

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Civil)**

SLUHCV2011/1143

BETWEEN:

FAST KAZ AUTO SUPPLIES LIMITED

Claimant

and

ATTORNEY GENERAL

Defendant

**CONSOLIDATED WITH:
SLUHCV2011/1148**

BETWEEN:

CURTIS HUDSON

Claimant

and

ATTORNEY GENERAL

Defendant

**SLUHCV2012/0532
BETWEEN:**

BRYAN JAMES

Claimant

and

ATTORNEY GENERAL

Defendant

**CONSOLIDATED WITH:
SLUHCV2012/0542**

BETWEEN:

JAMES ENTERPRISES LIMITED

Claimant

and

ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Horace Fraser for the Claimants

Mr. George F. Charlemagne with Mr. Kurt Thomas for the Defendant

2017: October 26;
November 8;
2018: October 29.

JUDGMENT

- [1] **CENAC-PHULGENCE J:** This judgment deals with four claims brought by different claimants against the Attorney General. They all concern the same issues. The two claims brought by Curtis Hudson (“Hudson”) and Fast Kaz Auto Supplies (“Fast Kaz”) will be referred to as the Fast Kaz Claims and the two brought by Bryan James (“James”) and James Enterprises Limited (“James Enterprises”) will be referred to as the James Claims. The trial in this matter took place on 26th October and 8th November 2017. On 8th November 2017, the Court reserved its decision pending receipt of submissions which were filed by the defendant and the claimant on 27th and 28th November 2017 respectively.

Fast Kaz Claims**Background**

- [2] Hudson is a businessman who operates a company by the name of Fast Kaz Auto Supplies Limited which is in the business of importing and selling vehicle spare parts, vehicle body shells and used vehicles and assembling and selling vehicles. Hudson is also the owner of private property situate at La Resource in Vieux Fort together with his wife.
- [3] In July 2009, Fast Kaz imported a container from Japan which contained four vehicle body shells, engines and other parts. The container was cleared and duties were paid to the Customs Department on 16th September 2009.

- [4] On 15th October 2009, a team of officers from the Customs Department entered the private property of Hudson and seized, removed and detained documents belonging to him. At the premises of Fast Kaz, the officers seized and detained three vehicles one of which was a Mazda Familia motor vehicle registration number PG5473 ("the Mazda vehicle") which belonged to Hudson. That vehicle Hudson averred was not locally assembled nor did it have any connection with the container which had been imported by Fast Kaz. The officers also seized and detained a vehicle which had already been sold to a customer. After several attempts to resolve the matter of the seizure, the Mazda vehicle was finally released by Customs on 11th July 2010, some nine months later. Fast Kaz claimed that this release was only as a result of the World Trade Organization's Regulations ("WTO Regulations") having been brought to the attention of the Comptroller. The documents however are still being detained to date.
- [5] The Fast Kaz claims alleged that the Customs acted in bad faith which resulted in loss being suffered by Hudson and Fast Kaz which virtually ceased trading. They also alleged that the Comptroller of Customs issued an illegal instrument authorising his officers to enter their premises to search, seize and detain. As a result of the actions of Customs, the Fast Kaz claimants claimed damages for trespass to property and goods (special, general and exemplary), damages for detainee, damages for breach of statutory duty, costs and interest.

The James Claims

Background

- [6] James is a businessman and an associate of James Enterprises which is in the business of importing and selling used and reconditioned vehicles. The business of James Enterprises is conducted from NAPA outlets in four locations, Vieux Fort, Soufriere, John Compton Highway and Mary Ann Street. James is also the owner of private property situate at Balembouche, Choiseul. On 14th October 2009, a team of Customs Officers entered the private property of James and seized,

removed and detained documents which belonged to James. As a result, James claims that he suffered loss and claimed damages for trespass (general, exemplary/punitive), costs and interest.

