



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. G0183 OF 2020

BETWEEN:

**DARYL RENEE BARNES-NEWELL
(Administrator of the Estate of Shaun Newell)**

Plaintiff

AND:

KERRON BIGGS

1st Defendant

JERRY WOOD

2nd Defendant

IN CHAMBERS

Coram: Hon. Justice Marlene Carter

**Appearances: Mr. Clayton Phuran of CP Attorneys for the Plaintiff
Mr. Paul Keeble of Hampson & Co. for the Defendants**

Heard: 23 & 24 May 2023

Draft circulated: 28 March 2024

Judgment delivered: 8 April 2024

HEADNOTE

Civil litigation – Order 14 r. 12 – summary judgment – Coroner’s Inquest- whether full ventilation of the facts in issue at Inquest – whether on evidence claim appears realistic or fanciful

240408 – G0183/2020 - Barnes-Newell v. Biggs & Wood – Judgment (Application for Summary Judgment)

JUDGMENT

Background

1. By Writ of Summons dated 18 November 2020, the Plaintiff brought an action for damages following an accident that took place on 25 November 2019, in which a school bus being driven by the 1st Defendant, collided with a motorcycle controlled by the deceased, Mr. Shaun Newell, resulting in the death of the deceased.
2. The Plaintiff's claim for negligence is against the 1st Defendant as the driver of the school bus, and the 2nd Defendant who was "*at all material times the owner of the school bus.*"
3. The Plaintiff claimed:

"3. On or about the 25th November 2019 after traffic stopped in both directions the 1st Defendant, Kerron Briggs so negligently drove, operated, managed and maneuvered the motor vehicle with registration number 165 218 when he entered from the minor road, Mimosa Lane, onto the main thoroughfare of Shamrock Road in the District of Bodden Town, so that the said motor vehicle registered 165 218 came violently into collision with motor cycle with registration 149 519 being ridden by the deceased, Shaun Newell, resulting in severe personal injuries, loss, damages and ultimately the death of Shaun Newell."

4. A Coroner's Inquest (hereinafter "the Inquest") was held on 9 and 10 March 2022 relating to the accident. It is not in issue that at the Inquest, the Coroner received the evidence of a number of witnesses, including the Pathologist, three Accident Reconstructionists and civilian witnesses to the accident. After hearing these witnesses, the Coroner's Jury returned a verdict of death by misadventure. The Plaintiff was represented at the Inquest and was permitted to question the witnesses before the Jury.

The application

5. On 8 February 2023, the Defendants filed a Summons (hereinafter "the Summons") seeking Summary Judgment pursuant to Order 14, Rule 12 of the Grand Court Rules. The Defendants sought the following:

"1. An order pursuant to GCR Order 14/12 dismissing the Plaintiff's claim as against the Defendants and entering judgment for the Defendants on the ground that the Plaintiff's claim has no prospect of success; and

2. *Their costs of this application and of this action, and such further and other relief as counsel may advise and this Honourable Court permit.*”

6. The Defendants grounded the application on what was termed “*a number of incontrovertible facts*” arising from evidence presented at the Inquest. The Defendant set out the said facts said facts as follows:

“The deceased... operating a motorcycle for which he was not licenced, attempted to overtake west bound morning rush hour traffic... the road being marked with an unbroken white line...

West bound traffic on Shamrock Road had stopped to permit the 1st Defendant... to proceed east bound on Shamrock Road. The bus moving slowly was $\frac{3}{4}$ of the way into its turn and established across the eastbound lane of Shamrock Road when the deceased rode into the right side of the school bus, colliding with the side of the bus just ahead of its rear tyres.

The report and evidence of Mr Collin Redden, Accident Reconstructionist, was that... the deceased at 25 mph would have been 183.25 to 293.20 feet distant at the time the bus started to pull out. An experienced, attentive rider would have required a maximum of 75’ within which to stop the motorcycle.

Mr [Collin] Redden dismissed [the suggestion in the expert report of Richard Lambourn, Accident Reconstructionist, that the reaction and braking time depended on the deceased’s view of the emerging bus] and testified that “the rider would have seen the school bus from way back”. Mr Redden advised... that the school bus operator had no visible hazard to respond to and there was nothing the operator ... could have done to avoid the collision.

PC Athelston Watts, Accident Reconstructionist, concluded that the deceased was responsible for the collision and there was no liability on the part of the school bus operator, the 1st Defendant.

