SAINT LUCIA

IN THE HIGH COURT OF JUTSTICE

CIVIL SUIT 310 OF 2000

BETWEEN

KAREN HANDLEY

PLAINTIFF

VS

CLETUS JOSEPH
RUPERT ELLIS GAJADHAR

DEFENDANTS

Appearances
Mrs. Veronica Barnard for Plaintiff
Miss Gail Philip for the Defendants

2000 OCTOBER 18
NOVEMBER 1

JUDGMENT

[1] **d'Auvergne J**. On the 23rd day of March 2000 the Plaintiff filed a writ endorsed with a Statement of Claim seeking damages (Special and general), against the Defendants, (jointly and severally).

[2] On the 12th day of April 2000 an appearance was entered on behalf of the Second-named Defendant and on the 9th of May 2000 an appearance was entered on behalf of the first-named Defendant.

[3] On the 17th day of May 2000 the Plaintiff filed an amended Statement of Claim, amending paragraph one which reads as follows:

"On the 7th day of April 1997 at about 2:47 p.m. a collision occurred on the Vide Boutielle Highroad when Motor Truck Registration No. HB4314 owned by the **Second**-named Defendant and driven by the **First**-named Defendant came into contact with the Plaintiff. The said collision occurred as a result of the negligent driving of the First named Defendant."

[4] On the 9th of June 2000 another appearance was entered for both Defendants and a Defence was filed on their behalf on the 13th June 2000.

[5] I pause here to reproduce paragraphs 1 and 2 of the Defence which read as follows:

Paragraph (1)

"Save that the second Defendant admits ownership of motor truck registration No. HB4314 and the First Defendant admits that he was driving the said motor truck along the Vide Boutielle Highroad at the material time, paragraph (1) of the Amended Statement of Claim and the Particulars of Negligence alleged thereunder are denied."

Paragraph (2)

The First named Defendant denies that he was negligent as alleged or at all and state that the injuries allegedly sustained by the Plaintiff was caused solely or contributed to by the negligence of the Plaintiff in attempting to jump across a drain running along the side of the said road as per Particular of negligence hereunder.

[6] Four days later the Defendants filed a summons seeking the following:

(i) That the Statement of Claim herein be struck out as disclosing no reasonable cause of action against the Second Defendant.

(ii) The costs of this action be paid by the Plaintiff.

(iii) The costs of and occasioned by this application be borne by the Plaintiff.

(iv) Further or other relief.

[7] On the 26th June 2000 a reply was entered by the Plaintiff and on the 11th day of July 2000 a summons was filed on behalf of the Plaintiff seeking an amendment to the first paragraph to include "At all material times hereto the First-named Defendant was the servant and or agent of the Second-named Defendant" after "Particulars of Negligence."

[8] At the hearing in chambers on the 18th October 2000 I heard the summonses in the order in which they were filed.

Learned Counsel for the Defendants argued that the Statement of Claim filed on the 23rd March 2000 did not allege vicarious liability nor negligence against the Second named Defendant. She urged the Court to note that the last summons filed on the 11th July 2000 for an amendment was the third application for an amendment, that after the first amended statement of claim the second-named Defendant was pleaded to be the owner of the vehicle; that no negligence was alleged against him nor was there pleaded any reference to his being reckless or vicariously liable.

[9] Learned Counsel for the Plaintiff opposed the application by stating that the application was not out of time, that the Defendants had filed their defence and therefore it was too late to seek to have the statement of claim against the second Defendant struck off. She argued that since the pleadings stated that the second Defendant was the owner of the vehicle it therefore implied that he was vicariously liable.

[10] She quoted O**rder 20 Rule 5** of the **Rules of the Supreme Court 1970** and said that the Court had the power to grant the application of the 11th July 2000 to insert the aforementioned noted at paragraph (7) at page (3), at the end of the first paragraph after "Particulars of negligence."

[11] Learned Counsel for the Defendants replied that vicarious liability must be expressly pleaded. She argued that the summons filed on the 11th day of July 2000 was seeking to create a new cause of action and she quoted **Article 21 22 (2)** and **2129 of the Civil Code** and also the Case of **Norman Walcott vs Moses Serieux**. **Civil appeal No. 2 of 1975 (St Lucia)**

[12] **Conclusion**

The writ in this action was issued on the 23rd of March 2000 in which the Plaintiff's claim is for damages for personal injury and consequential loss arising as a result of an accident which occurred on 7th April 1997 at Vide Boutielle Highroad Castries.

[13] On the 6th day of April 2000 the period of three years following the date on which the cause of action rose, expired.

Article 2122 of the Civil Code States:

> "The following actions are prescribed by three years:
>
> 1. For seduction, or lying-in expenses;
> 2. For damages resulting from delicts or quasi-delicts, whenever other provisions do not apply.
> 3. For wages or salaries of employees not reputed domestics and who are engaged or hired for a year or longer period;

4. For sums due to schoolmasters and teachers, for tuition, and board and lodging furnished by them."

Article 2129 provides as follows:

"In all the cases mentioned in articles 2111, 2121, 2122, 2123 and 2124, the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired except in the case of promissory notes and bills of exchange, where prescription is precluded by a writing signed by the person liable upon them.

[14] There is no doubt that the action in the instant case falls under Article 2122.

I have considered the case of **Rodriquez v R J Parker (male) (1966) 2 ALLER 349, (1967) 1QB, 116** where the amendment was allowed to correct the initial of the name of the Defendant. In my judgment the amendment allowed in that case is very different from the amendment sought in the instant case and what was envisaged by the authority laid down in **Rodriquez's** case.

[15] In **Norman Walcott v Moses Serieux [Supra] Peterkin J A** as he then was, had this to say:

"In **Article 2129** quoted above, both the right and the remedy are extinguished, and therefore there is no question of a party being called

upon to choose whether he would plead the defence of limitation. As long as the evidence in a case discloses that the period of limitation has expired the judge has no discretion in the matter."

[16] The period of limitation has expired and in accordance with the principle laid down in **Norman Walcott's** case I am unable to accede to the Plaintiff's request to amend paragraph one so as to read:
"At all material times hereto the First named Defendant was the servant and or agent of the Second-named Defendant."

[17] I now turn to the first summons filed on the 19th June 2000, which alleges that the Statement of Claim discloses no reasonable cause of action against the Second Defendant. I have considered the submissions and also the fact that though the application was made promptly it was filed after the defence. In my judgment all that the amended Statement of Claim of 17th May 2000 discloses is that the Second named Defendant is the owner of motor truck registration No. HB4314 and this alone does not make him liable in law to any delict committed by another person. I agree with counsel for the Second-named Defendant that vicarious liability must be expressly stated. It cannot be implied.

[18] On the pleadings as it stands it must be accepted that the amended Statement of Claim does not disclose any reasonable cause of action against the second-named Defendant.

In Article 2129 quoted above both the right and the remedy are extinguished and therefore to allow the amendment is to allow the Plaintiff to institute proceedings out of time.

[19] It is significant to note that in the Rodriquez' case the Judge held that the Limitation Acts in England can properly be regarded as dealing with practice and procedure rather than conferring substantial rights whereas in **Article 2129** quoted above, both the right and the remedy are extinguished and the judge has no discretion.

20. Based on my findings noted above my order is as follows:

The summons filed on 11th July 2000 to further amend the Statement of Claim is dismissed.

The summons of 19th June 2000 is allowed in that the Second-named Defendant be struck out from the Statement of Claim.

Costs to the Second-named Defendant to be agreed or otherwise taxed.

Suzie d'Auvergne
High Court Judge