

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 2006/0182

BETWEEN

TAMARA BARROW

Claimant

AND

P.C. 240 JOHN FLAVIEN
THE HON. ATTORNEY GENERAL OF SAINT LUCIA

Defendants

Appearances:

Mr. Robert Barrow for the Claimant

Mr. Dwight Lay in association with Ms. Dora Modeste for the Defendants

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2006: May 31
September 22
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Mason J

[1] The substantive action in this claim was filed by the Claimant on 7th March 2006 claiming from the Defendants among other things damages for personal injuries and damages and costs arising from the negligence of the first named Defendant in discharging a firearm in a certain public place and in a manner contrary to the safety of the general public or the

occupants and/or the visitors of the aforementioned public place while in the course of his employment as servant and/or agent of the second Defendant.

[2] The present application is by the Defendants for an order that :

- 1) the statement of case filed on the 7th day of March 2006 be struck out as disclosing no reasonable ground for bringing the claim
- 2) alternatively that the First Defendant cease to be a party in this action and that his name be struck out of the statement of case and all subsequent proceedings therein.

[3] The grounds on which this application is based are that:

- 1) the action herein is prescribed by virtue of Article 2124 of the Civil Code of St. Lucia; and
- 2) article 13 of the Crown Proceedings Ordinance Ch.13 of the Revised Laws of Saint Lucia 1957 requires that this action be instituted against the second Defendant/Applicant only

Article 2124 of the Civil Code of St. Lucia

[4] Counsel for the Defendant is of the view that since in accordance with Art. 2124 of the Civil Code actions against public officers are prescribed by six months, that the incident complained of having taken place on or about the 20th December 2003, the period of limitation would be 20th June 2004. As a consequence any cause of action against the

Defendants is bound to fail as both the right and remedy of the Claimant have been extinguished.

[5] To support this latter contention, Counsel cited the opt quoted case of Walcott v Serieux Civil Appeal N0. 2 of 1975 (St. Lucia).

[6] Counsel further states that by Article 2066 of the said Civil Code it is presumed that the acts done by the first Defendant in respect of his public duties were done in good faith. In the absence of any statement of fact in the claim form or the statement of claim upon which the Claimant can rely to establish a claim based on bad faith, the Court must assume that the first Defendant acted in good faith throughout.

[7] Counsel for the Claimant on the other hand contends that the Claimant's action against the first Defendant is not barred by prescription under the Article, that the issue of whether or not the first Defendant acted in bad faith is a question of fact that can be determined at trial.

[8] In the event that the allegation of bad faith is not really evident on the pleadings an amendment may very well cure any defect that may exist.

[9] Article 2124 of the Civil Code of Saint Lucia 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 months.

By article 2006 it is provided “Good faith is always presumed. He who alleges bad faith must prove it”.

[10] The incident which is the substance of the Claimant's claim is alleged to have taken place on Friday 19th December 2003, and the Claimant filed her action on 7th March 2006 – clearly a period in excess of the six months allowed by Article 2124 of the Code relative to prescription of acts by public officers.

(It should be noted that according to Article 2101: Prescription is acquired when the last day of the term has expired, the day on which it commenced is not counted).

[11] It is agreed and accepted that in order for such prescription to be circumvented the Claimant would have to establish that the acts on the part of the first Defendant were not done in good faith and in respect of his public duties.

[12] Part 8.7 of the Civil Procedure Rules 2000 require the Claimant to include in the claim form or in the statement of claim a statement of all of the facts on which the Claimant relies which statement must be as short as practicable.

[13] The Claimant in her statement of claim claims as follows:

1.

2. The first Defendant was at all material times a Constable of the Royal St. Lucia Police Force on active duty and as such, a servant and or agent of the Government of Saint Lucia.
3.
4. On Friday 19th December 2003 the Claimant was a patron at a dance hall called "The Dub House" situate at Marie Therese Street in the town of Gros Islet
5. The first Defendant, while on active duty, entered the said dance hall and negligently discharged rounds of ammunition into the room which was at that time crowded with persons causing injury to the Claimant

[14] The Claimant then set out the particulars of negligence thus:

- (i) Discharging a firearm in a crowded room in a manner that was hazardous to occupants of the room
- (ii) Discharging a firearm in a dimly lit room where visibility was poor
- (iii) Failing to exercise due care in discharging his firearm
- (iv) Failing to take any proper precaution to avoid causing injury to persons

[15] Thus it would seem to me that the Claimant while pleading negligence alleges some element of wrongdoing on the part of the first Defendant while in the execution of his public duties.

