THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. 2008/0580

BETWEEN:

RICHARD FREDERICK
LUCAS FREDERICK

Claimants

AND

THE COMPTROLLER OF CUSTOMS
THE ATTORNEY GENERAL

Defendants

Appearances:

Mrs. Lydia Faisal and Mrs. Petra Nelson for Claimants
Mr. Kenneth Monplaisir Q.C and Ms. Renee St. Rose

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2008: November 5
November 12

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# RULING

[1] COTTLE J: On 17th June 2008, the Claimants filed a fixed date claim form against defendants. They sought the following relief:

(1) *Declarations that the Defendants' continued detention of the Claimants' vehicles confiscated on June 18th 2007 is in breach of the Claimants' Constitutional rights pursuant to S.6 of the Constitution: Protection from the Deprivation of Property.*

(2) *An order that the Claimants are entitled to compensation for the period during which the vehicles were unlawfully detained by the Defendants.*

(3) *An order that the Claimants are entitled to the value of any depreciation in the detained vehicles an account of exposure to the elements and other factors.*

(4) *Declaration that their arrests and detention on June 18th 2007 were in contravention of S3 of the Constitution: Protection of Right to Personal Liberty*

(5) *Orders for compensation to the Claimants as a consequence of the said arrests pursuant to S. 3 (6) of the Constitution*

(6) *Orders for the return of the vehicles unlawfully detained by the 1st Defendant*

*The Claimants also seeks:*

(7) *General Damages to be assessed*

(8) *Interest on any sums awarded*

(9) *The costs of this action*

[2] The claim form was served on both Defendants on 18th June, 2008 with the attached notes to the Defendants. The date fixed for the first hearing was 25th September, 2008.

[3] On 16th July, 2008, the first Defendant filed an Acknowledgement of Service. He indicated that he intended to defend and admitted none of the claim.

[4] On 29th July, 2008 a second Acknowledgement of Service was filed by Messrs Monplaisir & Co., as the "defendant's legal practitioner".

[5] The Acknowledgement of Service contained an admission of part of the claim, to wit. "The unlawful detention of the vehicles, compensation for unlawful arrest".

[6] 0n 11th September, 2008 the Claimant's filed an application for entry of judgment. The grounds of the application were that the defendants had admitted unlawful arrest of the Claimants and unlawful detention of the vehicles. The arrests and detention of the vehicles was alleged to have occurred on 18th June, 2007.

[7] The Claimants also say that the Acknowledgement of Service was filed out of time and there was no application made or granted allowing for any extension of time. No defence was filed by either defendant within the 28 days limit imposed by CPR 2000 for the filing of a defence.

[8] On 22nd September, 2008 a document was filed by Messrs Monplaisir & Co. It expressed itself to be a withdrawal of the Acknowledgement of Service filed on 29th July, 2008. It expressly preserved the Acknowledgement of Service filed on 16th July, 2008. On 23rd September, 2008 there was filed an affidavit in answer or defence, by the first Defendant.

[10] The matter, fixed for hearing on 25th September, 2008, was listed in error on 24th September, 2008. Mr. Monplaisir indicated by letter that he would be off island and sought an adjournment. The court adjourned the matters to 5th November, 2008 without hearing from the Claimants of Counsel. On 25th September, 2008 the Claimants appeared. They were informed that the matter had been heard the previous day in error and adjourned to 5th November, 2008.

[11] On 23rd October, 2008 an application was filed by the defendants seeking an extension of time to file a defence and seeking to have the Claimant's application for judgment dismissed. The application was supported by an affidavit sworn by a legal practitioner in the firm of Monplaisir & Co.

[12] This affidavit reveals that the application for entry of judgment, filed on 11th September, 2008 was never served on first Defendant and only served on the chambers of Monplaisir & Co on 24th September, 2008 at 3:35 p.m.

The withdrawal of Acknowledgement of Service.

[13] Under the 1970 Rules of the Supreme Court, a litigant who entered an unconditional appearance required leave of the court to withdraw that entry of appearance. This is largely because the effect of such an entry of appearance was to submit to the jurisdiction of the court.

[14] Under the Civil Procedures Rules 2000, (CPR 2000) which repeals and replaces the 1970 Rules of the Supreme Court there is no provision for the entry of appearance. Instead

Part 9 speaks to the Acknowledgement of Service and notice of intention to defend. Part 9 does not make any provision for leave to be required on the withdrawal of an Acknowledgement of Service. Mr. Monplaisir Q.C. argues that this omission by the framers of the CPR 2000 is deliberate and now means that no leave is needed. Mrs. Faisal argues that as the CPR is silent as to leave, the court should look at the UK position. She cites Halsbury's Laws of England 4th Edition vol. 27 at paragraphs 403 to the effect that an Acknowledgement of Service can only be amended or withdrawn with the leave of the court.