- [7] From the business outlets of the James Enterprises, a team of Customs Officers seized, removed and detained four vehicles and a number of documents pertaining to the business. Several attempts were made to resolve the matter but to no avail. The vehicles were finally returned in March 2011, one year and five months later. The James claimants averred that Customs acted in bad faith in seizing and detaining their property which resulted in them suffering loss. As a result, James Enterprises claimed that it suffered loss and claimed damages for trespass (special, general, exemplary/ punitive), costs and interest.
- [8] Both the Fast Kaz and James Claims claimed that the document issued by the Comptroller of Customs authorising the search was illegal as the Comptroller had no legal authority to issue same.

Defence

- [9] In its defence of the Fast Kaz Claims, the defendant averred that based on the results of investigations conducted into the importations by Fast Kaz, customs officials had reasonable grounds to suspect or grounds to believe that Fast Kaz was involved in disassembling vehicles in Japan and then importing them into Saint Lucia as vehicle parts so as to evade payment of customs duties which is lower on vehicle parts than on a fully assembled vehicle.
- [10] The defence contended that the actions of the Comptroller and by extension the customs officers were authorised and issued pursuant to section 94(1) of the **Customs (Control and Management) Act**¹ ("the Act"). The defendant denied that the Customs acted in bad faith and that Fast Kaz or Hudson suffered any loss for which they can claim damages.

¹ Cap. 15.05, Revised Laws of Saint Lucia 2013.

[11] In relation to the James Claims, the defence contended that James was served with a “writ” under the hand of the Comptroller of Customs which authorised them to enter the premises of James to conduct a search of his property and remove any documents which related to the matter. The defence averred that all the actions of Customs officers were authorised by and taken in accordance with the provisions of the Act. In relation to the James Claims, the defence averred that the actions are prescribed by section 2124 or alternatively by section 2122 of the **Civil Code**.² The defence denied that the Customs officers acted in bad faith and averred that their actions were at all times in accordance with the Act. The defence has also denied any loss claimed and contended that the claimants are not entitled to any damages.

Issues

- [12] The issues identified are as follows:
- (a) Whether the claims are prescribed? If not, then,
 - (b) Whether the entry of the customs officers onto the claimants’ property and the seizure and detention of goods was lawful and the Comptroller of Customs had reasonable grounds to seize and/or detain property of the claimants?
 - (c) Whether the Comptroller of Customs breached any statutory duty?
 - (d) Whether the claimants are entitled to damages and if so, what should be the measure of such damages?

Whether the Claims are Prescribed?

- [13] The actions of the Customs officers were carried out on 14th and 15th October 2009. The Fast Kaz and James claims were filed on 2nd November 2011 and 12th June 2012 respectively. The defendant pleaded that the claims are prescribed pursuant to Article 2124 of the Code. Article 2124 states:

“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.”

² Cap. 4.01, Revised Laws of Saint Lucia, 2013.

- [14] According to Article 2066 of the Code, good faith is presumed and it is for the claimants to prove absence of good faith, i.e. bad faith. Based on the pleadings, it cannot be disputed that both the Fast Kaz and James claims would have been filed beyond the six month period prescribed by Article 2124 unless they can show that the actions of the Comptroller of Customs through his officers were taken or done in bad faith.

Bad Faith

- [15] In **Claude Shoulette v The Attorney General**³, Wilkinson J explained that a claimant who alleges bad faith must not only provide the particulars on which such an allegation is based but must prove them. If they are not capable of supporting the allegation, the allegation itself will be struck out. Edwards J in the consolidated cases of **Michael Christopher v PC 240 John Flavien et al and Tamara Barrow v PC 240 John Flavien**⁴ explained the effect of a pleading of bad faith in the context of Article 2124 and said this:

“Under the Civil Code, in the case of a delict, an allegation of bad faith in a statement of case against a public officer performing his public duties, serves to take the prescription period beyond the six months stipulated in the Article 2124 for bringing the claim, and effectively extend the prescription period to 3 years as stipulated by Article 2122.2. That is my interpretation of Articles 2124 and 2122.2.”⁵

