

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

(CIVIL)



Suit No.559 of 1993

Between:

RONALD HINKSON

Plaintiff

VS

- (1) LA TOC HOLDINGS LIMITED
- (2) LOUIS GRANT
- (3) ONE HARRY

Defendants

Mr P.J. Husbands, QC in association with
Mr Hinkson for the Plaintiff

Mr Anthony McNamara for the Defendants

1994 November 1, 2 & 28

JUDGMENT

d' Auvergne, J.

By a writ of summons indorsed with a statement of claim and filed on September 13, 1993, the Plaintiff, an internationally famed guitarist alleged that while he was lawfully on the premises of the first Defendant's hotel called Sandals Saint Lucia, at approximately 1:00 a.m. on May 3, 1993, the third Defendant, a servant or agent of the first and second Defendants, acting on their behalf wrongfully detained and kept the Plaintiff on the

first Defendant's property by placing an obstruction at the exit of the first Defendant's property, thus preventing the Plaintiff from leaving the first Defendant's hotel resort and thereby wrongfully imprisoned the Plaintiff and deprived him of his liberty for a period of 45 minutes from 1:00 a.m. to 1:45 a.m. on the said date.

The Plaintiff further alleged that by reason of the wrongful imprisonment he was, apart from being deprived of his liberty as stated above for 45 minute, he was injured in his good name and reputation and was exposed to public humiliation and that he also suffered mental anguish.

The Plaintiff asked for the following relief:

- (a) general damages
- (b) costs
- (c) interest from date of judgment until payment.

The Defendants entered appearance on September 27, 1993.

On December 2, 1993 no defence having been entered the Plaintiff took out a default judgment in accordance with Order 13 Rule 2 of the Rules of the Supreme Court.

On May 10, 1994 the Plaintiff applied by summons for an assessment of damages arising out of the judgment in default of Defence by the Defendant.

This matter was originally set down for hearing on June 6, 1994 but was eventually heard on November 1 and 2, 1994.

At the trial the Plaintiff gave evidence on his own behalf and called one witness Jennifer Gaston. The third Defendant gave evidence and called Heron Emmanuel who at the material time was Night Manager of the first Defendant; the Second Defendant did not see it fit to attend the trial, nor was any excuse given on his behalf.

The Plaintiff told the Court that about 1:00 a.m. on the day in question he drove his car, Registration No.898 unto the compound of the first Defendant in order to drop two entertainers who were guests at that hotel. He said that when he got to the gate there was a barrier across the entrance so he pulled down the windows of his car and heard a woman say, *"He is bringing the people back."* On observing that the barrier remained in the same position he said aloud, *"I am returning two of your guests."* The barrier across the gate was raised by the third Defendant who said in patois, *"You all fellows are too ignorant"*, to which he replied, *What is wrong with you they have given you a job to raise the bar and you have gotten fresh."* He drove to the reception area, dropped his friends and drove back towards the gate; that on his arrival at the gate the third Defendant said to him, *"open your trunk I have to search that car"*. The Plaintiff said that he asked the reason why that was being done and was informed by the said third Defendant that it was

the policy of the first Defendant to search all vehicles leaving the compound even those belonging to the manager, the second Defendant.

The Plaintiff said that he refused to allow the third Defendant to search his car and he also told him (third defendant), *"I hope you understand the implication of what you are doing for you are holding me prisoner."*

He further told the Court that he persisted in his refusal of having his car searched by the third Defendant and the third Defendant told him quite plainly that if he could not search the car, then the Plaintiff would not be allowed to leave the compound and the third Defendant went to sit in the nearby booth.

The Plaintiff said that during that interval of 45 minutes there were other cars trying to get into the compound but were unable to do so (because his, Plaintiff's car was in the way). The Plaintiff said he called the Police who arrived about 10 minutes later, but that meanwhile the Night Manager arrived on the scene and ordered the third Defendant to allow the Plaintiff to drive out and park his vehicle. The Plaintiff said that he related what had happened to the said Night Manager at the latter's request; that the said Night Manager then told him that if he wanted to see the General Manager he would arrange for me to see him, and that he should write a report.

The Plaintiff further told the Court that some time later he went to the said hotel to attend a 'Herbie Hancock' show whereupon a gentleman came and introduced himself to him stating that he was "Mr Louis Grant, the Manager of Sandals." The Plaintiff said that the said Manager, the second Defendant in the suit told him that he had heard of the incident, that he had tried to contact him by phone but in vain and explained that during the period of renovation of the said hotel "there was a lot of pilfering" hence the reason why he had instructed his "security to search only construction vehicles". He then apologized verbally and concluded his conversation by telling the Plaintiff that anytime he wanted to have lunch he could call him.

The Plaintiff stressed that the second Plaintiff never sent him a written apology and he further stressed that the incident has caused him many stressful days, that it has caused him to suffer much humiliation against one Mr Mangal telling him that he was searched at Sandals for drugs and having to explain to his daughter that he was not searched at Sandals for drugs. He said that the incident caused him to look like a thief in the eyes of right thinking people in the society.