The statement of Donnetta Marie Brown...was that she [Ms Brown] observed west bound traffic stop to let the school bus out, and stated the majority of the school bus was in the east bound lane when the deceased “speeding” ... and “zig zagging” having in her view “lost control” collided with the side of the bus.

The evidence of Dr Jyoti, Pathologist, was to the effect that the Cannabinoids in the deceased's system and valid for the time of the accident were very high and exceeded the level recordable on his lab instrument..."

7. In his affidavit in support of the application dated 17 May 2023, Mr David Merriott, Loss Adjuster, stated, inter alia:

"19. I verify for the purposes of GCR Order 14 r. 13, the facts as pleaded in the Amended Defence of the 2nd Defendant filed on 11 January 2022 and in the Defence of the 1st Defendant filed on the same date, and in the Grounds to the Defendants' Summons, and that the Plaintiff's claim has no prospect of success by reason of the facts and evidence referred to..."

8. The Defendants filed outline submissions to support the Summons. Counsel for the Defendants referred extensively to the evidence of the witnesses called at the Inquest. Counsel outlined the following "critical matters":

"a. ... all three accident reconstructionists are effectively in agreement on the critical time/distance/speed equation relevant to the subject accident, which make it clear that had the Deceased been travelling at the permitted speed of 25 mph (which all accept for their analysis he might have been), he would have between 183' and 293' feet within which to bring the motorcycle to a stop and to have avoided a collision, requiring as he did merely 75' in which to comfortably brake to a stop, and on the evidence of PC Watts and Mr Redden, unobstructed visibility of the school bus at all material times.

b. There is no further relevant evidence which can possibly come out at trial. This makes this application a paradigm case for summary judgment... the facts established by the only evidence that is or will be available, make it crystal clear that this claim is utterly hopeless and it would be an abuse for it to continue to trial.

c. This is a case where the Plaintiff has (effectively) had her day in court; her attorney was able to put before the court her only evidence, Richard Lambourn's report and examine the Defendants' key witnesses... In this respect, this application differs markedly from similar applications where the Plaintiff might complain that he or she has not had an opportunity to see and hear the evidence and put her case to witnesses. This Plaintiff did have this opportunity and the outcome is apparent from the jury's verdict and the notes of the Inquest."

9. The Defendants' further submissions in reply of 24 May 2023 concluded that:

"42. It is for the plaintiff to prove that there is a realistic possibility of establishing negligence in the defendants, as opposed to a fanciful one. They cannot identify any negligence on the part of the 1st Defendant. ...There is no further relevant evidence that will be available at a trial which is not available now."

10. Counsel invited the Court to consider the principles identified by Lewison J. in *Easyair*, cited with approval by Vos M.R. in *HRH Duchess of Sussex v Associated Newspapers Ltd.*¹, that the Court must "*grasp the nettle*" and decide the matter, since if the Plaintiff's case is bad in law, "*the sooner that is determined the better*".

11. In this regard, Counsel also referred to the Judgment of Kawaley J. in *Simamba v. Health Services Authority*²:

"10. The principles governing the court's discretionary jurisdiction to strike-out cases before trial on the grounds that further prosecution of the claim would amount to an abuse of process because the claim is bound to fail are well settled. A civil litigant has a right of access to the court but no absolute right to take his case to trial. A defendant has a fair hearing right not to be forced to defend at trial a case which it is possible to determine at the interlocutory stage is bound to fail because it is plain and obvious that the claimant will not be able to prove his case at trial. Before considering the strike-out jurisdiction, it is important to remember that the court now has a positive duty to actively manage cases with a view to achieving the overriding objective."

12. Mr Richard Robinson, in his affidavit in response on behalf of the Plaintiff, submitted that:

"20. ... the Plaintiff has a reasonable and realistic prospect of success at trial. Further, there are other compelling reasons that the matter should go to trial ... there are substantial areas of dispute and many issues that should be resolved at trial.

...

25. ... we suggest that the matter proceed to trial as it is reasonable to assert based on the aforementioned that the matter is a contentious one which would require the intervention of the court. That there are points to be deliberated, questions that remained unanswered

¹ [2022] 4 WLR 81

² [2019] (2) CILR 213

and statements from key witnesses that have been excluded and would need to come to the fore.

