

IN THE SUPREME COURT

Common Law & Equity Division

BETWEEN

**LEROY ALEXANDER DORSETT JR. a.k.a.  
LEROY ALEXANDER DORSETTE**

**1<sup>st</sup> Plaintiff**

**AND**

**PRINCESS ENYA SADE DORSETT a.k.a.  
PRINCESS ENYA SADE DORSETTE**

**2<sup>nd</sup> Plaintiff**

**AND**

**GREGORY THOMPSON**

**1<sup>st</sup> Defendant**

**AND**

**SECURITY & GENERAL INSURANCE CO. LTD**

**2<sup>nd</sup> Defendant**

**Before: The Honourable Madam Justice Ntshonda Tynes (Ag.)**

**Appearances: Ms. Pleasant Bridgewater for the Plaintiffs**

**Mr. Damian Neville for the Defendant**

**RULING**

**Tynes, J (Ag.)**

1. This Ruling concerns two striking out applications by the Defendants: the first, seeking an Order that the Amended specially indorsed Writ of Summons and action be struck out as against the 2<sup>nd</sup> Defendant on the grounds that the 2<sup>nd</sup> Defendant is not a proper party and that it discloses no reasonable cause of action; the second, seeking an Order that the

Amended specially indorsed Writ and action be struck out on the grounds that it is scandalous, frivolous or vexatious and/ or the Plaintiffs' conduct in maintaining and pursuing the claim in the circumstances amounts to an abuse of process.

2. By agreement between the two sides, the applications were heard on the papers. The Defendants' submissions with authorities were delivered to the court on the 16<sup>th</sup> January, 2023. The Plaintiffs' submissions were delivered to the court on the 19<sup>th</sup> January, 2023.

### **Background**

3. On the 24<sup>th</sup> January, 2014, Mr. Leroy Dorsett, a pedestrian, crossing the street on West Atlantic Drive, Freeport, Grand Bahama, was struck by a motor vehicle driven by and registered to the 1<sup>st</sup> Defendant. On the 1<sup>st</sup> June, 2016, Mr. Dorsett commenced this action by a specially indorsed Writ claiming damages against both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for personal injury and consequential loss sustained due to the alleged negligent driving of the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant is the 1<sup>st</sup> Defendant's insurer. In a Defence filed on the 3<sup>rd</sup> August, 2016, the Defendants admit to the road traffic accident but deny liability, alleging that Mr. Dorsett walked into the path of the 1<sup>st</sup> Defendant's vehicle. In the alternative, the Defendants allege contributory negligence by Mr. Dorsett.
4. At the close of pleadings, a Case Management Conference was held and the action progressed uneventfully in preparation for trial with, inter alia, the filing of Witness Statements and Bundles of Documents by both sides. Sadly, however, and quite dramatically, on the 25<sup>th</sup> October, 2017, one week before the Trial was to commence, Mr. Dorsett passed away. Subsequently, Mr. Dorsett's children sought and obtained an Order enabling them to continue the proceedings in place of their father. They elected to amend the Writ on the 17<sup>th</sup> November, 2021 by removing Mr. Dorsett, deceased as Plaintiff and naming themselves as the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs instead.

5. The instant applications are brought by Summons filed on the 2<sup>nd</sup> September, 2022. The first application is made pursuant to *Order 15 rule (6)* and *Order 18 rule 19(1)(a)* of the *Rules of the Supreme Court*. The second application is made pursuant to *Order 18 rule 19(1)(b) and (d)* and *Order 31(A) rule 18(2)(s)* of the *RSC* and under the Court's inherent jurisdiction.

