SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 2005/0593

BETWEEN:

LIFE RAFTS AND INFLATABLES CENTRE (ST. LUCIA) LTD.,

Claimant

AND

(1) THE HONOURABLE ATTORNEY GENERAL
(2) COMPTROLLER OF CUSTOMS
(3) THE MINISTRY OF COMMERCE, INDUSTRY & CONSUMER AFFAIRS

Defendants

Appearances:

Mr. T. Hinkson for Claimant
Ms. B. Portland for Defendants

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2005: September, 23
2006: January, 30

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DECISION

MASON J:

Before the Court are two (2) applications.

[1] In the first application, the Defendants are seeking to have struck out the claim filed by the Claimant on 17th August, 2005 for "damages caused by a breach of the express or

implied terms of a Cabinet Conclusion No. 1246 granted on 16th September, 1999 in favour of the Claimant".

[2] The second application is by the Claimant for an interim injunction to prohibit the second named Defendant from keeping in its possession certain items seized from the Claimant by the second named Defendant.

[3] The facts giving rise to these actions are as follows

[4] In May 1999 the Claimant who is in the business of repairing and servicing all types of inflatable and life rafts, applied for duty free concessions on certain materials and items to be used in the business.

[5] The Claimant also applied for a concession on a 35 foot yacht.

[6] On 16th September 1999, by way of Cabinet conclusion No. 1246, Cabinet considered and approved a memorandum submitted on behalf of the Claimant granted to the Claimant "the waiver of import duty and consumption tax or equivalent to be used in the servicing and repair of life rafts and other inflatable and the provision of training in practical survival in a life raft at sea, subject to a verification by the third named Defendant.

[7] Cabinet did not approve the request for waiver of duties on the boat.

[8] In the course of business and believing the Cabinet Conclusion to have been breached, the second named Defendant seized certain goods belonging to the Claimant.

[9] On 17th August, 2005 the Claimant filed the abovementioned claim against the third Defendant claiming breach of the Cabinet Conclusion.

[10] On 24th August 2005, the Claimant filed a Notice of Application for an interim injunction to prohibit the second named Defendant from keeping the seized items and equipment.

Application to Strike out the Claim

[11] The basis for the Defendants' application is two fold:

(1) that the Notice of Proceedings filed and served by the Claimant is in violation of Article 28 of the Code of Civil Procedure; and
(2) that the Court has no jurisdiction to hear the matter

[12] It is argued by Counsel for the Defendants that the Claimant filed and served a document headed "Notice of Proceedings" against the first and second named Defendants without specifying or disclosing the grounds of the action against them and this requirement being mandatory caused the notice to be defective.

[13] Added to this, the pleadings of the Claimant failed to address the question of effective service, if any, of any proper Notice.

[14] Counsel also referred to a letter of 17th June, 2005 sent by the Claimant to the second named Defendant which sets out fully and extensively the Claimant's claim and which the Claimant would wish to be accepted as a Notice.

[15] Counsel argues that if this letter is to be deemed Notice of Proceedings, then there is no proof of service on the second named Defendant as required by Article 28 Civil Code Procedure, the letter having been accepted by a member of staff of the second Defendant as indicated in the Affidavit of Service. That letter would be also defective as a Notice there being no evidence of personal service.

[16] Counsel continues that if this letter on the other hand is to be deemed a notice of claim pursuant to the Customs (Control and Management) Act 1990 that it would have been served in accordance with the procedure and guidelines stipulated by that Act, viz, written one month of the date of service of the notice of seizure to the Comptroller (second Defendant) at any Customs Office.

[17] It is Counsel's opinion that if the foregoing is accepted, then the Claimant cannot invoke the jurisdiction of the court since the procedure for challenging the seizure of goods is set out in the fourth schedule of the Customs Act.

[18] Counsel's view is that the notice of proceedings under Article 28 Civil Code Procedure is in relation to the institution of claims and notice of claims under the Customs Act is in relation to goods which have been seized.

[19] Counsel contends that Article 28 Civil Code Procedure and the fourth schedule of the Customs Act are disparate pieces of legislation not dependent or relying on each other.

[20] In response Counsel for the Claimant is of the view that Article 28 Civil Code Procedures must be modified by the statutory provision in Section 3 of the fourth schedule to the Customs Act

[21] It is his argument that the letter of 17th June, 2005 is thus in full compliance with both Section 3 of the fourth schedule of the Customs Act and Article 28 Civil Code Procedure in that it discloses the nature of the cause of action, has stated the address of the Plaintiff and it has been served at least one month before the filing of the action on the second named Defendant by delivering it to the office.

[22] Counsel is contending that the letter is a notice of claim under the Customs Act and does not need to be served personally.

