

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NUMBER SLUHCV 2001/0473

BETWEEN:

(1) ELIZABETH BISCETTE
(2) RUDOLPH STEPHEN
(3) KENNY HENRY
(4) LAWRENCE NUPTIAL

Claimants

AND

(1) THE ATTORNEY GENERAL
(2) THE ST. LUCIA BANANA CORPORATION

Defendants

Appearances:

Mr. Nicholas Frederick for Claimants
Mr. Roystan Glasgow and Ms. Jan Drysdale for first Defendant
Mr. Wilkinson Larcher for second Defendant

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2005: January 25, 28
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JUDGMENT

Introduction

1. **SHANKS J:** The Claimants are banana farmers and tenants of Sir John Compton on the Palmiste and Charles estates in the Quarter of Micoud. They claim damages against the Defendants because their banana fields became infested with leaf spot as a consequence (they say) of the Defendants' failure to carry out any aerial spraying of bananas between April 2000 and May 2001 save for one day in October 2000.

2. The statement of claim alleges that the Government were under a statutory duty to carry out such spraying under SI No 71 of 1999 and that the second Defendant, St. Lucia Banana Corporation (SLBC), were under a contractual duty to do so (Mr Frederick also sought to rely on a contractual duty on the part of the Government: I am quite sure such a contention is utterly hopeless and give it no further consideration). Because it seemed to me on reading the papers highly questionable (1) whether on a proper construction of the SI any statutory duty lying on the Government gave rise to an individual right to bring an action for damages and (2) whether the evidence put before the court by the Claimants disclosed any contractual duty owed by SLBC to the Claimants to carry out aerial spraying in 2000, I directed that those matters should be dealt with as preliminary issues before the trial proceeded.

Factual background

3. The facts relevant to the preliminary issues are these. Until 1997 Sir John cultivated bananas himself on the two estates. He, like all other growers, sold them to the St Lucia Banana Growers Association, which held a statutory monopoly. The Association provided services to its members including services designed to control leaf spot disease for which they deducted a "cess" from the price of the bananas which was fixed annually by the delegates of the Association.
4. After the tenants took over from Sir John the Association was informed but the sales of their bananas to the Association (and then SLBC) continued under the relevant estate code numbers and the payments were made to bank accounts in the name of Sir John. The Association (and then SLBC) continued to provide the leaf spot services to the estates.
5. On 1 October 1998 the Association was dissolved by statute and its assets, liabilities and contracts were transferred to SLBC. SLBC did not enjoy the Association's monopoly status and growers were now free to sell to other companies (in particular the Tropical Quality Fruit Company Ltd). SLBC continued to provide the leaf spot control services for a period but because a number of growers sold to other companies which did not contribute to the leaf spot control programme there was confusion and SLBC found the programme onerous and the spraying became erratic.

6. As a direct response to this problem the Government assumed responsibility for leaf spot control and introduced SI No 71 of 1999 under the Plant Protection Act 1988 on 18 September 1999 (see Sir John's statement at paragraph 10). The SI provides for the imposition of a "banana aerial spraying levy" on all bananas exported from St Lucia at the rate of 3 cents per pound. Section 3(4) says that the "...levy received...forms part of the Consolidated Fund and shall be used to (a) defray the cost of the provision by the Government of aerial spraying of bananas against regulated pests and (b) establish technical competence for the purpose of pest surveillance". Section 3(3) provided for a review of the amount of the levy to be carried out each year by a review group including representatives of the Plant Protection Board and SLBC.
7. It is the Claimants' case that they sold bananas for export during the period February 1999 to February 2001 through SLBC and that relevant deductions were made (cess or levy) but that no spraying was done (except for the one day) from April 2000, thereby leading to the infestation of the Claimants' banana fields.

The Government

8. There is no doubt that the Government was by virtue of the SI under a statutory obligation to spend any money raised by the levy to provide for aerial spraying of bananas and for establishing technical competence in pest surveillance. The question is whether a failure to carry out aerial spraying on particular bananas at particular times can give rise to a claim for damages by the relevant farmer if damage results.
9. The test to be applied as to whether the breach of a duty imposed by a particular statute gives rise to a claim by an individual for damages is whether the intention of the statute, considered as a whole and in the circumstances in which it was made and to which it relates, was to impose a duty enforceable in this way. No universal rule can be formulated but relevant factors to consider will be whether the statute was designed to protect a limited class or the public as a whole, whether the damage suffered was of the kind the statute was designed to prevent, whether there is a special remedy prescribed by the statute, the nature of the obligation imposed and the general purview

and intendment of the statute (see Halsbury's Laws volume 45(1) Reissue paragraph 398 to which Mr Glasgow helpfully referred me in an earlier edition).

