

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
CIVIL DIVISION**

GRENADA

Claim Numbers: GDAHCV2020/0430, GDAHCV2020/0431, GDAHCV2020/0432,
GDAHCV2020/0433, GDAHCV2020/0334, GDAHCV2020/0435,
GDAHCV2020/0436, GDAHCV2020/0437 and
GDAHCV2020/0438

BETWEEN:

[1] JANIEL DOUGLAS
[2] RYAN JOHNSON
[3] APHA MC DONALD
[4] KELLON EDWARDS
[5] ORLANDO MONTERAM
[6] TYRON GARRAWAY
[7] SHEVONA STEPHEM
[8] JODY DYETTE
[9] SHONNELLI LA QUA

Claimants

and

[1] THE COMMISSIONER OF POLICE
[2] THE ATTORNEY GENERAL OF GRENADA

Defendants

Before Master Alvin S. Pariagsingh

Appearances: Jerry Edwin for the Claimants; and
Caryn Adams and Laren Kay Simon for the Defendants

2021: December 09;
2022: August 05.

DECISION

**Defendants' application to strike out
on the basis of alternative remedy and abuse of process**

[1] **PARIAGSINGH, M.:-** Before the Court is the Defendants' application to strike out filed on January 28, 2021.

THE CLAIMS:

[2] These consolidated claims all arise out of the same facts.¹ The facts in summary are that on April 24, 2020 at around 5:00pm officers of the Royal Grenada Police Force wrongfully and illegally entered the home owned by Shonneilli La Qua by pushing through a tall private gate without invitation. The Claimants each claim that they were wrongfully detained and deprived of their freedom to move within, throughout and around the house.

[3] The Claimants also allege that no explanation was given by the police officers for their entry save that it was indicated that the persons who lived at the house were in breach of the Covid -19 Regulations. A search of the house was conducted.

[4] The Claimants claim that there were no prevailing circumstances which justified the entry by the police. Their claims are that the actions of the police have infringed on their constitutional right to peaceful enjoyment of property. They contend that they have suffered deprivation of liberty, anxiety, fear and psychological trauma.

[5] The Claimants seek special, general and vindictory damages for wrongful detention and breach of their constitutional rights.

THE APPLICATION:

[6] The Defendants contend that the claim against the First Defendant ought to be struck out in its entirety as he is not a proper party to this claim. This was conceded to by the Claimants at a hearing on July 14, 2021.² The Defendants' application to strike out in relation to the Second Defendant is two pronged. The Defendants contend that the Statement of Claim as a whole is deficient in that the facts do not disclose a cause of

¹ By order made on July 14, 2021

² On July 14, 2021 permission was granted to the Claimants to withdraw this claim against the First Defendant with the issue of costs being reserved to be dealt with at the end of the application.

action. Alternatively, the Defendants contend that all claims in relation to a minor made be struck out as the minor is not a party to these proceedings.

PROCEDURAL HISTORY:

[7] This application came on for hearing in July 2021 just shy of 6 months after it was filed. No affidavit in opposition or submissions were filed on behalf of the Claimants. At the hearing, the Court heard brief oral submissions from Counsel for the Claimant who indicated that he had only been able to have a cursory read of what Counsel for the Defendants had submitted by way of written submissions and authorities. The Court brought an authority and invited the parties, particularly the Claimants, to consider same and indicate whether the application was still being opposed or whether the Claimants were minded to adopt a particular course, more so, since the Claimants are all within limitation to refile.

[8] Counsel for the Claimants asked for seven days to provide his response (July 21, 2021). The Court gave Counsel until July 31, 2021 to do so but nothing was forthcoming from the Claimants. Further nothing has ever been forthcoming to date from the Claimants by way of an affidavit in opposition or written submissions.

[9] The matter next came on for hearing on December 09, 2021 when the position from the Claimants' side was the same as it was on July 14, 2021 which is in fact the same as it was on January 28, 2021 when the application to strike out was filed.

