THE HIGH COURT

[2023] IEHC 27

[Record No. 2020/7772P]

BETWEEN:

KATARZYNA SINGH

PLAINTIFF

AND

IAN CORBERTT

DEFENDANT

JUDGEMENT of Ms. Justice Siobhán Phelan, delivered on the 23rd day of January 2023.

INTRODUCTION

1. This matter comes before me on an application pursuant to Order 25 of the Rules of the Superior Courts, 1986 for:

(i) An Order directing the trial of a preliminary issue as to whether the Plaintiff's claim against the Defendant has been compromised by reason of accord and satisfaction; and

(ii) An Order dismissing the Plaintiff's claim made in personal injuries summons dated the 18th of November, 2020 on the basis of the Defendant's plea of accord and satisfaction.

BAGKROUND

2. The Plaintiff is a Polish national who has been living in the State since in or about 2009. It is claimed that she left school early, is not proficient in English and does not know how to read English. On the 17th of February, 2020 she was involved in a road traffic accident when her vehicle was rear ended. The Defendant admits liability for the accident which caused damage to the Plaintiff's car and personal injury.

3. At the time of the accident, the Plaintiff was a recently single parent of four children, the youngest of whom was a new born infant. Anxious to secure the early repair of her car, she attended with a used car salesman, also a Polish national, seeking his assistance. He entered into discussions on her behalf with the Defendant's insurance company both in relation to car repair and compensation for personal injury.

4. In circumstances which have been outlined on affidavit, following some discussions between the used car salesman and the Defendant's insurance company, the parties entered into a written agreement purportedly to settle any claim the Plaintiff might have arising from the accident. The said settlement was purportedly entered into by signature of the Plaintiff on the 30th of March, 2020 confirming agreement to terms outlined in a letter dated the 26th of March, 2020 [hereinafter "the letter of compromise"] from a Litigation Handler with the Defendant's insurer. Following the return of this signed letter, the settlement sum of €18,000 in respect of injuries was paid in addition to a sum of some €3,000 separately paid in respect of special damages and out of pocket expenses.

5. Notwithstanding the existence of this signed letter of compromise and the payment of the sums outlined in the letter, the Plaintiff commenced the within personal injuries proceedings by the issue of a summons dated the 18th of November, 2020. No reference was made to the existence of a settlement agreement in those proceedings and no proceedings were brought seeking to impeach the agreement signed by the Plaintiff prior to the issue of the personal injury proceedings.

6. In the Defence delivered, the Defendant raised a preliminary objection to the maintenance of the within proceedings, pleading accord and satisfaction.

7. By way of a Reply to Defence the Plaintiff denied that she is estopped from maintaining the proceedings, denies that she accepted a sum in satisfaction or discharge of her claim against the Defendant and denies that the Defendant is entitled to rely on the principle of accord and satisfaction. It is further pleaded that the signed agreement of the 30th of March, 2020 amounted to an improvident transaction and should be set aside in circumstances where the Defendant took unfair advantage of the Plaintiff having regard to her serious injuries (including mental sequelae), lack of understanding and ignorance of the system, poor understanding of the English language, impecunious circumstances and complete lack of independent legal

advice. It is pleaded that the sum paid on foot of the purported agreement represents a significant and serious undervaluation of the quantum of general damages to which the Plaintiff is entitled as a consequence of suffering serious personal injury, loss, damage, inconvenience and expense arising out of the accident the subject matter of the proceedings.

8. For the purpose of this application, the Plaintiff appears to accept that she signed the letter of compromise but it is claimed that she does not have good English, was vulnerable and in a precarious financial position with four young children to care for on her own, did not have legal advice and the concept of full and final settlement was not explained to her.

LETTER OF COMPROMISE

9. In the letter of compromise, reference was made to conversations with the Plaintiff's representative, one Mr. Fijolek, the used car salesman referred to above. The Plaintiff was advised that the Defendant's insurers were prepared to pay the sum of €18,000 in full and final settlement of all claims howsoever arising in relation to the accident conditional on the Plaintiff confirming, *inter alia*, that:

I. Mr. Fijolek was authorised by her and entitled to discuss the circumstances of and injuries arising from the road traffic accident and her claim for damages in respect of same;
II. She wished to settle her claim for damages notwithstanding that her personal injuries had not resolved and that she had been advised by her GP and MRI report that further medical examinations were advisable, it being unclear what future treatment might be required or whether she would make a full recovery from her injuries;
III. She had been advised of her right to seek and obtain legal advice but had chosen not to do so;
IV. She understood that the offer of €18,000 was in full and final settlement of every aspect of her claim for damages against the Defendant and that she would not be entitled to any further payment even if her injuries worsened or did not resolve;
V. She understood that the offer of €18,000 was to include her claim for each and every item of out-of-pocket expense, including Dr. Padraic Quinn's bill in the sum of €250, and that she would not be entitled to receive any additional payment in relation to same

even if she did require future medical treatment or incur any further out of pocket expenses;

VI. Each of the above points had been fully explained to her by Mr. Fijolek and she completely understood the settlement which was being offered and did not wish any further clarification or explanation of the settlement offer.

