

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

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

GRENADA

CLAIM NO: GDAHCV2021/0517

BETWEEN

KEITH FRANK

Claimant

and

NEIL WELLS

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr Francis Williams for the Claimant

Ms. Caryn Adams with Mrs Karen Reid- Ballantyne, Solicitor General, for the Defendant

2022: June 21

RULING

[1] **ACTIE, J.:** The matter came on for hearing on the 9th June 2022 for the determination of a notice of application dated 3rd March 2022 filed by the defendant seeking the following orders:

1. That there be a stay of all proceedings in the instant claim pending the hearing and determination of the criminal proceedings in the Magistrate's Court against the defendant arising out of the incident which is the subject matter of these proceedings.

2. Alternatively, that the defendant be granted an extension of time to file a defence within 28 days of the date of this order of the court.

[2] The application states that the defendant was charged summarily on 21st June 2021 with Causing Grievous Bodily Harm arising out of an incident involving himself and the claimant which is the subject of the claimant's claim. The first hearing of the criminal matter was scheduled for 4th March 2022.

[3] The defendant states that it would be contrary to the public interest in the proper administration of justice for both the criminal and civil proceedings to proceed at the same time. Further, the defendant avers that the filing of a defence and any subsequent orders for disclosure and witness statements in these proceedings, prior to the hearing and determination of the criminal proceedings, would be highly prejudicial in the conduct of his criminal trial and may undermine and violate his constitutional rights under section 8 (7) of the Constitution of Grenada, which affords him a right not to be compelled to give evidence at his criminal trial. The defendant avers that the filing of such defence, disclosure and witness statements will be public documents, which will be available to the prosecution and the claimant, who has an interest in the prosecution, once the same has been filed. Conversely, the defendant states that there is little or no danger of prejudice to the claimant in granting the application especially since these proceedings are still in their preliminary stages and pleadings have not yet been closed.

[4] The application is opposed by the claimant.

Law and Analysis

[5] The court in utilizing its general powers of management may stay the whole or part of any proceedings generally or until a specified date of event¹.

[6] There is binding authority that there is no automatic bar to the conduct of parallel civil and criminal proceedings arising from the same facts. The Privy Council in **Donald Panton v Financial Institutions Services Limited**² cited several authorities which all held that a stay to prevent concurrent civil and

¹ See CPR 26.1 (g)

² [2003] UKPC 86

criminal prosecutions arising out of the same events is a matter of discretion to be exercised by reference to the competing considerations. It is not a matter of rule.

- [7] The burden of persuading the court to exercise its discretionary power in granting the stay lies with the defendant. The defendant is dutifully bound to prove on evidence that he will be severely prejudiced by the concurrent proceedings. Lord Justice Megaw in **Jefferson Ltd v Betcha**³ stated:

“In my judgment, while each case must be judged on its own facts, the burden is on the defendant in the civil action to show that it is just and convenient that the plaintiff’s ordinary rights of having his claim processed and heard and decided should be interfered with. Of course, one factor to be taken into account, and it may well be a very important factor, is whether there is a real danger of the causing of injustice in the criminal proceedings. There may be cases (no doubt there are) where that discretion should be exercised. In my view it would be wrong and undesirable to attempt to define in the abstract what are the relevant factors.”

“... a relevant factor telling in favour of a defendant might well be the fact that the civil action, or some step in it, would be likely to obtain such publicity as might sensibly be expected to reach, and to influence, persons who would or might be jurors in criminal proceedings.”