### **The Law**

6. The provisions of *Order 15 rule 6(2)(a)* of the *RSC* provide as follows:

***(2) At any stage of the proceedings in any cause or matter the Courts may on such terms as it thinks just and either of its own motion or on application -***  
***(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;***

7. *Order 18 rule 19(1)(a)(b) and (d)* of the *RSC* states:

***19. (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-***  
***(a) it discloses no reasonable cause of action or defence, as the case may be; or***  
***(b) it is scandalous, frivolous or vexatious; or***  
***(c) ...***  
***(d) it is otherwise an abuse of the process of the court,***  
***and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.***

8. *Order 31(A) rule 18(2)(s)* of the *RSC* provides that:

***(2) Except where these Rules provide otherwise, the Court may-***  
***...***  
***(s) take any other step, give any other direction or make any other order for the purpose of managing the case and ensuring the just resolution of the case.***

### **Application to strike out proceedings against 2<sup>nd</sup> Defendant**

9. The 2<sup>nd</sup> Defendant's application to strike out proceedings as against it is made on the ground that the Amended specially indorsed Writ discloses no reasonable cause of action

against the 2<sup>nd</sup> Defendant. As stated by Lord Pearson in *Drummond-Jackson v the British Medical Association* [1970] 1 WLR 688, 696:

*“a reasonable cause of action means a cause of action with some chance of success, when... only the allegations in the pleadings are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail, the statement of claim should be struck out.”*

10. The Plaintiffs’ Statement of Claim makes only two references to the 2<sup>nd</sup> Defendant. First, it identifies the 2<sup>nd</sup> Defendant as the insurer of the 1<sup>st</sup> Defendant. The second reference to the 2<sup>nd</sup> Defendant is found at paragraph 6 of the Statement of Claim, which states:

**“The First Defendant at all material times drove the motor vehicle with the knowledge and consent of the Second Defendant and as a servant, agent and/ or representative of the Second Defendant.”**

11. There is no further mention of the 2<sup>nd</sup> Defendant in the Statement of Claim.
12. Defence Counsel has submitted that it is settled law that a party involved in a road traffic accident caused by an insured wrongdoer cannot make a direct claim against or sue the insurer of the alleged wrongdoer.
13. The Plaintiffs have not addressed this application at all in their submissions and appear to have conceded the point.
14. I agree with Defence Counsel. The 2<sup>nd</sup> Defendant insurer has committed no tort. It has no contractual relationship with the victim of the accident and the matters pleaded at paragraph 6 of the Statement of Claim have no apparent factual or legal basis. The Statement of Claim discloses no reasonable cause of action against the 2<sup>nd</sup> Defendant.
15. Presumably, the deceased’s intent in making the 2<sup>nd</sup> Defendant a party to the action was to ensure recovery of any future damages awarded in the deceased’s favour. However, merely notifying the insurer of the action (either before or within 21 days after commencing proceedings) in accordance with the provisions of **Section 12** of the **Road**

*Traffic Act* would have sufficed as far as putting the insurer on notice of the proceedings and thereby rendering it liable for any judgment obtained against its insured.

16. It is unclear why this application, belatedly filed on the 2<sup>nd</sup> September, 2022, was not made sooner. As early as the 3<sup>rd</sup> August, 2016, the date of filing the Defence, the Defendants pointed out that the 2<sup>nd</sup> Defendant had been improperly named and foreshadowed the instant application. Paragraph 1 of the Defence states:

*“This Defence is filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants... without prejudice to the 2<sup>nd</sup> Defendants’ right to apply under the Rules of the Supreme Court and/ or under the court’s inherent jurisdiction for an order striking out the Plaintiff’s Statement of Claim as against them on the grounds that it fails to disclose a reasonable cause of action, it is frivolous, vexatious and an abuse of the courts process.”* (sic)

17. Nonetheless, the fact remains that Mr. Dorsett has no cause of action against the 2<sup>nd</sup> Defendant and the Statement of Claim discloses none. To paraphrase another oft-cited dictum of Lord Pearson in *Drummond-Jackson v the British Medical Association*, this is a “*plain and obvious case*” in which the court’s summary powers to strike out the Amended specially indorsed Writ should be exercised and the action dismissed as against the 2<sup>nd</sup> Defendant.