10. Applying this test I am clear that the intention of the SI in this case was not to impose a duty on the Government enforceable by an individual claim for damages. It is true that the SI could be said to be designed to protect a limited class, namely banana farmers, and that the damage allegedly suffered by them is of the type the SI was designed to prevent. It is also true that there is no special remedy provided by the SI.
11. However, the nature of the obligation imposed on the Government and the general purview of the SI make it clear that a claim for damages cannot have been intended: the obligation is to spend money in a certain way; there is no specific obligation to spray any particular bananas or to spray them at any particular intervals; the precise details of what the Government is to do with the money is left to the Government as a matter of policy and will in any event be dependant on how much money is raised (which is itself subject to review by the review group) and how much is spent on technical competence for pest surveillance as opposed to spraying. This is not the kind of duty which can ever be enforced by an individual even if an individual could show that it had been breached (and I am not at all sure that the Claimants' bare allegation that no spraying was done on their farms over a period of time could amount to a breach of the duty properly construed in any event).
11. I therefore conclude that it is not open to the Claimants to sue the Government for damages for breach of any duty imposed by the SI. The claim against the Government cannot succeed and it must be dismissed.

St. Lucia Banana Corporation

12. The claim against SLBC is based on an alleged breach of a contractual duty, which must be a contractual duty owed to the Claimants if it is to do them any good. Mr. Larcher took the point that there was no contractual nexus between the Claimants and SLBC, so that whatever the content of any duty it was not owed to the Claimants. Each of the Claimants state in their witness statements that they personally sold bananas to SLBC and the exchange of correspondence to which Mr. Larcher referred

me at bundle 3 pages 24 and 25 was not sufficiently clear to substantiate his point that any contract was between SLBC and Sir John rather than the Claimants. I therefore reject this point at least at this preliminary stage.

13. But there is another point. The duty pleaded by the Claimants at paragraph 4 of the statement of claim was a duty to spray the Claimant's banana fields periodically; this duty was said to arise as part of the "contractual marketing arrangements". When asked by me to point to any evidence of what precisely these arrangements were (and in particular some document setting them out) Mr. Frederick was unable to do so. Given that the precise content of the duty (e.g. how many times a year were they supposed to spray a particular farm?) must be crucial to deciding whether SLBC were in breach of contract I do not see how the Claimants can hope to succeed in their claim without this evidence. Further, when asked for a copy of the arrangements in the course of pleadings, the answer given (bundle 1 page 36) was that the arrangements were statutory and arose under the St Lucia Banana Growers Association Act 1967. That was an unsatisfactory answer in that, apart from anything else, the 1967 Act was repealed on 1 October 1998 at the same time as the Association was dissolved.
14. There is another reason why the Claimants cannot succeed in my view in showing that SLBC were under a contractual duty to spray the Claimants' bananas in 2000. It was part of the evidence presented on behalf of the Claimants that the Government assumed responsibility for leaf spot control in 1999 and it was accepted that the levy to be paid to the Government replaced the cess which had been paid to SLBC up to then. It is implicit in this that after 1999 SLBC was no longer responsible for the leaf spot control and was no longer being paid (through the cess) by its customers to carry out that responsibility. I should note that the fact that the Government may have contracted with SLBC for it to carry out the aerial spraying on the Government's behalf cannot make SLBC contractually liable to the farmers.
15. I am therefore satisfied that the evidence put before the court by the Claimants does not disclose any contractual duty owed by SLBC to the Claimants to spray their bananas in 2000; nor is there evidence of what precisely such a duty would have entailed. The claim against SLBC is also hopeless and must be dismissed.

Result

15. In the circumstances I find for the Defendants on both preliminary issues and dismiss the claims. I emphasise again that I have made no finding one way or the other as to what spraying ought to have taken place, whether and to what extent it did take place, whether any failure to spray was legally causative of any disease and what loss was suffered by the Claimants, all of which are contentious issues in the litigation. I will hear the parties on costs.

MURRAY SHANKS
High Court Judge (Acting)