The Plaintiff's version of the incident was supported by Jennifer Gaston. The sum total of her evidence was that she was the one who caused the Night Manager to be called to the scene and that the Plaintiff was prevented from leaving the compound of the first

Defendant for about 45 minutes. She however stressed that the said situation existed before she arrived on the scene.

The third Defendant gave a different version of the incident. He said that he saw a white car, Registration No.989 approach the barrier which was across the entrance to the said Hotel; that he left his booth and went towards the car, that after "about five seconds" the driver "wind down the window to his vehicle" and he asked the driver "can I help you sir" no one replied he repeated the question and someone at the back of the car said "we are guests". He said that there was a female security present but denied that she said "the guests are returning". He said that after he heard that the occupants of the car were guests he raised the barrier and as the car drove in the driver who he now knows to be the Plaintiff said, "you will raise bars for the rest of your life", and to this he replied in patois, "There are people that are ignorant."

He said that about 10 minutes later the same car returned to the gate and stopped in front of the barrier and that he (the third Defendant) went up to the Plaintiff and said, "*Sir, may I give your car a rout check please,*" to which the Plaintiff replied, "*no body was going to search that car.*"

The third Defendant said that at this juncture he called the night Manager who came. He denied that this was done at the instigation

of Jennifer Gaston.

He said that he related to the night Manager what had happened whereupon the latter asked him whether he had notified the driver of the check before he entered, and he replied that he had not; that he was immediately ordered to raise the barrier and allow the Plaintiff to drive out. He mentioned the arrival of the Police who only remained on the scene for a few minutes.

Under cross examination the third Defendant denied that the whole incident lasted for more than a few minutes, he also adhered to his statement that the Plaintiff did not return to the barrier after entering the compound within 2 to 3 minutes but after 10 minutes; that he only made the remark about some people being ignorant after the Plaintiff told him that he would operate barriers all his life.

Heron Emmanuel the then night Manager unlike the third Defendant said that he knew the Plaintiff. He said that on the night in question as soon as he was called he went to the barrier at the entrance to the hotel and on arrival the third Defendant told him in the presence of the Plaintiff that he asked the latter for permission to search his car and he refused. The Plaintiff then gave him his version of what had happened.

He said that he asked the third Defendant to allow the Plaintiff to drive out and park his car. He also mentioned the arrival of the

Police. He said that he explained to the Plaintiff that the third Defendant was "carrying out instructions but maybe had taken it too far;" that he gave the Plaintiff his name and telephone number and that he could "get him in contact with the General Manager in the morning" to which the Plaintiff replied that *"he does not want to see any General Manager he will have his lawyer deal with those foreign guys who come here and take Saint Lucians for dogs"* and that the Plaintiff left the compound.

Under cross examination this witness insisted that the searching of a person's motor vehicle even if there were no reason to search was not damaging to that person's character.

Learned Counsel for the Defendant commenced his address by stating that the defence had admitted liability and judgment had been taken, therefore the summons before the Court was only for assessment of damages.

He however pointed out that despite the fact that the defence has admitted liability he would like to review the allegation of false imprisonment and the manner in which the courts have assessed the quantum of damages. He quoted Clerk and Linsell on Tort 15th Edition Page 665, Paragraphs 13-14 which states as follows:

"A false imprisonment is complete deprivation of liberty for any time, however short, without lawful cause. Imprisonment is no other thing but the restraint of a man's liberty,

whether it be in the open field, or in the stocks or in the cage, in the streets, or in a man's own house, as well as in the common goal."

He said that while there was a false imprisonment the incident was taken way out of proportion; that it was only a misunderstanding of a security guard of his powers and not an oppressive maltreatment of someone. He said that the Plaintiff was detained on the compound for a maximum of 45 minutes and that there was no physical assault.

He also quoted McGregor on Damages 15th Edition, Page 1046, Paragraph 1619. Under the rubric Heads of Damages which reads as follows:

"The details of how the damages are worked out in false imprisonment are few; generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to the liberty, i.e, the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation with any attendant loss of social status."

He contended that right thinking persons would not think that a search of the Plaintiff's vehicle at 2:00 a.m. would amount to such

a loss of dignity. He further contended that there was no loss of general business to the Plaintiff and the fact that he was not employed by the Defendant Company was for another reason and not as the result of the incident.

Learned Counsel for the Defendants concluded his arguments by quoting the well known case of BOLA v ST LOUIS 6 WIR [1963] PAGE 453 which he said was to be considered in any award of damages. He further beseeched the Court to note the amount of damages awarded in four recent Saint Lucian cases.

Case No.290 of 1991 GIRAUDY v ROYAL ST LUCIA HOTEL in which the plaintiff a Barrister-at-Law was physically assaulted and the amount of damages was \$5,000.00.

