

IN THE HIGH COURT OF JUSTICE FEDERATION OF SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT A. D. 1995

CIVIL SUIT NO. 43 OF 1995

BETWEEN:

GEORGE HERBERT

1ST PLAINTIFF

and

VINCENT ALLEN

2ND PLAINTIFF

and

MICHAEL BLAKE

1ST DEFENDANT

and

WINSTON PATTERSON

(Admiralty Marshall)

2ND DEFENDANT

and

THE HONOURABLE ATTORNEY

GENERAL OF SAINT CHRISTOPHER AND NEVIS

3RD DEFENDANT

Appearances: Dr. Henry Browne and Mr. Hesketh Benjamin for Plaintiffs

Mr. Anthony Gonsalves for 2nd and 3rd Defendants

1st Defendant unrepresented and absent

IN CHAMBERS

{1995: May 5; June 1}

DECISION

On 2nd February, 1995 a Writ entitled as above was filed in the Registry of the Supreme Court.

It is notorious fact and the Court later note that the 1st Defendant has been missing at sea since mid-June, 1994 and consequently the two active defendants are Winston Patterson beside whose name there was Admiralty Marshall in brackets and the Honourable Attorney General of St. Kitts.

For ease of reference the Statement of Claim is reproduced

in its entirety:-

"STATEMENT OF CLAIM

1. The first-named Plaintiff is resident at 91 Marcella Street, Roxbury, MA 02119.
 2. The Second-named Plaintiff **is a** resident of High Street, Antigua.
 3. The First-named Defendant's whereabouts is unknown.
 4. The Second-named Defendant is sued in his style and capacity as Admiralty Marshall of the Federation.
 5. The Third-named Defendant is sued in his style and capacity as the Attorney General of the Federation
- of St. Christopher and Nevis pursuant to Section 3(1) of Chapter 22 of the Crown Proceedings Act of the laws of the Federation.
6. An action for damage done to the first named Defendant's pleasure boat the "Tropical Dreamer" by the Plaintiff's vessel MV PHYLLIARE commenced in this Court on behalf of the said first named Defendant against the vessel the MV Phylliare claiming the sum of \$38,626.40 as damages by way of
- Suit No. 211 of 1993 on the 14th day of October, 1993.
7. On the 14th day of October, 1994, a Warrant of Arrest an Detention of the said MV PHYLLIARE was executed in pursuance of the First-named Defendant's claim in the sum of \$38,626.40 and cost of \$5,000.00.
 8. No appearance was entered by or on behalf of the Defendants in the said Suit No: 211 of 1993.
 9. Pursuant to Order 19 Rule 23 of the Rules of the Supreme Court 1970, Judgment in Default was entered on the 11th day of January, 1994, in Suit No. 211 of 1993.
 10. On the 1st day of March, 1994, Judgment was entered on behalf of the First-named Defendant in Suit No: 211 of 1993, in the amount of \$43,626.40.
 11. On the 5th day of May 1994, the first named Defendant filed a Summons for Substituted Service in which said Summons the Plaintiff in Suit No: 211 of 1993, applied for an Order that the Summons for Substituted Service be exhibited in the OUTLET newspaper of Antigua giving Notice to the Plaintiffs in that an Application for Sale of the Vessel MV PHYLLIARE to satisfy the Judgment Debt.

At all material times since the arrest of the vessel MV PHYLLIARE the said vessel was in the custody and control of the 2nd named Defendant the Admiralty Marshall.

12. The said vessel drifted ran aground and was allowed to wreck along the south eastern coastline of St. Kitts on or about the 19th day of May 1993.

13. At the time of the wreckage the said vessel valued

\$300,000.00.

14. By reason of the aforesaid matters the Plaintiffs in this Cause have been seriously prejudiced and apprehend that they will continue to suffer loss and damage.

15. AND the Plaintiffs claim:

(1) That the Provost Marshall do indemnify the Plaintiffs against all claims by the Plaintiffs in Suit No: 211 of 1993

(2) That the Provost **Marshall** do pay the **Plaintiffs** the difference between the value of the **vessel** MV PHYLLIARE immediately prior to it being wrecked and the Judgment debt. Costs and other related expenses.

(3) Such further or other relief as may be just.

(4) Costs."

On 20th March, 1995 the Solicitor for the 2nd and 3rd Defendants filed a Summons for an Order that the Plaintiffs' Statement of Claim be struck out under Order 18 Rule 19 and/or under the inherent jurisdiction of the Court on the grounds that:-

(1) it discloses no reasonable cause of action against the 2nd and 3rd named Defendants;

(2) it is frivolous and vexatious;

(3) it is an abuse of the process of the Court; and that the Plaintiffs' action against the 2nd and 3rd named Defendants be stayed or dismissed, and that the 2nd and 3rd named Defendants be at liberty to enter judgment for their costs including the costs of this application to be taxed and paid by the Plaintiffs".

