

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0104

BETWEEN:

WINSTON PHILLIPS

CLAIMANT

AND

THE ATTORNEY GENERAL
OF SAINT VINCENT AND THE GRENADINES

FIRST DEFENDANT

AND

UNKNOWN OFFICER OF THE ROYAL
ST. VINCENT AND THE GRENADINES POLICE FORCE

SECOND DEFENDANT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances: Mr. Ronald Marks holding papers for Mrs. Patricia Marks-Minors of counsel for the claimant.
Mrs. Joezel Allen and Ms. Maffica Lewis of counsel for the 1st defendant.
Ms. Moureeze Franklyn of counsel for the 2nd defendant.

2020: May 27
Jun. 24

DECISION

BACKGROUND

[1] **Henry, J.:** Mr. Winston Phillips claimed that he was assaulted by an unidentified police officer in July 2018 when he visited the Central Police Station in Kingstown, Saint Vincent to request certain

information. He alleged that he was injured. He is seeking damages from the Crown. The Honourable Attorney General has been made a defendant. The other defendant is described as 'Unknown Officer of the Royal St. Vincent and the Grenadines Police Force'.

- [2] The Honourable Attorney General contended that Mr. Phillips did not comply with mandatory statutory timelines for filing his claim. He submitted that the court has no jurisdiction to hear the claim and that it should be struck out. He filed an application¹ for orders to that effect. Mr. Phillips opposed the application. For the reasons outlined in this decision, I have found that the court may entertain this claim. No order is made striking it out.

ISSUES

- [3] The issues are whether the:
1. Court has jurisdiction to entertain this claim?
 2. The claim should be struck out?

ANALYSIS

Issue 1 – Does the Court have jurisdiction to entertain this claim?

- [4] The Honourable Attorney General contended that the application is being pursued in accordance with rule 9.7 of the Civil Procedure Rules 2000. That rule sets out the procedure for disputing the court's jurisdiction. It provides in part:
- '(2) A defendant who wishes to make an application ... must first file an acknowledgement of service.
- (3) An application ... must be made within the period for filing a defence; ...' (Underlining added)
- [5] The application was supported by affidavit evidence – another CPR 9.7 requirement. The affidavit of service and Hon. Attorney General's Acknowledgment of Service indicated that the Fixed Date Claim Form was served on 11th July 2019. The Application was preceded by the filing of an

¹ On 6th August 2019.

acknowledgment of service² and was filed within the 28 day timeline³ for filing of a defence. It therefore complies with the foregoing prescribed stipulations.

[6] The application contained 4 grounds on which it was founded. Only one of those grounds relates to the challenge to the court's jurisdiction. It was broken into three parts, as follows:

1. The claim does not comply with the Public Officer's Protection Act⁴ ('the Act') because:

- a) contrary to section 3, it was commenced before the expiration of two calendar months after service of the mandatory notice of intended action on the Hon. Attorney General and therefore did not satisfy the prescribed timeline;
- b) the referenced notice did not identify the accused public officer and was not served on the unknown officer of the Royal St. Vincent and the Grenadines Police Force' personally or by leaving it at his residence; and
- c) contrary to section 5, service of the notice on the accused police officer was not established.

[7] In the supporting affidavit, Mr. Rodwell Stephens averred that he is a typist in the Hon. Attorney General's chambers. He asserted that he is advised by counsel and believes that Mr. Phillips did not comply with sections 3 and 5 of the Act (as outlined in the Application). He deposed further that Mr. Phillips served a Notice of Intention on the Hon. Attorney General on June 4th 2019 and subsequently filed the instant claim, before two months had elapsed. He asserted that contrary to the Act no such notice was served on the unidentified police officer. He averred further that Mr. Phillips failed to provide material facts when he did not supply the name of the alleged wrong-doer.

[8] Ms. Shenika Baynes filed an affidavit in opposition on Mr. Phillips' behalf. Ms. Baynes deposed that she is employed at the Law firm of Marks and Marks as Legal Secretary (lawyers for Mr. Phillips). Ms. Baynes indicated that she is informed by counsel and believes that the claim was initiated in July 2019 to meet the limitation deadline. She averred that if it was not filed at the time, it would

² Filed on 16th July 2019 (just over 3 weeks before filing of the Notice of Application).