26. *With respect to the application for Summary Judgment it is our humble view that the Defendant's Summons for Summary Judgment should be dismissed...*"

13. In submissions on behalf of the Plaintiff, Counsel took issue with the "purported mechanics of the accident" as outlined by the Defendants. Counsel noted that, at the Inquest, one Accident Reconstructionist had stated that there was a single point of impact to the right rear arch of the bus, which collided with the front, then the left side of the motorbike. That witness also stated that he had concluded that the deceased hit the side of the bus with his head while his head was down. Counsel argued that Dr. Lambourn, the Reconstructionist engaged by the Plaintiff, while agreeing that there was contact to the right of the bus and that the major damage to the bike was to its left side, also noted:

"I have made the observation that the damage to the motor bike, which Mr. Redden says was from the collision with the bus, is on its left side, and not on its right as should be expected in the collision as described. Similarly, there is a piece of the motor bike fairing which has been driven into a gap in the bodywork of the bus from the rear, and not from the front as should, again be expected. On the other hand, the helmet had 'contact transfers' to its right side, apparently from the black lettering on the side of the bus, and it may be that the pathologist's findings (which I do not have the expertise to interpret) could indicate whether Mr. Newell was primarily struck on his left or right side."

14. Counsel for the Plaintiff noted that this evidence of the damage to the left of the bike was consistent with the bike being pulled under the bus and dragged a short distance. He also noted that the Pathologist's report of the area of greatest impact to the body of the deceased, being to the chest area, was not consistent with the injury that would be expected, on the Defence's version of the purported mechanics of the accident. On the Defendants' version, he argued, what one would expect to have seen were injuries to the deceased's head or to the left side of his body. In this regard, Counsel pointed to the injuries noted by the Pathologist to the right side of the deceased, abrasions and lacerations to the right neck, shoulder, and chest and to the right thigh and right knee.

15. Counsel submitted that issues related to the distance that the bike would have been from the junction when the bus started onto the main road, whether and from how far away the bus would have been

visible as it turned onto the major road and what the 1st Defendant himself would have been able to see once he began to turn onto the major road were live, relevant issues.

16. Counsel for the Plaintiff did not agree with Counsel for the Defendants' assessment that there was no dispute between the parties' experts. Instead, Counsel for the Plaintiff highlighted areas in dispute touching relevant issues, to include, whether the evidence suggested that the deceased applied the rear brake harshly, leading to a loss of control of the motorbike, whether the deceased applied the front brake at all, and whether there was evidence of panic braking. Counsel suggested that these areas of disagreement extended to the distance travelled, perception time and rate of acceleration of the bus, all matters pertinent to whether the deceased would have been able to see the bus and how long he would have had to respond thereafter.
17. The issue of speed was another area in which the Plaintiff suggested that there was no agreement as to the course of the accident. Counsel for the Plaintiff noted that the expert, Mr. Redden, had conceded at the Inquest that the deceased was travelling within the required speed limit at the time of the accident. This was in contradiction to the key witness, Donetta Marie Brown, who noted in her statement to the police that the deceased was travelling at a high rate of speed.
18. For the Plaintiff, it was submitted that: *"There are substantial and serious conflict[s] as to the matters of fact and there are difficult questions in respect to law. ... There are substantial triable issues."* Counsel highlighted that any attempt by this Court to review the matter would result in a mini trial, a cost which is inappropriate on this application.

Court's considerations

19. Order 14, Rule 12 of the Grand Court Rules (1995 Revision) stipulates:

"(1) Where in an action to which this rule applies a defence has been served by any defendant, that defendant may on the ground that the whole or part of the plaintiff's claim has no prospect of success or that the plaintiff has no prospect of recovering more than nominal damages, apply to the Court for the plaintiff's claim to be dismissed and judgment entered for the defendant on the whole or part of the claim."

20. In ***Cribb v Reid***³, Patterson Ag. J. stated:

"In my view, as I have said earlier, the scope of O.14, r.12 appears to be very wide. It gives a Defendant the right to terminate proceedings against him in a summary manner by showing

³ [1997] CILR N-7

that the Plaintiff's claim has no prospect of success. If the Defendant is able to show that the Plaintiff's case is clearly unsustainable, then he will be entitled to judgment without the necessity of a possible long drawn out trial. If the issue raised by the defence is shown to be sufficient to finally determine the action in his favour without a full-scale trial, then in my view, an O.14, r.12 application is appropriate. These are but examples of the scope of the rule and are by no means exhaustive. The application of the procedure not only saves costs but it saves the time of the court."