The Summons of 2nd March, 1995 was supported by the affidavit of the Solicitor and he asserted therein that -

(2) The claim by the Plaintiffs against the 2nd and 3rd named Defendants is frivolous and vexatious, and an abuse of the process of the Court in that it is obviously unsustain able on the following grounds:

(a) By virtue of The Danube 11 (1921) P.183 C.A., the Crown is a Public Authority under the Public Authorities Protection

Act of Saint Christopher and Nevis, Cap.64. Further I am advised by the Admiralty Marshall and verily believe that the 2nd named Defendant in his capacity of Admiralty Marshall was in the execution of a public duty, as per section 2(a) of the said Act. Therefore any action against either Defendant should have been commenced within 6 months of the cause of action arising, as required by the said Act. I am advised by Inspector Patrick Wallace, Commanding Officer of the St. Kitts Nevis Coast Guard and verily believe, that the

MV PHYLLAIRE went aground at Potato Bay on 10th May 1994. Therefore the cause of action arose on or around the 10th day of May 1994, while this action was commenced on February 2 1995. The action is therefore statute barred and the 2nd and 3rd named Defendants intend to plead this defence under the Public Authorities Protection Act.

(b) The Crown can be sued in tort only upon the basis of the Crown Proceedings Act of Saint Christopher and **Nevis** Cap.22. Section **4(5)** of that Act provides immunity from suit to the Crown, for any act or omission of any person while discharging or purporting to discharge any

responsibilities which he has in connection with the execution of judicial process. This suit **against** the Crown, **based** upon the Admiralty Marshall's

responsibilities connected with the execution of judicial process, is therefore not maintainable. Further the Admiralty Marshall as a servant of the Crown is not amenable to suit in his representative capacity.

(c) The claim for indemnification by the Provost Marshall against all claims by the Plaintiffs in Suit No. 211 of 1993 is without any basis whatsoever and further has no connection whatsoever to this action, and further would amount to a relitigation of that action".

The Summons to strike out came on for hearing on 24th March, 1995 at which point an adjournment was granted at the instance of Mr. Benjamin to permit Dr. Browne to conduct the case for the Plaintiffs. The 2nd and 3rd Defendants were awarded costs incidental to and thrown away by the adjournment. The Summons to strike out was heard on 5th May, 1995 (the adjourned date).

Mr. Gonsalves addressed the Court in terms of the Summons supported by the Affidavit and referred to the White Book (Supreme Court Practice 1995 Vol. 1 pp 332/333 No reasonable case of action or defence:

"(3) **Li.mitation - Jiihere it appeared from the statement of claim that the cause of action arose outside the statutory period of limitation, it was held that the statement of claim would not be struck out unless the case was one to which the Real Property Limitation Acts applied (see Price v Phillips [1894]**

w. n. 213]. **However, if the defendant does**

plead a defence under the Limitation Act,

he can seek the trial of a preliminary issue, or in a very clear case, he can seek to strike out the claim upon the ground that it is frivolous, vexatious and an abuse of the process of the Court (see per Donaldson L.J. in Romex Properties Ltd. v. John Laing Construction Ltd. [1983] Q.B. 398). Thus, w:fJere the statement or claim discloses that the cause or action arose outside the current period or limitation and it is clear that the defendant intends to rely on the Limitation Act and there is nothing before the Court to suggest that the plaintiff could escape from that defence, the claim will be struck out as being frivolous, vexatious and an abuse of the process of the Court (Riches v. Director of Public Prosecution [1973] 1 K.L.R. 1019;

[1973] 2 All E.R. 935, c.A., as explained in

Romes: Properties Ltd. v. John Laing construction Ltd., above).

The Danube 11 1921 Probate Div. 183 appears to be on 'all fours' with the case at Bar with the exception that there was in that case a finding that the **Master** of the Danube (the Defendant) was solely to blame for the collision which resulted in the total loss of the Norrona.

Replying upon the Danube 11 and the Statute of Limitations and the authorities in particular - Romex Properties Ltd. v. Jo

Laing Construction Ltd (1983) ••••• 398 as dealt with in the

White Book 1995 Vol 1 pages 332/3331 Mr. Gonsalves submitted that it is proper to apply to strike out if the Defendant intends

to rely on the Statute of Limitations and there does not appear to be any defence thereto.

Next Mr. Gonsalves submitted that the Crown could not previously be sued in Tort - that the Crown Proceedings Act Cap.