- [16] Counsel for the defendant, Mr. George Charlemagne (“Mr. Charlemagne”) in his closing submissions relied on the cases of **St. Rose v La Fitte**⁶ and **Cannock Chase DC v Kelly**⁷ to define bad faith. In the case of **St. Rose v La Fitte**, Floissac CJ stated that “the words good faith” are descriptive of a state of mind which has long been judicially equated to honest belief.” The words of Megaw LJ in **Cannock Chase DC** are also instructive. In that case the court was of the view that bad faith means dishonesty which always involves a grave charge. The court opined that it should not be treated as a synonym for an honest, though mistaken

³ SLUHCV2009/0102, delivered 2nd March 2010, (unreported) at para 40.

⁴ SLUHCV2004/0502 and SLUHCV2006/0182, delivered 25th July 2007, (unreported) at para 39.

⁵ At para 39.

⁶ (1992) 42 WIR 113.

⁷ [1978] 1 ALL ER 152.

taking into consideration of a factor which in law is irrelevant.⁸

[17] Counsel for the claimants, Mr. Horace Fraser (“Mr. Fraser”) relied on the cases of **Finney v Barreau du Quebec**,⁹ and **Frank Roncarelli v The Honourable Maurice Duplessis**¹⁰ to define bad faith. Mr. Fraser submitted that bad faith is not limited to malice but extends to recklessness or serious or extreme carelessness and abuse of power. Counsel relied particularly on paragraph 39 of **Finney** where the court stated that bad faith certainly includes intentional fault. The court went on to state that recklessness implies a fundamental breakdown of the orderly exercise of authority, to the point that absence of good faith can be deduced and bad faith presumed. The act, in terms of how it is performed, is then inexplicable and incomprehensible, to the point that it can be regarded as an actual abuse of power, having regard to the purpose for which it is meant to be exercised.

[18] In the case of **Roncarelli**, Rand J defined “good faith” as
“carrying out the statute according to its intent and for its purpose; it means good faith in acting with a rational appreciation of that intent and purpose and not with an improper intent and for an alien purpose; ... it does not mean arbitrarily and illegally attempting to divest a citizen of an incident of his civil status.”¹¹

[19] Rand J said further that there can be no question of good faith when an act is done with an improper intent and for an improper purpose alien to the very statute under which the act is purported to be done.¹²

[20] The issue to be determined at this juncture is therefore the question of bad faith. If I find that the allegations of bad faith are not made out then that ends the matter. If on the other hand I find that there was bad faith, then the question of whether the trespass was unlawful would have to be considered.

⁸ Cannock Case DC at para 156.

⁹ [2004] 2 SCR 17.

¹⁰ 16 D.L.R. (2nd 689).

¹¹ Roncarelli at page 143.

¹² At page 141

[21] In **Jewel Thornhill v The Attorney General**¹³, the Court of Appeal said that:

“In order to determine whether an act was done in good faith, one may look at the conduct not only at the time of the act amounting to the violation but also at the actions before and after as bad faith is usually to be inferred from a certain state of things which may include conduct not only at the specific point in time of the action complained of but also actions taken before and after, as all of these may be relevant in defining bad faith in respect of the act. The mere telling of a lie does not in and of itself amount to bad faith; it all depends on the circumstances of the case.”¹⁴

[22] The particulars of bad faith alleged by the claimants in their statements of claim are as follows:

- (a) The Comptroller has no lawful authority to issue a search warrant and therefore was in breach of statutory duty;
- (b) The actions of the defendant were in violation of the claimants’ constitutional rights to private property;
- (c) The Claimant has violated no laws entitling the defendant to seize their properties;
- (d) The defendant ought to have known of the WTO’s regulations governing import duty on locally assembled vehicles to which Saint Lucia is a signatory;
- (e) The seizure of the claimants’ property was in violation of the WTO’s regulations;
- (f) The actions of the defendant were reckless not caring if it caused injury to the claimants;

I will examine each of these in turn.

