

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

GRENADA

CLAIM NO: GDAHCV2020/0007

BETWEEN:

SHONDELL FEREIRA

Claimant

and

BRADLEY RICHARDS

Defendant

Appearances:

Hazel B. Hopkin for the Claimant
George W. Prime for the Defendant

2020; June 11
June 14

DECISION

(Application for stay pending criminal trial)

[1] **PARIAGSINGH, M (Ag.):** For the purpose of protecting the integrity of the criminal trial against the Defendant and in the interest of fairness, I will not set out any of the facts alleged by either party.

[2] On January 08, 2020 the Claimant commenced this claim against the Defendant. The Claimant's claim is for damages for assault and battery which he alleges occurred on June 18, 2018. The facts which give rise to the action is pleaded at paragraphs 8, 9 and 10 of the statement of case. Arising out the same incident criminal charges were brought against the Defendant by the Crown.

[3] The Defendant filed a defence to this claim on February 06, 2020. At paragraphs 4, 5 and 6 of his defence a different version of fact is asserted. This matter came up for case

management on November 03, 2020 before Drysdale M (as she then was). No indication of any preliminary point and in particular, any intention by the Defendant to apply for a stay of this claim was given. The Master gave full case management directions up to and including the filing of witness statements and submissions. The Claimant has fully complied with all directions given. The Defendant has not complied with any of the directions given.

[4] On November 26, 2020 (23 days after the case management conference) the Defendant filed the instant application. The Defendant seeks an order staying this claim until the criminal charges against him are determined.

[5] The main ground of the application is that the Defendant would suffer serious prejudice in his criminal matter if this claim is not stayed. The Defendant contends that he has been indicted on a charge resulting from the same incident on which this claim is brought. He contends that his criminal matter is in a state of readiness and fixed for trial on November 22, 2021. Assertions are made that the witnesses in this case are the same witnesses in the criminal case and that all pleadings made by the Defendant in this case will undermine and negatively impact his chances of a defence in the criminal trial.

[6] In support of his application, the Defendant has filed an affidavit. This affidavit on any generous interpretation is starved of facts. The affidavit contains the following two paragraphs:

- a. That by proceeding with this Civil claim at this time will fatally undermine my Defence in the Criminal matter presently before the Criminal High Court, to which a trial date has already been determined. A true copy of my indictment and the Case Management Order are hereto annexed and respectfully marked "BR 1" and "BR 2"

- b. That I have been advised by my Attorney-at-law, Mr. George W. Prime and verily believe that proceeding with this Civil claim ahead of the Criminal matter will cause great prejudice against me in the criminal matter

[7] Counsel for the Claimant resisted the application mainly on the lack of evidence. Counsel submitted that the Court has to exercise its discretion taking into consideration the evidence before it and not based on the oral submissions of Counsel for the Defendant.

[8] Counsel for the Claimant, correctly in my view, took no issue with the discretion of the Court to grant a stay nor was the criteria to be applied disputed. The main argument was that, the evidence before the Court is insufficient to meet the evidential burden on the Defendant and as such there is not sufficient evidence on which the Court can exercise its discretion. In response, Counsel for the Defendant made robust submissions that the prejudice to the Defendant does not have to be set out in his affidavit in support. He contended that the prejudice was obvious.

[9] In **Panton and others v Financial Institutions Services Ltd (Jamaica) [2003] UKPC 95** the Board considered the issue of a stay of civil proceedings where there were ongoing criminal proceedings arising out of the same facts. The abandonment of the rule in **Smith v Selwyn [1914] 3 KB 98** and the development of the English common law on the issue was also stated. The position set out in Panton (Supra) is not foreign to this jurisdiction. Stephenson J, in **Kerlvin Julien & Anor v Bertie Jeffers & Anor, DOMHCV2014/0005-006** in considering this same issue recognized and restated the position in **Panton** as being the applicable law.

