

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 255 OF 2001

BETWEEN:

MONICA ROSS

Plaintiff

and

MINISTER OF AGRICULTURE, LANDS AND FISHERIES

First Defendant

PERMANENT SECRETARY, MINISTER OF
FOREIGN AFFAIRS, TRADE AND COMMERCE

Second Defendant

ATTORNEY GENERAL

Third Defendant

Appearances:

Olin B. Dennie for the Plaintiff
Paula E. David for the Defendants

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2001: June 27
July 6, 13, 25 and 31
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DECISION

[1] **WEBSTER, J. (*acting*)**. This action was commenced by the Plaintiff on the 18th June 2001 by a generally indorsed Writ of Summons claiming the following relief against the Defendants –

- (a) a Declaration that pursuant to an agreement with the Arrowroot Industry Association in 1996, and the permission of the Cabinet of the Government of St. Vincent and the Grenadines in January 2000 consequent upon the demolition of the space which was leased to the Plaintiff by the Arrowroot Industry Association, the Plaintiff is entitled to remain in possession of the Traffickers Association Shed located at Upper Bay Street, Kingstown, until 31st May, 2006 (“the Shed”);

- (b) an injunction to restrain the Defendants or either of them by themselves, their servants, agents, officers or howsoever from expelling or forcibly removing the Plaintiff from remaining in occupation of the Shed pending the final determination of this action;
- (c) alternatively, a declaration that the forcible or involuntary removal of the Plaintiff from the Shed pending the final determination of this action would constitute a violation of the agreement between the Plaintiff and Cabinet of St. Vincent and the Grenadines made in January 2000;
- (d) such further or other interim relief as the Court might see just pending the final determination of this action.

[2] On the said 18th June the Plaintiff applied *ex parte* for an interlocutory injunction to restrain the Defendants from expelling or forcibly removing her from occupying the Shed or, alternatively, a declaration that her forcible or involuntary removal from the Shed would constitute a violation of the agreement between her and the Cabinet of the Government of St. Vincent and the Grenadines.

[3] The application was supported by the Plaintiff's Affidavit in which she deposed that in 1996 she was granted a lease by the Arrowroot Industry Association for a period of ten years authorising her to repair and use a warehouse belonging to the Association. In pursuance of the lease she spent approximately \$100,000.00 repairing the warehouse. On an unspecified date the warehouse was demolished by the Planning Department of the Government, and in January 2000 the Cabinet granted the Plaintiff permission "as a *compensatory measure*" the right to occupy the Shed. She is currently occupying the Shed and has goods stored therein valued at over \$2,000,000.00. On the 15th June, 2001 she received a letter from the Permanent Secretary in the Ministry of Foreign Affairs, Trade and Commerce, giving her until the 18th June to vacate the Shed failing which action would be taken to remove her from the Shed.

[4] The Application was heard by this Court on the 18th June and an injunction was granted restraining the First, Second and Third Defendants from expelling or forcibly removing the

Plaintiff from occupying the Shed pending the final determination of this action (“the Injunction”). The Injunction had a return date of the 27th June, 2001.

[5] On the 27th June, 2001 the First and Second Defendants appeared by Counsel and were granted leave to enter conditional appearances. The Plaintiff’s application to continue the Injunction was adjourned to allow the Solicitors for the Defendants to take further instructions. On the 2nd July the First and Second Defendants applied by Summons to have their names struck out of the proceedings, and on the 6th July all the Defendants applied by Summons to discharge the Injunction.

[6] The current proceedings are concerned with the following applications -

- (a) by the Plaintiff to continue the Injunction
- (b) by the First and Second Defendants to have their names struck out of the Writ of Summons and all subsequent proceedings on the ground that they are not proper parties to the proceedings, the proper Defendant being the Attorney General
- (c) by the Defendants to discharge the Injunction on the grounds that –
 - i. an injunction cannot be granted against any of the Defendants in these proceedings; and
 - ii. there was a material non-disclosure by the Plaintiff in applying for and obtaining the Injunction.