21. In *Easyair Ltd v Opal Telecom Ltd*⁴, the Court stated the following regarding a court's jurisdiction on an application for summary judgment:

"... the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:

- i) The court must consider whether the claimant has a "realistic" as opposed to "fanciful" prospect of success: Swain v Hillman [2001] 1 All ER 91;*
- ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EXCA Civ 472 at [8]*
- iii) In reaching its conclusion the court must not conduct a "minitrial": Swain v Hillman*
- iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel at [10]*
- v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550;*
- vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller*

⁴ [2009] EWHC 339 (Ch)

investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63;

- vii) *On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ."*

22. In ***HRH Duchess of Sussex v Associated Newspapers Ltd***, Sir Geoffrey Vos, MR, accepted these principles and also noted what he referred to as "*Mummery LJ's warning*" in ***Doncaster Pharmaceuticals Group Ltd v. Bolton Pharmaceutical Co 100 Ltd***⁵ that the Court should be alert to "*the defendant, who seeks to avoid summary judgment by making a case look more complicated and difficult than it really is*", and "*the cocky claimant who ... confidently presents the factual and legal issues as simpler and easier than they really are and urges the court to be 'efficient' ...*".

23. He went on to endorse the approach of the trial judge at first instance in ***Doncaster***:

"As the judge also correctly said, neither CPR Part 24, nor the overriding objective, permits the court to enter judgment on the basis that the claimant has a strong case, the defence is not likely to succeed, and the time and costs involved in a trial are disproportionate to the potential gains. The judge said that his focus had to be on "whether it [was] realistic or fanciful to suppose the claims might fail at trial".

⁵ [2006] EWCA Civ 661 at [18] and [11]

24. This is an application for summary judgment after Coroner’s Inquest. The Coroner’s Act (hereinafter “the Act”), Section 6 (4) succinctly states the primary issues with which the Inquest is concerned:

“The verdict of the jury shall, subject to the evidence available, state —

- (a) the name and description of the deceased;*
- (b) when the deceased came to that person’s death;*
- (c) where the deceased came to that person’s death; and*
- (d) the cause and manner of death.”*

25. Section 13 of the Act reinforces the purpose and scope of the Inquest:

*“Where an inquest has not been stayed or has been resumed after being stayed, the Coroner shall continue to hear the evidence of any witnesses who have not yet testified **and shall record the verdict as to who the person was upon whose body the inquest has been held and how, when and where that person met that person’s death or that the cause of death was unknown as the case may be;** but the Coroner shall not record a verdict inconsistent with the finding of any criminal court acquitting any person charged before it with any crime connected with the death.”* (emphasis mine)

26. In ***R (on the application of Maughan) (Appellant) v Her Majesty’s Senior Coroner for Oxfordshire (Respondent)***⁶, the Court noted:

“After the evidence is given, the jury must make their determination as to how, when and where the deceased died (2009 Act, section 10). The Convention does not require any particular standard of proof or degree of conclusivity for these findings. The coroner will determine which facts in issue are at the centre of the case. A narrative statement of facts will often be necessary to express the findings of the jury on these facts (Middleton, para 36, and Guidance No 17 issued by the Chief Coroner). The coroner may formulate some questions to help the jury, and their answers will form the narrative conclusions recorded at the end of the inquest. The conclusion in such a narrative is of a factual nature (Middleton, para 37). That is reinforced by section 10(2) of the 2009 Act, which provides that a determination may not be framed so as to appear to determine any question of any question of criminal responsibility on the part of any named person or any civil liability.”

⁶ [2020] UKSC 46

27. The Cayman statute does not have a corresponding provision to Section 10 (2). However, there is no provision in the Act that empowers the Coroner to determine criminal responsibility or civil liability. The verdict of the Inquest is not conclusive to determine liability, either criminal or civil. In the instant matter, the verdict of the Jury was conclusive only as to the fact that the deceased's death was by misadventure.
28. Counsel for the Defendants, in written submission, states: *"It is accepted that there are differences between an Inquest and a trial of civil liability. A verdict of an Inquest is not res judicata and does not involve even issue estoppel."* At an earlier point in his submissions, Counsel noted that *"This Plaintiff did have this opportunity [to see and hear the evidence and put her case to witnesses] and the outcome is apparent from the jury's verdict and the notes of the Inquest."*
29. This Court is satisfied that Counsel was not thereby suggesting that the Jury's verdict was sufficient to find that summary judgment should, therefore, follow. However, for clarity, it is important to note that the conclusions of the Jury at the Inquest, not relating in any way to the issue of civil liability, cannot form the basis for a civil claim, nor can it be determinative of an application such as that now under consideration by this Court. The fact of the verdict does not, in and of itself, carry any particular weight on this application. Instead, Counsel's application is that, since all potentially relevant material has been presented before the Inquest, this Court was in a position to consider that evidence to determine whether the Defendants should be entitled to the Orders that they seek. In fact, Counsel's submission is that *"all the evidence which would be considered at a trial"* was before the Inquest, that there is no other relevant evidence possible, and therefore, this Court was in a unique position to determine whether the Plaintiff's claim has a realistic prospect of success.
30. The issue for this Court to determine is whether the circumstances of this case should be viewed as falling within (vi) or (vii) of the principles stated in *Easyair* as outlined above. Is this a case where there is *"no obvious conflict of fact but reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case"* or instead, is it a case where *"the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, [and therefore, the court] should grasp the nettle and decide it."* The Defendants ask the Court to adopt the latter formulation in their favour.
31. In its consideration of the main issue of the instant application, the extent to which the Court can rely on the evidence presented at the Inquest becomes relevant. This question is intertwined with the