The Plaintiff was invited to confirm her agreement to the foregoing conditions by signing and dating the letter and returning it. It appears the Plaintiff signed the letter on the 30th of March, 2020 and confirmed her bank account details to the Defendant's insurers.

AFFIDAVIT EVIDENCE

10. This application is grounded on the Affidavits of the Claims Handler who dealt with the material damage element of the claim and the Litigation Handler who engaged in negotiation and correspondence in respect of the personal injuries claim. Neither the Plaintiff nor Mr. Fijolek have sworn affidavits in reply but a detailed affidavit has been sworn on behalf of the Plaintiff by her solicitor.

11. It is not proposed to set out in full the Affidavit evidence but, in summary, the following emerges from the Affidavits:

I. Negotiations were conducted on behalf of the Plaintiff by another Polish national, Mr. Fijolek, who runs a small used car sales business and whom she approached for assistance in repairing her car;

II. While the Plaintiff confirmed to the Claims Handler dealing with the material damage claim that Mr. Fijolek was authorised to speak on her behalf in respect of that damage, there is no evidence the Plaintiff confirmed to the Defendant's insurer at any time prior to the 30th of March, 2020 that Mr. Fijolek was authorised to negotiate on her behalf in respect of a personal injury claim, as opposed to the material damage claim. This notwithstanding, negotiations were conducted with him as to both personal injuries and material damage;

III. There is no evidence that the Litigation Handler dealing with the personal injury claim had any direct contact with the Plaintiff other than by letter sending her a cheque as reimbursement for her MRI dated the 11th of March, 2020 and the letter of the 26th of March, 2020 which sets out proposed compromise terms;

IV. There is no evidence that the Litigation Handler satisfied herself from speaking with the Plaintiff at anytime prior to the 26th of March, 2020 as to the Plaintiff's level of English language competence or as to the authority of Mr. Fijolek to deal with the personal injuries element of her claim;

V. There is no evidence that the Litigation Handler advised either the Plaintiff or Mr. Fijolek as to the Plaintiff's right to take legal advice at any time prior to the letter of the 26th of March, 2020 notwithstanding that this letter asks the Plaintiff to confirm that this advice had been given. The letter of the 11th of March, 2020 which preceded this letter is notably silent with regard to the conduct of any settlement discussions, the right of the Plaintiff to seek legal advice in relation to such discussions, and any wish on the Plaintiff's part to compromise proceedings;

VI. There is no evidence that the terms of the letter were properly translated and understood by the Plaintiff before she signed indicating agreement to the terms;

VII. There is evidence to suggest that the Litigation Handler was on notice of a risk that the Plaintiff was a vulnerable person. The Plaintiff's GP submitted two reports to the Defendant's insurers. In his letter of the 10th of March, 2020, the Plaintiff's GP sets out and marks as 'NB' that the Plaintiff is recently separated and is now caring for her four young children (aged 13 years, 11 years, 6 years and 7 weeks old). The fact that the baby was only 7 weeks old was underlined. In his subsequent report dated the 14th of March, 2020 it was noted that the accident had a severe impact on the Plaintiff's mental health and it was noted that the Plaintiff was finding it very difficult to care for four young children and her GP described her present complaints as including Post-Traumatic Stress Disorder;

VIII. There is also evidence to suggest that the Litigation Handler was on notice that the injuries sustained were potentially significant comprising both physical and psychiatric

components. In his first letter, the Plaintiff's GP reported that the Plaintiff had severe back pain and numbness in her left leg and an MRI had been performed. He attached the report noting that it suggested orthopaedic opinion. The MRI report of the 9th of recorded a high signal annular fissure with a central disc bulge impacting on the thecal sac at the L4/5 level and bilateral facet joint arthrosis. In addition, at the L5/S1 level there was a high signal annular fissure with a left central disc extrusion exerting mass effect on the left anterolateral thecal sac, contacting and displacing the left exiting nerve root. In his subsequent medical report dated the 14th of March, 2020, the Plaintiff's GP sets out in detail the investigations and treatment to date listing the medication the Plaintiff had been prescribed and describing her present complaints as severe low back pain plus sciatica down left leg, insomnia and flashbacks. Clinical findings were also set out. The Plaintiff was described as profoundly affected as to lifting/carrying and bending/kneeling/squatting. It was noted that the Plaintiff had been referred for physiotherapy and that she might need surgery to her lower back in the future. The Plaintiff's GP clearly stated that the outlook for recovery was guarded and that her mobility was very much reduced.

