

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. 941/2005

BRYAN FELIX

Claimant

AND

ATTORNEY GENERAL
P. C. 237 SEVERUS MATHURIN

Defendant

Appearances:

Mrs. Faisal Attorney at Law for Claimant
Mrs. Taylor Alexander Attorney at law for Defendant

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2006: MARCH 8
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DECISION

MASON J

[1] This is an application by the Claimant for an amendment to his Statement of Claim, a move being strenuously opposed by the Defendants.

[2] The paragraph proposed to be amended is paragraph 4 of the Statement of Claim.

[3] It presently reads as follows:

The Defendant was at all material times acting in the course of his duty as a Police Officer with the Government of St. Lucia and the firearm with which the Claimant was shot was the property of the said Government.

[4] The proposed amendment is :

- 1) to add the word "second" before Defendant
- 2) to add the words: "The Attorney General is a Defendant in this action by virtue of section 13(2) of the Civil Proceedings Act No. 27 of 1956".

[5] Counsel for the Defendants is arguing :

- 1) that the Claimant has purported to sue the second Defendant in his personal capacity and then seeks by the proposed amendment to add the first Defendant;
- 2) that for the Claimant to plead that the second Defendant was acting in the course of his duty is not enough to determine the relationship
- 3) that the Claimant needs to specifically plead that the second Defendant is the servant or agent of the first Defendant.
- 4) That in any event the proposed amendment does not even establish the relationship,
- 5) That by the proposed amendment the Claimant is seeking to bring an action against the first Defendant where none existed before, and

6) That in so doing the action would be prescribed since under the Civil Code any action against a public officer is prescribed by 6 months

[6] Counsel for the Claimant is diametrically opposed to these views.

[7] Counsel is of the opinion:

- 1) that since all actions against public officers and brought by the Attorney General first Defendant, that having pleaded that the second Defendant was acting in the course of his duty is enough to establish the relationship and therefore the Claimant does not have to say that the second Defendant is acting as a servant or agent of the first Defendant.
- 2) That the proposed amendment would be enough to establish the relationship and it translates to the second Defendant acting on the behalf of the first Defendant;
- 3) that the proposed amendment is minor and the Claimant should not be deprived of his "day in court" because of the absence of the statement that the second Defendant is servant or agent of the first Defendant;
- 4) that regarding the argument about prescription, the court ought to invoke Part 26.1(2)(w) of the CPR 2000 and thus seek to balance the prejudices between the parties in the furtherance of the overriding objective of the Rules.

[8] The two issues raised therefore are:

- 1) whether the absence of the specific reference to the question of agency precludes the court from permitting the amendment, and

2) whether the action is prescribed

- [9] The principle regarding amendment is that the court has a general discretion to permit amendment where this is just and proportionate and that however negligent or careless may have been the omission, and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side.
- [10] It is understood that there is no injustice if the other side can be compensated in costs.
- [11] However in spite of that principle, we are confronted in this present case by legislative provisions of the Civil Code and the Crown Proceedings Act.
- [12] Section 10 of the Crown Proceeding Act stipulates that all civil proceedings by or against the crown in the High Court shall be instituted and proceeded with in accordance with the Code of Civil Procedure.
- [13] Section 13(2) provides that civil proceedings against the crown shall be instituted against the Attorney General.
- [14] The lengthy section 4 sets out the instances where the crown will be or not be held liable in delict or quasi delict.
- [15] The question following this to be asked is whether it is sufficient just to name the Attorney General as a Defendant.

[16] In any action against the crown, the particulars of the claim must include a statement of the circumstances in which the Crown's liability is said to have arisen.

[17] Where there is a relationship between the Crown and its servants or agents, it must be specifically stated.

[18] Let us look again at the relevant paragraph of the Claimant's statement of claim.

[19] It is my considered opinion that the relationship is advanced: the second Defendant is acting in the course of his duty as a Police Officer with the Government of St. Lucia.

[20] To not specifically use the words acting as servant or agent cannot be fatal to the claim because the first Defendant represents the Government of St. Lucia and the Claimant in accordance with s.13(2) of the Civil Proceedings Act has instituted his action against the Government of Saint Lucia through its Attorney General.

[21] The relationship between the second Defendant and the first Defendant has been forecast by use of the words "acting in the course of his duty as a Police Officer with the Government of Saint Lucia."

[22] With regard to the issue of prescription:

Article 2124 of the Civil Code states that actions against public officers in respect of acts done by themin respect of their public duties are prescribed by six (6) months.

- [23] The injury complained of is alleged to have occurred on 3rd July, 2005.
- [24] The action was filed on 15th December 2005 that is within five (5) months.
- [25] Where a proposed amendment amounts to a new cause of action, the application should be refused. But where the amendment is merely a clarification of the existing cause of action, it should be allowed.
- [26] The proposed amendment according to Counsel for the Defendant should be seen as a new cause of action and it having been filed in February 2006 would be prescribed.
- [27] While I agree with the contention, I do not accept that the proposed amendment amounts to a new cause of action. This is based on the foregoing opinion in relation to whether the words servant or agent has to be specifically pleaded.
- [28] While it does not affect my decision let me state that I agree with Counsel for the Defendant regarding prescription under the Code versus limitation under the CPR 2000.
- [29] It should be clear that the Code being legislation precedes in importance and application the CPR which are as they state rules of court and are secondary.
- [30] Reference therefore to limitation under Part 20.2 of the CPR has no relevance to the jurisdiction of St. Lucia.

[31] In addition the overriding objective being discretionary can only be used to help cure procedural defects in a case but not to preempt or override any legislative provision.

[32] That having seen said, I will allow the application by the Claimant for amendment to the Statement of Claim.

SANDRA MASON Q.C.

High Court Judge