

IN THE SUPREME COURT OF BELIZE, A. D. 2014

CLAIM NO. 122 OF 2013

BETWEEN:	(EVERALDO QUETZAL	CLAIMANT
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	(AND	
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	(JORGE ADRIAN TREJO	FIRST DEFENDANT
	(INSURANCE CORPORATION OF	SECOND DEFENDANT
	(BELIZE LTD.	

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

**Mr. Michel Chebat, S. C., of Chebat and Co. for the Claimant
Ms. Stevanni Duncan of Barrow and Williams for the Defendants**

R U L I N G

1. This is an application by the Second Defendant/Applicant, Insurance Corporation of Belize Ltd., a company duly incorporated under the Laws of Belize with registered offices at 16 Daly Street, Belize City, Belize for the following orders:

- i) That the Claim against the Second Defendant be struck out;
- ii) Costs;
- iii) Further or other relief.

2. The application is brought pursuant to Rule 26.3(b) and (c) of the Supreme Court Civil Procedure Rules which empowers the Court to strike out a statement of case or parts of a statement of case where it appears to the Court that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim.

The Applicant submits that the Claimant's Statement of Claim discloses no reasonable grounds for bringing the claim against the Second Defendant and that the claim is an abuse of the process of the Court on the following basis:

- a. The Statement of Claim discloses no cause of action against the Second Defendant;
- b. The Second Defendant has no legal or equitable basis on which it ought to be required to defend this claim;
- c. In the alternative, any claim against the Second Defendant is barred by virtue of Section 5(7) of the Motor Vehicles Insurance (Third Party Risks) Act Chapter 231 which prohibits the commencement of a claim against an insurer for no fault benefits after the expiry of twelve months from the date of the accident.

The Applicant further submits that the claim against the Second Defendant is frivolous and vexatious and an abuse of the Court's process.

3. The Application was supported by the affidavit of Ms. Melissa Watson Ellis, Claims Manager of the Second Defendant Company, dated July 18th, 2013. Ms. Watson Ellis stated in paragraph 8 that *"The Claimant sought to recover the sum of \$5000 from the Second Defendant without submitting proof to substantiate that the sums incurred were as a result of the collision; that the Second Defendant has always communicated to the Claimant that it required such proof and that it would not make any payment without such proof."* She then refers to a letter dated January 10th, 2012 attached as Exhibit "MWE1."
4. In contesting this application, the Claimant filed an affidavit dated September 18th, 2013 in which he sets out the events to date. In paragraph 4 he acknowledges that he does not have a judgment against the First Defendant but in paragraph 5 he states that he commenced the claim against the Second Defendant due to their refusal to pay the no fault benefit under Section 5 of the Motor Vehicle Insurance (Third Party Risks) Act.

He states that he has submitted a Medical Report from Dr. Cervantes, a Spine Specialist, detailing his injuries and the need for further medical attention, but that ICB has still refused to pay him the sums requested under the no fault section of the Motor Vehicle Insurance (Third Party Risks) Act.

5. On behalf of the Applicant, Ms. Duncan argued that the Statement of Claim discloses no cause of action as against ICB as there is no privity of contract between the Claimant and ICB. Secondly she argues that the claim is statute barred under Section 5(7) of the Motor Vehicle Insurance (Third Party Risks) Act.

Ms. Duncan submits that having failed to get assistance from ICB, the Claimant should have gone to the Supervisor of Insurance. She states that the Motor Vehicle Insurance (Third Party Risks) Act does not state that a Claimant can bring an action against an insurance company for not honoring a claim. Learned Counsel argued that Section 19 of the Motor Vehicle Insurance (Third Party Risks) Act states that once a judgment is obtained with respect to the claim, then that judgment can be enforced against the insurers. She also stated that ICB kept asking for and did not receive a

medical report from the Claimant detailing his treatment at the Corozal Hospital to prove that his injuries were as a result of the accident.

6. Mr. Chebat, S. C., for the Defendant submitted that the cause of action arises under Section 5 of the Motor Vehicle Insurance (Third Party Risks) Act which places an obligation on the insurance company to pay no fault benefits to an injured party. He further submits that Section 5(7) of the Motor Vehicle Insurance (Third Party Risks) Act is subject to Section 5(8) which states that where the delay is due to the actions of the insurer, the claim will not be statute barred. Learned Counsel argued that the Claimant submitted all the medical reports he had available to him at the time to the Second Defendant as proof of his injuries and the insurance company still refused to pay.

The Law

7. The Motor Vehicle Insurance (Third Party Risks) Act Chapter 231 of the Laws of Belize Revised Edition 2000 reads as follows:

Section 5(1) “ Notwithstanding anything in any enactment, rule of law, or the common law and without prejudice to any claim or action for damages made as a result of negligence, the insurer of a person who was using a motor vehicle at the time of an accident involving the said

*vehicle out of which any bodily injury arose **shall**, irrespective of whether such person be negligent or not, pay as benefits to the injured party all reasonable expenses incurred as a result of that injury for necessary medical, surgical, dental, hospital and nursing services up to an amount not exceeding five thousand dollars.” (emphasis mine)*

Section 5(7) “Subject to subsection (8), no person shall commence an action or proceeding against the insurer for recovery of any claim for benefits under this section, after the expiration of twelve months from the date of the last benefit payment received by him or after the expiration of twelve months from the date of the accident, whichever is the longer period of time.

Section 5(8) “ The provisions of this subsection shall not be a bar to any action or proceeding where the delay is shown to have been due to any handicap resulting from the injury suffered or as due to the actions of the insurer.”

The Ruling

8. I have perused the documents submitted to date in this matter and it is clear to me that the Claimant has submitted a Medical Report setting out the nature of his injuries. It appears to me that upon receipt of that report from Dr. Cervantes, ICB was legally obligated to pay the no fault benefits to Mr. Quetzal. This is a clear obligation under Section 5(1) of the Motor Vehicle Insurance (Third Party Risks) Act which is written in clear and unambiguous language. I find ICB's conduct less than commendable in demanding that the Claimant produce a report from another doctor placing Mr. Quetzal in an unnecessarily stressful and burdensome position which is clearly contrary to what the spirit of the Act is designed to do which is to assist the injured person with immediate expenses arising as a result of an accident and obviate the need for litigation before these expenses can be recovered. This is obvious from the fact that the section makes it clear that these benefits are payable to the injured party "**irrespective**" of whether the insured is found negligent or not. I also find that it is ICB's fault that time expired due to delay arising from ICB's demands for other reports after they already received a Medical Report about the Claimant's injuries from Dr. Cervantes, a highly trained Neurosurgeon who has been accepted as an expert in his field

many times in these Courts. It is important to look at the time frame of events. Mr. Quetzal did not suddenly show up on ICB's doorstep demanding payment. He was injured in an accident, involving a party insured by ICB, and he subsequently requested payment of no fault benefits as he is legally entitled to do. This makes it clear that the negligence or otherwise of the insured is not a consideration at this point. I therefore order the insurance company must pay the no fault benefits forthwith. Section 5(8) therefore applies in this case. The application to strike out this claim is refused.

9. Costs awarded to the Claimant in the sum of \$2,000.00.

Dated this 31st day of January, 2014

**Michelle Arana
Supreme Court Judge**