

SAINT VINCENT AND THE GRENADINES

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

CLAIM NO SVGHC2008/0039

BETWEEN

EREEN ARCHIBALD

Claimant

AND

- 1. THE COMMISSIONER OF POLICE OF THE ROYAL
ST VINCENT AND THE GRENADINES POLICE FORCE**
- 2. THE ATTORNEY GENERAL OF SAINT VINCENT
AND THE GRENADINES**

Defendants

Appearances

Ms Nicole Sylvester and Ms Patina Knights for the Claimant
Mr. Richard Williams for the Defendants

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2009: July 1
2010: February 12
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RULING

[1] **LANNS, MASTER:** On 5th October 2006, Ereen Archibald slipped and fell at her workplace. She suffered injuries described as

- (a) A 1.5cm x 0.5 cm ulceration on the posterior aspect of the right forearm at the juncture of the upper and middle thirds on the posteromedial aspect;
- (b) Right gluteal swelling (haematoma) measuring approximately 8.0cm diameter and with a central area superficial ecchymosis;



(c) Multiple soft tissue injuries;

(d) Prolapsed Lumbar Intervertebral Disc (Disk Compression) L4/5

[2] At the time of the incident, Ms Archibald was a civil servant assigned to the Accounts Department of the St Vincent and the Grenadines Police Force, Central Station, Kingstown.

[3] On 26th January 2009, Ms Archibald commenced proceedings against the Defendants alleging that on 5th October 2006, whilst at work, she suffered an injury whilst descending a flight of stairs at the Central Police Station. She claims that the area was being cleaned by prisoners; that the steps were wet; and that there was no warning sign posted indicating that the area was wet. Further, she alleges that the accident was caused by the negligence of the Defendants, their employees, and their servants or agents.

[4] At the first case management conference held on the 2nd June 2009, I posed the following questions

(a) whether the Commissioner of Police is a proper party to the action; and

(b) whether the Public Officers Protection Act applies to the action.

[5] It was agreed that these questions should be determined as preliminary issues. The parties were directed to file submissions in relation thereto.

Issue 1: Whether the Commissioner of Police is improperly joined

Submissions of the parties

[6] Claimant's learned counsel (Ms Sylvester) directed attention to Section 4 of the Crown Proceedings Act Cap 85 of the Laws of St Vincent and the Grenadines (the Act). After setting out the provisions of section 4, Counsel submitted that if the cleaner of the stairway

was a servant or agent of the Crown, then in those circumstances the Commissioner of Police need not be a party pursuant to the Crown Proceedings Act.

[7] However, if the person cleaning the stairway was acting on specific instructions from police personnel then the cleaner would be an agent or servant of the Crown, Ms Sylvester submitted.

[8] Ms Sylvester was of the view that the factual matrix of this situation could only be gleaned at the stage of evidence.

[9] Ms Sylvester also directed attention to the case of **Peter Clarke v The Attorney General et al, (SLUHCV 1990/0475)** wherein Edwards J dealt with the issue as to whether the Commissioner of Police was properly joined as a party. She contended that **Clarke's** case concerned the actions of police officers and that the case decided that police officers carried out their duties for the state and not the Commissioner.

[10] Learned counsel for the Defendants (Mr Williams) submitted that the Commissioner of Police is not a proper party to the suit. For this submission Mr Williams relied on section 15(2) of the Crown Proceedings Act which provides, among other things that civil proceedings against the Crown shall be instituted against the Attorney General.

[11] Mr Williams also relied on section 10 (2) of the Crown Proceedings Act which defines "proceedings" to mean "any proceedings for the vindication or any right or the obtaining of any relief which if this Act had not been passed, might have been enforced or vindicated or obtained by an action against the Attorney General, any Government Department or any officer of the Crown as such."