[10] At paragraph 11 of **Panton** (Supra) the Board stated that the Claimant had a right to have its claim decided. The Board went on to state that:

‘It was for the Defendant 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] The affidavit in support of the instant application seems to have largely mirrored the affidavit in **Panton** (Supra). In that case the bald assertion that 'I will be greatly prejudiced in my defence in the criminal matters if I am forced to proceed with the action herein before the criminal charges are tried.' was the sum total of the evidence advanced by the Applicant. The Board in upholding the decision of judge at first instance to dismiss the application, which decision was upheld by the Court of Appeal, the Board stated:

'He would be obliged to testify in the civil proceedings if he were to have any opportunity of succeeding in them. He did not indicate how that testimony would prejudice him beyond the defence already filed, the material discovered and the answers given. Nor was there any specification in the course of the argument before the Board.'

[12] It is clear from the Board's statements in **Panton** that a party seeking a stay of civil proceedings pending the determination of criminal proceedings arising out the same facts has an evidential burden to satisfy the Court that prejudice would occur to the applicant by the civil matter proceeding. Merely saying that prejudice would occur is not sufficient. This is the only sensible way in which the Court can balance justice between the parties.

[13] The Defendant's affidavit says in summary two things. Firstly, he says that proceeding with this claim will fatally undermine his defence in the criminal matter. In his grounds he contends that all pleadings made by him in this claim will undermine and negatively impact his chances of success in the criminal matter. He has not said how.

[14] The Defendant has filed a defence in which a version of facts is asserted. The purpose of pleading are to set the parameters of a party's case. Material facts of the Defendant's case have already been set out in his defence. The Defendant's witness statements can only provide evidence of the facts already asserted. Having already committed his defence to paper in this claim and having certified the facts in his defence as being the truth in the attached certificate of truth, it is difficult to follow the argument that Defendant would be prejudiced by complying with the order for filing witness statements and this claim proceeding. He is already bound by the facts he has pleaded.

[15] Secondly, the Defendant simply makes the bald assertion that he is informed by his counsel that proceeding with this matter would cause great prejudice. Again, in his grounds the Defendant set out that witnesses in the criminal matter are the same witnesses in the civil matter. Six (6) witnesses' names set out in the indictment exhibited to the Defendant's affidavit. No witness statements have been filed by the Defendant. I am unable to say that the witnesses in the civil matter and the witnesses in the criminal matter are the same. To make this assumption, would in my view be to speculate.

[16] For the reasons set out above, I do not accept the submission of Counsel for the Defendant that the bald assertion in an affidavit that there would be prejudice, without more, is sufficient for the Court to exercise its discretion to grant a stay.

[17] The onus was on the Defendant to provide evidence of how he would be prejudiced by this claim continuing. He has not done so.

[18] The Court was also invited to consider making a 'Ring Fencing' order as made by Boodoosingh J (as he then was) in **Pricemart Clubs (TT) Ltd –v- Aaron Hosein CV 2014 – 03970** (Trinidad and Tobago). The Court raised directly with both Counsel whether such an order will satisfy the justice of the case. Counsel for both parties agreed that such an order may be appropriate. I am of the respectful view that this type of order directly impacts on how the trial is to be conducted is a matter for the trial judge. I am

prepared however, to make an interim ring fencing order until the matter comes up for hearing Pre-Trial Review before a Judge.

[19] In the circumstances, I make the following orders:

- a. The Defendant's application filed on November 26, 2020 is dismissed;
- b. An interim order is granted directing the Registrar to immediately seal this file. No pleading, document, witness statement or oral evidence filed or disclosed by the Defendant in this claim shall be used as evidence in the criminal proceedings against the Defendant. These proceedings shall be heard in camera and the file shall remain under the control of the Registrar until this matter comes on for hearing before a Judge for a Pre- Trial Review or until further order; and

[20] I will hear the parties on the issue of costs.

**Alvin Shiva Pariagsingh
Master (Ag.)**

By the Court,

**Registrar
Supreme Court.**