### **Application to strike out Plaintiffs’ action**

18. I now move to the Defendants’ application to strike out the Plaintiffs’ specially indorsed Amended Writ and action. As indicated earlier, this application is made under the inherent jurisdiction of the Court and pursuant to *Order 18 rule 19 (1)(b) and (d)* of the RSC, that is, on the grounds that the Statement of Claim is scandalous, frivolous or vexatious or is otherwise an abuse of the process of the court.
19. Defence Counsel submits that there is a paucity of documentary evidence in support of the Plaintiffs’ claim which, together with the loss of Mr. Dorsett as a witness, has left the

Plaintiffs with no prospects of success. The documents to which he refers are exhibited to Affidavits filed on the 2<sup>nd</sup> September, and 25<sup>th</sup> October, 2022 on behalf of the Defendants and sworn by Lavette E. Kemp and Ruthnell Shandia Bethell respectively. Those documents are police reports of the accident, a handwritten record of a statement given to police by one Keith Missick and a handwritten record of a statement given by Mr. Dorsett to the 2<sup>nd</sup> Defendant's agents. In addition, according to Defence Counsel, the deceased Mr. Dorsett and the 1<sup>st</sup> Defendant were the only eyewitnesses to the accident and without Mr. Dorsett to testify at trial, the Plaintiffs will be unable to prove the claim. He submits that the Plaintiffs' action is unsustainable on the merits and that their prospects of success are de minimis.

20. The Plaintiffs' submissions in response read as trial submissions and only tangentially address the matters to be determined in the instant application. Notwithstanding this, Plaintiff Counsel's submissions as they relate to the issues raised in the pleadings, i.e. the speed at which the 1<sup>st</sup> Defendant was driving, the alleged intoxication of Mr. Dorsett, causation and quantum, support the contention that the Plaintiffs' cause of action against the 1<sup>st</sup> Defendant is not, on the face of it, scandalous, frivolous or vexatious or an abuse of process.

## **Analysis**

### **Scandalous, frivolous or vexatious / Abuse of Process**

21. The courts have long established that matters in a pleading which impute on a party or anyone else dishonesty, bad faith or misconduct are considered "scandalous". (**Lumb v Beaumont (1884) 49 L.T. 772; Brooking v Maudslay (1886) 55 L.T.**) A claim is said to be "frivolous or vexatious" when it is obviously unsustainable (**Attorney-General of**

*Duchy of Lancaster v L.N.W. Railway* [1892] 3 Ch. 274, 277 per Lindley L.J.) or doomed to failure (*Law and Dearnley* [1950] 1 All E.R. 124, 133 per Tucker L.J.).

22. A case is considered to be an “abuse of the process of the Court” where it lacks a solid foundation (*Lawrance v Norreys* (1890) 15 App. Cas. 210) or where it is inescapably doomed to failure (*Domer v Gulf Oil (Great Britain) Limited* 119 Sol J 392).

23. In the House of Lords decision of *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 at 536 Lord Diplock opined that striking out for abuse of process is a power:

*“which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people.”*

24. The Defendants have not sought to identify any allegations in the Plaintiffs’ Statement of Claim which they regard as scandalous. Instead, their focus pertains to the existing documentary evidence which they argue overwhelmingly favours the Defendants. Similarly, the thrust of Defence Counsel’s submissions concerning the ground of abuse of process relates to the perceived weakness of the Plaintiffs’ evidence and the perceived inability of the Plaintiffs to prove their case. Defence Counsel’s submissions are obviously framed with the Court’s inherent jurisdiction in mind and not with a view to satisfying the requirements of the provisions of *Order 18 rule 19 (1)* of the RSC.