[15] However at para 202 of volume 37 of the same work it reads:

> *"Withdrawal and amendment of acknowledge of service. An acknowledgment of service in an action may be withdrawn at any time, but only with the leave of the court"*
>
> *"An acknowledgement of service may not be amended without the leave of the court, although leave is not necessary where the acknowledgement of service contains a statement to the effect that the party does not intend to contest the proceedings and the amendment is to substitute a statement to the opposite effect, provided that, in case of a statement that the party does not intend to contest the proceedings, the amendment to the opposite effect is made before judgment has been obtained in the proceedings".*

[16] I do not consider that leave is required for the withdrawal of an Acknowledgement of Service. I arrive at that conclusion as I agree with Mr. Monplaisir that the omission of any such requirement to obtain leave by the makers of the CPR is not mere happenstance.

[17] In any event the present case concerns two Acknowledgements of Service. The one withdrawn in the second one filed. It is inconsistent with the first which denies the whole claim and evinces an intention to defend. The effect of the withdrawal of the second Acknowledgement of Service and the adoption of the first is to indicate that the defendants do intend to contest the proceedings.

[18] No judgment on the admission had yet been made. Even in the UK, on my understanding of the learning quoted above, no leave would be required in the instant case.

[19] The filing of the Acknowledgement of Service by the first defendant .

[20] Counsel for the Claimants argue that the Crown Proceedings Act Chapter 2.05 of the Revised Laws of St. Lucia is mandatory. Section 13 reads:

> *(1) Civil proceedings by the Crown shall be instituted either by the Attorney General or by an authorized Government department in the official name of the head of such department*
>
> (2) *Civil proceedings against the Crown shall be instituted against the Attorney General*

[21] They say that, the first Defendant was added merely to notify him and he had no right to file an Acknowledgement of Service or a defence in his personal capacity. They buttress this argument by pointing to section 129 of the Customs Control and Management Act Chapter 15.05 of the Revised Laws of St. Lucia:

> *"An action, suit or other proceedings shall not be brought or instituted personally against any other officer in respect of any act done by him or her under any power granted to or duly imposed on him or her by a customs enactment".*

[22] Counsel also cite the decision of the Privy Council in Clinton Bernard v Attorney General of Jamaica. Privy Counsel Appeal 30 of 2003.

[23] That case concerns the test to determine whether the crown is vicariously liable for the acts of a particular public servant and the circumstances in which such liability arises. The case does not decide that the crown is the only permissible defendant. It does not decide that a public servant cannot be personally sued for wrongful acts committed by him in the performance of his official functions. Indeed in Clinton Bernard's case the action was brought against the police officer as first defendant and the Attorney General as second. As it turned out the first defendant absconded and could not be served. The action proceeded only against the Attorney General.

[24] In the present case the Claimants expressly make allegations of mala fides against the first defendant. At para 25 of the affidavit in support of the first Claimant (his statement of Claim

in effect) he avers that the first defendant was "actuated by malice in this case and not engaged in the bonafide execution of his duties….".

[25] Para 26 goes on to make further averments against the first defendant personally.

[26] In the circumstances I find it impossible to say that the first defendant had no right to respond to the claim which had been filed against him and served on him with attached notes and advising him that if he failed to act the court could deal with the case.

[27] Counsel for the Claimants also urge the court to disregard the Acknowledgement of Service filed by the first defendant as filed out of time and without leave. CPR 2000 at part 9.4 permits an Acknowledgement of Service to be filed at anytime before a request for judgment is made. I decline to strike out the Acknowledgement of Service of the first Defendant.

The application by the second defendant

[28] The second defendant seeks to adopt the defence filed by the first defendant. The Claimants resist this on various grounds which I do not enumerate here. Quite shortly, it appears to me to be impossible to find, liability in the Attorney General unless liability is found in the first defendant. There is no suggestion by the Attorney General that the first defendant was not acting in the course of his duties. If the first defendant is permitted to defend – and he must be so permitted having been sued and served – That defence is effectively that of the Attorney General.

[29] I therefore refuse the application by the Claimants for summary judgment. I direct that the matter be fixed for directions for the trial of this matter to be given. I make no order as to the costs of these applications at this stage. These costs will be dealt with at the full hearing of this matter.

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Brian Cottle

High Court Judge