[12] Mr Williams also directed my attention to the case of **Glentis W. Goodwin v. the Honorable Winston B Spencer and the Honourable Justin L. Simon**, Antigua Civil Appeal No 25 of 2005, wherein Justice of Appeal Michael Gordon held "In a suit of this

nature the proper party is The Honourable Attorney General and no one else. ... Civil proceedings against the Crown shall be instituted against the Attorney General."

Issue 2: Whether the Public Officers Protection Act is applicable to this case

Parties' submissions

[13] Ms Sylvester posited that the act complained of in this case is not an act of any public duty, or authority and therefore the Public Officers Protection Act cannot be prayed in aid and can afford no defense to the action by the Second Defendant. Ms Sylvester further contended that the act must be one in the direct execution of a statute or in the discharge of a public duty. There are duties and authorities which are not public and in the exercise or discharge of such duties or authorities this protection does not apply, argues Ms Sylvester. The act complained of by the Claimant related to cleaning of the staircase at Police Headquarters, which act taken at its highest was an act in the course of an errand - one which the public officer had authority to authorize, but it was not one which the public officer was bound in the execution of his duty to fellow citizens.

[14] This action for negligence is not within the class of actions contemplated by the statute, argues Ms Sylvester. Ms Sylvester placed reliance on the case of **Bradford Corporation v Myers** [1916] AC 242. I shall revert to this case below.

[15] Ms Sylvester also referred me to other cases which interpret the similar provisions of the Public Officers Protection Act including

- (i) **Felix Da Silva v Attorney General of St Vincent and the Grenadines**; Suit No 356 of 1989.
- (ii) **Rodriguez v Parker** [1976] 1 QB 116.
- (iii) **Kettleman v Hansel** [1987] AC 189
- (iv) **Durity v Attorney General of Trinidad and Tobago** [2002] UKPC.

[16] Mr. Williams contended that the present action is subject to sections 3, 4, and 5 of the **Public Officers Protection Act** which deal with the issue of Notice and the limitation period. He was of the view that the action is against the public servants whom it is alleged caused the staircase to be wet.

- [17] Mr. Williams referred me to **Life Rafts and Inflatable Centre (St Lucia) Ltd v. The Honourable Attorney General et al** Claim No SLU HCV 2005/0593 wherein Mason J quoted with approval the words of Edwards J in **Peter Clarke v the Attorney General et al**, Claim No SLYHCV1999/0047:

"It is evident ... that the consequence of giving a defective notice or no Notice is fatal to the action against the Defendants."

- [18] As to the issue of notice, Ms Sylvester indicated that the Claimant, out of an abundance of caution "filed" statutory notice. She did not say that she served statutory notice. I have not seen the notice on file. And the Defendants have raised no contention in the pleadings as to statutory notice. Are they required to do so? Perhaps not.

- [19] I now consider the relevant statutory provisions

Relevant statutory provisions

- [20] Section 3 of the Public Officers Protection Act is in the following terms:

"3. No action shall be brought against any public officer for anything done, or purported to be done in the exercise of his office unless and until two calendar months after notice in writing has been delivered to him or left at his usual place of residence with some person there, by the party who intends to bring such action or his legal practitioner or agent, and in every such notice shall be clearly and explicitly stated:

- (a) cause of action
- (b) the name and address of the person who is bringing the action; and
- (c) the name and address of his legal practitioner or agent, if any

and no evidence of the cause of such action shall be produced, except in so far as the cause of action has been spelt out in the notice.

- [21] And section 4 reads:

"4. Every action as set out in section 2 shall be brought within 12 calendar months next after the cause of action stated in the notice arose and no such action shall be maintainable after the expiry of the said period.

- [22] Section 5 provides

"5 In every proceeding for an action as referred to in section 3, it shall be incumbent upon the party bringing the action to prove –

- (a) that the notice required under section 3 has been given;

(b) that the action has been brought within the time specified in section 4;
and

(c) the cause of action,

and upon failure to establish any of the same the action shall be dismissed or terminated and a verdict shall be given against the person who brought the action with or without costs."

Are the Defendants Public Officers?