25. The provisions of *Order 18 rule 19 (1)* of the RSC relate specifically to pleadings. They give the Court jurisdiction to impose sanctions for breaches of the rules of pleading and are designed to enable an attack on a party’s pleadings where those pleadings offend the rules set out in *Order 18*. I see no reason for concluding and the Defence has not pointed to anything to suggest that the Plaintiffs’ Statement of Claim is scandalous, frivolous or

vexatious or an abuse of process. The Statement of Claim sets out a legitimate claim against the 1<sup>st</sup> Defendant resulting from the road traffic accident on the 24<sup>th</sup> January, 2014.

### **Inherent Jurisdiction**

26. On the other hand, the Court's inherent jurisdiction to impose sanctions in proceedings which are obviously frivolous or vexatious or an abuse of process is completely independent of and undiminished by the jurisdiction derived from *Order 18 rule 19 (1)*. Moreover, the matters which the court can give consideration to when exercising its inherent jurisdiction extend beyond those relevant to an application pursuant to *Order 18 rule 19(1)*. In *Lawrance v Norreys*, Lord Hanchell stated at page 219:

***“It cannot be doubted that the Court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the Court. It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases.”***

27. He went on to state that when considering whether to dismiss an action, it is appropriate ***“to take into consideration all the circumstances of the case.”*** Also in *Lawrance v Norreys*, on the issue of the Court's inherent jurisdiction, Lord Watson, agreeing with Lord Hanchell, added at page 222:

***“it is legitimate to examine not only the pleadings in [the] suit but the whole probabilities of the case, and the judicial history of the claim, from first to last...”***

28. Having considered the pleadings and the matters pointed out by Defence Counsel in support of the application, namely, the loss of Mr. Dorsett as a witness to give oral testimony for the Plaintiffs, in addition to the documentary evidence and filed Witness Statements, I see no reasonable basis for granting the order sought. To my mind, while the death of Mr. Dorsett, the principal witness for the Plaintiffs, is a significant blow to



the Plaintiffs' case, neither Mr. Dorsett's death nor the documentary evidence cited, nor both combined are sufficient bases for the Court to determine at this stage that the Plaintiffs' case is obviously unsustainable or inescapably doomed to failure. I also consider that it would be inappropriate at this time to delve into the quality or sufficiency of the evidence in support of or against the Plaintiffs' claim. And so, I do not. But, obviously at the time when the Witness Statements were prepared and exchanged, Mr. Dorsett was alive and available to give evidence. It is possible that the Plaintiffs may have at that juncture deemed the testimony of other witnesses unnecessary or redundant. It would not be inconceivable, given the circumstances, if the Plaintiffs upon evaluating the current state of the evidence, were to seek to adduce additional evidence or call additional witnesses. The Plaintiffs have not indicated whether or not there are other witnesses capable of giving evidence in Mr. Dorsett's stead whom they would wish to call. Furthermore, the Plaintiffs may also hope to elicit from the witnesses for the Defence through cross-examination, evidence in support of the Plaintiffs' case, something which they are fully entitled to do.

29. The Plaintiffs should not at this stage be removed from the judgment seat and deprived of the opportunity to prove their case merely because they may face difficulty. Satisfying the burden of proof at Trial is a mountain the Plaintiffs must climb and whether or not they are able to succeed is a determination best left to the Trial judge.

### **Conclusion**

30. In conclusion, as it relates to the 2<sup>nd</sup> Defendant, the specially indorsed Amended Writ of Summons is struck out and the action dismissed as it discloses no reasonable cause of action against the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant's costs of the application and of the

action up to and including the filing of the Defence are to be paid by the Plaintiffs to the 2<sup>nd</sup> Defendant to be taxed if not agreed.

31. The Defendants' application to strike out the Amended Writ as scandalous, frivolous, or vexatious or as an abuse of process is dismissed with costs to the Plaintiffs to be taxed if not agreed.

**Dated this 24<sup>th</sup> day of January, A.D. 2023**

**Ntshonda Tynes  
Justice (Ag.)**