

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
ANUHCv 2012/0336

BETWEEN

Joseph W. Horsford

CLAIMANT

AND

Geoffrey Croft

DEFENDANT

Appearances:

Joseph Horsford in person and unrepresented

Mr. Sylvester Carrott appearing for the defendant

2021: February 2nd, 9th
2021: June 2nd

JUDGMENT

- [1] **Robertson J.** The claimant initiated these proceedings alleging an assault and battery visited upon the claimant as a result of actions taken by the defendant. This court found that the claimant failed to prove the allegations made and dismissed the claim. The reasons for the decision are indicated hereunder.
- [2] In this matter the claimant gave evidence. Neither of the two witnesses for whom the claimant filed witness statements attended court to give evidence on the claimant's behalf. The defendant gave evidence and called Serge Gobinet to give evidence in support of the case for the defendant.
- [3] **The Background.** The claimant is the sole administrator of a parcel of land on Monks Hill Estate and registered as Registration Section: Falmouth and Bethesda, BLOCK: 34 2482B, PARCEL: 280. The defendant is the owner of property Registration Section: Falmouth and Bethesda BLOCK: 34 2482B, PARCEL: Parcel 217.
- [4] On the estate there is a road which gives access from the public highway to properties in the vicinity including the property upon which the dwelling house of the defendant stands. The defendant often used the road to access his property. On several occasions, prior to the incident in question, the claimant indicated to the defendant that he was not permitted to travel along that specific road. The claimant contends that another road is available for the defendant to access the defendant's property. There are existing disputes between the parties concerning right of access to the road.

[5] On 10th April 2012 the claimant was standing on the road speaking to an occupant of a vehicle. It was later determined that the occupant of the vehicle was Serge Gobinet. The defendant was driving along the road when the claimant caused the defendant to stop and instructed the claimant that he was not permitted to use the road. An interaction ensued. The claimant alleges that as a result of this interaction he was assaulted and battered by the defendant.

[6] **Issues for Determination.** The issues for the determination of the court are:

- a. Whether the claimant has pleaded the allegation of assault.
- b. Whether the claimant has, on a balance of probabilities, proven that the defendant committed a trespass to the person in the form of assault and/or battery upon the claimant.

The Evidence

[7] The relevant evidence of the Claimant is that the defendant utilized a roadway which the claimant contended was the property of the estate for which the claimant was the administrator and for which the defendant had no right of access. The claimant contends that the defendant was informed in clear terms that the path was not an access road and that he ought not to use that path. On a day while the claimant was speaking to one Serge Gobinet about the claimant's contention that the road was not to be used without the authorization of the estate, the claimant noticed the defendant approaching driving a vehicle. The road is on an incline and the defendant was proceeding along the road down the incline. The claimant left Serge gobinet (the driver in the vehicle) to whom he was speaking, crossed the path of the vehicle that Serge Gobinet was driving, stood in the middle of the road with his hands in a halting motion signaling to the defendant to stop his vehicle.

[8] The defendant halted the vehicle that he was driving. The evidence of the claimant is that the defendant brought his vehicle to a stop 8 to 10 feet from the claimant and following interaction ensued:

"Mr. Croft, you are not to drive on this lane. Turn back and go no further"

Mr. Croft's response: "Get to FUCK out of my way or I will run you over"

[9] The claimant's evidence is that without a moment's hesitation the defendant drove off in the direction that he was driving and knocked the claimant. The claimant's evidence is that he was hit on his 'rear backside' with the side mirror and the impact caused him to fall upon a heap of thorn bush cuttings that were on the side of the road. The defendant continued driving. Upon cross-examination the claimant insisted that he was standing on the roadway in front of the defendant's vehicle when the exchange occurred. The claimant indicated that the defendant "revved" his vehicle and moved off instantly and that he "jumped out of the way and his car hit me on my rear backside. Consequent upon that I fell over the curb on the embankment". The claimant's evidence is that the defendant intended to kill him and in the past the defendant had threatened to kill him.

[10] The defendant, in his evidence admits that he was on previous occasions told by the claimant that he was not permitted to use the road, but the defendant indicated that the road in question was the only viable access to his property. The defendant strongly denies the claimant's version of events as they relate to the interaction which resulted in the initiation of these proceedings.