[23] With regard to the question of lack of jurisdiction of the court, Counsel states that all Section 6 of the fourth schedule to the Act does is invoke a duty on the second Defendant to institute proceedings in either the Magistrate or High Court, that this duty arises on receipt of the notice of Claim.

[24] The second Defendant having failed to do his duty, the Claimant is left with no alternative but to invoke the jurisdiction of the count to hear the matter, there being no tribunal set up by the Act to hear the matter.

[25] Article 28 of the Civil Code Procedures states:

> "No public officers, or other person fulfilling any public duty or junction, can be sued for damages by reason of any act done by him in the exercise of his functions nor can any judgment be rendered against him, unless notice of such suit has been given to him at least one month before the issuing of the claim form."
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> "Such notice must be in writing must specify the grounds of the action, must be served on him personally or at his domicile and must state the name and residence of the Claimant".

[26] The Notice of Proceedings was addressed to the first and second Defendants - no reason being given for the exclusion of the third Defendant. It merely indicated that the Claimant intends to commence legal proceedings against the abovementioned Defendants".

[27] Taking into account the requirements of Article 28 Civil Code Procedure, I must accept Counsel for the Defendants' submission that the Notice is defective, because while it is in writing and has been given to the first and second Defendant at least one month before the issuing of the claim form, there is no evidence of either personal service on the Defendant or at their residence.

[28] Personal service means exactly what it says. The document must be given directly to the individual and not left with any other person. It can however be left at the Defendant's residence.

[29] The Article also requires that the Notice of Proceeding must state the residence of the Claimant. Again there is no evidence of this.

[30] I am therefore left with the conclusion that the Notice of Proceedings does not comply with the requirements of Article 28 Civil Code Procedure and being noncompliant is defective and cannot stand.

[31] I am persuaded by Counsel for the Defendants to quote the words of Edwards J in the case of Peter Clarke V The Attorney General et al SLUHCV 1999/047:" It is evident therefore that the consequence of giving a defective notice or no Notice is fatal to (the) action against all Defendants".

[32] If however I were minded to accept the contention of Counsel for the Claimant regarding the modification of Article 28 Civil Code Procedure by Section 3 of the fourth schedule to the Act, the Notice would no longer be defective.

[33] Section 130 of the Customs (Control and Management) Act of 1990 which deals with the detention, seizure and condemnation of goods and by paragraph 4 provides:

"Schedule 4 has effect in relation to appeals against the seizure of anything seized as liable to forfeiture under any customs enactment, and for proceedings for the condemnation as forfeited of that thing".

[34] Section 3 of the fourth schedule provides:

Where any person, who was at the time of the seizure of anything the owner or one of the owners of it, claims that it was not liable to forfeiture, he or she shall within one month of the date of service of the notice of the seizure, or where no such notice was served, within one month of the date of seizure, give notice of his or her claim in writing to the Comptroller or at any Customs Office.

Section 4 states that any notice under paragraph 3 shall specify the name and address of the Claimant…….

[35] The letter of 17th June, 2005 meets all these requirements and would then be considered a valid notice of claim

[36] What would then be the next step if the letter is accepted as valid?

[37] We would have to be guided by the requirements of Section 6 of the fourth schedule. That section provides:

"Where notice of Claim in respect of anything seized is duly given in accordance with paragraphs 3 and 4, the Comptroller shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was

at the time of its seizure liable by forfeiture, that Court shall condemn that thing as forfeited".

[38] It is clear from a reading of this section that it is incumbent upon the second Defendant, once properly served with a valid notice of claim, to institute court proceedings to determine the question of consideration.

[39] The Act however does not go on to make provision for failure to act.

[40] It is the Claimant's contention that since there is no tribunal to which an appeal can be addressed in such circumstances, the only alternative is to seek redress in the courts.

[41] With this I do agree.

[42] However it is my opinion that the failure to act in relation to the exercise of a public function which it must be admitted, the second Defendant exercises, is a situation which lends itself to an action for judicial review and not an ordinary claim.

[43] But having said all of that I do not accept the contention that Article 28 Civil Code Procedure is to be modified by Section 3 of the Customs Act. It is nowhere stated and no authority to support that contention has been produced.

[44] If therefore the notice of claim is taken on its own under the fourth schedule, it has been proven that the court has no jurisdiction to act.

[45] The Customs Act provides the avenue which the Claimant must follow.

[46] The Court accepts the submission for Counsel for the Defendants that since the Claimant has no cause of action, the Court has no jurisdiction to hear the application for an injunction.

[47] And since it is a moot point, I will not address the application to strike out the injunction application unless so directed.

[48] I reserve the determination of the question of costs for submission by Counsel.

SANDRA MASON

High Court Judge