

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SLUHCV2021/0233

BETWEEN:

JOSEPH MARIUS

Claimant

and

**DOMINIC LEONTY (Police Officer)
THE ATTORNEY GENERAL OF SAINT LUCIA**

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Alberton Richelieu for the Claimant

Mr. Seryozha Cenac with Mr. George K. Charlemagne for the Defendants

2022: June 30;
October 10.

JUDGMENT

- [1] **CENAC-PHULGENCE J:** The claimant, Joseph Marius (“Mr. Marius”) filed a claim in negligence against Police Officer, Dominic Leonty (“Mr. Leonty”) and the Attorney General (“the AG”) (“together referred to as the defendants”) seeking damages, interest and costs resulting from an accident which occurred on 21st June 2018. At the close of the trial, the parties were afforded another opportunity to have discussions, but these were unsuccessful. Having reviewed the pleadings and the evidence in the matter, I am of the view that the claim is prescribed and should be dismissed for the reasons which are set out below.

Background Facts

- [2] Mr. Marius, a taxi driver by profession is the owner of motor vehicle registration number TX 1. Mr. Leonty is a police officer holding the rank of Assistant Superintendent of Police and is employed with the Royal Saint Lucia Police Force. At the time of the accident, he held the rank of Sergeant of Police. It is not disputed that at the time of the accident, Mr. Leonty was acting as a servant or agent of the Crown.
- [3] As alleged by Mr. Marius, on 21st June 2018 at about 1:30 p.m., he was driving TX 1 along the Roseau Highway, in the quarter of Anse La Raye in a northerly direction heading towards Castries. Mr. Leonty was driving motor vehicle PE9493 owned by the Government of Saint Lucia in southerly direction heading towards Anse La Raye when he collided with TX 1 causing irreparable damage to TX 1.
- [4] Mr. Marius alleges that the collision was caused solely as a result of the negligence of Mr. Leonty and alleges the following particulars of negligence against him:
- (a) failing to keep on his left and proper side of the road;
 - (b) failing to swerve, or in any way or at all to avoid colliding with TX 1;
 - (c) driving at an excessive speed;
 - (d) attempting to pass a vehicle which was parked on the left side of the road when it was unsafe to do so, thereby colliding with TX 1;
- [5] Mr. Marius alleges that as a result of Mr. Leonty's negligence he suffered loss and claims special damages in the sum of \$149,500.00, general damages, interest and costs. Mr. Marius also alleges that the defendants acted in bad faith.
- [6] In response to the claim, the defendants gave their version of how the accident occurred. They allege that Mr. Leonty while driving towards Anse La Raye on the Roseau Highway noticed a vehicle parked on his left side of the road and a TX plate vehicle travelling in a northerly direction.

- [7] Mr. Leonty noticed that the TX vehicle had slowed down and he formed the view that Mr. Marius was allowing him to pass around the parked motor vehicle which was parked on the left side of the road. However, Mr. Marius accelerated causing Mr. Leonty to have to immediately apply brakes and the two vehicles collided with each other.
- [8] The defendants categorically deny that the collision was caused solely by Mr. Leonty's negligence or that the AG was negligent in any way. Further, the defendants deny the allegations of bad faith and aver that the absence of bad faith renders the claim prescribed pursuant to article 2124 and 2122(2) of the **Civil Code of Saint Lucia**¹("the Civil Code").
- [9] Mr. Marius in his reply denies that he had slowed down as it was Mr. Leonty's duty to stop to avoid the accident. Mr. Marius denies that he stopped and then accelerated as alleged by the defendants or that he caused or materially contributed to the collision. Of course, Mr. Marius denies that the claim is prescribed.

Evidence

- [10] The evidence in this claim came from Mr. Marius and Mr. Leonty. I will look at the evidence in so far as it is relevant to the first issue.

Issues

- [11] The issues for determination in this claim are as follows:
- (i) Whether the claim is prescribed? If not, then
 - (ii) Whether Mr. Leonty owed a duty of care to Mr. Marius and breached that duty, causing the accident? If yes,
 - (iii) Whether Mr. Marius is entitled to damages and if so, what quantum?
- [12] Counsel for the claimant and the defendants presented closing arguments at the close of the evidence having filed skeleton arguments on 4th and 6th May 2022 respectively. Counsel for the defendant filed further submissions on the issue of bad faith on 10th June 2022.