[10] The conduct of the Claimants will be taken into account in treating with the issue of costs.

ISSUES TO BE DETERMINED:

[11] The issues that arise for determination are:

1. Whether the Statement of Claim discloses a cause of action against the Defendants?
2. What is the appropriate order for costs consequent on the withdrawal of this claim against the First Defendant?

ISSUE 1- Whether the Statement of Claim discloses a cause of action against the Defendants?

[12] To disclose a cause of action against the Defendants the Claimants' pleading must comply with **Part 8 Rule 8.7(1) of the Civil Procedure Rules 2000 as amended (CPR)**. The Claimants are under a duty to include in their Claim Form or in their Statement of Claim a statement of all the facts on which they rely.³

[13] All the elements necessary to establish a cause of action must be set out in the Statement of Claim. If this is not done, the claim will be amenable to being struck out.⁴

[14] The Claimants are required to set out all the 'material facts' on which they intend to rely on in their claims. A 'material fact' is a relevant fact. It is a fact that is germane to establishing the cause of action itself. **Blackstone's Civil Practice 2020 at page 507** provides the following guidance:

'The rules should not be read or interpreted as suggesting that the particulars of claim should contain evidence. The distinction between material facts (relevant), and the evidence by which those facts are to be proved (irrelevant) still remains good practice.'

³ CPR 8.7 (1)

⁴ See *Bruce v Odhams Press Ltd* [1936] 1 KB 697.

[15] The level of particulars pleaded are those particulars that the Claimants must set out to provide a concise statement of their case. At minimum, these facts must disclose a cause of action. Sufficient facts must be pleaded to disclose grounds for the bringing of the claim.

[16] In an application to strike out, the Court is only concerned with the Statement of Claim sought to be struck out. The Court is not concerned with the defence. The Court only has to consider whether the pleading discloses a complete cause of action. In a claim for wrongful detention the Claimants have to allege that their detention was unlawful and it is for the Defendants to justify the lawfulness of the detention.

[17] The Claimants' claims are not a pure common law claim for wrongful detention. The Claimants also seek constitutional relief. The sufficiency of pleading of both claims are considered separately.

The common law claim for wrongful detention:

[18] The Statement of Claims filed are vague and omit material facts, such as, how long the ordeal lasted. Whilst some elements of the tort are stated- in particular that there was a wrongful detention the pleading in respect of the extent of the detention- the damages and injuries alleged to have been suffered are all missing. It is my view that in the absence of material facts and particulars such as these, the Claimants are in clear breach of their obligation under **Rule 8.7 CPR**.

[19] Two such examples are paragraphs 8 and paragraphs 10. Paragraph 8 alleges that the Claimants suffer physical and psychological trauma and injuries. In any claim for damages for personal injuries there is the duty pursuant to **Rule 8.9 (3) CPR** to set out in the Statement of Claim certain matters such as the date of birth of the Claimant and details of the medical reports relied on etc. This requirement was recently emphasised

by the Board in **Bergan v Evans**⁵. None of these matters are pleaded in any of the claims.

[20] Similarly, paragraph 10 alleges that certain beverages were removed and taken away by the police and despite several requests, these items have not been returned. Assuming the Claimants are able to prove this at a trial, any such loss would be a past pecuniary loss recoverable as special damages. The Claimants seek special damages but none is specially pleaded. This is another breach of **Rule 8.7CPR**.

[21] Allowing an amendment of the Statement of Claim would involve material changes and permitting the Claimants to introduce new material in the form of particulars which would take a very untidy form. Not only would the form be untidy but so too the substance would in essence be putting flesh in what is the bare bones of a case pleaded. This may require considerable amendments to the defence as well. Then, in essence, the Court would be pressing the reset button on this claim. There will be prejudice to the Defendant that can be remedied in costs. However, this in my view is not determinative of the issues.