¹³ SLUHCVP2012/0035, delivered 16th April 2015, unreported.

¹⁴ SLUHCVP2012/0035, delivered 16th April 2015, (unreported) at para 35.

Bad Faith Allegations

- (a) The Comptroller has no lawful authority to issue a search warrant and therefore was in breach of statutory duty;**
- (b) The actions of the defendant were in violation of the claimants' constitutional rights to private property;**

[23] Counsel for the claimants, Mr. Fraser at the start of this trial raised as a preliminary point the constitutionality of section 94 which he submitted was ultra vires the **Constitution of Saint Lucia**¹⁵ ("the Constitution") in that it gave the Comptroller judicial powers allowing him to issue a search warrant to search private property. He raised the issue of the separation of powers. I had indicated then that I would have addressed this as part of the substantive trial. In support of his submission, counsel relied on the cases of **James Bristol v The Commissioner of Police**¹⁶ and **Jitendra Chawla (aka) Jack Charles v Attorney General**.¹⁷ Counsel suggested that though these two cases were constitutional motions, the principles are applicable to this case and the Court being the guardian of the Constitution cannot adopt a construction of a statute to authorise judicial power in the hands of an officer of the executive.

[24] Counsel for the defendant, Mr. Charlemagne objected to the issue of the constitutionality of section 94 of the **Customs Act** being introduced in this manner. He argued that the claim before the Court is a private law claim, but the alleged bad faith is predicated on the breach of the constitutional rights of the claimants. Mr. Charlemagne further argued that in this case, the court is concerned with a private law action, trespass which would have to be tested on the evidence adduced by each party. The claimant's preliminary point is based on perceived action of the Comptroller pursuant to a section which presumably breached the Constitution. This Mr. Charlemagne argued is of no relevance to the case before the Court.

¹⁵ Cap. 1.01, Revised Laws of Saint Lucia, 2008.

¹⁶ Grenada Civil Appeal No. 16 of 1997, delivered 23rd February 1998 (unreported).

¹⁷ Belize Court Action No. 208 of 2002, delivered 29th July 2002.

[25] Mr. Charlemagne argued that the provisions of section 94 of the Act expressly provide for the Comptroller of Customs to authorise the entering and searching of premises and to seize and remove from such premises anything or property liable to forfeiture. He further submitted that the principle of the presumption of constitutionality applies- a law is presumed valid and constitutional until or unless otherwise ruled by the Court.

[26] Mr. Charlemagne also argued that the actions of the Comptroller fall within the exceptions provided for in section 6 of the Constitution since the Comptroller had reasonable grounds to believe that the claimants had breached the Customs Act and had evaded the payment of chargeable duties. Counsel further submitted that the Comptroller is empowered by section 94(1) of the **Customs Act** which authorised the entry onto claimants' property for the express purpose of recovering the payment of unpaid taxes.

Discussion

[27] Section 94 of the **Customs Act** is in the following terms:

“94. Power to search premises

- (1) Where an officer has reasonable grounds to believe that anything which is liable to forfeiture by virtue of any customs enactment is kept at or concealed in any building or other place or any offence has been committed under or by virtue of any customs enactment he or she may after being authorised by the Comptroller in writing so to do—
 - (a) enter any building or place at any time, and search for, seize, detain or remove anything which appears to him or her may be liable to forfeiture; and
 - (b) so far as is reasonably necessary for the purpose of such entry, search, detention or removal, break open any door, window or container and force and remove any other impediment or obstruction; and
 - (c) search for and remove any invoice, bill of lading or any other document or book relating to any assigned matter.
- (2) Without prejudice to the power conferred by subsection (1) or to any other power conferred by this Act, if a magistrate is satisfied by information upon oath given by an officer that there are reasonable grounds to suspect as aforesaid, he or she may by warrant under his or her hand given on any day authorise that officer or any other

person named in the warrant to enter and search any building or place so named.

- (3) Where in the case of any entry, search, seizure, detention or removal, damage to property is caused and no goods which are liable to forfeiture are found, the owner of the building, place or goods damaged shall be entitled to recover from the Comptroller the costs of making good that damage to the property.”

[28] Section 102(1) of the **Customs Act** provides as follows:

“102. Power to require information and the production of evidence

- (1) Importers and exporters shall keep all commercial documentation relating to importation or exportation for a period of 5 years from the date of importation, exportation or carriage coastwise of any goods and any person concerned in that importation, exportation or carriage coastwise, or in the carriage, unloading, landing or loading of such goods shall—
- (a) Furnish to any officer in such form and manner as he or she may require, any information relating to the goods;
 - (b) give access to any computer for the purposes of verification and audit;
 - (c) produce and permit the officer to inspect, take extracts from, make copies of or remove for a reasonable period, any invoice, bill of lading or other book or documents relating to the goods; and
 - (d) Not tamper with any information or documents given under paragraphs (a) – (c) prior to its production, access or inspection.”

[29] The evidence reveals that in the Fast Kaz claims, the officers commenced the search of the residence of Hudson without the “writ” but with his consent. Officer Peter Norbal (“Officer Norbal”) who headed the search of Hudson’s residence and Officer Raymond Leopold (“Officer Leopold”) who headed the search of Fast Kaz both gave evidence that they explained the reason for their presence and that they were awaiting the “writ” from the Comptroller. They both testified that permission was sought to commence the search whilst they awaited the document and such permission was granted. Officer Norbal in his evidence said that both he and Officer Leopold explained the basis for the seizure to Hudson, being that the items imported were not declared as vehicles but as parts and as a result the claimants had made a false declaration, that the invoices used were false and that they had evaded or attempted to evade the payment of chargeable duties.

- [30] The evidence in relation to the James Claims is that the officers presented “writs” to Mr. Bryan James in relation to his private residence and Mr. Leroy James in relation to James’ Enterprises which operated under the name NAPA at various locations. Mr. Kosygin Frederick who headed the search of Napa Auto Parts (“NAPA”) on New Dock Road, Vieux Fort gave evidence that he explained the purpose of the team’s presence to Mr. Leroy James which was to verify the goods and vehicles imported by NAPA and James Enterprises and handed him the “writ” to show the authority for the actions they would take. Mr. Frederick said that Mr. Leroy James cooperated and acceded and took them to various offices. He said that they could not get access to the computer in Mr. Bryan James’ office which was password protected and he had refused to provide the password. After conducting the search of the NAPA premises, the team examined the vehicles at a private warehouse. Mr. Frederick gave evidence that he informed Mr. Bryan James that the Customs had reasonable grounds to believe that the vehicles stored at the private warehouse were improperly imported and were liable to seizure as the department had proof that the values declared for the vehicle were false, that false invoices had been submitted to the Comptroller in the declaration for the vehicles, and as a result of the false values, the payment of the correct values was evaded.
- [31] In each case, the Customs officers acted on the authority of the “writ” issued pursuant to section 94(1) of the Act under the hand of the Comptroller.
- [32] Therefore, the law clothes and gives legality to the actions of the Comptroller and if he acts pursuant to that law, it cannot be that he is acting in bad faith. The evidence shows that the Comptroller issued what is referred to as a “writ” pursuant to his powers under section 94 on the basis that there were reasonable grounds to believe that there were things liable to forfeiture at the premises of the claimants. The section requires that there be reasonable grounds for believing, authorisation from the Comptroller to undertake the actions stated in the section, and that such authorisation be in writing. There is no prescribed form that the authorisation should take which seemed to have given rise to the genesis of the document termed “writ”.

The terms of that document are a carbon copy of section 94.

[33] The presumption of constitutionality applies and it is not appropriate for the claimants to have raised a challenge to the constitutionality of section 94 in the manner which they did. There were no pleadings in relation to this point. The issue was not raised at pre-trial review which could have afforded the claimants an opportunity to address the matter in the appropriate manner. The whole point of the **Civil Procedure Rules 2000** ("CPR 2000") is to ensure that parties are well aware of the claims to which they must answer.

[34] In the case of **Shankiell Myland v Commissioner of Police et al**¹⁸ Ellis J said the following which very succinctly expresses the position as far as introducing matters not pleaded:

"Litigation proceeds on the basis that the court is a court of pleadings. They are critical in that they give fair notice of the case that has to be met, so that the opposing party may direct its evidence to the issues disclosed and they assist the court in adjudicating on the allegations made by the litigants. Not only should they define the issue(s) between litigants with clarity and precision, but they also serve as a record of the issues involved in the action which can (if necessary) be referred to at a later date."¹⁹

[35] At paragraph 41 of **Myland**, Ellis J said this
"The Court cannot accept that in these circumstances it is appropriate for a claimant to ignore the requirements set out under the CPR and to seek to litigate an issue which has not been raised in his pleadings, thus taking the opposite party completely by surprise."

[36] Even assuming that section 94 were found to be unconstitutional, that still does not amount to bad faith as at the material time the officers and the Comptroller would have acted pursuant to a section which is presumed to be good law, it having not been declared otherwise by the court. It is interesting to note that section 94(2) also appears to make provision for the issue of a warrant by a Magistrate to search any building or place named in the warrant. That provision

¹⁸ GDAHCV2012/0045, delivered 9th May 2014, (unreported).

¹⁹ At para 37.

commences, notwithstanding the provisions of subsection (1) which suggests that the procedure in subsection (1) is not subject to that in subsection (2).

[37] Counsel for the claimants, Mr. Fraser argued that the defendant had no authority to search the claimants' computers and that constituted a breach of their constitutional rights. However, section 102 of the Act makes provision for the importer of goods to give access to any computer for the purposes of verification and audit and to produce and permit the officer to inspect, take extracts from, make copies of or remove for a reasonable period, any invoice, bill of lading or other book or documents relating to the goods.

[38] Where an officer genuinely believes that he is empowered by the particular statute to take certain actions and he does so, based on the authorities cited above, such actions to my mind cannot be said to have been done in bad faith.

[39] Whilst I agree with Mr. Fraser that the High Court has a duty to uphold the Constitution at all times and has jurisdiction to hear and determine questions regarding the interpretation of the Constitution, I do not subscribe to the view that this would apply in this case where the claimants are alleging that a section of the **Customs Act** is ultra vires the Constitution and the principle of separation of powers. That would have to be the subject of specific pleadings. On the other hand, the question whether the actions of the Comptroller pursuant to section 94 of the **Customs Act** infringed the claimants' right to the private property could certainly be a question which the High Court can entertain as it touches and concerns the infringement of one of the claimant's fundamental rights²⁰.

[40] The claimants have failed to specifically particularize the allegation of bad faith in relation to the violation of the claimants' constitutional rights to property. They have failed to identify what statutory duty was breached by the Comptroller of

²⁰ See *Jaroo v The Attorney General of Trinidad and Tobago* [2002] UKPC 5 and *Antonio Webster v The Attorney General of Trinidad and Tobago* [2011] UKPC 22.

Customs. They therefore have failed to prove any bad faith on the part of the Comptroller or his officers. A bald statement that the actions of the defendant violated the claimants' constitutional rights to private property cannot be said to be a specific pleading of bad faith. In addition, the claimants attempt to raise the constitutionality of section 94 of the **Customs Act** in a private law claim which is not permissible.

(c) The Claimant has violated no laws entitling the defendant to seize their properties;

- [41] In the particulars of bad faith, the claimants do not give any details as to what actions of the defendant are being complained about and which constitute bad faith. However, in submissions, Mr. Fraser attempted to clothe this particular of bad faith with the garments necessary to sustain it. That had to have been done in the pleadings and not in submissions. The particulars of bad faith must be specifically pleaded and proven. In the submissions, counsel stated that the Customs officers purported to act on a suspicion that was baseless.
- [42] Section 94 of the Act allows the Comptroller to authorize search, detention and seizure if he has reasonable grounds to believe either that anything liable to forfeiture is at premises or that any offence has been committed under the Act. It is for the claimants to plead the allegation of bad faith to allow the defendant to respond. The defendant for his part has alleged against the claimants breach of sections 113 and 116 of the Act.
- [43] Assuming it were to be found that the Comptroller did not have reasonable grounds to believe, does that constitute bad faith? The claimants have alleged nothing which amounts to bad faith. There must be some action demonstrated on the part of the defendant which shows that they had no reasonable grounds to believe. The fact that the investigative report was compiled and finalised in October 2009 was as a result of the culmination of the investigation. That cannot be an indication of bad faith. I will not go into whether in fact the defendant had

reasonable grounds to believe as I do not believe that issue arises at this time based on the allegation of bad faith as pleaded. In conclusion, the claimants have no evidence of an improper intent or that the actions of the defendant were done for an improper purpose which is alien to the **Customs Act** under which the Comptroller and his officers acted.

- (d) The defendant ought to have known of the WTO's regulations governing import duty on locally assembled vehicles to which Saint Lucia is a signatory;**
- (e) The seizure of the claimants' property was in violation of the WTO's regulations;**

[44] When one considers the definition of bad faith as enunciated in the cases, the question is whether the defendant's alleged lack of knowledge of the WTO regulations would amount to bad faith. In the pleadings, Fast Kaz averred that it was only when its managing director, Hudson brought the World Trade Organization's regulations to the attention of the Comptroller that he released their vehicles on 11th July 2010. That is denied by the defendant who averred in its defence that the restoration/release of the vehicles by the Comptroller was in the exercise of his powers under section 125 of the Act.

[45] Mr. Fraser argued that Saint Lucia being a member of the World Trade Organization (WTO") mandated that a customs officer should be familiar with the WTO regulations. He argued that pursuant to these regulations and the rulings thereon the mere stripping of a vehicle and importing it as parts is not illegal and he referred to the particular rules. He argued further that the Comptroller's conclusions that the claimants have been stripping vehicles, importing them as parts and then re-assembling them was contrary to the WTO rules and he labelled this as an 'extremely reckless act'.

[46] The claimants apart from asking the Court to take judicial notice of the fact that Saint Lucia is a member of the WTO have provided no evidence to support the allegation that the regulations and rulings to which they refer do apply to Saint

Lucia and bind the Comptroller of Customs. In cross-examination of customs officer, Raymond Leopold, when asked whether he agreed that Saint Lucia was governed by WTO rules simply answered yes. That to my mind is not sufficient to draw any conclusions as to the applicability or not of the said regulations. The rulings of the WTO as I understand it apply to the parties to the particular dispute and do not bind other parties. It may very well be the case that other parties may do well to have regard to a particular ruling to determine a particular matter but that does not mean that it is binding.

[47] In closing submissions, Mr. Charlemagne submitted that the customs classification of goods is based on General Rules for the Interpretation of the Harmonized System which is the internationally accepted system adopted by the World Customs Organization of which Saint Lucia is a member. He further submitted that the department's conclusion on disassembled vehicles being classified as complete vehicles is founded on principles of rule 2(a) of the Rules of Classification as stipulated by the Common External Tariff²¹ which is legislated pursuant to section 3 of the **Customs Duties Act**.²² The Common External Tariff is found in Schedule 4 of that Act as 'Common External Tariff of the Caribbean Community based on the Harmonized Commodity Description and Coding System (H.S) 2007'. There therefore appears to be a basis for classification contemplated by this Act which is clearly defined therein.

[48] It is Mr. Charlemagne's contention that based on the Harmonized Commodity Description and Coding System the Comptroller had a sound and reasonable basis for the decision (a) that the vehicles although imported unassembled should have been classified as complete vehicles; (b) that the shells imported by Fast Kaz had the essential character of a completed vehicle and should have been classified as such, (c) that the importer's actions of bringing in disassembled vehicles was intended to defraud the Government of customs revenues. It was

²¹ See Schedule 4 of the Customs Duties Act, Cap. 15.04.