[7] The principles relating to the Defendants’ contentions that the First and Second Defendants are not proper parties to the proceedings, and that an injunction is not available against any of the Defendants, overlap, and so I will deal with them together. The starting point in the resolution of these issues is the Crown Proceedings Act, Cap. 85 (“the CPA”). Section 15 of the CPA provides that civil proceedings against the Crown shall be instituted against the Attorney General, and section 18 provides that–

“(1) In any Civil Proceedings by or against the Crown the Court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that –

(a) where in any proceedings against the Crown any such relief is sought as might, in proceedings between subjects, be granted by way of injunction or specific performance, the Court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(b) in any proceedings against the Crown for the recovery of land or other property, the Court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled, as against the Crown, to the land or property or to possession thereof.

(2) The Court shall not, in any civil proceedings, grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.”

[8] The meaning of sections 15 and 18 is clear. In civil proceedings against the Crown, the Attorney General is the proper defendant (section 15), and injunctive relief and orders for the recovery of land are not available against the Crown or an officer of the Crown (section 18). That is simple enough. What is not so simple is to determine what are “civil proceedings” within the meaning of the CPA, and whether the Plaintiff’s claims are “civil proceedings” within the meaning of the CPA.

[9] Regrettably the CPA does not, as in England, define civil proceedings. What it does is to set out in section 10 the proceedings by and against the Crown that fall under the CPA. Subsection (2) of section 10 sets out the proceedings against the Crown that fall under the Act as follows –

“Subject to the provisions of this section, any reference in this Part to civil proceedings against the Crown shall be construed as a reference to the following proceedings only –

- (a) proceedings for the enforcement or vindication of 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 any such proceedings as are mentioned in paragraph 2 of the Schedule;
- (b) proceedings for the enforcement or vindication of 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;
- (c) all such proceedings as any person is entitled to bring against the Crown by virtue of this Act”.

Subsection 3 lists certain proceedings that are expressly excluded from the provisions of Part 2 of the CPA (dealing with jurisdiction and procedure). They are –

- (a) proceedings brought by the Attorney General on the relation of some other person
- (b) proceedings by or against the Public Trustee
- (c) proceedings under the written laws relating to charitable trusts by or against the Attorney General.

It is clear that the Plaintiff's claims do not fall into any of the exceptions listed in subsection 3. However, it is equally clear from the language of section 10 that Pat II of the CPA does not apply generally to all proceedings that can be brought in the High Court. It is therefore necessary to examine the section to see if it includes the claims that the Plaintiff has brought against the Defendants.

[10] The three paragraphs of subsection 2 of section 10 are disjunctive and it sufficient if the claims fall under any of the paragraphs. Paragraph (c) deals with "*All such proceedings as any person is entitled to bring against the Crown by virtue of this Act*". The general category of proceedings that a person is entitled to bring against the Crown by virtue of the CPA is set out in section 3 which reads-

"3. Where any person has a claim against the Crown on or after the 1st March, 1955, and, if this Act had not been passed, the claim might have been enforced, subject to the Governor's fiat, by petition of right, or might have been enforced by a proceeding provided by sections 342 to 348 of the Civil Procedure Code, 1884, then, subject to the provisions of this Act, the claim may be enforced as of right, and without the fiat of the Governor General, by proceedings taken against the Crown for that purpose in accordance with the provisions of this Act."

The proceedings that were enforceable by sections 342 to 348 of the Civil Procedure Code, 1884 are set out in section 343 as follows-

"343. All claims against the Government of the colony being of the same nature as claims which may be preferred against the Crown in England, under the provisions of Imperial Acts, 23 and 24 Vic., c. 34, entitled "The Petitions of Right Act, 1860," may, with the consent of the Governor, be preferred in the Supreme Court in a suit instituted by the claimant as plaintiff against "The Attorney General" as defendant."

Section 344 suggests that prior to the passing of the CPA in 1955 proceedings that were enforceable by Petition of Right in England were enforceable in St. Vincent by the procedures set out in sections 344 to 348 of the 1884 Code. The proceedings that could have been preferred against the Crown in England by Petition of Right are set out in **Halsbury's Laws of England** 3rd ed. Volume 11 paragraph 12. They include petitions for "*the recovery of land or other corporeal hereditaments*", and petitions for "*unliquidated damages for breach of contract*". The Plaintiff's claims are for possession of property pursuant to an agreement with the Government, and for damages for breach of contract. Both claims could have been brought by Petition of Right in England and therefore fall squarely within section 3 of the CPA. Consequently they are included in the proceedings covered by section 10(2)(c). They are therefore "civil proceedings" within the meaning of sections 15 and 18 respectively with the following consequences –

- (a) the proper Defendant is the Attorney General
- (b) relief by way of injunction is not available against the Crown to the Plaintiff.