[22] Given the level of amendments required, not only on the common law claim but the Constitutional claim (discussed below) I am not minded to grant permission to amend. The Claimants are all within the limitation period to fix their claim and refile it. This position was stated by the Court of Appeal at paragraph 28 of its decision in **Dr. Martin Didier et al –v- Royal Caribbean Cruises Limited**⁶ which states:

[28] Therefore, for the strike out procedure, the pleadings alone are examined and if the court finds that they are untenable as a matter of law a party may have his/her claim or defence struck out. **This does not preclude that party however, from remedying the faults of their claim or defence and bringing further legal proceedings in relation to the same dispute. They are perfectly entitled to do so.** The situation is different, however, with the summary judgment procedure since this procedure gives a judgment on the merits which operates

⁵ [2019] UKPC 33

⁶ Civil Appeal No. SLUHCVP2014/0024

as issue estoppel. No further litigation on the same issue(s) will be entertained by the court.'

The Constitutional claim:

[23] The Defendants have relied on the decision of the Board in **Attorney General v Ramanoop**⁷ at paragraph 25 which states:

'[25] In other words, where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of state power.'

(emphasis mine)

[24] The reliefs sought all relate to the alleged wrongful detention of the Claimants arising out of an illegal entry. That is in the plainest form of a common law tortious claim. To take it outside of the regular common law action, the Claimants have to show that there is some feature which makes it appropriate for this claim to proceed as a mixed claim. They have not done so. The Claimants have not at all addressed the issue of the relief available in the common law action being inadequate to compensate, assuming the Claimants are ultimately successful, for the breaches alleged. In fact, the Claimant has not addressed this issue at all.

[25] The two rights alleged to have been infringed are the right to privacy of his home and the right to freedom of movement. Neither of these two rights is absolute. **Section 1 of the Constitution of Grenada** provides a qualification to the right of privacy. It states:

'the provisions of the Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in these provisions, being limitations designed to ensure that the

⁷ [2005] UKPC 15

enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.”

[26] The onus was on the Claimants to show that they cannot pursue a breach of their Constitutional right to freedom of movement in the common law claim. They had to show some feature which would make it undesirable or insufficient for the Claimants to be compensated in their common law claim. They have not done so.

[27] In respect of the right to privacy, again there are qualifications to this right. It is not absolute. The Claimants had to demonstrate that there is no possibility of pursuing any infringement of this right under the common law. They had to demonstrate there are some special features that made it untenable for them to be compensated in a common law claim. This would have allowed them to pursue a mixed claim.

[28] Additionally, the pleadings in each of these cases are not clear on the alleged contravention of these rights. Some of the Claimants plead that they reside in a house owned by Shonneilli La Qua and some claim to be lawful visitors. Shonnelli La Qua pleads that she is the owner of the house. There are no particulars of how the right to privacy was breached except to say that there was an unwarranted and illegal entry. To pursue this aspect of the claim, substantial amendments would be necessary.

[29] The Defendant has made reference to Part 56 Rule 56.7 (4) (c) CPR. This rule sets out what the affidavit evidence in support of an administrative claim must contain. A claim for constitutional relief is one such administrative claim. The Claimants will have to amend their claim to plead the matters required to be put before the Court in this rule.

[30] The right to freedom of movement is also subject to qualifications set out in **Section 12 (3) of the Constitution**. Unlike the case of the right to privacy, wrongful detention can be prosecuted as a common law claim. There is no demonstrated reason why relief for the alleged wrongful entry and detention cannot be compensated in the common law action.

[31] I am mindful of the approach to be taken in an application to strike out as set out by Thom JA in **Agnes Danzie et al V Cecil Anthony SLUHCVAP2015/0009** at paragraph 13 stated:

“It is a well-established principle that the court’s power to strike out a statement of case should only be used sparingly (*Real Time Systems Limited v Renraw Investments Limited and Others* [2014] UKPC 6). Also, in *Salfray Hussain v Birmingham City Council and Others* the English Court of Appeal, in considering the exercise of discretion to grant relief from sanctions where judgment was entered in default, stated: ‘it must be kept in mind that discretionary powers are not to be exercised in order to punish a party for incompetence—they must be exercised in order to further the overriding objective’. In exercising his discretion, the learned judge was required to consider what was the appropriate response having regard to all of the circumstances, including whether there were other alternatives available that would be just in the circumstances.”

