IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2006/0204

BETWEEN:

LEON CHERRY

Claimant

AND

CHARLES LERICHE

Defendant

Appearances:

Mr. Kenneth Monplaisir Q. C. for the Claimant
Mr. Kenneth Foster Q. C. for the Defendant

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2007: June 13
September 19, 27
November 13

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JUDGMENT

Mason J

[1] This is a simple matter stemming from rather unfortunate but all too prevalent circumstances. It is like so many which are based on factual evidence more than a question of law: the Claimant paints one picture and the Defendants seeks to paint over it. It is then left to the court to decide which account is the more credible.

[2] The Defendant is here being sued by the Claimant for damages consequent upon an assault. It is uncontroverted that on 5th October 2005, the Defendant threw a chemical liquid into the eyes of the Claimant.

[3] In his defence the Defendant states that on the mentioned date the Claimant wrongly trespassed upon his premises, that the Claimant armed himself with a cutlass and a coconut, walked up to the Defendant who was taking photographs of the Claimant and when the Claimant reached about five (5) feet away from him, he (the Defendant) in self defence threw a glass of tile cleaning liquid at the Claimant which resulted in the Claimant and his chauffeur, who also had a cutlass, quickly retreating and vacating the premises.

[4] The Defendant counterclaimed for special damages. He alleges that on the day previous to the incident, the Claimant entered upon his premises and cut and destroyed his trees and flowers and dumped quarry waste on his lawn as a result of which he incurred loss. He claims for the loss of the trees and flowers, for the removal of the quarry waste, for replanting of the lawn and for his legal costs.

[5] It should be noted that there is presently an ongoing legal battle between the Claimant and his brother, the Defendant's father, over the ownership of property which the Defendant and his father are presently occupying.

[6] The details of that suit are not particularly relevant to this action. Suffice it to say that there is a judgment of the Court of Appeal affirming the decision of the High Court. This

judgment which ordered that the property be held by the one brother in trust for the both has now been appealed to the Privy Council. It should also be noted that there is in that case no injunction restraining the Claimant from going onto the property and consequently the allegation of trespass will not be entertained by this court.

[7] By the time the matter came to trial, the Claimant had died, but of totally unrelated causes. An order was granted for his wife as executrix to be substituted for him and the proceedings to continue.

[8] The Claimant's witness told of being employed as a chauffeur to the Claimant and that on the day in question he took the Claimant to town to purchase coconuts prior to going to the property. On arrival at the property he parked the car on the street and he took a coconut from the trunk of the car and gave it to the Claimant together with a cutlass. The Claimant went and sat on a wall on the property and began to cut the coconut. The witness next relates that he heard the Claimant speaking and when he looked he saw the Defendant coming towards the Claimant with a camera and he appeared to be taking photographs of the Claimant who asked of the Defendant why he was taking his photograph. The witness states that the Defendant also attempted to photograph him but he turned away.

[9] He next saw the Defendant go into the house and return with a green glass, walk up to the Claimant and when he was about five (5) feet away, he threw the contents of the glass into the Claimant's face. The Claimant cried out to him that the Defendant had thrown acid in his eyes and asked for some water. The witness gave the Claimant some water and he

washed his face. The witness states that he heard the Defendant say in Creole: "I will blind your ass" before he left and went and stood near the house.

[10] The Claimant and witness then left and went to the Police Station where they reported the incident after which the Claimant attended a doctor at the polyclinic and he was referred to an eye specialist.

[11] The witness' account of the incident remained unchanged under cross examination.

[12] The ophthalmologist gave evidence of the injury to the Claimant's eyes: the Claimant complained of pain in his eyes, of diminished vision, of swelling of the eyelids and redness in the eyes. He attended to the Claimant on a couple of occasions after the incident. Two (2) weeks later the Claimant still had the redness in his eyes and the blurred vision but the pain had reduced in intensity. When he saw the Claimant some eight (8) months later in May 2006, his visual acuity had somewhat improved, there was no pain but he still complained of blurred vision and haziness.

[13] Under cross examination the doctor admitted that he had been unable to do a break down of the liquid in the Claimant's eyes but he had been referred for acid having been thrown in his eyes.