[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.

[17] The court cannot in the circumstances be expected to infer or assume from the facts whether or not the first Defendant acted in good faith.

[18] It is my considered opinion therefore that whether the acts of the first Defendant were done in good faith and in respect of his public duties as provided by Article 2124 of the Code can only be established by a trial of the action wherein evidence when led could be cross examined. As a consequence I do not agree that the action would be prescribed.

In addition the overriding objective is that cases be dealt with justly which implies that litigants should be given an opportunity to be heard

Article 13 of the Crown Proceedings Ordinance

[19] Under this head Counsel for the Defendants stated that this section requires Civil proceedings against the Crown are to be instituted against the Attorney General only, that a perusal of the claim form and statement of claim clearly show that the Claimant's claim is against the Crown in respect of the negligent acts and/or omissions of the first Defendant in respect of his public duties.

- [20] Counsel submits that neither the claim form nor the statement of claim contain any statement of fact on which the Claimant can rely to establish a claim against the first Defendant in his private capacity and or in relation to him acting in bad faith in respect of his public duties.
- [21] Counsel states further that the Crown cannot be liable for the acts of the first Defendant if he was acting with bad faith because acts done in bad faith cannot amount to the performance of the work for which servants are employed as contemplated by Article 986 of the Civil Code.
- [22] It is the view of Counsel for the Claimant that although section 13 of the Ordinance requires all Civil Proceedings brought against the Crown to be brought against the Attorney General, that does not prevent the first Defendant from being a party to the proceedings.
- [23] Counsel contends that the Attorney General is the representative of the Crown and the servant or agent of the Crown is properly joined as one of the parties to the proceedings.
- [24] In addition, Counsel submits, Section 4 (3) of the said Ordinance affects the liability of the Crown for delicts or quasi delicts committed by its servants and or agents in the execution of their public functions and does not operate to bear an action against the public officer both in his public and in his private capacity.
- [25] To support his argument, Counsel referred to the cases of:

Peter Clarke v Attorney General et al Claim SLUHCV 1999/0475 per Edwards J paras 47 to 52

Gordon (Lemuel) v Attorney General (1997) 5I WIR 281

Inland Revenue Commissioners and Attorney General V Lilleyman and Anor (1964) 7 WIR 496 et 522.

[26] Section 13 of the Ordinance provides at sub paragraph (2).

Civil proceedings against the Crown shall be instituted against the Crown Attorney.

[27] Section 4 (1) (a) provides that the Crown shall be liable and in respect of delicts or quasi delicts committed by its servants or agents.

[28] Section 4 (3) provides:

Where any functions are conferred or imposed upon an officer of the Crown as such by any enactment having the force of lawand that officer commits a delict or quasi delict, the liabilities of the Crown in respect of such delict or quasi delict shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

[29] See also Article 986 of the Civil Code:

(Every person) is responsible for damage caused not only by himself, but by persons under his control

Masters and employers are responsible for damage caused by their servants and workmen in the performance of work for which they are employed.

{30} I agree with the submission of Counsel for the Claimant that while section 13 directs that actions against the crown be in the name of the Attorney General, there is nothing to prevent the first Defendant being the perpetrator of the alleged wrongdoing and servant and/or agent of the Attorney General from being joined as a party to the action.

[31] I would wish to concur with the proposition in the above cited case of Lilleyman that “unauthorized acts by government officers may be the subject of actions against them in their personal capacity but not in their official capacity unless otherwise provided by law” and also agree with Edwards J in the case of Peter Clarke v Attorney General and others where at para 49 she says “It appears to me on a close look at section 4 (3) of Cap 13 that it is a provision which is an example of the law providing otherwise”.

[32] Edwards J continues at paragraph 50:

“I say this because in any view it seems to make the Crown absolutely liable in every respect for the conduct of its servants provided their wrongful acts were done in the course of their performing their official functions”.

Conclusion

[33] I therefore reject the contention of the Defendants:

- a) The statement of case in this matter should be struck out as disclosing no reasonable ground for bringing the claim, or
- b) that the first Defendant should cease to be a party of to this action

[34] In the premises therefore, the application of the Defendants is dismissed.

SANDRA MASON Q. C.

High Court Judge