

# Lawlines



## Commercial Litigation

### Impact Of Settlements In Cases Of Joint Liability

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#### Introduction

When a fire occurs on a ship or when an accident takes place in a factory causing injury and damage to a victim, there may be several parties at fault. If the victim decides to bring an action for damages under such circumstances, it is almost certain that the victim ('plaintiff') would go after every party at fault in a bid to recover losses incurred and be fully compensated for injuries suffered.

Joint and several liability arises where two or more individuals commit the same tort and cause injury to a plaintiff. In such a situation, each tortfeasor becomes liable to the injured party for the whole of the damage that results from their tortious act, as long as the damage is not too remote.

There may be times when one of the tortfeasors wants to avoid the trouble, cost and potential adverse publicity of going through the process of litigation and therefore would be more willing to settle the matter out of court. Such a tortfeasor may make a settlement offer that the plaintiff may accept.

This article discusses the issues that arise when a plaintiff enters into a settlement agreement with one of many tortfeasors and the effects of such an agreement on the rights and liabilities of the remaining tortfeasors.

#### Effect Of Settlement Agreements

In a situation where A sues B and C as joint tortfeasors, and A then enters into a settlement agreement with B, A may be taken as having released C from his claim. There has been much criticism of this rule especially since the joint tortfeasor, namely C, appears to walk away 'scot free' when in fact he is equally to blame. The rationale behind this rule is that the cause of action against the joint tortfeasors is 'one and indivisible' and that it is extinguished when a settlement is reached with one of the tortfeasors.

It must be noted, however, that A may expressly or impliedly reserve his rights against C, the joint tortfeasor, in the settlement agreement that he enters into with B. Whether C is released from liability to A therefore depends on the construction of the settlement agreement entered into by A and B.

#### Construing A Settlement Agreement

Broadly speaking, there are two approaches adopted by the courts in construing such a settlement agreement. In the first, more traditional approach, a settlement agreement can be construed as a 'release' or a 'covenant not to sue', where a distinction is drawn between the terms 'release' and a 'covenant not to sue'. Where A agrees to release B from liability, C will automatically be released as well. However, if A enters into an agreement 'not to sue' B, C is not released from liability. The rationale behind this rule is that in the former situation, A is divesting himself of his rights as against B which are one and the same as against C. However, in the latter situation, A only promises not to enforce his rights against B in return for consideration (ie, damages).

The second, more modern approach, is to ignore the above distinction between a 'release' and a 'covenant not to sue'. Instead, one looks at all the surrounding circumstances of the case, in addition to the express words of the settlement agreement, to see if A, despite settling with B, has expressly or impliedly reserved his rights to go after C. This approach was adopted in *Watts v Aldington* (1993) and *Johnson v Davies* (1999).

Assuming that the settlement between A and B is construed such that A's claim against C remains alive, A can then continue to sue and obtain a judgment against C for damages sustained. The court may in some instances state the percentage of fault on the part of C. It must, however, be noted that the court's declaration as to the percentage of fault on C's part does not mean that C is liable for only that percentage. C, being a joint tortfeasor, is liable for A's entire claim amount save that he can make a deduction for the amounts paid by B under the settlement agreement. Apart from this, C will not be able to subtract any amount attributable to B.

Legislation specifically allows a plaintiff to commence or continue an action against a person jointly liable for debt or damage even though judgment has been obtained against the other person(s) jointly liable in respect of the same debt or damage. This is set out in section 17 of the Singapore Civil Law Act which provides:

'Judgment recovered against any person liable in respect of any debt or damage shall not be a bar to an action, or to the continuance of an action, against any other person who is (apart from any such bar) jointly liable with him in respect of the same debt or damage.'

This provision is, however, confined to situations where a judgment has been obtained against one of two (or more) tortfeasors and will not operate to keep alive a claim against a joint tortfeasor where a settlement has been reached with one tortfeasor.

### **Contribution Between Parties Jointly Liable**

Where a settlement agreement is construed as releasing B but not C, this does not mean that C is without any remedy. C is entitled to contribution from B and this is expressly provided for in section 15(3) of the Civil Law Act which states:

'A person shall be liable to make contribution by virtue of subsection (1) notwithstanding that he has ceased to be liable in respect of the damage in question since the time when the damage occurred, unless he ceased to be liable by virtue of the expiry of a period of limitation or prescriptions which extinguished the right on which the claim against him in respect of the damage was based.'

C may thus commence third party proceedings against B for contribution in a manner prescribed by the Rules of Court. The judgment of the court, stating the percentage of liability of each party, will be conclusive in determining the contribution that C may claim from B.

### **Conclusion**

The effects of settlements on joint liability is a relatively young and developing area of the law. It may appear that the victim may be able to enter into a settlement with one tortfeasor and yet continue the claim against the joint tortfeasor; but this is not always so.

At the end of the day, efforts have been taken and continue to be taken by law makers and the courts to ensure that an equilibrium is reached when treading the fine line between not allowing a joint tortfeasor to walk free and preventing the over-compensation of the plaintiff.

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