GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 2 OF 2002

BETWEEN:

GRENADA BREWERIES LIMITED

Appellant

and

GODWIN GRIFFITH

Respondent

Before:

His Lordship, The Hon. Sir Dennis Byron	Chief Justice
His Lordship, The Hon. Mr. Albert Redhead	Justice of Appeal
His Lordship, the Hon. Mr. Ephraim Georges	Justice of Appeal [Ag.]

Appearances:

Mr. James Bristol for the Appellant
Dr. Francis Alexis for the Respondent

2002: July 1;
2003: January 28.

JUDGMENT

[1] **REDHEAD, J.A.**: The respondent, Godwin Griffith, was employed by the appellant company as a machine operator.

[2] On 21st December, 1992 at about 3.00 a.m. whilst the respondent was at work on the night shift masked persons, whose identities were unknown, broke into the factory brandishing what appeared to be a gun violently attacked and overpowered him. He was knocked unconscious. He was bound, gagged and tied up. Several injuries were inflicted on him.

[3] The respondent was left so gagged and tied up until 7.00 a.m. when he was discovered by the day shift machine operator who came to relieve him.

[4] At the time of the incident the respondent was employed by the appellant company for thirty years.

[5] On 31st January, 1995 the respondent was compulsorily retired by the appellant company on medical grounds.

[6] On 2nd December, 1997 the respondent filed a writ in the High Court against the appellant claiming damages for personal injuries which he allegedly suffered, caused by the negligence of the appellant.

[7] In his Statement of Claim the respondent alleged that the appellant well knew that requiring him to perform his duties as machine operator on the night/morning shift exposed him to special risks of personal injury wrought by persons intruding on its breweries, given previous incidents. Such previous incidents included unidentified unauthorised persons intruding into the breweries at night and disappearances of incorporal property from inside the enclosed storage premises of the brewery premises, all of which had been reported to the appellant. In his Particulars of Negligence the respondent alleged:

[i] Negligently failing to take reasonable care for the safety of the [respondent] an employee of the defendant [appellant] by failing to provide sufficient numbers of security personnel as required by the special risks of personal injury known to the defendant [appellant] to be facing the [respondent] on the night/morning shift.

[ii] Negligently failing to provide sufficient numbers of suitably efficient security personnel as required by the said special risks of personal injury

known to the appellant to be facing the respondent on the said night/morning shift.

[iii] Negligently failing to provide adequately trained security personnel as required by the said personal risks.

[8] The respondent pleaded in the alternative that the security personnel contracted by the appellant to provide security services while the respondent performed the said night/morning shift were negligent in discharging their duties to protect him and for such negligence the appellant is liable, they being the servants or agents of the appellant.

[9] The learned trial Judge in giving judgment for the respondent held that:

> "From a review of the evidence and agreed facts . . . that from 1989 to 1992 there was a spate of criminal activities – cutting of fencing wire, breaking and stealing at the Company's factory and that the Company had knowledge of those happenings, and although it changed its security services it still only maintained a single guard on duty at any given shift including the night shifts which was insufficient for what was taking place at nights."

He further held:

> ". . . that the injuries sustained by the Plaintiff (respondent) did not arise from any ordinary risk associated with the service which was being rendered by him at the workplace but from the activities of criminals of which the Company knew or ought to have foreseen."

[10] The learned trial Judge then concluded that the Company was in breach of its duty to the respondent by not doing more to safeguard him and that breach of duty caused the injuries which the respondent suffered.

[11] The learned trial Judge entered judgment for the respondent with damages to be assessed.

[12] The appellant is dissatisfied with this decision and has appealed to this Court.

[13] Three grounds of appeal were argued on behalf of the appellant:

[i] The learned trial Judge erred in taking into account evidence of a spate of criminal activities from 1989 through 1992 when the Plaintiff by his pleadings and in particular, the Further and Better Particulars filed in the suit on the 30th day of April, 1990 and by which the Plaintiff is bound, limited himself to reports of activities in the months of October and November, 1991.

[ii] The learned trial Judge erred in law in holding that the defendant was in breach of its duty of care to the Plaintiff.

[iii] The learned trial Judge erred in law in holding that the defendant's security services were negligent when there was no evidence to support this finding.

[14] Under paragraph 4 the respondent in his Statement of Claim pleaded:

> "The Defendant well knew that requiring the Plaintiff to perform his duties as machine operator on the night/morning shift was exposing him to special risks of personal injury wrought by persons intruding on its breweries, given previous incidents. Such previous incidents included unidentified unauthorised people intruding into the breweries at night and the disappearance of incorporal property from inside the enclosed storage premises of the brewery premises, all reported to the defendant."

[15] Solicitors for the appellant requested under paragraph 4 further and better particulars as follows:

[i] The date on which the incidents were reported.

[ii] By whom were the incidents reported.

[iii] To whom were the incidents reported.

[iv] Whether the reports were oral or in writing.

[v] The nature of the reports.

[16] The reply furnished by Solicitor for the respondent:

[i] The dates on which the incidents were reported were October/November 1991.

[ii] The incidents were reported by Mr. Patrick Felix.

[iii] The incidents were reported to Mr. Allan Chu Fook, Head Brewer at the time and Mr. Ishmel Pierre, Assistant Brewer at the time.

[17] Learned Counsel for the appellant argued forcefully before this court that the Respondent having pleaded that the incidents took place in October/November 1991, he was therefore not allowed to give evidence of incidents outside of that period. Mr. Bristol argued that such evidence is not admissible as one is bound by one's pleadings.

[18] Mr. Bristol contended that the learned trial judge was obviously influenced by that evidence and that this Court should come to a different conclusion.

[19] I disagree entirely with Mr. Bristol's contention. I hold that the evidence was relevant and that the learned trial judge had every right to consider that evidence.

[20] The respondent in his Statement of Claim pleaded (paragraph 4) "previous incidents". He was asked specifically the dates on which the incidents were reported. He was not asked dates when the incidents had occurred. It would be unfair, in my view, to restrict him to dates when the incidents were reported and exclude the admission of incidents occurring outside of the dates when incidents were reported. Ground 1 of the appeal is without merit and is therefore dismissed.

[21] Learned Counsel for the appellant argued strenuously under ground 2 that in 1992 it could not have been in the contemplation of the appellant that anyone would break into the factory and criminally assault the Respondent. Mr. Bristol contended that what was being reported was a series of thefts of the appellant's

products from its premises. As a result it was that which was in the contemplation of the appellant's mind.

[22] The appellant took measures for correcting that situation by the hiring security guards. Learned Counsel, Mr. Bristol, argued that in 1992 and prior to that there was never any report of any attack on anyone inside of the building. The risk therefore of anyone sustaining injury inside of the building from an attack did not exist before December 1992 and therefore the appellant could not guard against such risk according to Mr. Bristol's argument.

[23] Mr. Bristol referred to the following:

Williams v Grimshaw and Others 1967 Q.B. 610.

> "The plaintiff, a woman aged 56, employed since 1962 by a cricket and sports club as a part-time stewardess in the evenings in the clubhouse, was responsible for bar and other takings which she took home nightly and returned the next day, until at the end of the week, the accumulated takings were checked by the treasurer . . . The practice was for her husband, a member, to help her lock up and they would walk home together, in his absence another member would accompany her to a well lit main road less than 200 yards from the club entrance which was a lonely part of a side road that was, at her regular departure time about midnight, ill lit, the club being opposite a disused factory, a derelict air raid shelter and waste ground. Since 1962 the club had been broken into on given occasions of which three were in the autumn and early winter of 1963. In April 1964 as she was leaving with some £60 in takings in the company of her husband, an attempted robbery of them resulted in her suffering injuries.
>
> In her action for damages against representative members of the club on an implied term of her contract of employment and in negligence for failure to take reasonable care for her safety and to safeguard her against risk of injury by criminals,
>
> Held, dismissing the action, that the employers were under a duty not to expose the plaintiff to unnecessary risks including risk of injury by criminals; but that, considered from the point of view of a reasonable employer in April 1964 the precaution taken was reasonable in the circumstances, and the employers had not failed in their duty to use reasonable care for the safety of the plaintiff."

[24] In **Charlton v The Forrest Printing Ink Co. Ltd.** [1980] 1 RLR 331. The plaintiff, Charlton, suffered serious eye injuries when he was attacked by robbers whilst he was collecting money from the bank to pay the company's wages.

[25] Mr. Charlton was one of five senior members of staff who were responsible for collecting the wage money from the bank. The managing director emphasised the need for those concerned to take precautions, such as varying the route, using different methods of transport, and sending different people, but in the course of time, what happened was that the wages were usually collected by Mr. Charlton and one other, using the same method.

