Neutral Citation no. [2008] NIQB 4 | *Ref:* **TRE7025**

Judgment: approved by the Court for handing down | *Delivered:* **11/01/08**

*(subject to editorial corrections)**

2004 No. 3620

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION

Between:

MARGARET ARMOUR KNIPE

Plaintiff:

and

PEARL BAMFORD, JAMES BAMFORD and NATIONAL FARMERS UNION MUTUAL INSURANCE SOCIETY LIMITED

Defendants:

and

JOHN WHYTE

Third Party:

TREACY J

INTRODUCTION

[1] The Plaintiff's claim is for damages for personal injuries, loss and damage sustained by reason of the negligence of the First-Named Defendant in and about the driving, management and control of a motor vehicle, the property of the Second-Named Defendant on or about 31 May 2002.

[2] The Defendants have issued Third Party proceedings claiming an indemnity against the Plaintiff's claim and damages on the grounds of the Third Party's negligence in and about the driving, management, care and control of a motor vehicle.

THE ISSUES

[3] On 22 March 2007 pursuant to Order 33 of the Rules of the Supreme Court (Northern Ireland) 1980 Master Bell ordered that the following questions be heard as preliminary issues in this action:

(i) Whether the Ordinary Civil Bill **of John Whyte v Pearl Bamford, James Bamford** was settled on the basis that Pearl Bamford was 70% liable and John Whyte was 30% liable in relation to the accident, the subject of this action.

(ii) Whether, in view of the said settlement, the third party is estopped from contending that he is other than 30% liable in this action.

THE FIRST ISSUE

[4] The Ordinary Civil Bill of **Whyte v Bamford & Bamford** referred to in question (i) was listed for hearing before His Honour Judge Lynch on 7 January 2005 at Belfast Recorder's Court Laganside Courthouse. It arose out of the road traffic accident, the subject of this action. Stuart Spence of counsel appeared on behalf of the Defendants and Michael Hamill of counsel appeared for the Plaintiff Mr Whyte.

[5] In an affidavit sworn by Stuart Spence in these proceedings he made the following averments which were, in effect, unchallenged:

> "5. …
> As further proceedings were intimated, it was essential that either an apportionment of liability to be binding was agreed by the parties or that the Court determines the liability issue. I explained this to Mr Hamill. In due course, we settled the Civil Bill whilst standing in the concourse on the second floor of Laganside Courthouse on the basis that a figure for damages was agreed with costs and that the First-Named Defendant herein was 70% liable and that the Third Party was 30% liable in relation to the said action. It was an express term of the said settlement that this division of liability be recorded in the decree.
>
> 6. The settlement was announced before His Honour Judge Lynch shortly after the Civil Bill was settled. Mr Hamill announced the damages and costs terms whilst standing on my right side. While he remained there, I announced the liability agreement. …"

Mr Spence exhibited to his affidavit the relevant entry in the Court Book which corroborates his account.

[6] In the affidavit of the Solicitor acting on behalf of the Third Party he deposes to an apportionment of liability having been raised but that he was not a party to any agreement in relation to same.

[7] In the affidavit of Mr Hamill he deposed as to his normal practice of recording an apportionment of liability on his brief and that same is not recorded in this case but that he cannot recall whether or not there was an agreed apportionment of liability, cannot recall mentioning settlement terms in Court and is not in the position to deny or confirm the averments of Mr Spence.

[8] Notwithstanding the foregoing a denial Defence was served on behalf of the Third Party and in answer to Interrogatories the Third Party stated that he believed no agreement in relation to liability had been entered into.

[9] In light of the effectively unchallenged averments of Counsel for the Defendants and the contemporaneous Court records I am quite satisfied that the Ordinary Civil Bill was settled on an apportionment of liability as set out above.

THE SECOND ISSUE

[10] On behalf of the third party (in reality the insurance company) Mr Good of counsel submitted that Mr Whyte's original solicitor and counsel in the civil bill did not have authority to bind his insurers to such an arrangement especially since his insurers were not involved in or represented in the proceedings in which the apportionment was agreed (as I have found).

[11] I do not accept that Mr Whyte's solicitor and counsel did not have the authority to enter into such an arrangement. Apportionment was not a collateral matter in the sense of being "extraneous subject matter" and solicitor and counsel had authority to enter into such an arrangement. The argument that apportionment here was collateral is decidedly thin when one has regard to the unchallenged averments set out at paragraph 5 above.

[12] The circumstance that, for whatever reason, Mr Whyte's insurance company was unaware of and unrepresented during the civil bill proceedings does not affect, in my view, the legally binding nature of the agreement that was entered into. It may potentially give rise to issues between Mr Whyte and his insurance company but it cannot affect the binding nature of the agreement. See, for example, paras 30.03 and 30.11 et seq of "The Law and Practice of Compromise" (6th edition) by David Foskett QC ("Foskett").

[13] It is well established that the solicitor retained in an action has ostensible authority as between himself and the opposing litigant to compromise the suit provided that the compromise did not involve matters collateral to the action; that matter was not collateral to the action unless it involved extraneous subject matter, and that a compromise did not involve collateral matter merely because it contained terms which the court could not have ordered by way of judgment in the action. See ***Waugh v. H B Clifford and Sons Limited*** [1982] Ch 374 at 375 and page 386 H to page 387 to C. Of course in the present case the compromise involved terms which the court could (and on consent did) order.

[14] An apportionment of liability having been agreed the court will not permit the same to be litigated again. See Foskett at para 6.01 and ***Plumley v. Horrell*** [1869] 20 LT 473 and ***Knowles v. Roberts*** [1888] 38 Ch D 263.

[15] The defendants contended that since the ordinary civil bill was settled as set out above that the third party is now estopped from contending that he is not 30% liable in this action.

[16] The relevant principles are those enunciated by the Court of Appeal in ***Shaw v. Sloan*** [1982] NI 393 namely that issue estoppel arises when it has been established that:

(i) the same question has been decided;

(ii) the judicial decision which is said to create the estoppel was final; and

(iii) the parties to that decision (or their privies) were the same persons as the parties (or their privies) to the proceedings in which the estoppel is raised.

[17] Mr Good contended that there was no judicial decision and accordingly that no estoppel could arise. I consider that this argument is unsound both as a matter of authority and principle. On authority because, for example, in ***Trainor v. McKee*** (1988) 9 NIJB 98 at page 101 Carswell J stated:

> "A judgment which in other respects gives rise to an issue estoppel does so none the less because it was made in pursuance of the consent and agreement of the parties: Spencer-Bower and Turner, Res Judicata, 2nd ed., para. 41 and authorities cited there."

To similar effect see Halsbury's Laws, 4th edition re-issue volume 16(2), para 408. In principle because it is plainly in the public interest that there be finality, efficiency and economy in the conduct of litigation.

[16] In this case the same issue (liability/apportionment for the rta) has been finally determined and the same parties (i.e. the defendants and the third party) bound by the earlier decision are the same parties sought in these proceedings to be estopped from disputing liability/apportionment as agreed.

CONCLUSION

[17] In light of the foregoing my conclusion is that the third party is estopped from contending that he is otherwise than 30% liable.