



THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 493 OF 2005

BETWEEN:

SAMUEL BARNWELL

Claimant

AND

**THE ATTORNEY-GENERAL OF
SAINT VINCENT AND THE GRENADINES**

First Defendant

WONG MATTHEWS

Second Defendant

Appearances:

Mr. Samuel Commissiong for the Claimant

Ms. Joezel Jack, Crown Counsel for the First and Second Defendant

2008: July 16
2010: March 11

JUDGMENT

- [1] **BRUCE-LYLE, J -:** The claimant Samuel Barnwell ("Claimant") is a farmer/proprietor and the Second Defendant, Wong Matthews ("Defendant"), was employed as a Senior Customs Officer, stationed at the E.T. Joshua Airport at Amos Vale, St. Vincent.
- [2] The Claimant in his claim alleges that on the 8th September 2005, he was re-entering the State from Tortola via the E.T. Joshua Airport, when the Second Defendant wrongfully assaulted him by ambushing him from behind his back and tossing him out of the Customs area. He also claims loss of \$3,700 U.S. from his luggage while it was in the Second Defendant's custody.

- [3] The Defendants contend that Customs Officer, Camille Garrick, who was on duty at the E.T. Joshua Airport at the time in issue, obtained knowledge that the Claimant had not cleared Immigration or Customs upon entering the State; and was heading towards the exit door, having by-passed the relevant officials. Customs Officer Garrick approached the Claimant and asked to see his passport to verify whether he had cleared Immigration. The Claimant refused, and began to express himself in a loud and aggressive manner, using abusive and insulting language, including proclaiming that the said officer was "stupid" and needed an education.
- [4] The Defendants further contend that Senior Customs Officer, Wong Matthews requested the presence of Customs Officer Garrick and the Claimant in the Customs Office in order to investigate what had transpired. This was when the Second Defendant then informed the Claimant that by verbally assaulting Customs Officer Garrick, he had committed an offence and his luggage would be detained until there was a response from the Enforcement Branch of the Customs Department. The Second Defendant and Customs Officer Garrick both contend that the Claimant at this time was asked to leave the Customs area, but he blatantly refused and had to be physically removed by the Second Defendant.
- [5] The Defendants further contend that the Claimant used force to re-enter the Customs area and by-pass the Customs Guard, Mr. Gideon Millington, but was restrained by the said Guard and led out of the Customs area. They further contend that the Claimant failed to make a Customs Declaration on arrival at St. Vincent on the 8th September 2005. They allege that he in fact submitted his Customs Declaration Form on September 10, 2005.
- [6] The Defendants also contend that, apart from the Claimant's allegation, there is no indication or supporting proof that, on arrival at the E.T. Joshua Airport from Tortola, and on the detention of his luggage, that the sum of US \$3,700 was in the Claimant's luggage and further contend that any pain, injury, loss or damage suffered by the Claimant, if any, would have been wholly as a result of his own actions.

- [7] From the above synopsis of the evidence adduced by both sides, the Claimant claims or seeks the following reliefs:
- (1) Damages for Assault.
 - (2) Damages for personal injuries;
 - (3) Exemplary Damages;
 - (4) The recovery of the sum of US\$3,700 (United States Currency) which disappeared while it was in the custody of the Second Defendant'
 - (5) Costs.

ANALYSIS OF THE EVIDENCE

- [8] I propose to analyze the evidence simultaneously with dealing with the issues involved, which I think the Court should concern itself with. I think the issues can be put under four broad headings as follows:-
- (a) Did the Second Defendant have a right to assault the Claimant in the circumstances, and if he did, did he have the right to use excessive force?
 - (b) Was it necessary in the circumstances for the Second Defendant to detain the Claimant's bag?
 - (c) Was the Second Defendant not under obligation, legal, precautionary or otherwise to make a careful note of the contents of the hand luggage and have it signed by the Claimant and witnessed in the interest of transparency and consistent with the regular practices of a police officer when he arrests and is minded to charge an accused person?
- [9] In dealing with the first issue regard must be had to the allegation made by Customs Guard Camille Garrick to the effect that she was verbally assaulted and insulted by the Claimant after she accosted him and enquired as to whether he, the Claimant, had cleared with Immigration. From the outset I must state here and very forcibly that the behaviour of the Claimant on the day in question was unbecoming of the model hardworking businessman he portrayed himself to be. I found his behaviour to be rather rude

considering that he had been asked a very simple question by the Customs Guard Camille Garrick. I shall return to this later in the judgment.

[10] Having said thus, I also find that the Customs Guard Garrick was quite overbearing in her handling of the matter, considering the manner in which the Immigration Officers handled the matter soberly. This makes one arrive at the belief in the Claimant's story that when he arrived in the arrival hall there were no immigration officers at post and this led him to go over to the Customs area to check on a box of foodstuffs that a friend had sent to a relative to see if it had arrived. It is my belief that if immigration officers were at post in their respective booths there would have been no need for the Claimant to take the chance to go to the Customs area first.