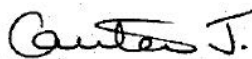
function of the Inquest and the nature of the conclusions or determinations reached by a Coroner or a Jury at an Inquest.

32. As noted above, the Inquest is not concerned with the determination of civil liability or any conclusion thereon. As such, this is a factor of which the Court must be mindful as it considers submissions which advance the fact that the witnesses at the Inquest were cross-examined by Counsel for the Plaintiff, or that all relevant evidence may have been presented before that forum as matters supporting the Summary Judgment application.
33. Not only is the result of the Inquest not determinative of whether a claim for civil liability can be supported, but the evidence presented at the Inquest must also be treated with caution. The questions which a Coroner or Jury must determine are directed to discovering whether the cause and manner of death of a deceased was, for instance, a natural death occurring from a disease process running its course or whether they could determine from the evidence presented whether the death occurred from some deliberate human act or omission which goes wrong and which may have unintentionally and unexpectedly led to death. Persons who are concerned or interested in the circumstances surrounding the death of the deceased are not compelled to present evidence or to interrogate the evidence presented at the Inquest. An Inquest is inquisitorial, not adversarial in nature, and its process has been described as “*sui generis*”⁷.
34. It follows that, while the Plaintiff had the opportunity to assess the evidence presented at the Inquest and to inquire into that evidence, the Plaintiff was not then putting forward its case or answering a case presented by the Defendant as would be expected at a trial. The Plaintiff could not apprehend that she was constrained to present every avenue of argument before the Inquest Jury. Given the Jury’s remit, it is inconceivable that she would have done so. It is reasonable to believe that the Plaintiff will have contemplated that there were other avenues that could be pursued, not dependent on the findings of the Inquest. To this extent, the Court’s examination of the evidence on the instant application is made with these matters firmly in view.
35. The Court has considered the detailed oral and written submissions of Counsel for the parties. This Court has concluded that the question of whether the Plaintiff has a realistic or a fanciful prospect of success cannot be determined without the Court conducting what, in essence, would amount to a mini trial. While the Defendants are confident in their submissions that the evidence relevant to the accident does not allow for any realistic possibility of establishing negligence in the Defendants,

⁷ Per Lord Kerr (§141) in R (on the application of Maughan) (Appellant) v Her Majesty’s Senior Coroner for Oxfordshire (Respondent) [2020] UKSC 46

where facts are not agreed, expert evidence surrounding the “*mechanics of the accident*” is not settled; the interpretation of the Pathologist’s report, whether it assists the Plaintiff’s or Defendants’ version of events, is unclear, these are all matters which weigh heavily in support of the view that this is not a matter suitable for summary determination.

36. It may be that because most of the available relevant evidence is present, this case may turn out not to be really complicated. However, this Court is not satisfied that it is a case that should be decided without a fuller investigation into the facts at trial than is possible or permissible on Summary Judgment. There has not been a full ventilation of the facts. The Court cannot, on this application, resolve conflicting versions of the evidence presented at the Inquest sufficient to determine conclusively, that the Plaintiff does not have a realistic prospect of success.
37. The caution with which the Court must approach the evidence presented at the Inquest, for reasons highlighted at paragraph thirty-three (33) above, also weighs against embarking upon a closer, more detailed assessment at this stage. Given the conflicting arguments surrounding the evidence, it may well be that the fuller investigation contemplated at a trial could add to or alter the evidence available to a trial judge and so affect the outcome of this claim.⁸
38. For these reasons, the application for Summary Judgment is dismissed. Costs are costs in the cause.



The Hon. Mrs. Justice Marlene Carter
Judge of the Grand Court

⁸ Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63