

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

CLAIM NO.: NEVHCV 2016/0132

BETWEEN:

WINGROVE WILKINSON

Claimant

and

NEVIS ISLAND ADMINISTRATION

Defendant

Appearances:

Mr. Jeffrey E. Nisbett for the Claimant

Ms. Rhonda A. Nisbett-Browne with Ms. Althea Campbell for the Defendant

2020: February 17

ORAL JUDGMENT

- [1] **VENTOSE, J.:** The Claimant brought a claim in negligence against the Defendant, the Nevis Island Administration (the “**NIA**”), for losses allegedly suffered as a result of the negligence of a person alleged to be Defendant’s employee in allowing the fire to escape and destroy property belonging to the Claimant. The Claimant also seeks damages for breach of contract based on an alleged promise of an employee of the Defendant that he would be compensated by the Defendant for the loss of his property.

- [2] The evidence of the Claimant is that Mr. Edison Taylor was sent to clean the site where a house was being built and he (Mr. Taylor) negligently allowed fire to escape, thereby destroying an Austin Metro car and other personal property that the Claimant kept on his land. The Claimant also states in evidence that the items of property that were destroyed were stored in the car. The Claimant was not present when the fire started but when he arrived at the scene the fire was already extinguished by the Fire and Rescue Services. The Claimant was not able to produce any documentary evidence at trial of any of the losses which he itemized in an undated invoice he allegedly sent to Ms. Garcia Hendrickson, who at the material time was an employee of the Social Services Department. The Claimant produced no receipts or documents in respect of any of these matters. In all the circumstances, the court does not believe that the Claimant had all or any of those items in the car as he stated in evidence at trial.
- [3] The Claimant states that, the next day, he went to the Social Services Department and spoke to Ms. Garcia Hendrickson who told him to make a list of what was burnt in the fire. The Claimant also states that Ms. Hendrickson told him not to take the matter to court because he (the Claimant) was going to be paid by the NIA for the items of property that he lost and that he understood that to mean that the government was going to pay him for the items he had lost in the fire. The Claimant gave evidence that, based on repeated assurances from Ms. Hendrickson that he would be paid compensation from the government, he decided not to sue the government for the loss of his property as a result of the fire.
- [4] Ms. Hendrickson, who previously worked as the Coordinator, Senior Division, Social Services Department, gave evidence at trial that the Claimant approached her at her office alleging that Mr. Taylor started a fire at his home and caused damage to his property. Ms. Hendrickson states that she referred the matter to her Director who instructed her to refer the matter to the police. The court accepts the evidence of Ms. Hendrickson that neither on that date nor thereafter did she ask the Claimant not to take the matter to court and that she did not make any

promises to the Claimant that the NIA would compensate him for the alleged loss and damage to his property. Ms. Hendrickson stated repeatedly at trial that she did not promise or assure the Claimant that he would receive any compensation from the NIA. The court accepts her evidence. She gave her evidence in a confident manner and the court believes her to be a witness of the truth.

- [5] The Claimant insists that Ms. Hendrickson promised him that the NIA would pay him compensation for his losses but also states that Ms. Hendrickson said to him that she will have to get the “directive”. This statement, it seems to the court, undermines the very basis of the Claimant’s case. And, even if Ms. Hendrickson had promised the Claimant that the NIA would make any payment to him, as he alleges, it seems to the court that, in any event, Ms. Hendrickson would not have had the actual, or even ostensible, authority to make any such promise binding on the NIA. This does not matter since the court has found as a fact that no such promise was ever made by Ms. Hendrickson to the Claimant.
- [6] Mr. Browne gave evidence at trial that, while the Claimant’s sister’s house was being constructed on the Claimant’s land, the maintenance team did not receive electricity from the Claimant’s house and that he does not know about the alleged fire or what caused it or if someone started the fire at the Claimant’s home. Mr. Browne states that no fire was caused by the maintenance team while they were constructing the house. Mr. Browne’s evidence was not material to the two issues at trial except that in evidence he stated that the Defendant had not promised to pay the Claimant any compensation.
- [7] Based on the evidence presented at trial, the court accepts the evidence of Ms. Hendrickson and concludes that, on the balance of probabilities, the Claimant has not provided any evidence to substantiate his claim that there was a promise of compensation to him by the Defendant for the alleged loss and damage to his property that could in law amount to an enforceable contract which sounds in damages. The court does not accept the evidence of the Claimant that Ms. Hendrickson made any such promise or assurance at their meeting after the fire or at any other time thereafter.

- [8] Mr. Edison Taylor gave evidence at trial that, before 2013, he was not a public servant or employee of the NIA but that, in 2010, he did a job in Bath for the department of Human Resources. His evidence was that he became a public servant in April 2013. During cross-examination, he was asked by Counsel for the Claimant whether the job in Bath was the only thing he did for the department of Human Resources and he replied yes it was. In those circumstances, the Claimant has not shown that Mr. Taylor was an employee of the NIA at the material time. The court, therefore, finds that, on the evidence presented in court, Mr. Taylor was not an employee of the NIA when the Claimant's vehicle was burnt. In any event, as will be explained in more detail later, the Claimant has not provided any evidence to show that Mr. Taylor was responsible for the fire at his premises.
- [9] The Claimant has also not provided any evidence to show whether, or how, Mr. Taylor might have caused the fire on his premises. The Claimant provided no evidence linking Mr. Taylor to the fire on his premises. On the Claimant's own evidence, he was not present when the fire started and that, when he arrived at his home, the fire was already extinguished by Fire and Rescue Services. In addition, the Claimant has provided no evidence at trial of the activities that Mr. Taylor might have been engaged in that would or might lead to a fire at his premises. Importantly, the Claimant has provided no evidence that Mr. Taylor was at his premises at the time the fire was started. The maxim **res ipsa loquitur** is a rule of evidence and does not assist the Claimant because on the evidence as it stands the Claimant has not shown that at the relevant time it is more likely than not that the effective cause of the fire was some act or omission of the Defendant or of someone for whom the Defendant is responsible, which act or omission constitutes a failure to take proper care.
- [10] The Claimant's claim fails, because, first, Mr. Taylor was not an employee of the NIA at the material time. Second, the Claimant has not provided any evidence to show that Mr. Taylor caused the fire in question. Third, **res ipsa** does not apply that at the material time that it is not likely that someone for from the Defendant is responsible was the effective cause of the fire.

[11] Fourth, there was no promise made by Ms. Hendrickson to the Claimant for the NIA to pay any compensation to the Claimant. Fifth, even if such a promise made, Ms. Hendrickson had no actual or ostensible authority to bind the NIA. Sixth, if this promise was made, it was based on a false premise that the Defendant was liable for the fire which they were not.

Disposition

[12] For the reasons explained above, I make the following orders:

- (1) The claim is hereby dismissed.
- (2) Prescribed costs to be paid to the Defendant by the Claimant pursuant to CPR 65.5(2)(b) within 28 days of today's date. The value of the claim is \$50,000.00.

Eddy D. Ventose

High Court Judge

By the Court

Registrar