22 now gives guidance in that regard and therefore if a Defendant did something in regard to a Judicial Process "purporting to discharge" he is covered. In this case he observed the Plaintiff

is attempting to sue a person in the service of the Crown and to attach liability in that manner. He submitted that a representative of the Crown cannot be sued in a representative capacity and relied in part upon **Section 16(2) of the Crown Proceedings Act Cap. 22** which provides that:-

"(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".

Further he submitted that the claim for indemnification by or from the Provost Marshall against all claims of Plaintiff in Suit No. 211 of 1993 is without any basis whatsoever and has no connection with this action and would mean a relitigation of that action. The relief sought in the Summons to strike out was accordingly sought.

Dr. Browne in response submitted that the action **against** the Crown and against person designated as Admiralty A immunity of Judges of superior and inferior Courts in respect of acts done in the performance or purported performance of judicial functions.

Mr. Gonsalves replied briefly and submitted that the effect of the Statute of Limitations can't be held in abeyance by the Plaintiff saying he will continue to suffer further injury. He pointed out that there was nothing in the claim dealing with loss of profits for wrongful detention and observed that in any event this is not a case of wrongful detention so Plaintiff could not say until returned they are suffering loss etc. He noted that if there is an accident that wrecks a vehicle time runs from date of collision and here the boat is described as a wreck with no salvage value which is the same thing.

At the conclusion of the arguments I held that the action against the 2nd and 3rd Defendants is dismissed and promised to put my reasons into writing. I now fulfil that promise.

The action of the 2nd Defendant who is sued in his personal capacity with the designation Provost Marshall added in brackets beside his name acted throughout in discharge or purported discharge of his Official functions as Admiralty Marshall - see paragraph 11 of the Statement of Claim.

The 3rd named Defendant is sued as Attorney General (without

even a mention of his name and this is the proper way to do it as Representative of the Government).

Both these Defendants therefore are sued in respect of a public duty and I agree with Mr. Gonsalves that this therefore attracts the Public Authorities Protection Act 64 Section 2 (a)

"2. Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Ordinance, or of any public duty or authority or of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect:

(a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the **ceasing** thereof."

The 2nd and 3rd Defendants vide the Summons and elucidated in the Affidavits of even date is that the action is frivolous and vexatious and an abuse of the Marshall is not caught by Cap.

64 of the Public Authorities Protection Act as contended for by Counsel for the 2nd and 3rd Defendants. The Action he said is brought under the Crown Proceedings Act Cap. 22 and even if it fell within Cap. 66 the period of Limitations has not elapsed. He referred to paragraphs 10 - 14 of the Statement of Claim and observed that the balance of the sale price of the vessel after payment of the Judgment Debt would go to the Plaintiff and the

Plaintiff has not got money or return of the vessel - The damage he said is continuing as the Plaintiff is "out of money and out of vessel". The issue he said as to whether or not the action

has been brought outside the Statutory period is not clear cut and so the issue should go to trial. He expressed the view that Section 64 that is, the Public Authorities Protection Act does not apply but submitted in the alternative that if it did the Plaintiff was well within the limitation period.

Further Dr. Browne agreed that under Section 16 Cap. 22 the Crown Proceedings Act the Crown cannot be sued but again his submission in the alternative is that if one has an action against any arm of the Court or Officer of the Court then the Attorney General is sued on behalf of the State because the Judiciary is an arm of the State. He cited Sections 2, 3 and 4 of the Crown Proceedings Act Cap. 22 as supporting this submission and observed that the Provost Marshall should indemnify the Plaintiffs. The matter he said is highly arguable and the Plaintiff should not be driven from Court.

Dr. Browne cited *Siwos v. Moore and others (1974) 3 A.E.R.*

776 which is case touching upon the process of the Court for the reason that the cause of action - if it is well-founded - arose on 10th May, 1994 and that therefore when the Plaintiffs sought to commence this action by the issue of a Writ on 2nd February, 1995 the Statute of Limitations or the period set out in Section 2(a) Cap. 64 - the Public Authorities Protection Act had passed almost three (3) months prior thereto.

On this Preliminary issue therefore I agreed with Counsel

for the 2nd and 3rd Defendants and ordered as heretofore noted - dismissing the Plaintiff's action against the 2nd and 3rd

Defendants.

Section 2(b) of Cap. 64 provides that "*Ji hereever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client*".

I accordingly enter Judgment for the 2nd and 3rd Defendants

on the basis that the Plaintiffs' action is frivolous and vexatious and an abuse of the process of the Court - time having run against the Plaintiffs.

Costs to the 2nd and 3rd Defendants to be taxed or agreed.

Velma L. Hylton, Q.C.

Puisne Judge

1st June, 1995