your letter relating to the Plaintiff and the injuries she suffered as a result of being accidentally shot by an agent of the Second Defendant, I therefore sought permission and have since received approval from the Honourable Attorney General to enter into negotiations with the Plaintiff with a view to having this matter settled without resort to litigation."**

Copies of both letters are exhibited in the Claimant's Supplemental Affidavit.

[12.] In conclusion, the Claimant's Affidavit asserts that, based on the foregoing admissions, the Court should enter Judgment on Admissions against the Defendants and direct that the matter proceed to an assessment of damages.

Defendant's Evidence

[13.] The Defendants filed its Defence on 30 September 2022. The Defendants admits that the Plaintiff was shot by an agent of the Second Defendant during a police operation but deny the allegations in paragraph 4 of the Statement of Claim, requiring strict proof.

[14.] Paragraph [5] of the Defence provides:

"5. Save and except that the Plaintiff was shot by an agent of the Second Defendant during a police operation, the Defendants deny the contents of paragraph 4 of the Statement of Claim and the Plaintiff is put to strict proof. By way of defence the Defendants also say;

- **a. The agent of the Second Defendant was in pursuit of a suspect who attempted to evade the police after a high speed chase in the immediate area and had ran through a yard close by where the Plaintiff was located.**
- **b. That as the agent of the Second Defendant pursued the suspect, the suspect produced an illegal firearm from his waist and pointed it in the direction of the pursing officer putting him in fear of his life.**
- **c. That as the agent became fearful for his life and the safety of other persons in the community, he un-holstered his service firearm and discharged a single shot in the direction of the suspect in order to prevent his escape and to immobilize and or thwart his efforts in discharging his firearm at the police.**
- **d. That notwithstanding the agent's appreciation of discharging his firearm in the direction of the suspect with a view to stop him, the Plaintiff was inadvertently wounded by the discharged shot.**
- e. **That the agent of the Second Defendant was not negligent nor reckless in the performance and execution of his duties as he reasonably and objectively performed those duties pursuant to Force Order D4 24 and 25 and Section 103 of the Penal Code, CH. 84, Statute Laws of the Bahamas**."

[15.] In paragraphs [6] and [7] the Defendants acknowledge that the Plaintiff sustained injuries and suffered loss and damage but make no admissions regarding the allegations in the Writ of Summons under the headings "Particulars of Negligence", "Particulars of Injuries," "Particulars of Special Damage," and "Loss of Income/Earning Capacity," requiring the Plaintiff entitlement to any claimed interest and similarly require strict proof. They neither admit nor deny the statements made under the heading "Particulars" and deny the contents of paragraph 8 of the Statement of Claim. Except for matters expressly admitted or not admitted the Defendants deny all other allegations in the Plaintiff's Statement of Claim.

[16.] At paragraph [11.] of the Defence provides:

"**Save as herein before specifically admitted or not admitted, the Defendant denies each every and allegation contained in the Plaintiff's Statement of Claim as though the same were herein set out verbatim and traversed."**

ISSUE:

[17.] The issue this Court must consider is:

(a) Whether paragraph [5] (c) to (e) and paragraph [6] of the Defendant's Defence and the correspondences from the Defendant's Counsel to the Claimant's previous Counsel and the letter from the former Commissioner of Police to the Claimant Counsel constitutes an admission of liability or negligence by the Defendant in relation to this claim. If so,

(b) Whether this Court ought to grant judgment on Admission to the Defendant?

Claimant's Submissions

[18.] The Claimant Counsel, Ms. Galanos relied on Part 14 of the CPR and submits that the purposes of the aforementioned provisions is to save costs by obviating the need for evidence and referred the Court to **Claude Benbow v AG of Trinidad and Tobago (CV 2005-00740)(28 January 2008)** where Madam Justice Pemberton stated:

"The admission must speak to facts pertinent to the claim between the parties to a cause or matter. The admission must be clear. There must be an admission to all the constituent parts of the claim made."

[19.] Ms. Galanos directed the Court to **Ellis v Allen [1914] 1 Ch 904 at 908** where it was established that the requirements for judgment on admissions include admission of facts upon which the applicant relies, either by pleadings or "otherwise" and could include letters between the parties which show that the defendant had no defence to the action. Ms.Galanos asserts the

[20.] Ms. Galanos further relied on **Blundell v Rimmer [1971] W.L.R. 123 at 126** where Payne J observed that:

"In an action for negligence, the cause of action has two elements: first, the breach of duty to the plaintiff, that is to say, in this case, the negligence; and secondly, damage suffered by the plaintiff. The plaintiff does not establish any right to judgment without evidence and proof of both of those elements."

[21.] Ms. Galanos asserts that the two elements required to establish negligence have been satisfied. Counsel further contends that the evidence clearly demonstrates that the agent of the Second Defendant negligently discharged his weapon, wounding the Claimant and causing her to suffer damage. In light of the Defendants' admissions and evidence presented and therefore the Claimant has established her entitlement to Judgment on Admissions.

[22.] Ms. Galanos further asserts that the Defendants have already admitted, through their Defence and correspondence, that the Claimant was shot by an agent of the Second Defendant.

This admission satisfies the elements of liability, and therefore, the Claimant should not be required to expend additional resources to prove her claim. It is further contended that the Defendants submissions are sufficient for the Court to enter judgment in favor of the Claimant.

[23.] Ms. Galanos contended that, based on the admissions made in the Defendants' Defence, as well as letters from Defendants' Counsel and the former Commissioner of Police, the Claimant is entitled to Judgment on Admissions against the Defendants.

Defendants Submissions

[24.] The Defendant's Counsel, Dr. David Whyms, opposed the Claimant position, asserting that no admission had been made by the Defendant as outlined in **Part 14. 1 of CPR**. Counsel also challenged the formulation of the single issue, arguing that it does not constitute an admission of negligence.

[25.] Dr. Whyms relied on **Part 14 of the CPR** and referenced **Perrin v Short [1997] PIQR P426**, where the Court held that a defence admitting negligence and some other damage did not amount to an admission of the entirety of the plaintiff's claim under Ord 9 r6(1)(b), thereby precluding interlocutory judgment. Counsel argues that applying the principles from the **Perrin** case that the Claimant's reliance on the letter from the former Commissioner of Police and paragraph [16] of the Claimant's submission is insufficient to justify the entry of an interlocutory judgment. This is because the nature and extent of the damages claimed by the Claimant were not admitted and have denied in the filed Defence.

[26.] Finally, Dr. Whyms asserts that the Claimant's reliance on **Claude Benbow v AG of Trinidad and Tobago [supra]** and **Ellis v Allen [supra]** does not support the Claimant's request for this Court to enter judgment on admission against the Defendants. He argues that the principles in **Claude** highlight not only the necessity of an admission of negligence but also the Defendant's denial of the allegations as pleaded in the Claimant's Statement of Claim.

[27.] Counsel contends that the principle established in **Blundell v. Rimmer** is inapplicable in this case, as it requires the Defendant to admit negligence, which has been expressly denied. Counsel emphasizes that there is no admission of negligence in the correspondence between the parties' Counsels, the letter from the Commissioner of Police, or the filed Defence. On this basis, Counsel argues that the Claimant's reliance on **Blundell v. Rimmer** is misplaced and urges the Court to reject the Claimant's request, proposing instead for the matter to be resolved through a full trial.

LAW

[28.] The general rule is when a party has admitted a claim or part of a claim in correspondence or pleadings, any other party may apply for judgment on admission to be entered against that party. It would not be in keeping with the overriding objective of saving expenses and indeed a waste of the parties' and the court's resources to proceed to a trial on the admitted issues.

[29.] The law governing Judgment on Admission in **Part 14 of the CPR** provides the steps that a party wishing to admit part or all of a claim must take, and the procedure that should follow after this admission is made. **Rule 14.1(1)** provides that:

> "**14.1 Making on admission**
>
> **(1) A party may admit the truth of the whole or any part of any other party's case.**
>
> **(2) A party may do this by giving notice in writing such as in a statement of case or by letter, before or after the issue of proceedings.**
>
> **(3) A defendant may admit the whole or part of a claim for money by filing an acknowledgement of service containing the admission.**
>
> **…**
>
> **(5) A defendant may file an admission under paragraph 4 at any time before a default judgment is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgement of services has expired."**

[30.] **Rule 14.4 of CPR** provides:

> **"14.4 Admission by notice in writing – application for attachment**
>
> **(1) Where a party makes an admission under rule 14.1(2), any other party may apply for judgment on the admission.**
> **(2) The terms of the judgment must be such as it appears to the Court that the applicant is entitled to on the admission."**

[31.] The principle of judgment on admission, as established in **Ellis v Allen [1914] 1 Ch. 904**, highlights that admissions of fact, whether made by pleading or through correspondence, can demonstrate that a defendant has no defence to the claim. In this case, the defendant admitted to breaching a lease covenant in a letter to the plaintiff's counsel. The Court accepted the admissions contained in the letter and ruled in favor of the plaintiff, granting judgment against the defendant.

[32.] In **Rankine v Garton Sons & Co Ltd (1979) 2 All ER 1185** Payne J emphasized that a judgment on admission requires both an acknowledgment of negligence and proof that the plaintiff suffered damage as a result as these two action are essential to establishing a cause of action for negligence, he states

> **"… in an action founded on negligence, a plaintiff was not entitled to judgment unless he could prove the two necessary components of his cause of action, ie, <u>that the defendant had been negligent and that the plaintiff had suffered damage as a result of that negligence</u>…since the plaintiff could not show that both components of his cause of action had been admitted, he was not entitled to an order..." [Emphasis added]**

[33.] In **Perrin v Short [1997] Lexis Citation 1905**, Hirst LJ reaffirmed the principles enunciated in in the **Rankine** case, emphasizing the necessity for a clear and unequivocal admission of liability, for a claimant to succeed in obtaining judgment on admission, citing Stevenson LJ he stated:

> **"Nothing short of a clear admission of liability, both of negligence causing the accident and of damage resulting from the accident caused by the negligence, is enough to satisfy the requirements of the rule and entitle the plaintiff to judgment." [Emphasis added]**

[34.] In **Blundell v Rimmer [supra]** Payne J opined that admission must address the entire claim, at page 127 he stated:

> **"…the simple question to be asked is this: have the defendants made a clear admission of liability or not? A mere acknowledgment of negligence without admitting damages does not suffice."**

Discussion and Analysis

[35.] **Rule 14.1 of CPR** outlines that judgment on admission may be made in writing through a statement of case, a letter, or similar means either before or after the commencement of proceedings. Paragraph [5] of its Defendant's Defence acknowledges that the Claimant was shot by an agent of the Second Defendant. By virtue of this admission, the Court finds that **Rule 14.1(1) and 14.1(2) of the CPR** apply. However, the Court must apply the tests in **Claude Benbow v AG**; **Ellis v Allen and Blundell v Rimmer,** which require admissions to be clear and unequivocal regarding both negligence and resultant damages. The Defendants dispute that these admissions amount to negligence or liability for the Claimant's injuries, requiring further examination.

Does the Admission constitute Admission of Liability?

[36.] The application is grounded on an admission in the Defendant's Defence and two correspondences: a letter from the Defendant's Counsel and a letter from the former Commissioner of Police. To determine whether to grant the Claimant's request for Judgment on Admissions, the Court must consider whether these admissions constitute a clear and unequivocal admission of liability or negligence. As a starting point, I have considered several cases which would provide guidance on the principles the Court should apply in determining whether to grant judgment on admission.

[37.] In **Forbes v Ferguson (Acting Commissioner of Police) and Attorney General [2010] BS 2010 SC 7** the plaintiff sought judgment on admission under **Order 27, Rule 3 of Rules of Supreme Court ("RSC"),** based on the defendant's acknowledgement of retaining the Claimant's passport post-release. The court held that an admission must be unambiguous and sufficient to determine liability without further trial. It was found that Defendant's admission was insufficient to resolve all material matters, including whether the passport was unlawfully seized, whether the constitutional rights were breached and whether Forbes suffered quantifiable damage as a result.

[38.] In **Ferguson v Department of Land and Surveys and the Attorney General [2013] BS 2013 SC 33** the Court considered whether a *"without prejudice"* settlement negotiations could be admitted as evidence of the defendant's admission of liability and whether the plaintiff was entitled to judgment on admission under **Order 27, Rule 3 of RSC**. In granting the judgment on admission, Bain J, applying the principle enunciated in **Ellis v Allen,** held that the *"without prejudice"* correspondence between the plaintiff and the defendants resulted in a binding settlement agreement, which constituted an exception to the "*without prejudice*" rule and was admissible as evidence.

[39.] In the Eastern Caribbean case of **Rose v Powell [2015] SVGHCV 2004/0224** the court considered whether the Claimant was entitled to a judgment on admission under the **CPR** based on the Defendant's acknowledgement of encroachment. The court held that the admission must be unconditional and unequivocal, and that a qualified admission cannot form the basis for judgment. The Court determined that the Defendant's admission was not unequivocal due to the statutory defence raised.

[40.] It is evident from these authorities, in determining whether to grant judgment on admission, the Court must be satisfied that the admission is clear, unequivocal, unambiguous and sufficient to determine liability without the need for further trial.

[41.] I have contemplated the literal meaning of the terms used in the Defence and the correspondence, taking note of the Defendant's use of specific terms, such as *"inadvertently*" in its Defence, "*accidentally*" in the Counsel's letter, and the Commissioner's letter description of the incident as "*unfortunate*". According to Merriam-Webster, "*inadvertent*" means accidental or happening by chance, "*accidentally*" refers to events occurring by chance, and "*unfortunate*" describes something bringing about ruin or misfortune. When considered together, the Claimant's assertion is these terms together amount to an admission of negligence.

[42.] One of the salient requirements of **Part 14** is the admission must be in writing. The aforementioned authorities posit the admission must be clear, unequivocal and unambiguous. When construed in the context of each document, I am satisfied that the admission in Defendant's Defence is nothing more than an admission of fact and the Defendant goes no further and does not admit liability.

[43.] The letter from the Commissioner of Police could be taken no higher than an apology letter, and the letter from the Defendant's Counsel is "without prejudice" communication and is not admissible as evidence as no settlement agreement was concluded. To my mind, I cannot accept the Claimant Counsel's submission that the admission is an admission of liability. The rule is clear: the admission must be clear and unambiguous. I find these admissions, taken together in their proper context, do not satisfy the standard for an unequivocal admission of liability as required under **14. 1 of the CPR**, which governs the procedures for obtaining Judgment on Admissions. I find the admissions together constitute an admission of fact.

Does the Admission constitute an Admission of Negligence?

[44.] In negligence claims, the Claimant bears the burden of proving two key elements: (1) that the Defendant's (or in this case the Defendant's agent's) negligent action directly caused the Claimant's loss, and (2) that the Claimant suffered damages as a result. As outlined in **Commonwealth Caribbean Tort Law, 3rd ed. [2003]** by Gilbert Kodilinye, on page 64, the tort of negligence requires three elements: *'(a) a duty of care owed by the defendant to the plaintiff and (b) breach of that duty by the defendant; and (c) damage to the property resulting from the breach.*' The Court must consider whether the Defendants' admission satisfy these criteria.

[45.] In **Perrin v Short,** it was established that where a Defendant admits to some elements of a claim but denies others, such as the nature and extent of damages, it does not amount to an admission of the entirety of the Claimant's Claim, and as such, judgment cannot be entered based

solely on a partial claim. Applying this principle to this case, the Court notes that while the Defendant acknowledges the Claimant was shot by an agent of Second Defendant, they deny negligence, recklessness, and the connection between the injuries sustained and the alleged breach. In other words, the Defendant acknowledged the incident occurred but is not admitting liability or accept legal responsibility. As observed by Hirst LJ in **Blundell v Rimmer** ambiguous or partial admissions fail to meet the standard for a clear and unequivocal admission. The issues of liability and negligence are interconnected and must be admitted together. Therefore, the Defendant's admissions are insufficient to establish admission of the entirety of the Claimant's claim, thus necessitating the need for a trial to resolve the matter.

[46.] The ambiguity in the Defendant's Defence, particularly paragraph [11], raises concerns about whether it constitutes a clear and unequivocal admission of liability. Applying the test laid down by Hirst LJ in **Blundell v Rimmer**, where he emphasized that admission of liability must explicitly address both negligence causing the incident and the resulting damage. The wording in paragraph [11] mirrors the unclear pleading criticized in **Blundell v Rimmer** for its lack of clarity and potential to nullify earlier admissions allowing the defendant to challenge individual allegations at trial, as it fails to provide an unequivocal acknowledgement of liability. On this point, I find that the admissions in the Defendant's Defence and the two correspondences are insufficient to grant judgment on admission, requiring the matter proceed to trial.

[47.] The Claimant appears to conflate the admission of facts with an admission of the entire claim. However, the Court finds that, at this stage and based solely on the pleadings, it is not possible to determine how the issue of negligence will be resolved. The admission of fact is not sufficient to grant judgment on admission as there is no admission of negligence including causation and the nature of damages. Thus, the matter must proceed to trial, where evidence will be tested through cross-examination.

[48.] Given the above, the Court concludes that the admissions in the Defendant's Defence and the two correspondences are insufficient to grant judgment on admission under **Rule 14.1 of the CPR**. They fall short of the clear and unequivocal standard required. The issue of negligence, including the causation of injuries and the extent of the damages, remains unresolved and cannot be determined solely on the pleadings of the papers before the Court. This matter must proceed to trial, where evidence can be presented, examined, and tested through cross-examination to resolve the outstanding issues. In making this determination, the Court is mindful of the overriding objective of the CPR to deal with the cases justly and proportionately, ensuring that all parties have a fair opportunity to present their case. Accordingly, judgment is entered in favour of the Defendants, with the determination of negligence and the resultant damages reserved for trial.

[49.] Accordingly, I make the following Order:

i. The Claimant's Application for Judgment on Admission based on the admission at paragraph [5] (c) to (e) and paragraph [6] of the Defendant's Defence filed on the 30th day of September, A.D., 2022, and the correspondence from Defendant's Counsel to the Claimant Counsel and the letter from the former Commissioner of Police is dismissed.

ii. It is further ordered that the matter be referred to the Case Management Conference for trial fixture.

iv. Each party shall bear their own costs associated with this Application for Judgment on Admission.

Dated 30th day of January 2025

Deborah E Fraser

Senior Justice