³ That is 28 days after service of the Fixed Date Claim Form.

⁴ Cap. 276 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

have become statute-barred, leaving Mr. Phillips with no legal recourse. The Court take note that the Act⁵ stipulates that such claims must be brought within 12 calendar months of the cause of action. I accept that the deadline would have expired in July 2019, all things being even.

- [9] Ms. Baynes averred that Mr. Phillips' lawyer wrote to the Commissioner of Police ('COP') on 31st May 2019 requesting the full name of the police officer who assaulted Mr. Phillips. She indicated that the COP has refused or failed to disclose the officer's name. She attested further that the Claim Form, Statement of Claim and Notice of Intended Prosecution were served on the COP's office on June 4th 2019.
- [10] Vault attendant Melicia Gilchrist provided an affidavit⁶ on the Hon. Attorney General's behalf. She acknowledged that the COP advised the Hon. Attorney General on October 31st 2019 that 'the police officer who was present with [Mr. Phillips] during the alleged incident on July 5th 2018 was Cpl 45 Adrian Forde.' Ms. Gilchrist stated that the Hon. Attorney General had requested information from the COP prior to that date but had obtained none. She did not say when that request was made.
- [11] Ms. Gilchrist averred further that the Hon. Attorney General maintains that notwithstanding the new information, Mr. Phillips failed to observe the 2 month period between the service of the notice of intended action and the initiation of his claim. She contended that even if he had identified the police officer and served the intended notice on him on June 4th 2019, his subsequent filing of the claim would constitute non-compliance with the time requirement mandate in section 3 of the Act.
- [12] Ms. Baynes deposed further that Mr. Phillips requested the medical report from the Milton Cato Memorial hospital but was unable to obtain it in time for filing his claim, as he had outstanding medical bills at the hospital. She stated that he has not been able to receive the medical report even though his lawyer has written to the hospital on his behalf. Ms. Baynes averred that Mr. Phillips has done all in his power to obtain the medical report and an answer from the COP, to no avail. She asked that the application be dismissed.

⁵ Section 4.

⁶ Filed on 8th November 2019.

- [13] Mr. Phillips also supplied an affidavit of his own⁷. He deposed that after the incident on July 5th 2018 he lodged a complaint with the Police Complaints Department. He averred that he visited the Hospital several times and tried to get a copy of his medical report, but was told each time that it was not ready. He attached a copy of the report to his affidavit. He attested that he is yet to receive a response from the COP regarding his query as to the identity of the officer who allegedly assaulted him. He deposed that had he waited any longer the limitation deadline to file his claim would have expired. He undertook to file any correspondence which he might receive from the COP.
- [14] The Hon. Attorney General submitted that in light of Mr. Phillips' failure to comply with the statutory requirements his claim should be struck out. He argued that the provisions of the Act seek to protect public officers and persons acting on behalf of the public in pursuance of any law, from vexatious and frivolous actions and claims which amount to an abuse of process. He concluded that the Court therefore lacks jurisdiction in this case.
- [15] Mr. Phillips maintained that he did all in his power to comply with the statutory requirements. He argued that although he made requests for the name of the police officer who assaulted him, he received no response. He has not denied that he filed his claim less than 2 months after serving the Hon. Attorney General with notice of intended action, or that he did not name or serve the referenced police officer with the claim or notice of intended action. I find that he did none of those things.
- [16] He submitted that the Hon. Attorney General cannot rely on the provisions of the Act because the police officer who assaulted him acted outside the scope of a public duty and would have no protection under the Act. He contended that the decision in **Samuel Barnwell v Attorney General**⁸ is applicable.
- [17] In that case, Justice Bruce-Lyle opined that the rationale for the Act:
- '... was and still is to protect public servants from legal liability only when they act in the course of duty imposed upon them by Parliament. It does not protect them when they act

⁷ Filed on 9th October 2019.