[26] Mr. Charlton claimed damages from his employers, alleging that they had failed in their duty to take reasonable care for his safety. The company was held to be liable in damages. Whilst accepting that Mr. Charlton had been given proper instruction in ways of reducing the risk, and holding that, as a general principle, it was not necessary for companies to employ security firms to handle the relatively small amount of money involved here, the court concluded that in the special circumstances of the case, the employers' failure to employ security specialists to collect the money from the bank amounted to a failure in the duty of care they owed to Mr. Charlton. This failure was the cause of his injuries and they were liable to him in damages.

[27] On appeal to the Court of Appeal it was held:

> "The High Court had erred in holding that the appellant company was liable in damages to the employee in respect of eye injuries he received when he was attacked by robbers when engaged in collecting the company's wages from the bank. The High Court's decision that the employers have failed in the duty of care they owed to the employee by not employing an outside firm of security specialists to collect the wages was inconsistent with their earlier findings that an employer's duty to take reasonable care for the safety of employees does not inevitably require the use of security firms and that the employee in the present case had been given proper instruction in ways of reducing the risk of injury to himself when collecting wages.

> In determining whether there has been negligence, the general principle is that a person must be regarded as negligent if he does not take steps to eliminate a risk which he knows or ought to know is a real risk and not a mere possibility which would never influence the mind of a reasonable man."

[28] Mr. Bristol placed a great deal of reliance on the above and argued that the appellant could not be negligent, because the risk of the respondent being attacked and injured in the factory by criminals was unknown to the appellant and therefore could not take steps to eliminate it.

[29] In **Houghton v Hackney Borough Council** [1961]Q.B. at 615. The plaintiff, Harry John Houghton, was employed by the defendant council as a rent collector. The practice of the council, which owned a large number of houses and flats within its area, was to collect the rents at various collecting points conveniently placed in relation to the houses are flats whose tenants were paying rents. Most of the collecting points were in rooms which had been specially built for the purpose, with barriers or grille behind which the rent collectors sat while collecting the rent.

[30] The rent collectors, such as the plaintiff, carried at any rate towards the end of their collection, a considerable quantity of cash which make them the subject of robbery and indeed robbery with violence.

[31] The plaintiff's union wrote to the borough treasurer in September 1959 complaining of the collection point at the Beecholme Estate which was not specially built for the purpose of collecting rent. The union asked that some grille should be provided.

[32] The borough treasurer took the view that he could not provide a grille.

[33] The borough treasurer did, however, take other precautions.

[34] He had an interview with the Superintendent of Police at which he suggested to him that the police should keep an eye upon the rent collection points; that if there were policemen on their beats they should endeavour to pass there from time to time on their beats and be around particularly towards the end of the rent collecting period, when the amount would be largest.

[35] The next precaution that the borough treasurer took in relation to the Beecholme Estate collecting point was to arrange that during the period in which the rent was being collected the porter, a uniformed man no longer young, should be about.

[36] The third precaution which the borough treasurer took was to arrange that a car with a chauffeur should call to collect the rent collectors to take them to the bank, and that the chauffeur should endeavour to be there rather early so he would be there at the time when the quantity of cash in the collector's possession would be the greatest.

[37] On the morning of 24th August 1968 at about 11.00 a.m. the porter was called away to do another job which took him about two or three minutes. While he was away a car with four men in it drew up outside of the door of the tenants' workshop. Three men ran out of the car and ran into the workshop. The plaintiff was struck over the head, his money was snatched, and the three men made their getaway.

[38] The plaintiff suffered injuries, not very serious, in the way of bruising and laceration to the head.

[39] It exacerbated the bronchitis and asthma to which he was already prone. He claimed damages from his employers, the Hackney Borough Council, on the ground that they failed to take proper precautions to preserve him from injury.

[40] At page 618 Diplock, J. said:

> "I do not doubt . . . that it is an employer's duty to take reasonable care to see that his employees are not exposed to unnecessary risks, even if it be a risk of injury by criminals. Therefore, what I am concerned with in the present case is not the precautions which the council might reasonably take to prevent their money being stolen by thieves but what precautions they might reasonably take to protect their employees from injury,"

[41] At page 619 the learned trial Judge opined:

> "In this particular case steps had been taken to ensure that the porter was around about during practically the whole of the time the rents were being collected and only away for a short period which could not be forecast in advance. That would seem to me to be a greater deterrent than any barrier in a quiet place without someone else about. Furthermore, it seems to me that the fact the porter would not be permanently in the office but might be outside – Indeed, he would be outside most of the time – would be a greater deterrent than having him permanently in the office, because a thief would not know in advance whether he would be outside available to give the alarm or inside available to be coshed. It also seems to me, so far as protection of the employee is concerned, that to have a man likely to be outside is a greater deterrent than to have a telephone or an alarm bell in the place, and if it is not a greater deterrent it is a greater protection to the man inside because if the thief knows that that man may be able to ring the alarm bell there is a greater temptation to commit violence upon him, which is the fact with which I am concerned.
>
> I therefore come to the conclusion that although it might have been an additional deterrent to have the rent collected in a room with a barrier or grille, I must take into account the practical difficulties in this particular case of taking that precautionary measure and in my view the precautions taken, although unfortunately they did not prevent the plaintiff sustaining injury, do comply in all the circumstances with that standard of reasonable care which is required from his employers. The defendants are accordingly entitled to judgment."