[11] The evidence of the defendant is that on the morning in question he was driving along the path from his home with the intention of accessing the highway. As the defendant approached his vehicle the claimant left the person to whom he was speaking who was seated in a vehicle parked alongside the road and ran across the road in front of the defendant's vehicle. The claimant signaled to the defendant to stop driving. The claimant then walked to the road stopped the defendant's vehicle and stood about 2 to 3 feet from the right-hand side of the defendant's vehicle.

[12] The defendant indicated that the claimant shouted at the defendant indicating that the defendant should come out of his vehicle and park it on the roadside and walk down the hill. The defendant's response to the claimant was "Out of my Fucking way, Mr. Hosford, I have an appointment in town." The defendant proceeded to continue driving down the path. As the defendant was driving he noticed that the claimant stepped backward and that he tripped on the 10" curb which runs along the western side of the said access road and as a result the claimant fell into bushes alongside the road. The evidence of the defendant is that his vehicle never made contact with the claimant and he neither at that time, nor any other time in the past, threatened to 'run the claimant over with his vehicle.

[13] Serge Gobinet was a witness on behalf of the defendant. At the material time Serge Gobinet lived on Monks Hill Road and was backing out of his driveway when the claimant walked towards him and went to the passenger side front window. At the time when the claimant approached this witness, Mr. Gobinet, the witness' vehicle was positioned in the middle of the road. The claimant introduced himself and indicated that work was to be done along the roadway and persons would be unable to drive along the road. While he was speaking Mr. Gobinet observed in his rearview mirror that a vehicle was approaching. Mr. Gobinet positioned his vehicle out of the path of the vehicle. The claimant stepped into the road shouted for the oncoming vehicle to stop and the claimant placed his hands in the air to signal to the defendant, in the oncoming vehicle, to stop his vehicle. The defendant stopped his vehicle slightly in front right side of Serge Gobinet's vehicle. The back of the defendant's vehicle was 'in line with' the front of Serge Gobinet's vehicle. The evidence of Mr. Gobinet is that he observed that the claimant went around driver's side of the defendant's vehicle and spoke with the defendant.

[14] The evidence of Mr. Gobinet is that he moved his vehicle so that it did not obstruct the defendant's path and his vehicle was parallel to the road although his front left tyre was on the driveway. Mr. Gobinet observed that when the defendant drove off the claimant stepped backward and fell over the curb into the thorn bush at the side of the road. Mr. Gobinet observed the claimant get up from the ground and shortly thereafter two men went to the claimant's assistance.

The Law and Application of the Law.

[15] Counsel for the defendant submits that the relief of assault is not available to the claimant since the claimant did not plead an apprehension of the infliction of immediate and unlawful force. Assault being an intentional and overt act causing another to apprehend the infliction of immediate and unlawful force.

[16] On the matter of pleadings this court notes the decision of the Court of Appeal in ***East Caribbean Flour Mills Ltd v Ormiston Ken Boyea***¹ where it was stated that:

“It is settled law that witness statements may now be used to supply details or particulars that under the former practice, were required to be contained in pleadings. ... In deciding that it was only the pleadings that she should look at to decide what were the issues between the parties the judge erred, in my respectful view. If particulars were given, for instance, in other witness statements the judge was obliged to look at these witness statements to see what were the issues between the parties.”

[17] Lord Woolf MR made a similar pronouncement in the oft cited case of *McPhilemy v Times Newspaper Ltd and others*² :

“The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies for the party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular, they are still crucial to identify the issues and the extent of the dispute between the parties. What is important is that pleadings should make clear the general nature of the case of the pleader.”

[18] In the instant case it is clear that claimant alleges assault and battery arising from the defendant's use of his vehicle on 10th April 2012. The court is required to not only look at the pleadings but is also obliged to look at the witness statements filed since particulars were given in the witness statement of the claimant. In this regard the court notes the witness statement of the claimant where the claimant indicated that:

“18. I turned to face the oncoming car driven by Mr. Croft, raised my hand above my head and Mr. Croft brought his car to a stop about 8 to 10 feet from me. I then said, “Mr. Croft, you are not to drive on this lane. Turn back and go no further”

19. Mr. Croft retorted and said, “GET TO FUCK OUT OF MY WAY OR I WILL RUN YOU OVER”, and without a moment's hesitation, Mr. Croft drove off the motor car he was driving and with it knocked me over and I fell upon a heap of thorn bush cuttings that were beside the lane, And (*sic*) he kept going and drove away.”