⁸ SVGHCV2005/0493

outside the scope of their lawful duty. A public officer/authority cannot rely on the Public Authorities Protection Act, if the authority was merely exercising a power and was not performing a public or statutory duty -*The Attorney-General of Antigua and Barbuda v Williams* (19913) 45 WIR, at 169 per Sir Vincent Floissac C.J., Dennis Byron, J.A and Satrohan Singh, J.A.,’.

[18] Justice Bruce-Lyle echoed the pronouncement of Lord Buckmaster L.C. in the case of **Bradford Corporation v Myers** and applied the principles expounded in it. He highlighted Lord Buckmaster’s statement:

‘... it is not because the act out of which an action arises is within their power that a public authority enjoys the benefit of the statute. It is because the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority. I regard these latter words as meaning a duty owed to all the public. It assumes that there are duties and authorities which are not public, and that in the exercise or discharge of such duties or authorities this protection does not apply.’⁹

[19] An examination of Mr. Phillips’ statement of case is indispensable to the present determination. In his statement of claim, Mr. Phillips alleged that he had gone to the Central Police Station on the day in question to inquire about his daughter whom he learnt had been arrested and was being detained there. He pleaded that he was approaching the CID office when the unknown police officer grabbed the back of his pants and pulled him to the ground. He claimed that when he got up the officer boxed him about his face and ordered him to leave. He claimed that he was injured in that encounter.

[20] Mr. Phillips has not expanded on his submissions as to how the Samuel Barnwell case is applicable. To the extent that it is his contention that the officer was not engaged in the exercise of any public duty at the relevant time, this is maintainable on one possible view of the pleadings. There is no contradictory assertion by the Hon. Attorney General and no pleadings from the defendants at this stage. In the premises, the Court is not at liberty to make a finding on that issue.

⁹ (1916) AC. 242 per Lord Buckmaster L.C. at page 247.

It would be pre-emptive to do so without sight of the defendant's defence and ventilation of the issues.

[21] Suffice it to say that if Mr. Phillips can establish that an unknown police officer assaulted him in the manner he alleged and at that time was not exercising any public duty, the provisions of the Act would not apply. In those circumstances, the court would have jurisdiction to entertain the claim even there is non-compliance with sections 3 and 5 of the Act. I make no finding therefore that the court has no jurisdiction to deal with this claim. This determination is without prejudice to the Hon. Attorney General to renew the objection when the pleadings and evidence are available to facilitate a consideration of all relevant materials.

[22] I am constrained to make the observation that the Hon. Attorney General has not denied that Mr. Phillips' request was made to the COP by letter dated May 31st 2019. There was no denial that it was received around that time. It strikes me that the COP's failure to respond before October 2019 would have partially frustrated Mr. Phillips' efforts to ascertain the officer's identity before the statutory deadline. No substantive explanation is provided. I hasten to add that the COP's response is not interpreted as an indication that the 'unknown officer' has been identified by him.

Issue 2 – Should the claim be struck out?

[23] The Hon. Attorney General contended that the claim should be struck out for several reasons:

1. Failure to comply with:
 - a) rule 8.7(1) of the CPR, by not providing all the facts on which Mr. Phillips relies, namely by omitting the name of the police officer who allegedly assaulted him; and
 - b) rule 8.9 (3) of the CPR by omitting the report from the medical practitioner on the personal injuries alleged in the claim;
2. failure to disclose any reasonable ground for bringing the claim; and
3. for being an abuse of process.

[24] The Hon. Attorney General submitted that Mr. Phillips' failure to name the police officer is fatal to the claim and bars him (Attorney General) from being listed as a defendant via the principle of

vicarious liability. Mr. Stephens repeated those contentions and averred that these failures prevent the Hon. Attorney General from successfully adducing evidence and defending the claim, thereby leaving him no reasonable ground for defending the claim.

