COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

CLE/gen/00089/2021

BETWEEN:

GINA BENNETT – ROLLE

Claimant/Respondent

AND

JACK STURRUP

AND

BAHAMAS WASTE LIMITED

Defendants/Applicants

Before: The Honourable Mr. Justice Franklyn K M Williams KC

Appearances: Ms.Vanessa Carlino with her Mrs.Annette Cash for the Defendants/Applicants

Mrs. Cathleen Johnson Hassan for Claimant/Respondent

RULING

Williams J

[1.] This is an application by the defendant for an order compelling the claimant to submit to an Independent Medical Examination ("IME") pursuant to the fulfillment of the overriding objective of the Civil Procedure Rules ("CPR"), that is to enable the Court to deal with cases justly and at proportionate cost, the Court's general powers of case management, and the provision of expert evidence to assist the Court.

[2.] The action was commenced by the claimant seeking damages for alleged injury to the lumbar region, in particular the spine, arising from a motor vehicle accident in which the second defendant's Mack MR6 Garbage vehicle operated by the first defendant hit the claimant's vehicle from the rear.

[3.] The defendant has applied by Notice of Application for, inter alia, *"1.an Order pursuant to Rules 1, 26 and 32 of the Civil Procedure Rules, 2022 and the inherent jurisdiction of this Honourable Court that the Claimant do attend an Independent Medical Examination by a suitably*

qualified medical practitioner to be nominated by the Defendant, at a date, time, and location to be agreed between the parties, or in default of agreement, as directed by the Court."

2. An Order that the cost of the Independent Medical Examination be borne by the Defendant.

3. An Order that the Claimant do co operate fully with the said examination and attend at the appointed time.

4. An Order that the medical report arising from the Independent Medical Examination be disclosed to all parties within a reasonable time after the examination

5. An Order that this Application shall not affect or jeopardise the existing trial date, and that all steps arising from the examination be conducted within timelines that preserve the current trial fixture."

[4.] The application is supported by the affidavit of Georgiann Arthur sworn on 24th March 2026. She avers, inter alia<

"9. Prior to making this application, the Defendant made several attempts to obtain the Claimant's agreement to attend an Independent Medical Examination. Numerous communications, including correspondence and telephone calls, were directed to the Claimant's Attorney; however, those communications were not responded to and calls were not returned. There is now produced and shown to me a true copy of the said correspondence which is annexed hereto at Exhibit *"**GA2**"*

10. In the circumstances, it has become necessary to seek the intervention of this Honourable Court. It is necessary and that the Defendant be permitted to obtain an independent medical opinion for the fair and proper assessment of the Claim. The Defendant undertakes to bear the full cost of the Independent Medical Examination and to arrange the same promptly.

11. I further verily believe that the granting of the Order is without prejudice to the Claimant and without jeopardizing the existing trial date, as the Defendant will act expeditiously. The Defendant will ensure that the report is disclosed promptly upon receipt.

12. This Application is made in good faith and is necessary for the fair and just determination of the issues in dispute. I verily believe that no prejudice will be caused to the Claimant if the Orders sought are granted."

[5.] The assertion that " *numerous communications, including correspondence and telephone call were directed to the Claimant's Attorney."* is not borne out by the evidence. The evidence produced by the defendant shows that only two attempts, the former in the form of a letter, the latter an email, ten days apart, were made to have the claimant submit to an independent medical examination; the letter, dated 5 March 2026 was delivered and received on 10 March 2026, a follow up email sent on 20 March 2026. Further, that correspondence, produced by the defendant to buttress the averment, and the dates thereof, pellucidly disprove it; the clear import is to paint the claimant as unreasonably withholding herself from independent medical examination. To knowingly make a false averment is both to commit perjury and contempt. Generally speaking, when soliciting and presenting affidavit evidence, counsel ought, consistent with the highest standards of the practice be careful not to, whether through inadvertence or otherwise, suborn perjury.

[6.] The defendant submits, "*This application is made in good faith. The application is a necessary procedural step designed to address the issues in dispute. In particular, this application ensures the assessment of the nature, extent and causation, and prognosis of the Claimant's alleged injuries are fairly, properly, and fully ventilated before the Court. Without such an examination, there is a real risk that the Court will be asked to determine critical issues on the basis of incomplete or untested medical evidence."*

[7.] The claimant opposes the application, on the ground of unreasonableness. The claimant's counsel received the letter on 10 March 2026. The application was filed on 24th March 2026, the hearing of which came on on 9th April 2026. The trial of the matter is fixed for 21 April 2026. This schedule does not permit sufficient time for examination by Dr. X, production of resulting medical report, perusal and examination thereof by the claimant's medical expert; nor does it afford the claimant the convenience of preparation for such, the claimant argues. In my view, the claimant's opposition is not unreasonable; the defendant's request, and application coming some almost eight years after the issue of writ, and one week after pre - trial review, during which period the issue of independent medical examination was not raised, was bound to excite anxiety and concern in the claimant. On balance, I am of the view that the 5 March 2026 letter, delivered as it was on 10 March 2026 was sufficient to put the claimant on notice of the defendants' intention, take counsel, and afford her the time to prepare, unencumbered by anxiety, for the medical examination, long considered a necessary procedural step in litigation such as this.

