

**EASTERN CARIBBEAN SUPREME COURT  
GRENADA**

**IN THE HIGH COURT OF JUSTICE  
(CIVIL)**

**CLAIM NO. GDHACV2015/ 0461**

**BETWEEN:**

**[1] EMROL PHILLIP  
[2] NICOLE PHILLIP**

Claimants

and

**[1] PAUL GREENIDGE  
[2] DANIEL JAMES**

Defendants

**Before:**

Ms. Agnes Actie

Master

**Appearances:**

Ms. Hazel B Hopkin of Derick F. Sylvester & Associates, Counsel for the Claimants

Mrs. Nicole St. Bernard of St. Ives Chambers, Counsel for the Defendants

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2016: June 7;  
June 27.

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*Civil proceedings- Summary Judgment- whether defence has real prospect of success - Rule in Hollington v Hewthorn - admissibility of a plea of guilty in criminal proceedings - Rule 15.2(b) of Civil Procedure Rules - CPR 2000*

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**JUDGMENT**  
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[1] **ACTIE, M.:** The claimants were involved in a motor vehicular accident when a minibus owned by the first defendant and driven by the second defendant collided with a motor vehicle driven by the first claimant and owned by the second claimant. The second defendant on 2<sup>nd</sup> February 2015 pleaded guilty to a charge

for the offence of driving without due care and attention before Magistrate Honor Jerry Seales.

[2] The Claimants, on 13<sup>th</sup> October 2015, filed a statement of claim against the defendants seeking special and general damages as a result of the accident. The defendants filed a defence admitting the accident but denying liability. The defendants aver that they should not compensate the claimants as the damage or loss sustained was due to the first claimant's negligence.

[3] The matter came for case management conference on 3<sup>rd</sup> February 2016 where the master referred the parties to mediation. The mediation was unsuccessful. The matter came up before me on 18<sup>th</sup> May 2016 for further case management conference where I directed the parties to file and exchange submissions on the point "whether a defendant who pleaded guilty to a criminal charge can subsequently deny liability in a civil claim on the same facts which gave rise to the criminal charge?"

#### **The Claimants' Submissions**

[4] Counsel for the claimants submits that the second defendant having pleaded guilty to the offence of driving without due care and attention is now estopped from denying liability in the present civil proceedings which arose from the same facts. Counsel avers that it is an abuse of process to allow the defendants to maintain their pleaded defence as it would be an affront to justice to ignore the guilty plea. Counsel acquiesces that section 41 of the **Evidence Act** provides that judgments obtained in other proceedings are irrelevant. Counsel however contends that Section 41 speaks to judgments but does not specifically preclude evidence of convictions obtained on guilty pleas or admission of guilt. Counsel further contends that the defendants do not have any realistic prospect of success and prayed for summary judgment to be entered in favor of the claimants pursuant to CPR 15.2.

### **The Defendants Submissions**

- [5] Counsel for the defendants submits that a plea of guilty in criminal proceedings is not to be treated as conclusive proof of liability in civil proceedings arising from the same facts and cites the case of **Hollington v Hewthorn and Co. Ltd**<sup>1</sup>. Counsel states that the **Evidence Act**<sup>2</sup> does not assist the claimants. Counsel in support also cites the Jamaica Court of Appeal decision in **Julius Roy v Audrey Jolly**<sup>3</sup> where the court held that a criminal conviction is undoubtedly, not evidence supporting any liability on the part of the respondent in a civil case. Counsel avers that **Hollington v Hewthorn and Co. Ltd** is still the law in this jurisdiction. Counsel is of the view that the said plea may have been influenced by other factors such as expediency or fear and cannot be taken as a foregone conclusion of liability.

### **Law and Analysis**

- [6] The main issue to be determined is whether the second named defendant having pleaded guilty to criminal charge on the same facts giving rise to the civil proceedings before this court can now deny liability. It is the rule that evidence of a criminal conviction for an offence arising out of the same facts in civil proceedings is inadmissible. This point of law was decided in the seminal case in **Hollington v F. Hewthorn & Co Ltd**<sup>4</sup>. The case arose out of a collision between two cars in which the plaintiff's car was damaged. The drivers of the cars were the only eye-witnesses of the accident. The driver of the defendant's car was convicted in the magistrate's court for the offence of driving without due care and attention. The plaintiff brought a civil action in negligence against the convicted driver and his employer, but before it came on for hearing the driver of the plaintiff's car died. The plaintiff, deprived of his only witness, sought to put in evidence the conviction of the defendant driver as evidence of his negligence. The court held that the conviction was not admissible in the civil action and, the defendant calling no evidence, the

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<sup>1</sup> (1943) 1 KB 587

<sup>2</sup> Cap 92

<sup>3</sup> {2012} JMCA Civ 53

<sup>4</sup> {1943} 1 K.B. 587

plaintiff's action failed for want of any admissible evidence of the defendant driver's negligence. Goddard L.J stated:

“In truth, that conviction is only proof that another court considered the defendant was guilty of careless driving. Even were it proved that it was the accident that to the prosecution, the conviction proves no more than what has just been stated. The court which has to try this claim for damages knows nothing of the evidence that was before the criminal court. It cannot know what arguments were addressed to it, or what influenced the court in arriving at its decision. Moreover, the issue in the criminal proceedings is not identical with that raised in the claim for damages”

