

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim SLUHCV2003/0601

Between:

CYRIL DORNELLY

Claimant

AND

ST. LUCIA AIR AND SEA PORTS AUTHORITY

Defendant

Appearances:

Mr. Peter Foster and Ms. Renee St. Rose for Claimant

Ms. Diana Thomas for Defendant

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2005: 21 March
8 April

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- 1 **SHANKS J:** The Claimant bought a car in March 2001 from Rudolph Rambally's Sales yard in Bexon. In November 2001 it was seized by the Customs and Excise because no duty had been paid on its importation. The seller has disappeared and the Claimant is out of time to bring any proceeding against the Customs and Excise. He therefore sues the Saint Lucia Air and Sea Ports Authority in whose custody the car was before it was removed by the importer in November 1999.
2. The Claimant relies on two provisions in the Customs Control and Management Act 1990:

“60 (1) Before any goods are removed from warehouse the proprietor of the goods shall deliver to the proper officer an entry thereof in such form and manner containing such particulars as the Comptroller may direct.

61(1) Save as permitted by or under this Act, no goods shall be removed from a warehouse until all duty chargeable on those goods has been paid”.

3. He says that those provisions give rise to a duty owed by the Defendant to him to ensure that imported goods are not removed from its custody until the proper entry form is produced and the duty is paid. This duty was broken because the Defendant released the car without the proper entry form being produced or duty being paid. He also says that the Defendant was negligent in allowing this to happen.
4. The Defendant raised a preliminary issue as to whether they owed the Claimant any statutory duty or duty of care in negligence. It was not disputed that the law of England is the relevant law in deciding this issue (see Article 917A of the Civil Code) and that the law is to be found in the House of Lords decision in *X v Bedfordshire CC*. [1995] 2AC 633 and in particular the speech of Lord Browne – Wilkinson at pp 731 –740.

Breach of statutory duty

5. It does not seem to me that ss 60(1) and 61 (1) impose any duty on the Defendant at all. S 60(1) imposes an obligation *on the proprietor of the goods* (not the Defendant) to

produce a proper entry form before removing goods. S.61(1) prohibits the *removal* of goods until duty has been paid; at most the Defendants *allow the removal* of goods: they do not actually remove them at all.

6. If my conclusion at paragraph 5 is wrong and the Defendants are in breach of S.60(1) and/or S.61(1) if they release goods without a proper entry form being produced and/or without duty having been paid, the question whether a statutory cause of action exists in favour of the Claimant depends on whether, on a proper construction of the statute:

- (a) the relevant duty is imposed for the protection of a limited class of the public and
- (b) the legislature intended to confer on members of that class a private right of action.

I have no hesitation in answering both the questions in the negative. If the duties imposed by the sections are owed to anyone, they are owed to the Customs and Exercise and possibly the public at large who have an interest in the collection of proper duties. There is no suggestion that they are owed to purchasers of imported goods. Further, I am satisfied that the legislature did not intend to confer on such purchasers a right of action against the Defendants: the whole purpose of the legislation is to collect revenues for the Government, not to give private rights of action.

Negligence

7. Assuming again that the sections relied upon impose any duty on the Defendants, the question whether this gives rise to a common law duty of care in negligence falls to be decided by applying the usual principles, namely:

- 1) was the damage to the Claimant reasonably foreseeable?
- 2) was the relationship between the Claimant and the Defendants sufficiently proximate?
- 3) Is it just and reasonable to impose a duty of care? (see: *X v Bedfordshire CC* at p739)

8. It was accepted that it was foreseeable that if the Defendant released goods on which duty had not been paid a subsequent purchaser might suffer loss in the way the Claimant has. However, it seems to me there is no sufficient proximity between the Defendants and the Claimant, who is two down the chain of purchasers from the importer who removed the car. It also seems to me neither just nor reasonable to impose a duty such as that contended for: the role of the Defendant is to assist in the collection of tax, not to compensate purchasers of goods which are later seized; and anyway the Claimant would have a full remedy against his seller if he could find him.
9. For these reasons I conclude there is no duty on the Defendants which gives the Claimant any right to bring this claim. I accordingly strike the claim out. I naturally have sympathy with the Claimant who is left with no remedy but it is quite clear to me that the law does not give him a remedy against the Authority. I will hear the parties on costs.

Murray Shanks
HIGH COURT JUDGE (ACTING)