¹Cap 4.01 of the Revised Laws of Saint Lucia.

Issue (i)-Whether the claim is prescribed?

Applicable Law

[13] Article 2124 of the **Civil Code** provides that actions against public officers in respect of acts done by them in good faith and in respect of their public duties are prescribed by six (6) months. Good faith according to article 2066 of the **Civil Code** is presumed and he who alleges bad faith must prove it. Therefore, the actions of the defendants are presumed to have been done in good faith and the claim would be prescribed unless the claimant proves bad faith. The onus rests on the claimant to prove the allegations of bad faith.

[14] This was made clear in **Fast Kaz Auto Supplies Limited et al v The Attorney General**² where Blenman JA looking at article 2066 said at paragraph 62:

“... This provision makes it clear that **the onus rests on the party alleging bad faith to not only particularise the allegations of bad faith but to prove them.** Collymore J in the Trinidadian case of *Marcano v Attorney General* (21TT 1985 HC 63) observed that:

“The keystone upon which the exercises of all public functions rest, as all the authorities show is good faith. The existence of bad faith in the exercise of any administrative function is sufficient warrant for the court to say that that is an improper exercise and so is unlawful. (See *The Matter of L.J. Williams v. Percival Smith and the Attorney General* No. 176/78). **The onus rests upon the applicant to show bad faith, and that in the absence of anything to the contrary, the Authority must be presumed to be acting properly.**” (my emphasis)

[15] In determining whether an act amounts to bad faith, the court may examine not only the conduct at the time of the act but those actions before and after. This is supported by the dicta of the learned Chief Justice in **Jewel Thornhill** at paragraph 37:

“... I accept however, as a general and commonsense proposition that in determining bad faith one should look at the entire course of conduct as a continuum, as bad faith is usually to be inferred from a certain state of things which may include conduct not only at the specific point in time of the action complained of but also actions taken before and after as all of these may be relevant in divining bad faith in respect of the act.”

² SLUHCVP2018/0040 (delivered 12th June 2020, unreported).

Discussion and Analysis

- [16] The claim was filed on 10th June 2021 and the collision occurred on 21st June 2018 which was outside of the six (6) month period prescribed by article 2124 of the **Civil Code**. In order to extend the prescription period to three years, Mr. Marius must not only plead bad faith, but he must also prove it.
- [17] Mr. Marius pleads the following particulars of bad faith on the part of the defendants:
- (a) Permitting Mr. Leonty to drive PE9493 without him having obtained a valid driver's licence;
 - (b) Permitting Mr. Leonty to drive PE9493 owned by the AG without having obtained a valid certificate of insurance to cover third party risks;
 - (c) Mr. Leonty pleaded guilty to driving without due care and attention in the Magistrate's Court in Anse La Raye on 29th January 2019;
- [18] The defendants deny the allegations of bad faith. The AG denies that it was negligent or that it was bad faith to allow Mr. Leonty to have access to PE9493. Mr. Leonty denies that he acted in bad faith and avers that he was acting on the course of his duties and was driving to the Anse La Raye Police Station in furtherance of his duties. The AG avers that the guilty plea by Mr. Leonty should not carry much weight as at the time of the said guilty plea, he was unrepresented and did not have the benefit of independent legal advice. The defendants also say that PE9493 was insured with a third-party insurance policy which was in effect at the time of the accident. The defendants aver that the absence of bad faith renders Mr. Marius's claim prescribed pursuant to article 2124 and 2122(2) of the **Civil Code**.
- [19] Mr. Marius in response avers that Mr. Leonty was an experienced police prosecutor in traffic matters in the Magistrate's Court and understood the consequences of pleading guilty.