[11] In the ensuing confrontation certain words were alleged to have been uttered by the Claimant to the witness Garrick, which she deemed as insulting and a verbal assault on her. These words have not been denied by Camille Garrick and the Second Defendant except to describe them as insulting and abusive. If these words are to amount to abusive, offensive and threatening language contrary to Section 101 (3) of the Customs (Control and Management) Act No. 14 of 1999, then the test to be applied ought to take an objective one. On this score I agree with Learned Counsel for the Claimant; the test in each case must be capable of being universally applied so as not to have a situation where the same words used in similar context may be construed by different persons in different ways. One can only imagine the confusion that would flow in the application of penal sanctions.

[12] I, having said what I have said above, do not accept that the words allegedly used by the Claimant amounted to abusive, offensive, or threatening language. Let me reproduce the said words for proper effect. The witness Garrick said the Claimant said the following:-

"You are looking for a big job. You do not have the qualifications for that. In order to qualify go and educate yourself and you may get a better job than this. You are a pretty lady---" or words to that effect.

This is after the witness Garrick had told the Claimant, "You are a liar, Immigration wants to see you." As I have said before, the Claimant may have misbehaved and was rude,

unbecoming his standing or "stature" in society. But by no stretch of my imagination can I say that these words can be construed as being abusive, offensive and threatening language.

- [13] It is on this basis that Customs Guard Garrick approached the Second Defendant for redress. In view of what transpired in essence, the way the immigration officers dealt with the situation, I see no reason why this matter proceeded any further. In my view Ms. Garrick's concern about a verbal assault on her was unfounded for her to have pursued the matter further after immigration had dealt with the matter quietly.
- [14] There was therefore absolutely no need for there to have been an assault by the Second Defendant on the Claimant, if it in fact happened. To determine if there was such an assault, one only has to look at the evidence of the Claimant himself, his son Warren Barnwell, and Kingsley De Freitas, witnesses for the Claimant and juxtapose that evidence with that given by Customs Guard Camille Garrick, the Second Defendant himself and witness for the defence, Anson Evans. Clearly there was a heated exchange between the Second Defendant and the Claimant after the Second Defendant had informed the Claimant that he was detaining his bag. Upon the Claimant protesting over that detention and remaining in the Customs area, the Second Defendant decided to remove the Claimant from that area. According to the Second Defendant, he only held the Claimant's hand and led him out of the Customs area through the main door and outside. The Claimant says otherwise; that he was held by the neck and flung out the main door to the arrival and Customs area.
- [15] From that evidence, I am more inclined to believe the Claimant's version of events. It is rather strange that Customs Guard Millington who was on duty at the main door was not called by the defence to support their story and the said Millington was ordered by the Second Defendant to open the main door, before the Claimant was flung outside. I find this action by the Second Defendant as high-handed, unnecessary, and excessive in the use of force.

[16] To put this in context, I will narrate the evidence of Warren Barnwell, the Claimant's son who said that he was in the Customs area when the Second Defendant set upon his father from behind, seized him by complete surprise, held him in a stranglehold and tossed him on the concrete pavement outside. This witness said he then went to his father's aid as he lay on the ground. Kingsley De Freitas, a witness for the Claimant and also a taxi driver operating from the E.T. Joshua Airport, had this to say in his witness statement:-

"Barnwell is small and thin in comparison and the Customs Officer was short and stocky. As he pushed Barnwell through the door, Barnwell's hands were in the air as though he was trying to hold on to the door to break the fall. He fell backward on his bottom and then on the concrete. He hit the back of his head on the concrete and for a while seemed helpless..."

"He tried to lift his head as though he wanted to get up but fell backwards until a young man who works as a taxi dispatcher just outside the Customs door ran to help him. He alone could not lift up Barnwell..."

"...It was a strong push."

These quotes appear at paragraphs 3 and 4 and paragraph 2 of Kingsley De Freitas' witness statement.

[17] This brings us to Issue Number Two – was it necessary for the Second Defendant to detain the Claimant's handbag? I contend that there was no need to detain the handbag of the Claimant. I found that action highly unnecessary. One can understand if a Customs officer detains a passenger's luggage if it will provide cogent evidence to prove the intended charge, for example say if a policeman who seizes drugs, handguns or ammunition or unauthorized cash to tie the accused to the offence charged. But in this case what was the necessity for seizing the handbag in an assault, verbal abuse and insulting language charge? Was the handbag used in the assault? I find this untenable and outright high-handedness.

[18] Besides, in detaining the handbag the proper standard procedure as adduced by witness for the Defendant Anson Evans, a Customs Officer, was not followed. This procedure would have noted from the Customs Declaration that the passenger is carrying money, the Customs Officer will count the money, denote the different denominations, place it in a

separate envelope and hold it in a safe place. This is consistent with the practice of the police when they detain accused persons with the subject matter of the offence being for instance possession of dangerous drugs, or unlawful possession of money.

[19] It is clear that the Second Defendant did not follow the procedures as from the evidence it is obvious that he was too emotionally enraged to apply the standard Customs Regulations. The Claimant from the evidence did all that was reasonably possible in the circumstances to bring to the Second Defendant's attention that he had money in his handbag. The Second Defendant ignored the standard Customs procedure and prevented himself from seeing the money the Claimant was carrying in the hand luggage. The money subsequently disappeared. There may have been no money in the bag as could be asserted by the Second Defendant, but by his not following the proper procedures to ascertain the presence of money in the bag or not, the benefit of the doubt has to go to the Claimant and I so hold.

[20] As to the assertion from the defence that the Claimant did not satisfy the provisions of Section 3 of the Public Officers Protection Act Cap. 115 of the Laws of Saint Vincent and the Grenadines and the reason for this assertion being that the action was filed before 2 months had expired after the required notice in writing, this Court has this simple answer. The rationale for this piece of legislation 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 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** (1991) 45 WIR, at 169 per Sir Vincent Floissac C.J., Dennis Byron, J.A. and Satrohan Singh, J.A.; see also the case of **Bradford Corporation v Myers** (1916) A.C. 242 per Lord Buckmaster L.C. at page 247:-

“In other words, 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."

[21] In that same case, Lord Atkinson noted at page 260:-

"I think that the negligent act complained of here was not done in pursuance or execution or intended execution of any act of Parliament, since there was no statutory obligation on the appellants to do it. I think it was not done in execution or intended execution of any public duty or authority, since no public duty was imposed upon the appellants to deliver this coke. I think the appellants were not guilty of any neglect or default in the execution of any Act of Parliament, or public duty, or authority since no public duty rested upon them."

[22] This simply means that the exercise of a power was distinguished from the exercise of a public duty. In this case the assault on the Claimant by the Second Defendant was the exercise of a power that has no protection under Section 3 of the Public Officers Protection Act, and the exercise of a public duty with which the Second Defendant was charged under the Customs (Control and Management) Act to examine the luggage of passengers to ensure that he/she complied with the law in relation to importing goods into the country. The Claimant's injuries are succinctly put in report form by Drs. M.K. Debnath, R.E. Ambrose and Maurice Robertson, on the 12th June 2005, 5th September 2007, 17th October 2005 and 3rd February respectively. These injuries were a result of the unnecessary assault on the Claimant by the Second Defendant. See the cases of Bryan v Lindo (1986) 44 WIR 295; Gordon v The Attorney-General (1997) 51 WIR 280 P.C.

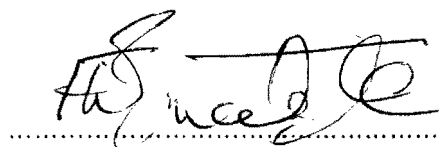
[23] Having examined the law in relation to my findings of fact and the Second Defendant's glaring and irresponsible and high-handed assault on the Claimant, I now turn to the final issue which this Court has to resolve. And that is, Is the Claimant entitled to exemplary damages, separate and apart from compensatory damages?

[24] It is an acceptable principle of law that the High Court has the jurisdiction in a single case to make awards for compensatory damages, i.e. special and general damages, and exemplary damages. These proceedings deal solely with the issue of liability, and its duty to rule expressly whether the facts and circumstances are sufficiently compelling for the Court to include an award for exemplary damages as pleaded by the Claimant.

[25] It is my contention, and I so hold following the three categories which may warrant the award of exemplary damages in the celebrated case of Rookes v Barnard (1964) AC 1129, that in as much as the Second Defendant's behaviour was irresponsible, unnecessary and high-handed, leading to the assault of the Claimant, the Claimant's own behaviour on the day in question left a lot to be desired. For one who described himself as a law-abiding, productive member of society and a well-known businessman, his behaviour on that day was nothing short of being rude and downright disrespectful to those enlisted with supervising the orderly entry of goods and persons to this nation's premier port of entry, the E.T. Joshua Airport. He openly flouted laid-down regulations and to my mind openly flaunted his own "delusions of grandeur" as is wont to be done by many in the upper echelons of this society. To my mind his behaviour was downright disgusting, a veritable show-off.

[26] But this did not warrant the vicious assault launched on him by the Second Defendant. In as much as the Second Defendant may fall into the category of situations warranting an award of exemplary damages, I will not do so, in view of the Claimant's own disgusting, disrespectful behaviour. The Second Defendant was wrong, palpably wrong in his treatment of the Claimant. He should have exercised restraint and dealt with the Claimant according to the prescribed procedures and law. He did not do so and instead proceeded to employ irresponsible, unnecessary, high-handedness in dealing with the Claimant, by assaulting him.

[27] I am satisfied, beyond a balance of probabilities that the Defendants are liable for the Claimant's injuries by assaulting him, and occasioning loss of his monies by illegally detaining his handbag. Damages to be assessed with costs by the Learned Master on a date to be fixed.

A handwritten signature in black ink, appearing to read 'F. V. Bruce-Lyle', written over a dotted line.

Frederick V. Bruce-Lyle
HIGH COURT JUDGE