[42] The duty of the employer as stated by Lord Maugham in **Wilsons & Clyde Coal Co. v English** 1937 3 AER 628 at 644:

> "I think the whole course of authority consistently recognised a duty which rests with the employer, and which is personal to the employer to take reasonable care for the safety of his workmen whether the employer be an individual, a firm, a company, and whether or not the employer takes any share in the conduct of the operations."

[43] I am of the opinion that having regard to the authorities that the Court should undertake an analysis of what was done by the employer, if in fact anything was done, that having regard to all the circumstances the measure taken by the employer was reasonable and the employer had used reasonable care for the safety of his employee then he would not be liable.

[44] In the case at bar the evidence is to the effect that there were many breakings in the premises of the appellant. Goods were stolen from the appellant's premises. As a result the appellant hired security guards to protect its goods. No thought of or concern for the respondent was given. In effect this was the submission of learned Counsel for the appellant as he reasoned that the respondent was safely esconsed inside of the building. There was never any report of any criminal attack prior to that incident and therefore it was not in the contemplation of the appellant's mind then that the respondent would be attacked and injured by criminals.

[45] In my judgment it ought to have been in the contemplation of the appellant's mind that those same thieves who broke into its premises to steal may have come upon the respondent and in an attempt to make good their escape and avoid detection would do physical injury to him.

[46] It ought to have been in the contemplation of the appellant's mind also that the very thieves who break into the compound to steal may not confine themselves to activities outside but may also break into the building and come into contact with the respondent and do injury to him. To borrow from the words of Diplock, J. in **Houghton** (supra) p. 618. What I am concerned with in the present case is not the precautions which the appellant might reasonably take to prevent their goods being stolen by thieves, but what precautions they might reasonably take to protect its employee from injury.

[47] It is patently obvious that the employer took no reasonable precautions to protect the respondent from injury.

[48] The appellant argued that the learned trial Judge erred in law in holding that the defendant's security services were negligent. The evidence or agreed facts are that the respondent was attacked, bound with wire and left tied up from about 3.00 a.m. until he was discovered at about 7.00 a.m. by the morning shift worker. In that regard I agree with the learned trial Judge that although the company "changed its security services it still only maintained a single guard on duty at any given shift including the night shifts which was insufficient for what was taking place at nights". I appreciate why this was so having regard to the argument of learned Counsel for the appellant that it was not in the contemplation of the employer that the appellant would suffer bodily injury I disagree with this argument. I therefore conclude that the precaution taken by the respondent was not reasonable in the circumstances and that resulted in the injuries of the respondent.

[49] It was as a result of that evidence the learned trial judge concluded that the security guard was negligent.

[50] Mr. Bristol, learned Counsel for the appellant argued that the respondent had to establish by evidence that the security guard was negligent. I am of the view that once the respondent established a prima facie case of negligence then that burden shifts on the security guard to show that he was not negligent. In any event in this case it does not matter whether or not the security guard was negligent as the issue here is whether the appellant took due care in providing a reasonably safe system of work. That duty is not delegable.

[51] As Lord Thankerton opined in **Wilson & Clyde Coal Co. v English** (supra) at page 632:

> "My Lords, it seems to me that the fallacy in the appellant company's argument lies in the view that the master being under a duty to take due care in the provision of a reasonable safe system of working, is absolved from that duty by the appointment of a competent person to perform the duty. In my opinion, the master cannot "delegate" his duty in this sense,

> though he may appoint someone as his agent in the discharge of the duty for whom he will remain responsible under the maxim respondent superior."

[52] Having regard to the foregoing the appeal is dismissed. The judgment and order of the learned trial Judge are affirmed.

[53] Costs of $7500 to the respondent in this Court and the Court below agreed.

Albert Redhead
Justice of Appeal

I concur

Sir Dennis Byron
Chief Justice

I concur

Ephraim Georges
Justice of Appeal [Ag.]