- [8] The defendant in his application for the stay states that the concurrent proceedings will pose a real danger of causing injustice to him in the Magistrate’s court as he has exercised his constitutional right to remain silent. The defendant states that to be called upon to consider the claimant’s claim at this stage to file a defence or disclosure and witness statements prior to the hearing and determination of the criminal proceedings may prejudice his criminal trial and may violate his constitutional right. He further states that there is no danger or prejudice to the claimant in granting the stay.
- [9] The defendant’s criminal charge for causing Grievous Bodily harm to the claimant and the claimant’s claim for assault and battery arise from the same facts. Where similar issues of fact are to be decided in both sets of proceedings then it may be wrong to allow a decision to be made in the civil action before it is made in the criminal proceedings. However, the extant claim is at the preliminary interlocutory stage in the civil proceedings with no possible decision on liability at this point. It is the defendant’s evidence that a date has been set for the criminal trial which may well be completed before the civil trial considering the backlog of cases in the civil division.

³ [1979] 2 All ER 1108, at page 1113

[10] The applicant's sole ground for seeking the stay is based on him having exercised his constitutional right to remain silent in the criminal proceedings. The Privy Council in **Panton**⁴ states that the right to remain silent is a tactical right guaranteed by the constitution but did not assist the defendants in seeking a stay. The Privy Council⁵ stated:

"The plaintiff had the right to have its civil claim decided. It was for the defendants to show why that right should be delayed. They had to point to a real and not merely a notional risk of injustice. A stay would not be granted simply to serve the tactical advantages that the defendants might want to retain in the criminal proceedings. The accused's right to silence in criminal proceedings was a factor to be considered, but that right did not extend to give a defendant as a matter of right the same protection in contemporaneous civil proceedings. What had to be shown was the causing of unjust prejudice by the continuance of the civil proceedings".

[11] In my view, the defendant has failed to satisfy how the filing of the defence in the civil claim at this preliminary stage will prejudice his case in the criminal proceedings. The evidence is that the matter is being tried summarily by the Magistrate and not by jury. The counsel argument suggests that the Magistrate maybe influenced by the facts in the pleaded defence, witness statements and disclosure in the civil proceedings. Whereas it could be argued that a trial by jury may be tainted by public discussions. The defence to a claim should not and cannot be used as a ground to influence the Magistrate in determining the criminal offence. Also, the difference in the standard of proof required in the criminal case and in the civil case is totally different.

[12] It is the defendant's evidence that hearings before the Magistrate could be disposed within four (4) months and a trial date has been scheduled for the criminal matter. It means that the criminal proceedings may well be determined before the completion of the case management and trial in the civil proceedings. Also, the matter is filed on the Litigation portal and the parties can engage the court in seeking the sealing of the filings and any decision made in the civil claim.

[13] The court applying the legal authorities is of the view that the filing of a defence to the claim at this preliminary stage will not prejudice the defendant's constitutional right to silence in the criminal proceedings. It has been held that "the claimant in the civil proceedings is to not be debarred from

⁴ [2003] UKPC 86

⁵ [2003] UKPC 86 at Paragraph 11

pursuing the action in accordance with the normal rules merely because the defendant might be affected by disclosing his defence in the civil proceedings”.

- [14] **CPR Rule 1.2** requires the court to give effect to the overriding objective to facilitate the operation of the Rules in order to do justice taking into account equality between the parties, the expense of litigation, proportionality, expedition and the court’s limited resources. The court is of the view that it is appropriate to allow the civil claim to proceed in accordance with the overriding objective of **CPR 2000** to avoid unnecessary delay.

ORDER

- [15] In summary, the defendant has failed to establish how the filing of a defence would prejudice his guaranteed Constitution right to silence in the criminal proceedings before the Magistrate. Accordingly, it is ordered and directed as follows:

- (1) The application to stay the claim is refused.
- (2) The defendant is granted an extension of time to file a defence.
- (3) The defendant shall file and serve a defence within twenty-eight days (28) from today’s date.
- (4) The claimant may file a reply to the defence in accordance with **CPR 10.9**.
- (5) Thereafter, the matter shall be listed before the master for case management conference in accordance with **CPR 2000**.
- (6) Costs shall be in the sum of \$750.00 shall be in the cause.

Agnes Actie
High Court Judge

By the Court

Registrar