[25] The Hon. Attorney General argued further that the name of an alleged tortfeasor is a critical component of Mr. Phillips' case. He contended that non-disclosure of the name is detrimental to the claim. He submitted that there is no reasonable ground for defending a claim against an unidentified defendant, for whom a defence must be filed. He concluded that he could not possibly prepare a defence for an unnamed person.

[26] The Hon. Attorney General acknowledged that striking out a claim is a draconian measure that should be used sparingly¹⁰. Mr. Phillips cited the same authority on which he relied. The Hon. Attorney General also cited the case of **Shamal Charles v The Attorney General**¹¹ where Belle J. ruled:

'Part 8.7 (1) of the CPR recognizes the need for basic fairness when it states the claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.'

[27] The Hon. Attorney General submitted that Belle J.'s further observations are also apt. he quoted him as saying:

'The persons responsible for the arrest should therefore be named as Defendants to provide the foundation for a fair trial and the proper basis for vicarious liability.'¹²

'Where the circumstances of the alleged wrongdoing cry out for an explanation of which the Attorney General would be unaware unless appraised of the facts, the only just approach would be to name the persons who committed the wrong.'¹³

¹⁰ Baldwin Spencer v The Attorney General of Antigua and Barbuda et al Civ. App. No. 20A of 1997.

¹¹ SLUHCV2009/1045.

¹² At para. 19.

¹³ At para. 23

'Where the Defendant would have to adduce evidence in his defence in order to properly defend the case, it is imperative that the alleged wrongdoers be named unless the parties have agreed otherwise.'¹⁴

- [28] Mr. Phillips countered that he has given more than adequate notice of his intention to prosecute this claim. In that regard, he contended that he did so by serving the notice of intended action on the COP and issued the letter seeking the identity of the officer who allegedly assaulted him. He argued that the COP is empowered to conduct an investigation into his original complaint, notify the officer of the complaint and provide his solicitors with the name of the officer. He advanced no legal authority for that submission. I make no finding that the COP is required to notify the officer. Mr. Phillips argued that he has been placed at a disadvantage by the non-disclosure of the officer's name.
- [29] Mr. Phillips submitted that when he filed the claim he indicated in it that he was not in possession of the medical report. He contended that he should not be prejudiced over his failure to attach it to the claim, since he had no control over its preparation.
- [30] He submitted that although he did not attach the medical report to his claim form, he described in the latter to the best of his ability, the injuries sustained. He argued that the Hon. Attorney General and the unknown police officer would not be prejudiced if the matter proceeds because they had ample notice of the claim since June 2019. He contended that the COP's office has the information which is vital to identify the police officer.
- [31] The Court notes that in the **Shamal Charles** case the only named defendant was the Attorney General. In the case at bar, a second unidentified defendant is added. The CPR and Practice Directions are silent as to whether an unnamed party can be made a defendant. The British Court of Appeal has approved a ruling from the Chancery Division of the High Court, that a claimant may use the description 'Person Unknown' instead of a name in bringing a claim, if he does not know

¹⁴ At para. 24.

the defendant's identity¹⁵. The Court opined that language used must adequately indicate who is included in the description and who is excluded.¹⁶

- [32] Significantly, in the **Shamal Charles case** Belle J. noted that counsel had not provided any legal authority for the submission that the claimant had to prove the charge against the police officers 'if he is to properly make a claim that the Attorney General is vicariously liable.' He observed that the case of **Sonson v The Attorney General of Saint Lucia** which was cited in support did not assist him because the Court of Appeal had not delivered a written decision in it. The learned judge remarked that perhaps the Court of Appeal thought that the principle had to be dealt with on a case by case basis and did not see the need to establish a precedent. He treated the various submissions as not being binding and considered the case before him based on the circumstances and special facts in it. This court will do likewise in the instant case.
- [33] The parties have essentially accepted that Mr. Phillips requested from the COP the name of the police officer whom he alleged assaulted him. The Hon. Attorney General has acknowledged that the COP responded only in October 2019, some 5 months after the initial request. On the one hand, Mr. Phillips sought to get information which he claimed not to have. On the other hand, the COP by law has responsibility for and superintendence of every police officer employed by the State and who would have been at the Central Police Station on July 5th 2018. Meanwhile, the Hon. Attorney General as the Crown's chief law officer has a duty to Mr. Phillips and to the Court to disclose relevant materials on an ongoing basis to advance the cause of justice.
- [34] The Court must have regard to the overriding objective in considering and determining this application. I remind myself that the CPR provides for continuous disclosure; that CPR 8.5 outlines the general rule that a claim will not fail because a person who should have been made a party to the proceedings was not so joined; and that CPR 8.7 contains no sanction for non-compliance. It is now established that the court will not impose a sanction for non-compliance with a rule or order