Submissions on bad faith

- [20] It is important to note that the term “bad faith” is not defined in the **Civil Code**. Counsel for the claimant, Mr. Alberton Richelieu (“Mr. Richelieu”) submitted that the concept of bad faith has moved from intentional bad faith to the more expansive meaning. In support of this he referred to the case of **Rejean Hinse v AG (Canada) et al**³ which referred to the case of **Finney v Barreau du Quebec**⁴ where the court held that bad faith is broader than just intentional fault to harm another, but it also encompasses serious recklessness. In **Hinse**, the Court said that the standard espoused in **Finney** was higher than the standard of simple fault and further that a simple fault such as a mistake or careless act does not correspond to the concept of bad faith that defined the limits of the Crown’s qualified immunity.
- [21] The Court held that bad faith could be established by proving that the Minister acted deliberately with the specific intent to harm another person, or by proof of serious recklessness that reveals a breakdown of the orderly exercise of authority so fundamental that absence of good faith can be deduced and bad faith presumed. The Court in **Hinse** also made the point that the focus should be on the individual conduct of the Minister.⁵
- [22] In the case of **Seelster Farms Inc. et al v Her Majesty the Queen in the Right of Ontario et al**,⁶ the Court went a little further than in **Hinse** to describe bad faith as conduct that implies a fundamental breakdown in the ordinary exercise of authority; conduct that implies a “lack of candour, frankness and impartiality;” and irrational decision-making that is arbitrary or plainly unreasonable because it fails to consider the appropriate information on which to decide.⁷
- [23] Mr. Seryozha Cenac (“Mr. Cenac”) in response submitted that in determining bad faith, one must determine the applicable test. He pointed out that this case deals with our **Civil Code** and not the civil law in Canada and the question is whether bad faith is to be given

³[2015] 2 R.C. S. 621.

⁴ [2004] 2 R.C.S. 17.

⁵See paras 51-53 of **Hinse**.

⁶2020 ONSC 4013.

⁷See para 120 of **Seelster**.

the same expansive meaning as in Canada. He submitted that under the **Civil Code**, bad faith appears to deal with the concept of intentional fault and in this case the test must be whether Mr. Leonty's manner of driving was so negligent that it is demonstrative of an intention to do harm to Mr. Marius. There is no evidence he said that Mr. Leonty set out to harm Mr. Marius in any way.

- [24] Mr. Cenac argued that the cases referred to by the claimant were not applicable in the context of this claim as in most of them there was a legislative underpinning to the acts being considered and therefore could be distinguished from this case. Mere negligence he submitted does not amount to bad faith.

Analysis of Bad Faith Allegations

- [25] I will now examine the allegations of bad faith pleaded.
- [26] The first is permitting Mr. Leonty to drive PE9493 without him having obtained a valid driver's licence. Mr. Marius has produced a letter dated 22nd November 2018 from the Chief Transport Officer which states that according to their computerised records at the Transport Department ...Dominic Leonty is not a holder of Saint Lucian Driver's Licence Number 036491. When I examine the contents of the letter, they do not prove the allegation made by Mr. Marius. The letter does not say that Mr. Leonty does not have a valid driver's licence. It specifically says that he is not the holder of a particular driver's licence number.
- [27] The defendants did not address this allegation at all. However, it is for the claimant to prove. In cross-examination, Mr. Leonty said that he never produced Driver's Licence Number 036491 or his driver's licence to the investigating officer at any time. Even if it were proven that Mr. Leonty did not have a valid driver's licence I cannot see how that could amount to bad faith in relation to the accident, the subject matter of this claim. In any event, I agree with counsel for the defendants, Mr. Cenac when he said in oral submissions that there is no causal connection between not having a valid driver's licence and the accident. I agree that a person's licence having expired does not render him/her

an incompetent driver and does not elevate the risk to the public. Driving without a licence does not mean without more that a person is negligent. It would have been different had the allegation been that Mr. Leonty did not have a driver's licence at all which may then have invited different considerations.

- [28] The second allegation is permitting Mr. Leonty to drive PE9493 owned by the AG without having obtained a valid certificate of insurance to cover third party risks. This is a bald allegation with no proof. The defendants have produced a certificate of insurance which they say pertains to PE9493. However, I note that the vehicle referenced in that certificate bears a registration number SLG3130. It is unclear whether in fact the vehicle PE9493 was insured at the time of the accident. The explanation given by Mr. Leonty in evidence was that the number PE9493 was assigned to the vehicle he was driving as it was an undercover police vehicle and that the certificate of insurance produced related to that vehicle. There is nothing more to support that evidence. However, even if it were the case that the vehicle being driven by Mr. Leonty was not insured, I cannot see how that could amount to bad faith. The only consequence of that failure would be that the owner of the vehicle, the Government of Saint Lucia would not be able to look to its insurer to satisfy Mr. Marius's loss in the event of judgment and would have to bear any damages which may be awarded by the Court on its own.