[14] The Defendant for his part related that when he arrived at the property he took photographs of the destroyed trees and the quarry waste on the lawn. He then got some chemical cleaner to clean the tiles in the verandah. A few minutes later he saw his uncle

(the Claimant) and his chauffeur drive up, saw his uncle sit on the wall with a coconut and cutlass in his hand. The Defendant continued that at the time he was at the front of the house so he took his camera and he had the liquid in his hand. At that time he was fifteen (15) feet away. He walked to the Claimant to take the photographs. He said that he had the camera and the glass because he got concerned. He said that the Claimant left where he was and approached him with the cutlass and that the Chauffeur did the same. The chauffeur was some eighteen (18) to twenty (20) feet away.

[15] The Defendant stated that he felt that the Claimant was coming to strike him with the cutlass: he had advanced to five (5) feet from him and had raised his hand with the cutlass and made an attempt to strike him. He then "sent the liquid in the Claimant's face to unsettle him".

[16] Under cross examination the Defendant admitted that he had not himself seen his uncle the Claimant cut down the trees or dump the waste but it was his belief that it was the Claimant who had done these things. He also admitted that he knew that there was a land dispute between his uncle and father, that he did not want his uncle on the land and that he felt that his uncle had no right to be there but denied that he was annoyed to see him there. He stated that the reason for taking the photographs was to show his lawyer what happened. He denied that he had to go into his home to get the chemical. He asserted that he was in the patio cleaning tiles and he was taking photographs. According to the Defendant he was four (4) feet away and the Claimant some eighteen (18) to twenty (2)) feet and the Claimant came up to him. When his witness statement was put to him: "I was about 15 feet away. I walked to him to take the photos" he maintained that he was four (4)

feet away and that it was the Claimant who came up to him and that the Claimant was furious.

[17] The Defendant still under cross examination denied that he had acid and insisted that it was tile cleaner. His statement to the police was put to him:

> *"Whilst I was at the property at Mongiraud that Wednesday morning I was cleaning the tile floor with acid…..As he walked towards me I stood still with my camera and a plastic glass with acid inside it. Then I threw the acid from the glass to Cherry's face to prevent him from chopping me with his cutlass. After I threw the acid to his face……When Cherry was coming towards me with the cutlass I was not afraid because I knew that I had something to defend myself. That something was my glass of acid".*

[18] He denied that he had told the police that he had thrown acid in the Claimant's face but conceded that it was his statement, that it had been read over to him and that he had signed it. He denied that he had gone to the property that day to do harm to the Claimant but reiterated that the Claimant had no right to be there because he felt it was his father's land. He admitted that he knew that when acid is thrown in a person's eyes that it would hurt him but he had done it because he had wanted to "unsettle" the Claimant.

[19] Having had the benefit of both seeing and hearing the witnesses and the opportunity of reviewing the evidence, I found the account of the incident as related by the Claimant's witness decidedly more credible than the Defendant's.

[20] I was persuaded by the fact that the stories of the two (2) were not particularly dissimilar except for one fact. Both the Claimant's witness and the Defendant stated:

1) *that the Claimant was sitting on a wall on the property with a coconut in one hand and a cutlass in the other some fifteen (15) to twenty (20) feet from the Defendant;*

2) *that the Defendant walked towards the Claimant taking photographs of the Claimant;*

3) *that when the Defendant came to within five (5) feet of the Claimant he threw the contents of a glass in the Claimant's face; and*

4) *that the Claimant experienced injury to his eyes*

[21] Left to be determined are:

a) *whether the Defendant had the glass in his hand at all times or whether on seeing the Claimant he had to retreat into the house to collect it, as recounted by the Claimant's witness; and*

b) *whether there was indeed cause for the throwing of the*

liquid i.e. an imminent attack on the Defendant by the Claimant.

[22] I shall here state quite categorically that I do not accept the Defendant's assertion that his action was in self defence but that I rather adjudged it to be a deliberate and malicious act on his part.