¹⁵ Bloomsbury Publishing Group Ltd. v News Group Newspapers Ltd (2003] EWHC, 1205. (Ch) approved in South Cambridgeshire District Council v Persons Unknown [2004] EWCA Civ1280.

¹⁶ See Blackstone's Civil Practice 2013 Ed. para. 14.3.

which does not prescribe such sanction.¹⁷ Applying the reasoning in **The Attorney General v Keron Matthews**, I note that CPR 8.7 contains no express or implied sanction for failure to identify a defendant by name or omission of a medical report. Mr. Phillips failure on neither score attracts the sanction proposed by the Hon. Attorney General of striking out the claim. I so find.

[35] I am mindful that Mr. Phillips has belatedly filed the medical report, details of which were included in the statement of claim. I am cognizant that Mr. Phillips may choose to invoke CPR Parts 28 and/or 34 to obtain any information to which he alleges that the Crown is privy. This includes particulars about the police officers who were present at the CID department and/or the Central Police Station on July 5th 2018.

[36] Also germane to a determination of this application are the principles which guide the court when considering an application to strike out a claim. In this regard, while the Court may make such an order,¹⁸ it utilizes that measure as a last resort, and only if satisfied that the claim discloses no reasonable ground for making it.¹⁹ The Court must also assess whether justice can best be served by ordering 'the claimant to supply further details or to serve an amended statement of claim.'²⁰ The judgments in **Tawney Assets Limited v East Pine Management Limited**²¹ and **Real Time Systems v Renraw Ltd.**²² are also instructive.

[37] I am satisfied that Mr. Phillips has outlined in his statement of case sufficient allegations which disclose reasonable grounds for bringing his claim. Likewise, I am of the view that where he has omitted to provide specifics about the referenced police officer, that justice would best be served if he was afforded an opportunity to supplement his claim by amending it or supplying further details.

¹⁷ *The Attorney General v Keron Matthews* [2011] UKPC 38.

¹⁸ Pursuant to rule 26.3 (1) (b) of the CPR.

¹⁹ *Michael Wilson and Partners Limited v Temujin International Limited et al* BVIHCV2006/0037.

²⁰ *Didier et al v Royal Caribbean Cruises Ltd.* SLUHCVP2014/0024 (unreported).

²¹ BVIHCVAP2012/007 (unreported).

²² [2014] UKPC 6.

In this regard, he may choose to activate elements of the CPR or to go another route. I certainly do not conclude that the procedural irregularities highlighted by the Hon. Attorney General are fatal to his claim. I find that his claim is not an abuse of process or fails to disclose reasonable grounds for bringing it. The application to strike out the claim is dismissed.

Costs

[38] Applications which are heard outside of case management and pre-trial review conferences attract costs on the assessed costs scale²³. This is one such application. In the premises, the Honourable Attorney General shall pay to Mr. Phillips costs to be assessed on application to be filed by him on or before 28th July 2020.

ORDER

[39] It is accordingly declared and ordered:

1. The Court has jurisdiction to entertain this claim.
2. The Application to strike out this claim is dismissed.
3. The Attorney General shall pay to Winston Phillips assessed costs on application to be filed on or before 28th July 2020.

[40] Completion of this decision was slightly delayed. I apologize to the parties for any inconvenience caused. This was totally beyond my control and attributable to lack of the requisite equipment and facilities at the relevant times. The parties' forbearance is appreciated.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar

²³ CPR 65.11.