

BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT 36 OF 2002

BETWEEN:

ISHMAEL BRATHWAITE

Claimant/Respondent

And

1. MICHAEL SMITH

2. BRYON SMITH

Defendants/Applicants

**Appearances:**

Mr. T. Neale for the Claimant

Mr. J.S. Archibald Q.C.; Miss M. Matthew and Miss A. Smith for the Defendants

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2002: July 4 and 17.  
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**JUDGMENT**

[1] **MATTHEW J Ag.:** On February 28, 2002 the Claimant filed a claim form seeking damages from the Defendants for assault and battery committed upon him on February 7, 2002. The Defendants acknowledged service on April 11, 2002 and filed their defence on June 18, 2002.

- [2] On April 29, 2002 the Defendants filed a notice of application that the proceedings be stayed until the conclusion of the criminal matter; and that the Respondent pays the cost of the application. I find the latter request a strange one indeed.
- [3] The grounds of the application are:
- (1) there is a criminal case pending that flows from the same incident as this civil matter;
  - (2) that the matter went before the Magistrate's Court for the first time on April 19, 2002 and was adjourned to May 22, 2002;
  - (3) that the matter is not expected to be heard on that date;
  - (4) the Applicants have spoken to the police about the Respondent being charged;
  - (5) that after the criminal matter has ended, the civil matter, if the Respondent is so inclined, can be revisited.
- [4] The Defendants filed an affidavit each on April 26, 2002 in support of their application. The Respondent opposes the application.

### **SUBMISSIONS OF COUNSEL**

- [5] Learned Queen's Counsel for the Applicants informed the Court that the criminal matter had begun before the date of the hearing and the Respondent gave his evidence in full at a preliminary inquiry and that the proceedings had been adjourned to July 31, 2002.

- [6] Counsel submitted that the Court ought to exercise its discretion to stay the proceedings and prayed in aid of the overriding objective of the Civil Procedure Rules 2000; and in particular the need for proceedings to be dealt with expeditiously.
- [7] Counsel did not have any objection to what Mr. Neale's skeleton says because the matter is all in the discretion of the Court.
- [8] Counsel submitted that it was not the intention of the Rules to have the Defendants arguing two cases, one in criminal and one in civil action, at the same time.
- [9] Counsel urged that the criminal proceedings would, or ought to be, ended in October 2002 and asked for the stay to be extended till November 1.
- [10] Learned Counsel for the Respondent agreed that the stay is a discretionary measure, but the Court, as in most discretionary matters, must be provided with a particular basis for the exercise of the discretion.
- [11] Counsel referred to the purpose of a stay and cited in this regard: *Halsbury's Laws of England, Fourth Edition, Vol. 37, paras. 437 and 442*. Counsel also cited *Halsbury's Laws of England, Fourth Edition Vol. 45, para. 1316* and the case **THOMAS LAUNCHES LTD. V TRINITY HOUSE CORP.** 1961 1 AER 26.

[12] In his reply learned Queen's Counsel referred to *para. 446 of Vol 37 of Halsbury's Fourth Edition* and the case of *Thomas Launches Ltd.*

## **CONCLUSIONS**

[13] It is unnecessary to refer to the facts of **THOMAS LAUNCHES LTD. V TRINITY HOUSE CORP.** as it is quite a different case to the one under consideration. There was hardly any doubt that the summary proceedings in that case ought to be stayed for it dealt exactly with the issue that was before the High Court.

[14] It is trite law that in cases of assault and battery the injured party may pursue his civil action independent of the Crown pursuing criminal remedies. See *Halsbury's Laws of England, Fourth Edition Vol. 45 para. 1316.*

[15] I accept the authority of *paragraphs 437 and 442* cited above. I do not believe *paragraph 446* is particularly relevant to the issues here.

[16] Both learned Counsel have rightly agreed that this is a matter for the discretion of the Court. Here the preliminary inquiry is in progress and is adjourned to July 31, 2002 with the criminal proceedings well on the way to completion by October, 2002. I do not think that it is appropriate for the Defendants to argue their two cases in the interim. It must be prejudicial to them.

- [17] As observed the application is *"to restrain by a stay, only for three, four months, the matter which is under Your Lordship's control to do justice"*. This means up to November 4, maximum. With or without a stay it is unlikely that those civil proceedings will be heard before November 4, 2002 having regard to the Court's calendar.
- [18] There will be little prejudice to the Respondent in the case where the pleadings seem to be complete. Now while it is true that if the result of the criminal proceedings is that the Defendants are found not guilty there can be no bar to civil proceedings because of the different burdens of proof, Defendants who are found guilty at the Assizes would be fool hardy to defend the civil action in the matter.
- [19] The application for the stay is granted until November 4, 2002 but there shall be no order as to costs.

**A.N.J. MATTHEW**  
High Court Judge Ag.