[23] Before a person can claim protection under the Act, he must show that he or she is a public officer. Who then is a public officer? The Act provides an answer.

[24] Section 2 of the Act defines "public officer" to mean "any person holding any public office (which shall include the office of a minister) in Saint Vincent and the Grenadines, whether permanent or temporary and whether with or without salary or remuneration."

[25] That the Defendants are public officers, there is no doubt. They are public officers, who are employed by the State, and are paid by the state of St Vincent and the Grenadines and thus, they are entitled to the protection of the Act. But the question arises as to whether in this particular case the Claimant's accident was the result of an act done by the Commissioner of Police in the exercise of his duty so as to entitle the Defendants to claim benefit under the Act.

Was Ms Archibald's accident the result of an act done by officers of the Crown in the exercise of a public duty?

[26] It can hardly be said that when Ms Archibald slipped and fell, that it was the result of an act done in the exercise of a public duty, or authority, or of any neglect or fault in the execution of any such duty or authority.

[27] In **Bradford Corporation v Myers** (supra) the appellants, a municipal corporation, were authorized by an Act of Parliament to carry on the undertaking of a gas company and were bound to supply gas to the inhabitants of the district. They were also empowered to sell the coke produced in the manufacture of gas. The corporation contracted to sell and

deliver a ton of coke to the respondent, and by negligence of their agent the coke was shot through the respondents shop window. More than six months afterwards the respondents commenced an action in negligence against the corporation. The corporation pleaded section 1 of the Public Authorities Protection Act 1893 as a bar to the action. It was held that the act complained of was not an act done in direct execution of a statute or in the discharge of a public duty or the exercise of a public authority and there, the Public Authorities Protection Act afforded no defense to the action.

[28] At page 247, of the judgment Lord Buckmaster L.C. stated

“...It is not because the act out of which an action arises is within the power that a public authority enjoys the benefit of the statute. It is because the act is one which 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 alike or an authority exercised impartially with regard to the public. It assumes that there are duties which are non public and that in the exercise or discharge of such duties or authorities this protection does not apply.”

[29] Applying that case to the present case, it cannot be said that a statutory duty was placed on the Commissioner of Police to require prisoners to clean the staircase of the Central Police Station. I am therefore inclined to agree with the submission of Ms Sylvester that the Defendants cannot pray in aid the Public Authorities Protection Act.

[30] I make the observation that the Defendants failed to plead sections 3, 4 or 5 of the Act which speaks to notice and the limitation period. The Defendants raised these sections for the first time in their written submissions.

[31] In this regard Ms Sylvester submitted that where a defendant either by oversight, inadvertence or otherwise omits to plead limitation in the Defense, it is no longer open to the Defendant. That Defendant is bound by his pleaded case and in the absence of an amended defence, he is duty bound to rely on the case as filed. This proposition she

posited, finds support in the case of **Ketteman v Hansel** [1987] AC 189, where it was held that

“a plea of limitation was a procedural defense that had to be pleaded and, in considering whether the architects should have leave to amend their Defence to plead that the action was statute barred, it was relevant that although they had been parties to the action since 1982, they had not sought the leave of the court to amend until closing stages of the trial when the court had investigated the merits of the plaintiffs’ claim and the plaintiffs had individually undertaken the strain of litigation in which they had a legitimate expectation that the issues raised in their pleadings would be determined, and that therefore, the architects should not have been permitted to amend their Defence and, in the absence of a plea of limitation, the plaintiffs succeeded on the merits.”

[32] Although I am in agreement that it was incumbent on the Defendants to plead sections 3 and 4 of the Act, I do not agree that they had any such obligation to plead section 5. As Mitchell J noted in **Mac Leish**, section 5 is not a matter for pleading by the defence. It is a matter for evidence at the trial. Proof has to be provided at the trial the same way as proof of any fact in issue relevant to the action has to be given. The onus is on the Claimant to provide the proof.