[7] However it is to be noted that Goddard LJ made a stark distinction between a conviction after trial and a conviction upon a guilty plea by the defendant where at paragraphs 599-600 he stated:

“It may frequently happen that, where bigamy or any other crime has to be proved in a civil proceeding, the prisoner on his trial had pleaded guilty. Proof by a witness present at the trial of the confession is admissible, because an admission can always be given in evidence against the party who made it. In the present case, **had the defendant before the magistrate pleaded guilty, or made some admission in giving evidence that would have supported the plaintiff's case, this could have been proved, but not on result of the trial.**” (My emphasis)

[8] The rule in **Hollington v Hewthorn** clearly establishes that evidence of a criminal conviction is inadmissible in subsequent civil proceedings to prove the facts on which the conviction is founded, where the facts are in issue in civil proceedings. However the rule in **Hollington** applies to convictions where the court or a jury has proved the high threshold beyond reasonable doubt required in criminal proceedings. The rule does apply to a conviction based on admission or on a plea of guilty.

[9] The issue of the admissibility of a guilty plea in subsequent civil proceedings arose in **Amos Virgo v Steve Nam**<sup>5</sup> where the defendant who pleaded guilty on a charge for careless driving in the Magistrate's Court attempted to deny liability in a civil claim. In an application to strike out the defendant's statement of case and to

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<sup>5</sup> Supreme court of Jamaica claim No. 2008/HCV00201.

enter summary judgment, Evan J. Brown J, [Ag] citing **George Stephenson v Dalvester Smith**<sup>6</sup> where Brooks J. distinguishing **Hollington v Hewthorn** stated:

“Mr. Smith’s previous plea of guilty...undermines Mr. Smith’s credibility in the defence he seeks to advance in this case”.

[10] Brown J. [Ag] in **Amos Virgo v Steve Nam** at Paragraph 24 said:

“**Hollington v Hewthorn** is not authority for the proposition that a defendant’s conviction in criminal trial, based on a plea of guilty, cannot afterwards be relied on in a civil trial. An admission made anywhere is good everywhere.....

If **Hollington v Hewthorn** laid down any rule, it is this, in all its untruncated glory, whereas a conviction arising from a verdict of guilty in a criminal trial is inadmissible, in a subsequent civil trial, a conviction based on a plea of guilty or any other admission during the course of the criminal trial is admissible”

[11] Counsel for the claimant states and I accept that the facts in the case before this court are distinguishable from the facts and rule laid down in **Hollington v Hewthorn**. The second defendant having been charged with driving without due care and attention, on the same facts giving rise to the civil claim, for which he pleaded guilty clearly undermines his defence in the civil suit. Lord Goddard rule in **Hollington** is commonly regarded as authority for the proposition that evidence of the determination of a jury or magistrate at an earlier trial is inadmissible to prove facts on which a return of a verdict of guilty was based on the opinion of the jury or the magistrate. The rule does not apply to an admission or plea of guilty entered by the defendant on his own volition.

### **Summary Judgment**

[12] The issue is whether given the facts before this court, summary judgment should be entered in favor of the claimants. The power of the court to grant summary judgment against a defendant is governed by CPR 15.2(b). This Rule allows the court to grant summary judgment on a claim or on a particular issue if it considers

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<sup>6</sup> Cl.2004 HCV00990(unreported) 11<sup>th</sup> April 2006

that the defendant has no real prospect of successfully defending the claim or the issue.

[13] In **Saint Lucia Motor & General Insurance Company Co. Ltd v Peterson Modeste**<sup>7</sup> George-Creque JA as she then was said:

“What must be shown in the words of Lord Woolf in *Swain v Hillman* is that the claim or the defence has no “real” (i.e. realistic as opposed to a fanciful) prospect of success. It is not required that a substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at trial. From this it is to be seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the court arrives at the view that it would be difficult to see how the Claimant or the Defendant could establish its case then it is open to the court to enter summary judgment.”

[14] The interest of justice requires finality in litigation. The guilty plea undermines the credibility of any evidence given to the contrary in subsequent civil proceedings against the same defendants. In the circumstances, it is near impossible for the defendants in this case before the court to maintain a viable argument against liability as pleaded in their joint defence. The defendants do not stand a reasonable prospect of successfully defending the case in light of the guilty plea made by the second defendant in the court below. For the reasons above and in an effort to save judicial time and expense, summary judgment is entered in favor of the claimants against the defendants.

### **Order**

[15] For the reasons advanced above it is hereby ordered and directed as follows:

1. Summary judgment is granted to the claimants with damages to be assessed.
2. Costs to the claimants in the sum of \$500.00.

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<sup>7</sup> SLUHCVAP 2009/008.

3. The claimants shall file and serve affidavits/witness statements, submissions with authorities in support of the assessment of damages within 21 days of today's date.
4. The defendants shall file and serve affidavits/witness statements, submissions with authorities in support of the assessment of damages in reply within 21 days of service by the claimants.
5. The assessment of damages shall be scheduled and the parties shall be notified by the court office, unless a consent order on quantum is sooner filed.

**Agnes Actie**  
Master