IX. In view of her work as a hotel housekeeper the nature of the injuries described should have raised an issue in the mind of a reasonable person experienced in personal injury litigation in relation to the Plaintiff's ability to return to her work which had the potential to result in a claim and an award of damages for loss of earnings;

X. An issue is raised as to whether the Plaintiff fully understood her conversations with Mr. Priestly, the Claims Handler who spoke with her in respect of material damage only and obtained verbal authority from her to speak with Mr. Fijolek on her behalf. It is stated that a consideration of the recordings of the conversations would reveal how poor the Plaintiff's understanding was. The recordings are not in evidence before me.

12. What is clear from the Affidavit evidence is that the nature and extent of the discussions between the Litigation Handler and Mr. Fijolek is disputed. In particular, I note the claim on behalf of the Plaintiff that Mr. Fijolek did not advise the Plaintiff that the sum being offered was in full and final settlement or that she would not be entitled to seek additional payments. I note also that there is no evidence that Mr. Fijolek was sent a copy of the compromise letter for the purpose of confirming with the Plaintiff his understanding of what he had discussed with the Litigation Handler and the terms of the letter.

SUBMISSIONS

13. The Defendant's submissions in moving the application were addressed to the validity of the compromise agreement and the circumstances in which a Court will interfere with an agreement on the basis that it constitutes an unconscionable bargain. Specifically, the Plaintiff relies on the decision of Gilligan J. in *McGrath v. Independent Newspapers (Ireland) Ltd.* [2004] 2 I.R. 425 where he identified the central requirements of a valid compromise being (i) consideration (i) a complete and certain agreement and (iii) the parties' intention to create legal relations and it is the Defendant's position that all elements were present in this case.

14. The Defendant further relies on the public interest in upholding the finality of settlements. The Defendant also refers to the heavy burden on a party seeking to set aside a contract on the basis of unconscionable bargain and in this regard refers me to *Alec Lobb Ltd v. Total Oil (GB) Ltd*. [1983] 1 All ER 944 (adopted by Laffoy J. in *Keating v. Keating* [2009] IEHC 405) where it was found that the three elements must be present before the court will interfere with a contract on the basis of unconscionable bargain, namely, one party must be at a serious disadvantage, this weakness has been exploited in some morally culpable manner and the resulting transaction is not merely bad or improvident but over-reaching and oppressive.

15. Referring to the circumstances of this case the Defendant contends that the fact that a personal injury litigant does not have legal representation does not of itself give grounds to impeach an agreement. The Defendant refers to the Plaintiff's professed lack of proficiency in English but points out that she had been in the State for a good many years by the date of the accident and it must therefore be reasonable to suggest that she is well-integrated. The Defendant further maintains that the bargain is reasonable in that he maintains that the injuries sustained are in any event comfortably within the jurisdiction of the Circuit Court.

16. Notably, the Defendant did not address any submission to the test which applies to the direction of a trial of a preliminary issue.

17. In submissions on behalf of the Plaintiff, I was referred to Biehler and McGrath, *Delaney & McGrath on Civil Procedure* (Roundhall, 4th ed., 2018) Civil Procedure most

particularly, paragraphs 4.06, 14.08, 4.14-4.15, 14.17 and 14.23. With reference to the principles set out in Delaney & McGrath, the Plaintiff maintains that the issues in this case are not suitable for resolution in a trial of a preliminary issue having regard to the dispute on the evidence as to whether there was a binding full and final settlement of the case and specifically whether the parties were *ad idem*. The Plaintiff's counsel refers to the fact that the Plaintiff has limited education, cannot read English and was represented in discussions by a used car salesman who in turn was not sent the letter purporting to set out the settlement terms to underscore the factual basis upon which it is argued that no binding agreement was reached.