- [29] The third allegation is that Mr. Leonty pleaded guilty to driving without due care and attention in the Magistrate's Court in Anse La Raye on 29th January 2019. That fact is not disputed and was admitted by Mr. Leonty. It is trite that a finding of guilt or a conviction in a traffic matter in the Magistrate's Court does not establish liability without more. Even where a person is found liable in the civil court of negligence, this does not in and of itself amount to bad faith. This was made clear in the case of **Tamara Barrow** where Mason J said at paragraph 16:

"Negligence connotes a failure to take proper care, some degree of thoughtlessness, some measure of irresponsibility which by themselves do not necessarily presuppose lack of good faith or presuppose bad faith which in turn implies an intention."

This allegation of bad faith does not come up to proof.

- [30] Whilst it may appear that **Finney, Hinse and Seelster Farms** give an expanded definition of what constitutes bad faith; this must be appreciated in light of the facts of these cases. For example, in *Finney*, the respondent had made several complaints against a barrister who had a history of disciplinary infractions and therefore, the dilatory manner in which the Barreau dealt with the matter, which was of great importance to the general public, meant that another member of the public could have been subjected to his acts of professional misconduct. Hence, the court's view that the Barreau had displayed gross carelessness in how it had handled the matter.
- [31] I cannot see that these cases are applicable in the context of the claim before me. Even if one were to accept the expanded definition of bad faith as stated in the Canadian cases, the evidence in this case does not show any gross or serious carelessness or recklessness. If anything, the allegation is that Mr. Leonty was simply careless in his driving. It must be remembered that the conduct being looked at to determine bad faith is that of Mr. Leonty in the context of the accident which occurred. The second defendant is simply a party to this claim because (i) Mr. Leonty is a servant or agent of the Crown and (ii) the vehicle which he was driving is owned by the Crown hence they are vicariously liable for his actions.
- [32] In any event, when one looks at the use of 'bad faith' in our **Civil Code**, I am of the view that it does not lend itself to the wider definition in the Canadian authorities. If one takes a look at a few of the articles of the **Civil Code** in which 'bad faith' appears, it does not suggest that it contemplates the expansive Canadian civil law definition. The following articles are considered: (a) article 372 where its use connotes an intentional occupation of property with no good basis; (b) articles 981-984 where it refers to where a person receives what is not due to him or her whether through error of law or fact in bad faith and the consequences which will flow. In this context, bad faith, refers to intentional behaviour; (c) article 1426 which refers to a vendor selling someone's property in bad faith which again connotes some intentional conduct on the vendor's part.

[33] I note that Mr. Richelieu in his submissions filed on 4th May 2022, refers to behaviour on the part of the Commissioner of Police which he says is bad faith but that was never articulated in the pleadings. The Commissioner of Police is not a party to this claim. In his further submissions filed on 10th June 2022, the claimant has sought to detail what he says are the circumstances which show bad faith. The majority of these were not pleaded in the statement of claim and will not be addressed. I have already dealt with those particulars which were pleaded and found that they do not amount to bad faith. In any event, allegations of bad faith must be in the pleadings and not in submissions.

[34] I find that the claimant has not proved on a balance of probabilities any of the allegations of bad faith pleaded.

The consequences of failure to prove bad faith by the claimant

[35] Having found that Mr. Marius has failed to prove any of the allegations of bad faith which he pleaded, it means that his claim should have been filed within six (6) months of the date of the accident, that is, on or before 21st December 2018. This failure therefore means in the words of Peterkin JA in **Norman Walcott v Moses Serieux**,⁸ that:

“... **both the right and the remedy are extinguished** and therefore there is no question of a party being called upon to choose whether he would plead the defence of limitation. **As long as the evidence in a case discloses that the period of limitation has expired, the judge has no discretion in the matter.**”
(my emphasis)

[36] Article 2129 permits no exercise of discretion by the court and effectively that ends the matter. There is therefore no need to continue to deal with issues (iii) and (iv) identified in paragraph [11] above. The unfortunate conclusion for the claimant is that his claim therefore fails and must be dismissed.

Conclusion

⁸ Civil Appeal No, 2 of 1975, delivered 20th October 1975, unreported.

- [37] In light of the foregoing discussion, I conclude that the claim is prescribed having (i) been filed outside of the six-month prescription period stipulated in article 2124 of the Code and (ii) the claimant having failed to prove the particulars of bad faith as alleged by him.

Order

- [38] The claim is dismissed. Prescribed costs are awarded to the defendants to be paid by the claimant pursuant to CPR 65.5 on the value of \$149,500.00, calculated in the sum of \$21,187.50.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar