

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HCVSVG2009/0343

BETWEEN:

PERCIVAL STEWART

CLAIMANT

-AND-

HARLEQUIN PROPERTIES (CARIBBEAN) LIMITED

HARLEQUIN PROPERTIES (SVG) LIMITED

RIDGEVIEW CONSTRUCTION (SVG) LIMITED

DEFENDANTS

Appearances: Mrs Kay Bacchus-Browne for the Claimant, Mr. Parnel Campbell Q.C. for the First and Second Defendants.

2015: Jul. 9
Sept. 24

JUDGMENT

BACKGROUND

- [1] **Henry, J.:** This case involves a claim by Mr Percival Stewart in which he seeks damages from Harlequin Properties (Caribbean) Limited (“Harlequin Caribbean”), Harlequin Properties (SVG) Limited (“Harlequin SVG”) and Ridgeview Construction (SVG) Limited (“Ridgeview”). Mr Stewart alleges that he was injured while employed by Ridgeview as a painter and he seeks damages from Ridgeview. Ridgeview refutes the claim. Mr Stewart contends that he is also entitled to recover damages from Harlequin Caribbean and Harlequin SVG because Ridgeview was their agent at the time of the accident. Harlequin

Caribbean and Harlequin SVG dispute that they were Ridgeview's principal and they deny liability.

ISSUES

[2] The issues which arise for consideration are:

1. Whether Ridgeview is liable to Mr Stewart in respect of the injuries he sustained? and
2. Whether Harlequin Caribbean and/or Harlequin SVG was/were Ridgeview's principal and is/are therefore liable in damages to Mr Stewart in respect of the injuries he sustained?

Preliminary Observations

[3] On June 30, 2011, Percival Stewart filed a document titled "Entry of Satisfaction" for Ridgeview. That form is not prescribed by the CPR or rules of court. On its face, it implies that Ridgeview settled the claim. However, Mr Stewart filed no Notice of Discontinuance pursuant to the Civil Procedure Rules 2002 ("CPR") as required.¹ Ridgeview did not file a request for the claim to be recorded as satisfied as permitted by the CPR.² Without more, the "Entry of Satisfaction" is not probative.

¹ See CPR 14.2 (1) which provides:

"14.2 (1) If the defendant pays the claimant the sum claimed, together with interest at the statutory rate (if claimed) and the fixed costs as set out on the claim form, within the period for filing an acknowledgement of service under rule 9.3 the-

- (a) claim is stayed; and
- (b) claimant must forthwith file and serve a notice of discontinuance."

² See CPR 14.3 which states:

"14.3 If the claimant does not file and serve a notice of discontinuance in accordance with paragraph 1 within 7 days of payment, the defendant may file and serve a notice in the form specified in Form 28 to request that the claim be recorded as satisfied."

Accordingly, the issues will be determined on the premise that there has been no satisfaction.

ANALYSIS

Issue No. 1 – Is Ridgeview liable to Mr Stewart in respect of the injuries he sustained?

[4] Mr Stewart initiated his claim against Harlequin Caribbean and Harlequin SVG in 2009³ and amended it subsequently⁴, adding Ridgeview as a defendant. He describes his suit⁵ as one for “*Special Damages for personal injuries sustained while at work with the Defendants...*”. The relevant particulars of his statement of claim state:

- “1. The claimant is an adult who was employed with the Defendants as a painter in 2007 at a monthly salary of \$2000.00.*
- 2. In March 2008 the claimant fell during his employment on the job, because a discarded empty cement bag was left on the ground which covered a piece of steel.*
- 3. The claimant therefore lost his footing, fell to the ground, was unconscious and lay there for sometime.*
- 4. The Defendants at first transported the claimant to the doctor for 2 months at a cost of \$100.00 per trip as he sustained serious injury to his spine as a result of the fall.*
- 5. Upon receipt of a medical report from Dr. C. Woods relative the claimant’s medical report the third defendant fired the claimant the very day of receipt of report.”*

The rest of the statement of claim describes interactions among the parties and details the loss and expenses for which Mr Stewart seeks damages.

³ Filed on October 20, 2009.

⁴ On August 10, 2010.

⁵ See paragraph 1. of the Amended Claim Form.

[5] In its Defence⁶, Ridgeview denies that Mr Stewart fell and injured himself. It also disclaims responsibility for such fall or injury and for any loss or expense occasioned by such fall and/or injury. Mr Stewart gave evidence of the fall and essentially repeated the statements contained in the statement of claim. Ridgeview did not provide testimony and was not represented at the trial. For their part, Harlequin Caribbean and Harlequin SVG submitted that the statement of claim is “lacking in precision”, does not indicate whether it is a claim in “negligence, nuisance, occupier’s liability or some other head of liability”. They submit that this failure introduces conjecture regarding the cause of the accident and is therefore fatal to Mr Stewart’s claim.

[6] Negligence arises where the injured party suffers damage through breach of duty owed to him by the other party or the other party’s agent. Generally, an action in negligence must stipulate in the pleadings, what duty is owed, the facts from which the duty arises and how the breach of duty occurred.⁷ Where an employee is injured at his workplace, the usual particulars of negligence surround allegations of failure by the employer to provide a safe working environment. Mr Stewart does not ascribe blame to Ridgeview or to either of the Harlequin companies in relation to his fall, associated injuries and loss. He makes no assertion of breach of duty against any of them in his claim form, statement of claim or testimony. Therefore, his claim as framed does not satisfy the requirements of an action in negligence.

[7] Further, Mr Stewart does not accuse Ridgeview of any other civil wrong. He does not allege that Ridgeview and/or its servants or agents left the steel covered under the empty cement bag thereby causing him to fall and injure himself. Even if he had included such particulars of negligence, Mr Stewart failed to give evidence of such negligence. He essentially rehearsed the contents of his statement of

⁶ Filed on October 26, 2010.

⁷ **West Rand Central Mining Co. v R [1905] 2 K.B. 391 at 400.**

claim when he gave his testimony. This court will not speculate. Similarly, Mr Stewart does not allege breach of contract or other actionable wrongdoing by Ridgeview. In the premises, Mr Stewart's claim against Ridgeview is not sustainable in negligence, contract law or other civil wrong. Percival Stewart's statement of claim has not disclosed a cause of action against Ridgeview. I find therefore that Ridgeview is not liable to Mr Stewart in damages.

Issue No. 2 – Was Harlequin Caribbean or Harlequin SVG, Ridgeview's principal and are they therefore liable in damages to Mr Stewart in respect of the injuries he sustained?

[8] It is trite law that a principal is liable for his agent's wrongdoings if the agent was acting in that capacity at the time he committed the wrong. The converse is also true: a principal will not be liable for his agent's wrong if the agent was acting outside the scope of his authority at the time of the wrong. Similarly, a principal is not liable for wrongdoing which is not caused by himself or his agent. Having found that Ridgeview is not liable to Mr Stewart, it follows that neither Harlequin Caribbean nor Harlequin SVG could possibly be liable to him. For the sake of completeness and good order I will nevertheless consider the claims against them.

[9] An agency is created when one person employs or appoints another to act on his behalf. Mr Stewart alleges that Ridgeview is Harlequin Caribbean's and Harlequin SVG's agent. However he makes no such assertion of agency in the statement of claim. Mr Stewart testified that Mr Allan Wayne Wright of Harlequin SVG transported him to the doctor immediately after the accident and on two subsequent occasions,⁸ in a vehicle allegedly registered to Harlequin SVG.⁹ He deposed further that Harlequin SVG's Project Manager Tony Dick took him to his

⁸ On March 11 and 25, 2008.

⁹ Registration number TQ58.

doctor's appointment on April 14, 2008 in a vehicle (registration number TQ203) owned by Harlequin SVG. Mr Stewart provided a photograph of that second vehicle and another showing the information contained on a decal on the side of the vehicle. That latter photograph was inscribed with a date stamp "2004/01/01." Mr Stewart contends that since the vehicles are owned by Harlequin SVG, this proves that Ridgeview was Harlequin SVG's agent.

[10] Andrew Stewart testified to this effect on Percival Stewart's (his brother) behalf. He stated that he was prevented by Allan Wayne Wright from accompanying Percival Stewart to the doctor in company vehicle TQ58. He deposed that Mr Wright informed him that company vehicles "are solely for the transportation of the Company's workers." Mr Stewart submits that this is proof that Harlequin SVG was Ridgeview's principal. I do not agree. It would be speculative to conclude that the relationship of principal and agent existed between the two companies based solely on what conceivably was an arrangement between the two companies with respect to transportation of Mr Stewart for those limited purposes.

[11] Mr Percival Stewart deposed also that an agreement was made between Ridgeview and the Harlequin companies in which Harlequin SVG agreed to assume all liabilities incurred by Ridgeview. Mr Stewart has not exhibited such an agreement. However, he explained that Mr David Ames, one of the directors of the Harlequin Companies made a public statement indicating that "his company Harlequin will be responsible". Implicit in this assertion is that the alleged undertaking by Mr Ames involved payment to Ridgeview's creditors and former workers. Mr Stewart identified two issues of the Searchlight newspaper as his source of information. In this regard, he deposed that Mr Ames "reassured persons owed money by Ridgeview ... that 'all debts have been taken over by the developers as part of the termination agreement.'" The newspaper did not ascribe authorship of the articles¹⁰ to Mr Ames. Furthermore, that statement attributed to Mr Ames was reportedly made by an unnamed businessman who was quoted in

¹⁰ July 11, 2008 and August 15, 2008 publication of the Searchlight newspaper.

the article. It consists of hearsay which does not satisfy the requirements of admissibility under the Evidence Act (“the Act”).¹¹ The same applies to the other article which alludes to an agreement of which the newspaper was reportedly informed by unnamed sources.

[12] Hearsay evidence is admissible in civil proceedings to prove the facts contained in it, only if the Act or rules of court permit.¹² The court’s permission must be obtained. Such evidence is admissible to prove the facts in it, only through the direct oral evidence of the maker of the statement or someone who heard him make it.¹³ Neither David Ames nor the person who allegedly heard him make the statement gave evidence in this case. Accordingly, Mr Stewart cannot rely on the newspaper article to establish either an agency agreement between Ridgeview and the Harlequin companies or an undertaking from them to cover his medical bills and other related expenses. He has failed to provide proof of any such

¹¹ Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

¹² See section 47(1) of the Act which provides:

- (1) “In any civil proceedings a statement made, whether orally or in a document or otherwise, by any person whether called as a witness in those proceedings or not, shall, subject to this section and to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.” (underlining mine for emphasis.)

See also the **East Caribbean Flour Mills Ltd. v Ormiston Ken Boyea SVGHCVP2006/0012 at para. [56] per Barrow J.A. (as he then was)** where referring to section 47 of the now repealed Evidence Act Cap 158 (which is identical to the present Evidence Act), he said:

“[56] ...It is common ground that section 47 of the Act provides for the admission of hearsay evidence “whether [made] orally or in a document.”

¹³ Ibid. at section 47(4) of the Act which states:

“(4) Where in any civil proceedings a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it:
Provided that if the statement in question was made by a person while giving oral evidence in some other legal proceedings, it may be proved in any manner authorized by the court.”

See also the **East Caribbean Flour Mills Ltd. case at para. [84] per Barrow J.A. (as he then was)** where he acknowledged that the effect of section 47(4) of the Act is to allow for the admission and proof of hearsay evidence “...by the direct oral evidence of the person who made the statement or of a person who heard or otherwise perceived it being made.”

agreement between Harlequin Caribbean and Ridgeview or Harlequin SVG and Ridgeview. For the foregoing reasons I find that neither Harlequin Caribbean nor Harlequin SVG is liable to Mr Stewart as principals of Ridgeview. Regarding the matter of costs, I have considered the overriding objective of the CPR and the factors enumerated in CPR 64.6 and 65.2 and have concluded that justice of this case requires that the appropriate order is for no costs to be awarded.

ORDER

[13] It is accordingly ordered:

1. Percival Stewart's claim against Harlequin Caribbean for damages is dismissed.
2. Percival Stewart's claim against Harlequin SVG for damages is dismissed.
3. Percival Stewart's claim against Ridgeview for damages is dismissed.
4. In accordance with CPR 64.6 (2) each party shall bear his or its own costs.

[14] The court is grateful to counsel for their submissions.

.....

Esco L. Henry
HIGH COURT JUDGE