[32] The exercise of the power to strike out is the exercise of a discretion having regard to the overriding objective. That is to deal with cases justly and having regard to the economics of the resources of the parties and the Court. In my view in considering what an appropriate response to the breach is, the Court must consider the effect of granting permission to amend now.

[33] The Court referred the parties to the authority of **Patrick Awong v Attorney General of Trinidad and Tobago**⁸. This authority, though not binding, is persuasive on the approach to be taken. In this case, the Court refused to strike out a constitutional claim where there was a common law remedy as the Court held that the conduct of the police officers effecting an arrest disclosed a special feature. In that case the special feature was the lawfulness of the warrant of arrest issued by a Magistrate. At paragraph 12, Seepersad J stated:

‘The pleaded case before this Court seems to suggest that the operative circumstances go beyond that of false imprisonment simpliciter and the Claimant has an arguable constitutional claim. The police seemingly did not act arbitrarily or without reasonable cause, as a warrant had been issued and the Claimant was arrested under the said warrant’

⁸ CV2020/0146, Trinidad and Tobago (unreported)

[34] In my view, the pleadings in this case do not go beyond that of false imprisonment simpliciter. To permit an amendment at this stage would be to permit the Claimant to entirely re-engineer their claims. They are not barred by limitation. The greater prejudice lies in restarting the pleading process to permit the Claimant to fix the deficient claims. Such substantial amendments in my view cannot be compensated in costs. If allowed, the Second Defendant will have to defend this claim for a second time. In this regard, the claims must be struck out.

[35] In summary my findings on this issue are that the common law claim is not maintainable as pleaded as material elements of a complete cause of action are missing. Further there is nothing pleaded that demonstrates the test in **Ramanoop** being satisfied for this claim to proceed as a mixed claim.

[36] For completeness, the reference to the alleged action of the police being in the presence of a minor must be taken in the context it is pleaded. No relief is claimed on behalf of the minor. At its highest, it will be a fact that goes to aggravated or exemplary damages. This no doubt will have to be properly particularised in the amendment.

ISSUE 2- Costs of the withdrawal against the First Defendant.

[37] The general rule is that a party who discontinues against a party is liable for the costs up to the time of the withdrawal. The Defendants seek their costs in the sum of \$1,500.00. This is less than the prescribed costs application to a withdrawal at this stage.

[38] There is no special circumstances or reason to depart from the general rule. The First Defendant is entitled to this costs. Further, the sum claimed is entirely reasonable considering the fact that defences were filed in each of these claims on behalf of the First Defendant.

[39] The Claimants shall accordingly pay the First Defendant's costs of this claim in the sum of \$1,500.00.

COSTS:

[40] The general rule is that costs follow the event. The costs of this application are assessed costs. There are no reasons to depart from the general rule more so given the Claimants' conduct of this claim thus far.

[41] These claims are not valued and the special damages claimed are not quantified. Using a value of \$50,000.00 and having reached the stage of a defence being filed and the case management conference having occurred, the appropriate percentage of prescribed costs recoverable is 55%. Given the Claimants' conduct of this claim and the application, there is no basis to make any reduction of costs.

ORDER:

[42] For these reasons it is hereby ordered that:

1. The Claimants claims are all struck out;
2. The Claimants are to pay the First Defendants costs of this claim in the sum of \$1,500.00; and
3. The Claimants are to pay the Second Defendant's costs of this claim in the sum of \$4,125.00.

**Alvin Shiva Pariagsingh
High Court Master**

By the Court,

Registrar