18. The point is made on behalf of the Plaintiff that whether or not the Plaintiff's claim was comfortably within the jurisdiction of the Circuit Court is a matter which can only be determined on the evidence adduced in relation to injury and loss and places emphasis in this regard on the risk of future surgery and the ongoing nature of the injuries combined with the additional psychiatric injuries. It is submitted that an experienced litigation handler would have been aware that these features meant that the case would warrant a significant reserve well in excess of the €18,000 paid to compromise the proceedings.

19. Further submissions were advanced on behalf of the Plaintiff regarding the affidavit evidence adduced to ground this application on behalf of the Defendant including the fact that Mr. Priestly's Affidavit does not state that he confirmed authority with the Plaintiff for Mr. Fijolek to discuss her personal injury claim and that Ms. Blake's Affidavit, in her capacity as Litigation Handler who conducted negotiations with Mr. Fijolek, refers to the need to seek legal advice only if the Plaintiff wanted to seek a higher sum than that being offered.

20. In his legal submissions, counsel for the Plaintiff refers to the summary of the legal position which must be found to prevail before Or. 25 of the Rules of the Superior Courts can be invoked contained in the judgment of McKechnie J. in *Campion v. South Tipperary County Council* [2015] 1 I.R. 716 and argues that, on an application of those principles, the issue of accord and satisfaction in this case is not suitable for determination by preliminary issue as evidence and cross-examination is required both in relation to the accord and satisfaction claim and the question of unconscionable transaction, should it arise. Counsel on behalf of the Plaintiff also referred me to the decision of Noonan J. in *Allied Irish Banks PLC v. DX and TX* [2020] IECA 308 in relation to the test for setting aside a transaction on the basis that it is improvident or unconscionable and submits that all limbs of the test identified are met in this

case. It is submitted that the same evidence requires to be considered in relation to whether the transaction is unconscionable as is required in assessing quantum in the case with the result that there would be no court or costs saving.

21. When asked why the Plaintiff had not moved to set aside or impeach the settlement agreement prior to the institution of her proceedings, it was submitted that it had not been anticipated that the Defendant's insurers would seek to stand over the purported agreement instead of accepting that it was an improvident transaction. It was always the Plaintiff's position that credit would have to be given for the money already paid to her. In circumstances where the Defendant is seeking to stand over the purported agreement, then counsel for the Plaintiff says that this puts the matter in issue in these proceedings and arising from the pleadings in the Reply to Defence, whether or not the claim has been compromised such that no further proceedings are maintainable is now an issue to be determined in these proceedings.

22. In replying submissions, counsel for the Defendant indicated to me that were I minded to adjourn the preliminary issue to the hearing of the action rather than rule on the issues now that it should be on the basis that the Defendants would not be criticised for failing to bring on the preliminary issue in advance.

DECISION

23. Order 25 provides as follows:

> *"1. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.*
>
> *2. If, in the opinion of the Court, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim, or reply therein, the Court may thereupon dismiss the action or make such other order therein as may be just."*

24. No order has yet been made directing the trial of a preliminary issue. I understand the power under O.25, r.2 to arise only where a Court has determined the preliminary issue, which issue has been set down for hearing, in a manner which disposes of the whole action. Essentially, therefore, the only question properly before me on this application is whether to direct the trial of a preliminary issue as to whether the proceedings have been compromised by reason of accord and satisfaction.

25. It is clear from the case-law that the jurisdiction to direct the trial of a preliminary issue is one to be exercised with great caution. This caution stems from litigation experience which shows that it may be very difficult in some cases to predict in advance of the hearing what facts might be critical in determining the issues which they potentially give rise to. A problem may even exist as to what the established facts mean. It is well recognised that it is necessary for fairly well-established certainty on the factual situation, before a point of law under the preliminary process, can be safely dealt with. The legal position regarding when O.25 of the Rules of the Superior Court may be successfully invoked are helpfully set out in *Campion v. South Tipperary County Council* [2015] 1 I.R. 716, at para. 35 (p. 731) as follows:-

> *"• There cannot exist any dispute about the material facts as asserted by the relevant party: such can be agreed by the moving party or accepted by him or her, solely for the purposes of the application.*
>
> *• There must exist a question of law which is discreet and which can be distilled from the factual matrix as presented.*
>
> *• There must result from such a process a saving of time and cost, when the same is contrasted with any other suggested method by which the issues may be disposed of: in default with a unitary trial of the entire action. In the absence of admissions, appropriate evidence will usually be necessary in this regard: impressions of what might or might not be, will not be sufficient.*
>
> *• The greater the impact which a decision on the preliminary issue(s) is likely to have, on the entire case, the stronger will be the argument for making the requested order.*
>
> *• Conversely if irrespective of the courts decision on that issue(s), there should remain for determination a number of other substantial issues or issue(s) of a substantial nature, the less convincing will be the argument for making such an order.*

• Exceptionally however, even if the follow on impact will not dispose of any other issue, the process may still be appropriate where the subject issue is substantial in its own right and where its determination will clearly benefit the action in an overall sense.

• As an alternative to such a process in such circumstances, some other method or mode of proceeding, such as a modular trial may be more appropriate.

• It must be "convenient" to make such an order: at one level this consideration of itself, can be said to incorporate all other factors herein mentioned, but for the purposes of clarity it is I think more helpful, to retain the traditional separation of such matters.

• "Convenience" therefore should be understood as meaning that the process will enhance in an overall way the most efficient, timely and cost effective method of disposing of the entire litigation.

• The making of such an order must be consistent with the overall justice of the case, including of course fair procedures for all parties.

• The court at all times retains a discretion whether or not to make such an order: when so deciding it should exercise caution so as to make sure that if an order is made, it will meet the purposes intended by it;…"

26. The application for a preliminary issue must be in the context of established facts. A clear dispute exists in this case as to whether a lawful and binding agreement was entered into through the signing of the compromise letter by the Plaintiff and the payment to her of settlement sums on foot of that letter and/or whether any such agreement is voidable as an improvident or unconscionable transaction. As apparent from the case-law cited before me, an intention to create legal relations is necessary for there to be a valid compromise. While some of the facts are established in this case, others are disputed or not agreed. Those contested facts are relevant to the issues of law sought to be tried.
In particular, an issue arises on the evidence as to whether an intention to create legal relations was present in the minds of both parties in this case. It seems to me that this is an issue which can only properly be resolved with the benefit of oral evidence and cross-examination.

27. Further, the issue of accord and satisfaction is not the only issue which arises on the pleadings and which would require to be determined to dispose fully of the proceedings. Accordingly, I do not consider that a decision on the preliminary issue as sought by the

Defendant will substantially dispose of the proceedings in a manner which might justify the exercise of a discretion to direct trial of a preliminary issue. In *Allied Irish Banks PLC v. DX and TX* [2020] IECA 308 Noonan J. analysed the authorities addressed to the circumstances in which a transaction may be set aside on the basis that it is improvident or unconscionable and summarized the factors which should be present as follows (para. 27):

> *"1) The parties do not meet on equal terms, such that one is vulnerable to being taken unfair advantage of by the other. The categories of vulnerability are not closed and must depend on the facts of each case.*
>
> *(2) There is an inherent unfairness in the transaction, be it described as undervalue, or inadequacy of consideration, or otherwise.*
>
> *(3) There is an element of impropriety or moral culpability in the conduct of the party seeking to retain the benefit of the transaction.*
>
> *(4) The latter party knew, or ought to have known, of the other party's vulnerability.*
>
> *(5) There is an absence of appropriate independent advice, be it legal or otherwise."*

28. It seems to me that the affidavit evidence in this case, even absent an affidavit from the Plaintiff herself or Mr. Fijolek, establishes that a justiciable issue arises for determination on the evidence as to whether the agreement referred to constituted an unconscionable bargain. There is no doubt that the parties were not in an equal bargaining position. Whether there was an inherent unfairness in the transaction because of the inadequacy of the compensation paid depends, at least in part, on a proper assessment of the value of the case which can only be established following a full consideration of the evidence. However, the basis for contending such a level of inadequacy has been laid having regard to the nature of the injuries outlined in the reports exhibited on affidavit. Similarly, whether the circumstances were such as to impose a duty on the Litigation Handler to ensure that the Plaintiff understood the proposed terms and/or was legally advised in respect of same, and whether the Litigation Handler breached such a contended for duty, are real questions which arise on the affidavits.

29. These are not straightforward issues but are mixed questions of law and fact turning on the decision of a court hearing all of the evidence as to whether the Litigation Handler

unlawfully took advantage of the Plaintiff's apparent vulnerability by tying her to an agreement which she knew to be an undervalue of the claim without ensuring that the Plaintiff was properly informed and advised. The decision of the Supreme Court in *LM v. Commissioner of An Garda Siochana* [2015] IESC 81 (cited in Delaney & McGrath at para. 14-15) casts doubt on the appropriateness of dealing with novel issues as to the existence of a duty of care by way of preliminary issue. While there may not be the same degree of novelty in this case, nonetheless the issues which arise are of not ones which admit of easy answers given the policy considerations which inhere in the finality of agreements to compromise proceedings and the burden on the courts to provide effective remedies in the vindication of rights. These are issues which cannot readily be determined in the absence of careful and full consideration of the evidence and legal argument.

30. In *Cafolla v. O'Reilly* [2017] IESC 16, which was referred to in extracts opened to me in Delaney & McGrath, the Supreme Court declined to direct the trial of a preliminary issue. Giving judgment in that case O'Donnell J. said that there is a distinction between the determination of a single identified issue which is capable of bringing a conclusion to the claim and predicting at an early stage in the proceedings, even with a high degree of confidence, the likely outcome of a case. He concluded that the trial of a preliminary issue as to whether there was accord and satisfaction of the plaintiff's cause of action in that case should not have been ordered because it would have been necessary to canvas a number of legal issues to determine this, some of which required evidence, and almost all of which would have benefitted from an exploration of the evidence establishing the background against which such legal issues were to be addressed. Whilst commenting that the trial of a preliminary issue can be a useful tool, especially when there is a reasonable chance that the determination of the issue will bring the proceedings to an end, he observed (para. 17):

> *"….Without wishing to be wise in hindsight, it is doubtful if this case was ever a suitable candidate for the isolation of a single legal issue, at least the one which was determined in the High Court. It is also doubtful, for example, there was much saving in terms of time or cost in the avoidance of the evidence in this case."*

31. In *Cafolla*, the Supreme Court ruled that while the question of prior accord and satisfaction, is in principle capable of being dealt with by way of a preliminary issue, and in

some cases may be capable of being dealt with without oral evidence, in that particular case evidence and indeed further argument was necessary before the Court could conclude that each of these claims was precluded by prior accord and satisfaction. In the circumstances the Supreme Court ruled that the issue should not be remitted to the High Court for trial of the preliminary issue. The Supreme Court ruled that instead the case should proceed to a full hearing. The Court directed that the issue of whether the plaintiff in that case was bound by the accord and satisfaction asserted with consequence that the proceedings should be struck out was a matter to be addressed at a trial.

32. I accept that the facts and legal issues in this case are different to those in *Cafolla,* however, it can equally be said of this case that evidence and further argument is required before a Court could reach conclusions in relation to either the issue of accord and satisfaction or unconscionable transaction. It cannot be said that a determination of the issue of accord and satisfaction would resolve all issues as the question of unconscionable transaction arises plainly on the pleadings and would still require to be determined.

33. Recalling the factors that the Court will be required to consider and decide upon to resolve the issues arising in respect of the enforceability of the purported compromise agreement including the question of the parties' intentions in view of language, comprehension and communication difficulties, the question of the Plaintiff's vulnerability and the availability of advice (legal or otherwise) in dealing with the issues of whether a binding agreement was entered into and/or the Plaintiff's contention that the letter of compromise is voidable as an improvident or unconscionable transaction, I am quite satisfied that there is a necessity in this case for oral evidence and for witnesses to be available for cross-examination. Given that the evidence required to determine the question of unconscionable transaction includes evidence which would enable an assessment of quantum which is the same evidence which a court hearing personal injuries proceedings on full hearing would hear, I cannot see that there would be any saving of court time or costs in directing the trial of a preliminary issue in this case.

34. Finally, I am not satisfied that an order directing the trial of a preliminary issue limited to the question of accord and satisfaction, as sought on behalf of the Defendant, would be consistent with the overall justice of the case, including fair procedures which embodies a requirement for equality of arms. In my view, I would wrong to bring about the termination of these proceedings without all evidence being heard in view of the information before the Court

as to the Plaintiff's vulnerability, her lack of education and compromised ability to communicate in English and the impact of the accident on her mental health, as outlined by her GP to the Defendant's insurer before the purported compromise was entered into. The risk of injustice in determining the Plaintiff's claim without having considered all relevant evidence and potential issues arising seems to me to be considerable.

CONCLUSION

35. For the reasons set out above, I refuse the application for trial of a preliminary issue in advance of a full hearing. When regard is had to the issues involved, to the contextual setting in which these issues are pleaded and to the overall evidential footprint in which they are, at this of point the case, positioned, it does not seem to me that this is an appropriate case in which to exercise a discretion to direct the trial of a preliminary issue. It is my view that these proceedings should proceed to full hearing. The issue of whether the Plaintiff was bound by the accord and satisfaction and, accordingly, whether the proceedings should be struck out (and the other issues arising) are matters to be addressed at a trial.