[19] In this regard the court is required to consider both matters of assault and battery. The burden of proof in respect of each cause of action rests on the claimant.

[20] The authors of Halsbury's Laws of England noted that:

“Assault is an intentional and overt act causing another to apprehend the infliction of immediate and unlawful force. The threat of violence exhibiting an intention to assault will give rise to liability only if there is also a present ability (or perhaps a perceived ability) to

¹ St. Vincent and the Grenadines Civil Appeal No. 12 of 2006 (delivered 16th July 2007, unreported).

² [1999] 3 All ER 775 at p. 792-793.

carry the threat into execution. An assault may be committed by words or gestures alone, provided they cause an apprehension of immediate and unlawful force....³

“A battery is an act of the defendant which directly and intentionally or recklessly causes some physical contact with the person of the claimant without his consent”⁴

[21] As it relates to the incident in question both parties are adamant about the veracity of their respective versions of event. Other persons were present at the time of the incident. The evidence before the court is that the claimant had workmen in the area and Serge Gobinet was also present. The claimant was speaking to Serge Gobinet just prior to the incident and Mr. Gobinet’s version of events supports that of the defendant. The claimant’s witnesses did not attend the trial to give evidence as to their observations on the incident.

[22] Serge Gobinet, a driver who was on the road at the time was in a position to view relevant aspects of the incident. Specifically, the witness explains that when he initially came out of the driveway he was in the path of the oncoming vehicle and he had to move his vehicle to permit the defendant to pass along the road. This movement placed his vehicle in a position parallel to the road. He explains that when he indicated in his witness statement that he “inched out of the way by moving onto the driveway” the words did not mean that he did not return his vehicle to the driveway but the front left wheel was on the driveway. Based upon the position of the witness he would have had a clear view of parts of the events.

[23] This witness was clear that the claimant stopped the defendant’s vehicle as it proceeded down the path. During his evidence the witness gave hand gestures to demonstrate how the claimant was able to get the defendant’s oncoming vehicle to stop. The witness also indicated that the defendant’s vehicle stopped so that the back of the defendant’s vehicle was in line with the front of the vehicle of the witness. The witness was clear and consistent that he saw the claimant walk to the defendant’s driver side passenger window to speak to the defendant. This court accepts the evidence of this witness. His evidence was clear, forthright and I found him to be a credible witness. This court places no weight on the admission of the witness that he was acquainted with the defendant prior to the incident.

[24] This witness would not have seen how far the claimant stood from the right-hand side of the defendant’s vehicle but his evidence is that the defendant moved off in his vehicle, the claimant stepped back and stumbled onto the cuttings. Given the evidence of where the defendant’s vehicle stopped in relation to this witness, the witness would have had a view of what transpired after the defendant drove away from the claimant.

[25] Accordingly, this court accepts the defendant’s version of events that the claimant was speaking to him through his driver side window. The defendant contends that the claimant was two to three feet from his vehicle when he said to the claimant to “out of my fucking way”. The burden of proof rests

³ Halsbury’s Laws of England: Tort (Volume 97 (2015)): (1) Trespass to the Person: para. 528.

⁴ Halsbury’s Laws of England: Tort (Volume 97 (2015)): (1) Trespass to the Person: para. 529.

on the claimant and in this court's view the claimant has not discharged the burden that the claimant's version of the event was more likely than not to have occurred. In this circumstance the claimant has not proven that the defendant directly, intentionally or recklessly caused physical contact with the person of the claimant. Additionally, this court notes that the medical report showed no injury or swelling to the claimant's hip. The report spoke of tenderness to the area.

[26] Having accepted that the claimant was to the side of the defendant's vehicle it is difficult to see how the claimant would have suffered an intentional and overt act causing the claimant to apprehend the infliction of immediate and unlawful force. This is particularly in the context where both parties contend that the defendant said, "get out of my fucking way". On this matter this court has again determined that the claimant has not proven its case on a balance of probabilities.

[27] Accordingly, this court determines that the claim ought to be dismissed with costs. The costs is payable to the defendant by the claimant on the prescribed costs regime.

Marissa Robertson
High Court Judge

.....

Registrar