Case No.270 of 1988 NATHANIEL NEPTIAL v (1) LUCAS FREDERICK (2) THE ATTORNEY GENERAL in which the plaintiff was awarded \$1,500.00.

Case No.174 of 1989 NATHANIEL NEPTIAL v (1) MICHAEL SMITH (2) ATTORNEY GENERAL in which the same plaintiff was awarded \$1,000.00.

Case No.220 of 1987 AUSBERT d'AUVERGNE v (1) PC 279 DANIEEN JOSEPH (2) ATTORNEY GENERAL in which the plaintiff was awarded \$3,000.00.

Counsel argued that the damages should be minimal since the case was blown out of proportion and that the Plaintiff did not really suffer any loss of good name, reputation and humiliation.

Learned Senior Counsel for the Plaintiff reviewed the sequence of events on the night in question and pointed out that it was only at the suggestion of the Plaintiff's witness Jennifer Gaston that the night manager was called. He stressed that the third Defendant acted in spite.

He beseeched the Court to note the absence of the second Defendant the Manager of the first Defendant and of a written apology to the Plaintiff.

He urged the Court to accept that the Plaintiff suffered indignity and severe loss of prestige and that his reputation was tarnished. He also quoted Clerk and Lindsell on Tort, 15th Edition, Paragraphs 14 13 and said that despite ROOKS and BARNARD [1964] AC 1129 the judge is entitled to consider aggravating damages if there was no apology for the charge and of the defendant persistence in the charge originally made.

He pointed out that McGregor on Damages, 14th Edition, Paragraph 1361 states: "*a false imprisonment does not merely affect a man's liberty, it also affects his reputation.*"

He distinguished the High Court Civil Case No.220 of 1987 AUSBERT d'AUVERGNE vs PC 279 DANIEN JOSEPH and THE ATTORNEY-GENERAL in which the plaintiff was asked his name by PC Joseph, the first defendant, where upon the plaintiff tendered his identification

card. The Police Officer acting strictly with the letter of the law charged the plaintiff with a criminal offence to which he pleaded guilty. Learned Senior Counsel urged the Court to note the comments of the trial judge who said, "The incident could have been avoided if the plaintiff had complied with the Police Officer's request." Learned Senior Counsel argued most vehemently that this could not be said in this case and further argued that the Learned Judge in awarding damages in the sum of \$3,000.00 appeared to find the Plaintiff more to blame and that the Learned Judge awarded the Plaintiff 25% of what he would have awarded, had the defendant been wholly to blame. He contended that the appropriate figure should be twice the amount that would have been awarded had the circumstances been different in the case No.220/1987 mentioned above.

He quoted two cases concerning incidents at hotels in the island involving indigenous citizens.

Case No.387 of 1988 VERNON COOPER vs CLUB ST LUCIA SMUGGLERS VILLAGE LTD where the plaintiff, a well known Barrister was refused service at the hotel. The plaintiff sued the hotel and the Court found that his rights of entry and service to and by the hotel had been infringed.

The Case of 290 of 1991 quoted earlier involving Giraudy-McIntyre vs The Royal St Lucia Ltd (High Court 290/91) where the Plaintiff

was not only refused service at the hotel, but was physically abused. He beseeched the Court to send a clear message to the hotels operating in this State which disregarded the rights of citizens and further urged the Court to award substantial damages.

CONCLUSION

The Defendants have admitted liability for false imprisonment and therefore all I have to consider is the assessment of damages.

It is my view that the Plaintiff suffered indignity and was bothered about the incident for a few days but I do not believe that the Plaintiff suffered any loss of reputation either locally or internationally; actually I am of the view that the Defendants were the ones who suffered the tarnished reputation but this is not my concern since they did wrong and have to suffer the consequences of their action.

A case study of the cases dealing with damages for loss of reputation and injury to character shows that the damages awarded have been exceptionally low.

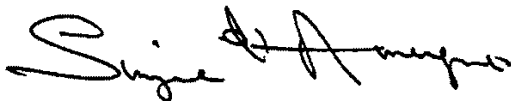
The case of Ausbert d'Auvergne vs PC 279 Damien Joseph and the Attorney General where the trial judge noted that the Plaintiff had committed a traffic offence and therefore he took his behaviour into consideration in his assessment of the damages. I have perused that judgment and I have not seen any pronouncement by the

Learned Judge that he awarded the Plaintiff 25% of what he would have awarded him had the defendant been wholly to blame.

The period of arrest was only forty-five minutes, which cannot be considered a long period by any measure, neither was there outrageous conduct by the third Defendant in the manner of arrest.

Though I agree with Counsel for the Plaintiff about the recent trend of disregard for the rights of citizens by the hotels operating in the State I cannot acquiesce to his request that a message should be sent by awarding substantial damages since I am to decide the case on its merits keeping in mind the amounts awarded in recent cases.

The Plaintiff is entitled to general damages and so I award him \$10,000 and his costs to be agreed or otherwise taxed.



SUZIE d'AUVERGNE
PUISNE JUDGE