[23] Even if it could be entertained that the Defendant did in fact opportunely have the camera and the glass with the liquid simultaneously in his hand at the precise moment that he saw the Claimant sitting on the wall, and even if it could be accepted that his intention at that time were merely to record the Claimant's presence on the property for the benefit of his lawyer, it is safe to accept that if his intentions were honourable that he would have divested himself of the glass in order to adequately manipulate the camera.

[24] It would in my view be stretching the imagination and belief somewhat in order to accept the Defendant's story about being "concerned":

> "*At that time I was at the front of the house, so I took my camera and had the same liquid in my hand. I was about 15 feet away. I walked to him to take the photo. I had the camera and the glass because I got concerned. My primary concern was to take out a photograph of what he would be doing so that I would have direct proof of his presence on my hand, which now has a court matter pending over it".*

[25] This account is plainly not plausible for there is no discernible or comprehensible reason for his having "the camera and glass because I got concerned". He had not yet walked up to the Claimant who he alleges raised the cutlass to him, so what was the nature of his concern: was it concern for his safety or concern to capture the images.

[26] Even if it were to be believed that the Claimant attempted to strike the Defendant with the cutlass, in light of the acrimony between the parties due to the pending litigation I view the Defendant's action of walking within five (5) feet of the Clamant and taking his photograph as both unnecessary and an act of provocation.

[27] In addition having accepted that if he were to throw the contents of the glass into the Claimant's face that it would injure him and yet he did so, I am satisfied that it was with a singular and malevolent intent that he proceeded to injure the Claimant and not to "unsettle" him as he chose to call it.

[28] It is my judgment that he was simply taking up the cudgels on behalf of his father because he considered the Claimant to be a trespasser with no right to be on the property and he sought – illegally – to resolve the matter.

[29] In the circumstances I find in favour of the Claimant.

[30] The Claimant has in his statement of claim, claimed for both special and general damages.

[31] The rule regarding special damages is that they must be specially pleaded and strictly proved. The Claimant has claimed for special damages in the sum of $10,024.48 covering a miscellany of items for which there is no supporting documentation. While it might be apparent that he incurred certain expenses as a consequence of his injury, in order to be recompensed, the court must be presented with the relevant documents or receipts.

[32] In the circumstances, an award or $339.95 for medical examinations and medication will be allowed. In the absence of receipts an award of $900.00 will be made for taxi fares ($400.00) housekeeping ($250.00) and nursing care ($250.00) for a two (2) week period.

[33] The Claimant has also made a claim for general and aggravated damages for his pain and suffering and submits that he is entitled to a fair compensation which is to be determined by a review of cases where similar injuries were suffered.

[34] Having made a review of the cases from this jurisdiction I am satisfied that an award of $5,000.00 for pain and suffering would in the circumstances be appropriate taking into account that"

> *"the underlying principle regarding damages is that they are compensatory. They are not designed to put the plaintiff in a better financial position than that which he would otherwise have been in if the accident had not occurred. At the same time the principle (is) of a once –for-all award ……" per Lord Oliver of Aylmerton in Hodgson v Trapp 1988 HL"*

[33] As stated above, the Defendant filed a counterclaim for loss and damages incurred by the destruction of his trees and flowers and the dumping of quarry waste allegedly by the Claimant.

[34] However in light of his admission under cross examination that he did not himself see the Claimant committing the alleged acts of waste nor did he adduce other evidence to support this claim, the counterclaim must fail. And I so find.

ORDER

[35] Judgment to the Claimant as follows:

1. Special damages

Medical expenses	$ 339.95
Taxi fares	$ 400.00
Housekeeping Expenses	$ 250.00
Nursing Care	$ 250.00

	$1,239.95
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General damages

Pain and suffering	$5,000.00

Interest at the rate of 3% per annum will be allowed on the sum of $1,239.95 (special damages) will effect from 5th October 2005 (date of the incident) until 13th November 2007 (date of judgment). Interest at the rate of 6% per annum on the sum of $5,000.00 (general damages) from 14th March 2006 (date of service of the claim) until 13th November 2007 (date of judgment).

2. The counterclaim of the Defendant is hereby dismissed.

3. Costs to the Claimant to be prescribed in accordance with Part 65.5 CPR 2000.

SANDRA MASON Q. C.

High Court Judge