²² Cap 15.04, Revised Laws of Saint Lucia, 2013.

acknowledged by Hudson in cross-examination that duties on parts are lower than on completely assembled vehicles. I note that the defendant led no evidence to support its contentions that the classification used was correct. None of its witnesses spoke to this.

[49] Without the need to decide whether the claimants' or defendant's submissions are correct, it is clear to me that a misapprehension on the part of the defendant as to whether in fact the WTO regulations were applicable or his seeming lack of knowledge of these rules/rulings cannot amount to bad faith. There is nothing on the evidence to show that the defendant knowing of the WTO Rules/ruling deliberately did not apply them. A lack of knowledge cannot amount to bad faith. If as the Fast Kaz claimants say the Comptroller released the vehicles only after bringing to his attention the WTO rulings, then that to my mind suggests good and not bad faith. However, the defendant was clear that this was not the basis for the release of the vehicles by the Comptroller.

[50] It is interesting to note that what is referred to by Mr. Fraser as WTO rules at page 79 of Bundle 3 are part of the General Rules for the Interpretation of the Harmonized System which is recognised as the basis for the classification of goods by the WTO. The WTO has adopted wholesale the classification of goods by the World Customs Organization as the standard to be applied by member states. Classification is a specialised field and evidence would have to be led to show that the classification suggested by Customs is incorrect. What Mr. Fraser refers to at page 79 is the general rules for interpretation of the different heads of classification and forms part of a larger classification document with different codes for different articles/goods.

[51] I cannot accept that the claimants' allegation of bad faith in relation to the WTO rulings/regulations can succeed.

(f) The actions of the defendant were reckless not caring if it caused injury to the claimants;

- [52] The claimants have once again pleaded an allegation of bad faith in very general terms. It cannot be for the Court to try to decide what actions of the defendant are being spoken of. In closing submissions, Mr. Fraser submitted that this referred to the fact of the detention and seizure of the claimants' vehicles and no action being taken within a reasonable time. He submitted that inaction for 9 months is unreasonable and an abuse of power. He also submitted that the vehicles were not liable to forfeiture. He also argued that the documents which were taken from the claimants had not been returned despite requests having been made for same.
- [53] The evidence of the customs officers was that it was an ongoing investigation and they seemed to believe that the actions taken by them were a necessary part of the investigation. There is no pleaded allegation of bad faith which has been proven.
- [54] It is imperative that allegations of bad faith are specifically pleaded. A court should not have to try to figure out what the allegation is especially where it is stated in such vague and broad terms. It is important that the allegations be so pleaded to enable the court to assess the evidence as against the allegations made to see whether they are made out. A defendant also has to answer to the bad faith allegations and can only do so if he is clear as to what the allegations are.

Conclusion

- [55] Given the findings that the claimants have failed to establish bad faith on the part of the defendant, I refer to the well-known case of **Norman Walcott v Moses Serieux**²³ wherein Peterkin JA stated as follows:

"In Article 2129, ... both the right and the remedy are extinguished and therefore there is no question of a party being called upon to choose whether he would plead the defence of limitation. As long as the evidence in a case discloses that the period of limitation has expired, the judge has no discretion in the matter."

²³ Civil Appeal No. 2 of 1975, delivered 20th October 1975, unreported.

[56] Based on the above dicta, the claimants' cause of action is prescribed by Article 2124 of the **Civil Code** since the claims were all filed more than six (6) months after the cause of action arose. There is therefore no need to decide the other issues identified earlier in the judgment.

Order

[57] The claims are therefore dismissed. Costs to the defendant to be assessed if not agreed within 21 days.

[58] I wish to sincerely apologise to counsel and the respective parties to these claims for the delay in the delivery of this judgment.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar