

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE**

SUIT NO. GDAHCV2007/0439

BETWEEN:

Clinton Belfon

Claimant

AND

[1] **CPL #48 Alex Fletcher**

[2] **PC # 295 Quintana Ogilvie**

[3] **PC #164 Lewan John**

[4] **The Attorney General of Grenada**

Defendants

Appearances:

Derrick Sylvester of Counsel for the Claimant

Adebayo Olowu of Counsel for the fourth named defendant

4th February 2014

DECISION

- [1] **TAYLOR-ALEXANDER, M:** By order of Master Debra Burnette (Ag), dated the 6th December 2012, the court directed that (1) the application of the Fourth Defendant to be removed as a party to the claim filed on the 26th day of March 2008 is denied. (2) The amended defence of the fourth defendant

filed on the 3rd June 2008 is struck out as disclosing no reasonable ground for defending the claim. (3) judgment is hereby entered against the fourth defendant with damages to be assessed.(4) the claimant is to file and serve affidavits in support of assessment on or before the 31st of January 2013. (5) the fourth defendant do file affidavits in reply within 28 days of service of the claimant's affidavits. The claimants do have leave to reply if necessary, (7) the hearing of the assessment is fixed for the 12th March 2013; and (8) the fourth defendant is granted leave to appeal.

[2] The fourth defendant has applied for a stay of execution of the decision of the court pending the determination of an appeal filed. The grounds are stated to be, to preserve the status of the fourth named defendant, to be removed as a party to the claim. I had difficulty understanding the grounds of the application and in any event, it assumed, by the lack of attention given to the application that it would have been granted as a matter of course, when the contrary is true. The filing of an appeal does not operate to stay the proceedings and an application for a stay is one which by its nature seeks to deny the claimant its entitlement to the fruits of its judgment.

[3] Part 62.19(a) of the CPR 2000 states the general rule that an appeal does not operate as a stay of execution or of proceedings under the decision of the High Court, except so far as the court directs. The court usually exercises its discretion where the interest of justice so requires. The obligation is on the applicant to so establish and none having been established, I have dismissed the application freeing me to continue the assessment.

Brief Facts

[4] The claimant was assaulted and beaten by defendants 1-3, who are police officers, and who it is pleaded were acting at the time as police officers in the execution of their duties and as servants and or agents of the fourth named

defendant. The fourth defendant had defended the claim, denying that the police officers were at the time of the assault in the execution of their duties and were not agents of the defendant. The fourth defendant was unsuccessful in that course as its defence was struck out. The order of the court striking the claim is under appeal. The claimant seeks compensation for his injuries suffered as a result of being brutalised, as well as for false imprisonment. He has also included a claim for exemplary damages and for aggravated damages.

General Damages

- [5] In assessing general damages under this head, the factors identified stated by in **Cornilliac v St. Louis** (1965) 7 WIR relevant to the consideration of damages (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities; and (v) the impact on the claimant's pecuniary prospects.
- [6] The claimant was a purportedly healthy twenty eight year old male and a father of a one year old daughter at the time of the incident and a sales clerk who lived with his mother in Frequente. He was allegedly assaulted and beaten by the 1-3 defendants at Fantazia night club on the 13th April 2007, for a misunderstanding he had with the girlfriend of one of the officers. After being beaten he was forcibly held against a fence by the defendants, who, with no reasons being offered and who did not disclose themselves to be police officers, told him that they were going to go with him. The defendant avers that from the beating, he had been bleeding from bruises to both sides of his face, bleeding to his mouth and his nose and he was suffering from pain all over his body. He was placed on board a police vehicle, which is when he became aware that the defendants were police officers. While on the vehicle he was assaulted, beaten and threatened, and that continued at the police where the

claimant was taunted and searched and placed in a jail cell at the South St. Georges Police Station where he remained for the night. In the morning he was conveyed to the General Hospital for medical attention.

- [8] The medical practitioner who examined the claimant found him to have suffered harm resulting in abrasions and swelling below both his eyes and cheeks; a small abrasions to the inner left lip; cervical spine tenderness of the level of the C4-C7 area of the erythema and tenderness to the left side of the back. When providing the history of the accident to Dr Douglas Noel, the claimant stated that he was brought by the police for medical attention the very night of the assault. He claimed to have lost consciousness a few times during the entire incident. He was given an intramuscular voltaren medication and a cervical X-ray which revealed no boney injury.
- [9] He was examined by Dr Noel on the 30th of April 2007 and the 14th of May 2007. X rays performed of his cervical, thoracic and lumbosacral spine two weeks after the injury was all normal. He complained of neck spasms, neck pains and bi lateral shoulder pains and of headaches since the assault. He also complained of lower back pain and left knee pain since the assault.
- [10] The medical examination revealed full range of motion of his musculoskeletal system, cervical spine, thoracolumbar spine and of both shoulders. There was no tenderness to palpitation of the shoulders, neck or thoracolumbar spine. The left knee was clinically normal to examination. An examination of his nervous system was normal and x rays of his cervical and lumbosacral spine revealed no abnormality. Dr Douglas concluded that what pain the claimant felt of the neck, bi lateral shoulder, left knee and lower back pain would wax and wane according to activities involving significant physical activities.
- [11] There were no submissions filed in support of assessment. . I have considered in detail the report of Dr Noel; I have also read the affidavit evidence of the claimant where he details the pain and suffering he endured and his evidence as to diminished pecuniary prospects.

[12] In assessing general damages for pain and suffering and loss of amenities in a personal injury case, it is the judicially-accepted approach that the court should seek by an award of damages to put the claimant as far as possible to do so by a monetary award in the position that he would have been in had he not sustained the injury to his person.

[13] Of my own research, I have considered the following authorities from the Eastern Caribbean:—

Asquith Mc Lean v Sheldon Bynoe SVGHCV2006/463, where an award of \$15,000.00 was made for pain, suffering and loss of amenities. The claimant was struck with a cinder block and sustained a 4cm laceration to the left parietal region of the scalp and had temporary diminished pecuniary prospects.

Jude Jack v The Attorney General et al GDAHCV2006/0531 where in 2010 a claimant who sustained a flesh wound from a gunshot wound to his right lower back was awarded \$15,000 general damages.

The following from the High Court of Jamaica:—

Yee v Grant and Anor Suit Number C.L 1989/Y011 where in 1990 general damages for pain suffering and loss of amenities were awarded for bruises across the abdomen, hips, and right side of the neck, ankle sprain and cut on the palm of the left hand in the amount of JA \$5,000.00 updated to December 2011 to JA\$153,886.01 or EC\$4,817.12.

[14] I am aware that the awards made would have been in consideration of not just the injury but of the pain suffering and loss of amenities and the extent to which pecuniary prospects had been affected. I followed the existing practice of comparison and adjustments, bearing in mind that this approach is not flawless and that each case must be assessed on its own peculiar facts. Taking into account the totality of the evidence, the facts presented I award the claimant

the sum of EC\$8,000.00 as a fair monetary award for the claimant's personal injuries.

Damages for False Imprisonment.

- [15] This loss covers loss of liberty, injury to feelings, the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation caused by the false imprisonment. There was little evidence provided as to the injury suffered and none opposing, I am satisfied that the incident would have caused shock to the equilibrium of the claimant, the incident being unjustified and in a public place and in the presence of family and friends. The defendant had to be bailed by his mother which would have caused the claimant some embarrassment. Damages for false imprisonment are to be considered before any basis for aggravation. While there is little guidance on the calculation of an appropriate award, I borrow the guidance of the English Courts in **Thompson v The Commissioner of Police of the Metropolis** and **HSU v Commissioner of Police of the Metropolis** [1998] QB 498 CA where a sum of £500.00 was held to be appropriate for the first hour, with the sums to be awarded after the first hour being on a progressively reducing scale, such that for a 24, hour period an award of £3,000.00 should be appropriate. I am inclined to use a similar application. The claimant, from the evidence, was in custody for no longer than a 12 hour period. It is appropriate in the circumstances to award the claimant under this head the sum of \$1500.00

Exemplary Damages/Aggravated Damages

- [16] I make no award for aggravated damages. I find no basis for an beyond one for false imprisonment and exemplary damages.

- [17] Exemplary damages are usually awarded for high-handed and oppressive conduct by officers of the state. It is intended to punishing a wrong and of publicly indicating that it is not acceptable; the end sought is not to compensate the victim for the loss suffered." In assessing the exemplary damages a court should include the injury the plaintiff had endured to his dignity and pride, mental suffering and loss of reputation. I have considered the guidance of the stated principles of law. I have considered that in this case there was joint adventure, where the influence of other police officers who ordinarily, should encourage better behavior, was used as an opportunity to engage in wanton brutality by persons trained to exercise restraint and know better. Their conduct is what continues to hamper effective policing by creating mistrust by the public of police officers. I have considered that the sum awarded is a notional award to reflect the court's disapproval for the behavior exhibited. I have chosen to award the sum of \$3000.00 as exemplary damages.

Special Damages

- [18] Special damages were pleaded of \$1011.66, although none was proven. I make no award for special damages.

Conclusion

- [19] The total damages which I award the claimant for personal injuries, loss and damage consequent upon the accident is as follows:—

- (a) No award is made for special damages.
- (b) General Damages for pain and suffering and loss of amenities in the sum of XCD\$ 8,000.00;
- (c) Damages for false imprisonment in the sum of \$1,500.00;
- (d) Exemplary damages of \$3,000.00;

for a total award of \$12,500.00. I further award interest on the sums awarded at 3% from

the date of the incident to the date of judgment and thereafter at the rate of 6% to the date of payment in full and prescribed costs of \$1875.00.

V. GEORGIS TAYLOR-ALEXANDER

High Court Master