

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

SAINT LUCIA

Claim Number: SLUHCV2022/0439

BETWEEN

[1] **J S**

[2] **M S**

[3] **M S**

(minors by their father and next friend)

Claimants

-and-

[1] **THE DIRECTOR OF THE FAMILY COURT**

[2] **THE ATTORNEY GENERAL**

Defendants

Before Master Alvin Pariagsingh

Appearances: Mr. Collin Foster for the Claimant; and
Ms. Kozel Creese and Ms. Karen Bernard for the Defendants.

2023: April 20;
July 06.

DECISION

Second Defendant's application to strike out filed on October 17, 2022

[1] **PARIAGSINGH, M:** - Before the Court is the Second Defendant/ Applicant's application filed on October 17, 2022 seeking an order that the Claimants' claim filed on September 19, 2022 be struck out¹. The crux of the application is that pursuant to Article 2124 of the Civil Code, actions against public officers in respect of acts done in good faith and in respect of their public duties are prescribed by six (6) months.

¹ The names the minor Claimants have been initialised to protect their identity.

- [2] It is common ground between the parties that where bad faith is alleged, a triable issue arises and Article 2124 may not apply. The Applicant also contends that in order to extend the period to three (3) years pursuant to Article 2122 (2) of the Civil Code, the Claimant must not only plead bad faith but also prove it.
- [3] The central issue in this application is whether bad faith was pleaded or sufficiently pleaded.
- [4] Both parties in their written submissions traversed the principles for striking out which I need not repeat. The Applicant placed heavy reliance on the case of **Jewel Thornhill v The Attorney General**². Whilst I am bound by **Thornhill** and the principles stated therein, I respectfully do not agree that this case is on all fours with the issue in this application, it is distinguishable.
- [5] In **Thornhill** the matter had gone to trial and the trial judge found as a fact that bad faith was not proven. Not only was pleadings closed, there was full case management and a trial at which the trial judge determined the triable issue of bad faith. In the instant case, the matter is at the case management stage where disclosure and witness statements have not been filed. Pleadings are not closed. The Defendants are yet to file a defence and the Claimant still has the opportunity to file a reply or even amend his claim without permission. The first case management conference has not occurred.
- [6] Additionally I find no merit in the Applicant's submission that the Claimants have to prove bad faith, presumably at this stage. There is no obligation to prove bad faith at this stage. In my view that obligation arises at a trial. At this stage, the Claimant need only satisfy the pleading requirement of bad faith.
- [7] The Applicant has also raised the issue of the immunity of the First Defendant by reason of **Section 4(5) of the Crown Proceedings Act**. Reliance was placed in the case of

² SLUHC VAP2012/0035 (unreported)

Reginald Hull v Attorney General of St. Christopher and Nevis & Ors³. In my view the issue of whether the Second Defendant is immune from suite is hinged on a finding of fact that the First Defendant was acting within the ambit of an order of the Court. That is an issue of fact. There is a factual dispute as to what happened at a meeting convened further to an order by a Magistrate. The fact of what transpired at the meeting must, in my view, be interrogated at a trial to determine if the First Defendant's alleged actions are consistent with what was ordered. That factual dispute cannot be resolved at this stage. I find no merit in this ground advanced by the Applicant.

[8] Without repeating the pleadings, the allegations are that the First Defendant acted outside what was contemplated by the order of a Magistrate and her job by speaking harshly to the minor claimants, blocked them from leaving the meeting room, took their devices, violently held on to them and prevented them from leaving the room or contacting their father for a period of approximately seven (7) hours causing them distress and mental anguish. The allegations in this matter are quite serious. They include three minor children being assaulted by the First Defendant and police officers in a Court building. The allegations are that the police officers 'with great force dragged the Claimants back into the said interview room. In the process the First Claimant's hands were violently squeezed and the Second Defendant was choked'. Attached to the Statement of Claim are two medicals detailing injuries to the First Claimant's hand and the Second Claimant's neck. The words 'bad faith' features one (1) time in the six (6) pages of the statement of claim at paragraph 12 but no specific particulars are pleaded.

[9] The Claimants in their written submission concedes that a presumption of good faith is attached to the role of a public officer however they say that for the First Defendant to be clothed with the gab of good faith she had to be acting within the confines of her jurisdiction. They submit that the pleaded facts identify conduct that 'takes her [the First Defendant] outside of the ambit of what she is authorised and able to do'. They rely on paragraphs 8(a) to 8(i) in support of their contention that their pleading are sufficient.

³ SKBHCV2012/0029 (unreported)

[10] The Claimant also submits that there is no civil procedure rule which requires that pleadings of bad faith be enumerated or itemised in a restricted style. I have a difficulty with this submission. The duty imposed on the Claimant to plead all material facts in a concise manner under Rule 8.7 (1) CPR in my view must extend to pleading and particularising all material facts on all issues, including bad faith.

[11] Barrow JA in **Eastern Caribbean Flour Mills Ltd v Boyea**⁴ at para 43 opined that the obligation under Rule 8.7 (1) CPR is to 'make clear the general nature of the case'. This has been the consistent position of the Court of Appeal as can be gleaned from the decision of Belnman JA (as she then was) in **Fast Kaz Auto Supplies Ltd & Ors v The Attorney General**⁵.

[12] From a reading of the entirety of the statement of claim it is difficult to conclude that bad faith is not foreshadowed. The issue is not specifically pleaded except for paragraph 12 but no particulars given. From the particulars which are pleaded however, it is clear that the Claimants are contending that the First Defendant acted in bad faith.

[13] In my view, the authorities favour the approach of utilizing any available alternatives before striking out is deployed, per Thom JA in **Agnes Danzie & Ors v Cecil Anthony**⁶. In my view the issue of bad faith being foreshowed but sufficiently set out or particularised can be cured by an amendment.

[14] The prejudice to the Applicant will be minimal by granting the Claimants permission to amend as the claim is at the embryotic stage and neither Defendants have as yet filed a defence.

⁴ Civil Appeal No. 12 of 2006 (unreported)

⁵ SLUHC VAP2018/0040 (unreported)

⁶ SLUHC V2015/0009 (unreported)

[15] The defect in the pleadings can be cured by an amendment and the Applicant's application is premature given the current stage of the proceedings.

[16] For these reasons, the application is refused and must be dismissed.

[17] On the issue of costs, the Claimant is being allowed to remedy a shortcoming in their pleadings. The opportunity would not have been afforded but for the application. The application was not wholly without merit. There has been some measure of success by both parties. Accordingly, each party shall bear their own costs of this application.

ORDER:

[18] It is hereby ordered that:

1. Unless the Claimants file an amended statement of claim specifically particularising the allegation of bad faith and the facts upon which they rely on in support of the allegation on or before 3:00pm on July 17, 2023 this claim is struck out and stands dismissed without further order.
2. If there is compliance with paragraph 1 above, this claim is to proceed in accordance with the Civil Procedure Rules.
3. Each party to bear their own costs of the application filed October 17, 2022.

**Alvin Pariagsingh
Master**

By the Court,

Registrar