[33] The Claimant argues that the Defendants are bound by their pleaded defence. However, it must be borne in mind that this case has only progressed to the stage of first case management conference. In my judgment, it cannot be said that the first case management conference has been completed.

Is the Commissioner of Police properly joined as a party?

[34] To my mind section 15 (2) of the Crown Proceedings Act provides the answer:

“Civil proceedings against the Crown shall be instituted against the Attorney General....”

[35] In **Glentis W. Goodwin v The Honourable Winston B. Spencer and Honourable Justin L. Simon, Antigua and Barbuda Civil Appeal No 25 of 2005**, the Court of Appeal considered the interpretation of similar provision. His Lordship Justice of Appeal Gordon said:

“In a suit of this nature, the proper party is the Honourable Attorney General and no one else....Section 13(2) of the Crown Proceedings Act Cap 121 of the Laws of Antigua is in clear, unequivocal and mandatory terms. It reads “Civil proceedings against the Crown shall be instituted against the Attorney General.”

[36] Ms Sylvester argued that if the cleaners of the stairway were servants of the Crown, then in those circumstances the Commissioner of Police need not be a party pursuant to the Crown Proceedings Act. However, if the cleaners of the stairway were acting on specific instructions from police personnel they would be an agent or servant of the Crown. The factual matrix of this situation, says Ms Sylvester, could only be gleaned at the stage of evidence.

[37] Mr. Williams on the other hand was adamant that this action is against the public servants whom it is alleged caused the step to be wet. Because of the provisions of the Crown Proceedings Act, the Attorney General is substituted for the Commissioner of Police. I agree with this submission.

[38] In my view, it matters not whether the cleaners were cleaning at the behest, or under the control or supervision of the police authorities, or even prison authorities. Either way, neither the Superintendent of Prisons nor the Commissioner of Police should be made parties in their personal capacities. In the absence of any allegation that the Commissioner was personally involved, or that he approved or directed the prisoners not to place warning signs indicating that the stairs were wet, I conclude that the Commissioner of Police was improperly joined as a defendant. The case, being one of vicarious liability, section (15) 2 of the Crown proceedings Act applies.

Conclusion

- [39] Section 3 of the Public Authorities Protection Act imposes a mandatory precondition and requires the Claimant to serve a notice setting out clearly and explicitly the information required under sub-paragraphs (a) (b) and (c) on the Defendants prior to the institution of the claim. There is no evidence that such a notice has been served, although the Claimant states that notice has been served. The authorities say that defective notice or no notice at all is fatal. If no notice is served on the actual perpetrator (s) then it logically follows that no liability can attach to the Honourable Attorney General. The Defendants have not pleaded the Public Authorities Protection Act. As to whether they can still do so, or whether this omission is suggestive of waiver, I make no finding. I leave it to the parties to take whatever course of action they would wish to in this regard. I venture to say that in one sense, the Act appears to be applicable, in another it appears not. Perhaps it is a matter for the trial judge.
- [40] As to the issue of parties, I am fortified in my view that in the light of the relevant provisions of the law as contained in the **Crown Proceedings Act**, and decided cases, the Commissioner of Police is improperly joined. Section 15(2) of the Crown Proceedings Act applies if the Claimant is to continue her case against the Commissioner of Police and the proper party to cite as Defendant is the Attorney General.
- [41] I am driven to adopt the words of the Court of Appeal in **Goodwin's** case. "In a suit of this nature, the proper party is the Honourable Attorney General and no one else." Section 15(2) of the Crown Proceedings Act Cap 85 of the Laws of St Vincent and the Grenadines is in clear, unequivocal and mandatory terms. It reads "Civil proceedings against the Crown shall be instituted against the Attorney General."
- [42] For all the foregoing reasons, I would therefore order that the claim issued in this matter against the Commissioner of Police be set aside. The matter is to be fixed for the next case management conference.

[43] I am grateful to counsel for their very helpful submissions and authorities. And I apologize for the delay in delivery of this decision and thank counsel for their patience and understanding.


PEARLETTE E. LANNS
Master