[8.] Affidavit of Rozanna Symonette Smith has been filed on behalf of the claimant on 8th April 20026 in opposition to the application.

[9.] On this issue of fair and just disposal of the issue, Widgery J in *Edimeades* [1969] 2 All ER 127 had this to say:

"If, in fact, the defendant is deprived of medical advice on some aspect of the case and the only evidence on that aspect is given by the plaintiff's doctors,, I see no way by which the balance can be adjusted. If the trial judge thinks that the plaintiff's doctors are credible, it seems to me that he would then have to follow their evidence and a great injustice to the defendant might arise."

[10.] In the unreported case of *Murphy v Ford Motor Company* (decided 19 October 1970), Denning MR said:

"It is now clearly established that if the defendants in a personal injury case make a reasonable request for the plaintiff to be medically examined by a doctor whom the defendant have chosen, then the plaintiff should accede to such a request unless he has reasonable ground for objecting to that particular doctor."

[11.] Cairns LJ in *Starr v National Coal Board* [1977 1 All ER 243] put it squarely:

"If the defendant has put forward the name of a particular doctor and can show that an examination by a doctor is necessary in his interests and that this particular doctor is apparently well qualified to examine the plaintiff, the plaintiff then has to give reasons for objecting to him. He must at least be able to show that there is some substantial ground on which he and his advisers have formed the opinion that the doctor in question lacks the proper qualifications or is likely to conduct his examination and to make his reports unkindly or unfair."

[12.] The claimant makes no objection to the suitability of Dr. X; however, she does complain that an independent medical examination conducted some eight years after the accident *"...cannot properly and or definitively direct the Court on the Plaintiff's injuries, condition, pain, suffering or loss of amenity at the time of the accident, nor over the past 8 years since the accident. At most, any new report would only be able to set out the Plaintiff's current condition, which can be ascertained by cross examination of the Plaintiff herself or her current physician."* In my view, it is precisely the claimant's current condition which need be medically examined; she claims a twenty five percent (25%) permanent disability as a direct consequence of the defendants' actions.

The reasoning in *Starr* was followed in *Patricia Edgecombe v Super Value Foodstores* 2019/CLE/gen/01817 and *Cindy Michelle Rolle v Higgs and Johnson (a firm) et al* 2022/CLE/gen/01638

[13.] A perusal of the authorities, which including the several Bahamian suggest a staged approach. Gargan J in *Clarke v Poole et als* [2024] EWHC 1509 (KB):

"85. The starting point is whether the defendant has shown that, absent the claimant's objections, it is in the interests of justice for the testing to be carried out. As Kennedy LJ points out, if the defendant cannot satisfy this test, then the court need go no further and the application must be dismissed.

86. The second question is whether the claimant has put forward a substantial objection which is more than imaginary and illusory. If the objection is "imaginary and illusory" then the outcome of the application must favour the defendant.

87. However, where there is a substantial objection, the court must embark on a third stage and balance the competing rights, namely (i) the defendant's right to defend itself in the litigation; and (ii) the claimant's right to personal liberty. In my judgement Kennedy LJ was right to suggest that when undertaking that exercise particular weight should be given to the claimant's concerns if the test is invasive and/or involves pain/discomfort and/or the risk of physical/psychological harm."

[14.] While I find that the claimant's objections are neither *"imaginary or illusory"*, they are not, in my view so substantial as to weigh against the proposed independent medical examination; It is, in my view in the interests of the just disposal of this case that the proposed independent medical examination be conducted. The claimant is suing for substantial damages. Liability is denied. The claimant claims substantial and continuing injuries, and a permanent disability of twenty five (25%) percent.. These are at issue, as is causation. She founds her claim on the medical report of her expert. In the premises, I consider it necessary in the interest of just disposal of this matter the independent medical examination be carried out.

[15.] The overriding objective is met by the grant of the order sought.

[16.] It is ordered that:

1. The claimant/respondent submit to the independent medical examination to be conducted by Dr. X immediately
2. The independent medical examination be conducted at Mangrove Cay, Andros at time and location of the claimant/respondent's choosing and convenience
3. The medical report resulting, be disclosed to all parties no later than 16 April 2026
4. The defendant/applicant to bear the any and all costs incidental to execution of this Order.
5. The execution of Order shall not affect or jeopardise the fixed trial date
6. All steps arising from said examination be conducted within timelines which preserve the trial fixture.

IKM Williams

Williams J

13 April 2026