[11] The applications to strike out the names of the First and Second Defendants, and to discharge the Injunction on the ground that injunctive relief is not available against the Crown, are therefore granted. Having regard to these findings it is not necessary to deal with the application to discharge the Injunction on the ground of non-disclosure by the Plaintiff.

[12] These findings are sufficient to dispose of the applications before me, but, in deference to the submissions made by Learned Counsel for the Plaintiff I will deal briefly with his submission that the Court should not follow the CPA in coming to its decision. He submitted that the CPA was conceived in colonial times, and the modern approach to claims against the Crown is to be found in the case of **Jennifer Gairy (as Administratrix of the Estate of Eric Matthew Gairy, deceased) v The Attorney General of Grenada** (Privy Council Appeal No. 29 of 2000). This appeal concerned a claim for redress under the Constitution of Grenada for a violation of the Appellant's right not to be deprived of property by the State without compensation. The Board allowed the Appellant's appeal and ordered the Minister of Finance to pay all amounts due to the Appellant forthwith.

Counsel referred to several passages in the advice delivered by the Board including paragraph 19(2) where Lord Bingham of Cornhill said-

“Historic common law doctrines restricting the liability of the crown or its amenability to suit cannot stand in the way of effective protection of fundamental rights guaranteed by the constitution.”

It is this new approach to the enforcement of fundamental rights and freedoms against the State that Counsel submits requires the High Court to move away from the CPA in determining the Plaintiff's claims. However, the flaw in this argument is that the Plaintiff's claim is not made under the Constitution, and Lord Bingham opined at paragraph 21 that *“...it must be highly questionable whether it (the CPA) includes claims for constitutional redress”*.

- [13] Counsel also referred to the fact that there are numerous reported cases where the Court has granted injunctions against the Crown and officers of the Crown. However, it was pointed out to him that these cases usually involve applications for prerogative orders in judicial review proceedings, and there is no question that judicial review proceedings are excluded from the CPA. This opinion was expressed by Lord Woolf in **M. v Home Office** [1993] 3 All ER 537 (HL) when he said at page 555-

“The language of s. 23 (of the UK CPA – our s. 10) makes it clear that Pt. II of the Act does not generally apply to all proceedings which can take place in the High Court. In particular, it does not apply to the proceedings which at the time would have been brought for prerogative orders.”

In the Court of Appeal decision in **Gairy v AG**, Chief Justice Byron adopted Lord Woolf's interpretation of “civil proceedings” as excluding prerogative orders (at para. 22), and this view was upheld by Lord Bingham in the Privy Council (at para. 13).

- [14] It is clear that that judicial review proceedings are excluded from the CPA, and constitutional proceedings are probably excluded as well. The Plaintiff cannot rely on the *Gairy v AG* case, nor the judicial review cases, to say that the developments in the law relating to fundamental rights and freedoms mean that the CPA does not apply to claims for breach of contract and possession of land. It may be that the Chief Justice was correct when he said at paragraph 34 of the *Gairy* case that the CPA *“...is anachronistic in an age*

when it may be more appropriate to have State Liability Legislation”, but that is a matter for Parliament, not the High Court.

[15] It is apparent from the foregoing that I do not accept the submissions of Counsel for the Plaintiff, and It is therefore ordered as follows-

- (a) the names of the First and Second Defendants be struck out of the Writ of Summons and all subsequent proceedings in this action
- (b) the Injunction granted on the 18th of June, 2001 restraining the Defendants from expelling or forcibly removing the Plaintiff from the Traffickers Association Shed is hereby discharged
- (c) The First and Second Defendants will have their costs of the application to strike out their names as parties to the action, and the costs of the application to discharge the Injunction will be the Defendants' in the cause
- (d) And by consent it is ordered that the execution of this decision be stayed until the 31st August, 2001.

Paul Webster
High Court Judge (Ag.)