

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO.27 OF 2001

BETWEEN:

SYLVANUS LESLIE

Appellant/Plaintiff

and

RYAN OLLIVIERRE

Respondent/Defendant

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Satrohan Singh
The Hon. Mr. Ephraim Georges

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Richard Williams for the Appellant
Mr. Ronald Burch-Smith for the Respondent

2002: July 15;
2003: January 28.

JUDGMENT

The Background

- [1] **BYRON, C.J.:** The appellant appeals against the decision of Master Pemberton bringing this case to an end at a Case Management Conference on the ground that the statement of claim did not allege facts which disclosed any reasonable ground for bringing the claim.

Chronology

- [2] I think it would be of interest to make a brief record of the material chronology of this case. Proceedings were initiated by a specially endorsed writ on 14th July 1995 claiming damages for the malicious prosecution of civil proceedings and

false imprisonment. A defence was filed on 28th December 1995. On 27th September 1999, an amended statement of claim was issued pursuant to an order of the court. Pursuant to further orders of the court, particulars of malice were delivered on 8th November 1999, and an amended defence was filed on 23rd November 2001. The matter was brought under the management of CPR 2000 and witness statements were exchanged prior to a Case Management Conference held on 19th November 2001. At the case management conference the Master posed a preliminary question: whether there was a valid basis for the tort of malicious prosecution and false imprisonment. Written submissions were provided and after oral argument a decision was given on 11th December 2001 dismissing the writ with costs to the defendant.

The Appeal

- [3] Both Counsel agreed that this appeal did not require oral argument and relied on the written arguments presented in accordance with case management directives pursuant to CPR 2000 Part 26.1(2)(n), a power which is vested in both the High Court and the Court of Appeal. The issues dealt with are:

- [a] the jurisdiction of a Master at a case management conference
- [b] the relevant pleading rules
- [c] the essential ingredients of the tort of malicious prosecution and false imprisonment
- [d] relationship of the pleadings to the law
- [e] costs

Jurisdiction at Case Management Conference.

- [4] The exercise of the power to give final judgment after adjudicating on a preliminary issue at a case management conference advances the overriding objective of the rules and is specifically conferred by them. The powers, which were exercised, in this case were specifically conferred by the rules.

- [5] The power to pose a question not raised by the parties is conferred at CPR 2000 Part 26.2 (1):
- “Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.”
- [6] The power to strike out a pleading which does not disclose any reasonable ground for bringing a claim is conferred by Part 26.3 (1):
- “In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that:-
- (a) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim.”
- [7] The power to give final judgment at the case management conference is conferred by -
- Part 26.1 (2) (i) “[the court may] dismiss or give judgment on a claim after a decision on a preliminary issue.”

Can the Master Exercise These Powers?

- [8] The answer is provided by CPR 2000 part 2.5 which clearly states:
- “(1) Except where any enactment, rule or practice direction provides otherwise the functions of the High Court may be exercised by –
- (a) a master;”

This rule is based on the authority of The Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) (Amendment) Act No.18 of 2000, section 3 which provides:

“12A (1) A Master shall exercise the authority and jurisdiction of a judge sitting in chambers and any other authority and jurisdiction as may be assigned by the rules of court made under section 17 of the court order.”

The Pleadings

- [9] The required contents of a statement of case are set out in the Rules. In CPR 2000 Part 8.7 it is prescribed:
- “the claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.”

This case was filed before CPR 2000 came into force. The rules of court, which prevailed at that time, were The Rules of the Supreme Court (Revision) 1970. Order 18 Rule 7(1) states as follows:

“Subject to the provisions of this rule and rules 10,11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.”

In this case in addition to the pleadings, at the time the Master came to consider the issue, there were also witness statements which had been filed. All of the facts on which the claimant intended to rely were disclosed. In this case, therefore, the decision did not turn on the quality of the pleadings but on the facts on which the claimant intended to base his claim.

The Relevant Facts

- [10] The pleaded case of the appellant, was that he had travelled from Toronto, where he resides, to St. Vincent for holidays and, when he was about to board the return flight, he was prevented from leaving as a result of civil action filed against him, maliciously and without reasonable and probable cause, in Magisterial Case No.186 of 1994, as a result of which he suffered damage in terms of deprivation of liberty, suspension from his job, and loss of wages and expenses he incurred, and when the case was heard the Magistrate found in his favour.
- [11] The particulars which were served pursuant to Court Order alleged that the Respondent threatened and intimidated the Appellant to pay him money before he left the State, waited until he was about to board the aircraft to prevent him from leaving and swore an affidavit to the effect that the Appellant did not have assets in the State while he knew that he owned real estate in Bequia.

- [12] The amended defence denied that the proceedings were instituted maliciously and without cause and alleged that they were instituted to recover the sum of \$3,500.00 being the cost of a keyboard purchased from the appellant which failed to function properly and after attempts to recover failed, legal proceedings were instituted in the Magistrates Court. The witness statements amplified the pleadings. There was little controversy on the facts. There was no allegation that the appellant was ever arrested. In the witness statements there was an allegation that when the writ of summons was served on him, he was told by the bailiff that he would be arrested if he did not obey a court order.

The Law

- [13] The legal position is not controversial. It is well settled on the authorities that an action only lies for the malicious prosecution of criminal cases or the malicious presentation of insolvency proceedings.

“In an action for malicious prosecution the plaintiff must show first that he was prosecuted by the defendant, that is to say, that the law was set in motion against him on a criminal charge; secondly, that the prosecution was determined in his favour; thirdly, that it was without reasonable and probable cause; fourthly, that it was malicious.”

This statement of the ingredients of malicious prosecution is to be found in Clerk and Lindsell on Torts 17th Ed at paragraph 15-05 and was approved in **Martin v Watson** (1996) 1 AC at 74. The principle was extended to include the malicious institution of insolvency proceedings from the dictum of Brett MR in **Quartz Hill Gold Mining Company v Eyre** (1883) 11 QBD 674 at 684.

- [14] In **Gregory v Portsmouth City Council** (1997) EWCA Civ 2645 (5th November) the court had to consider the scope of the tort of malicious prosecution and in particular whether such an action could arise out of disciplinary proceedings instituted by a Local Authority against one of its councilors. Simon Brown LJ giving the leading majority opinion stated the position at page 12:

“The only types of proceedings which hitherto have been clearly established on the authorities to ground claims for malicious prosecution are first, most but not all criminal proceedings, and secondly, civil insolvency proceedings i.e. the malicious presentation of petitions whether for winding up or bankruptcy.”

- [15] However, Counsel for the Appellant found encouragement in the dissenting opinion of Schiemann LJ and urged the court to pursue the rationale he expounded at paragraph 70:

“I do not start from the position that the purpose of the course of action which we are considering is to prevent the courts from having their processes abused. It seems right to start from the position of the individual who has suffered damage by being maliciously subjected to proceedings brought without any justification. In my view such an individual ought to be compensated unless there are compelling reasons to the contrary”.

Although the majority of the court was concerned with the concept of the law finding a remedy where there was a wrong Walker LJ explained that resisting the temptation to usurp a Parliamentary function did not leave the litigant without his remedies at paragraph 90:

“For my part I am not satisfied that the restriction of malicious prosecution to its apparent boundaries would leave a yawning gap. If a man loses his job and suffers damage to his reputation because of some false and malicious story passed to his employer, after a disciplinary hearing he will have a cause of action for libel or slander or malicious falsehood....”

- [16] In this case the appellant did not allege that either a criminal charge or insolvency proceedings had been presented. The facts alleged demonstrate a bona fide dispute over the sale of the keyboard, the kind of dispute which it is the normal function of the courts to settle. There was no allegation of the use of a false or malicious story to base the proceedings which were initiated. There was therefore no possibility that a court could find that the initiation of the proceedings was capable of grounding the case.

- [17] Counsel for the Appellant relied on another limb of argument. It was his contention that the manner in which the case was prosecuted abused the Courts process and caused the Appellant damage. He relied on a cause of action

described as abuse of civil process. The legal principle is set out in 4th Halsbury's Vol 25 paragraph 717:

"The law allows every person to employ its process for the purpose of asserting his rights without subjecting him to any liability other than the liability to pay the cost of the proceedings if unsuccessful. In civil proceedings, however, which involve an interference with liberty or property, or affect, or are likely to affect, reputation, an action lies analogous to the action for malicious prosecution, if those proceedings are undertaken maliciously and without reasonable and probable cause."

- [18] This proposition was expounded in **Roy v Prior** (1971) AC 470 a case where the Court held that a cause of action could lie for the abuse of civil process to procure the arrest of a witness without reasonable or probable cause. The essence of the action is discussed in the opinion of Lord Reid at 477:

"The Plaintiff is suing the defendant because he alleges that the defendant procured his arrest by means of a judicial process which the defendant instituted both maliciously and without reasonable cause. ... the gist of the complaint, where malicious arrest is asserted, is that an arrest has been secured as a result of some malicious proceeding for which there was no reasonable cause."

- [19] The distinguishing feature between **Roy v Prior** and this case is that there was no allegation that the appellant was arrested.

- [20] In this case there were allegations related to steps taken to require the attendance of the appellant at the trial. The most extreme allegation of fact was that when the proceedings were served by the bailiff, the bailiff said that non-compliance with the court order would result in arrest. In my view I could not support the contention that this conduct could amount to an abuse of process. The direct result of this conduct was the appearance of the Appellant in Court and his ability to defend the case successfully. In my view this was a case where the system worked to the advantage of both parties. The loss which the Appellant suffered was incidental to his defence of the civil claim and it is also well settled law that costs and related expenses in defending civil suits cannot be recovered in fresh proceedings.

[21] In my view if the appellant proved his allegations he could not have succeeded in obtaining judgment. Reaching final disposition at the Case Management Conference is in accordance with the overriding objective of CPR 2000 as it speeded up the final resolution of the case and saved expense both in terms of the resources of the Court and the costs incurred by the litigants.

[22] The costs were awarded by the Master but they were not quantified as they should have been. The Respondent is entitled to prescribed costs regulated by Part 65.5. The Appellant claimed the sum of \$17,790.80 special damages and general damages. In the circumstances of this case I would declare the special damages claimed to be the value of the claim. In accordance with the provisions of Appendix B the quantification is 30% of that sum. Since the matter was disposed of at Case Management Conference then 55% of the costs should be awarded. I would vary the order of the Master to include an order for costs in the sum of \$2935.48. The costs on appeal are two-thirds of that sum being \$1956.99.

The Order

[23] I would therefore order that the appeal stand dismissed with costs to the Respondent in the sum of \$1956.99. The order of the Court below is varied to the extent that paragraph 3 now should read:

“3. The action stands dismissed with costs to be paid by the Appellant to the Respondent in the sum of \$2935.48.”

Sir Dennis Byron
Chief Justice

I concur

Satrohan Singh
Justice of Appeal

I concur

Ephraim Georges
Justice of Appeal [Ag.]