

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

(CIVIL)

COMMONWEALTH OF DOMINICA
CLAIM NO. DOMHCV2011/0060



BETWEEN:

CECILIA ROBIN

Claimant

AND

THE ATTORNEY GENERAL
THE HOSPITAL SERVICES

Defendants

Before:

Master Cheryl Mathurin

Appearances:

Mr. Gildon Richards for the Claimant

Ms Pearl Williams and Ms T. Hyacinth for the Defendants

2011; October 20th; November 16th

RULING

- [1] **MATHURIN, M:** On Thursday 20th May 2010, the Claimant Ms Robin, who at the material time was a registered nurse at the Princess Margaret Hospital, alleges that she was preparing a haemodialysis machine when she was jolted by an electrical shock which she states caused her severe injury, loss and damage. It is pursuant to this incident that Ms Robin instituted this Claim alleging negligence against the Defendants on the 25th February 2011.
- [2] The Defendants after filing their defence filed an application on the 16th May 2011 to have the claim struck out on several grounds which were determined save the one that it was statute barred. The Defendants assert that because the action was not filed within 6 months of the injury, it is statute barred by virtue of the Public Authorities Protection Act, Chapter 7:60 s2(1)(a) hereafter (the Act).

The relevant section provides as follows;

"Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act, or of any public duty or authority, or of any alleged neglect or default in the execution of any such act, duty or authority, the following provisions shall have effect

(a) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of or, in case of a continuance of injury or damage, within six months next after ceasing thereof."

- [3] The Defendants submit that the ongoing renovation works at the Dialysis Unit of the Hospital when Ms Robin sustained her injuries was in the exercise of a public duty and as such, her action is excluded by the operation of the Act. They state that the Hospital is a public institution with an overt public duty to ensure that the public receives safe and proper health care and has a public duty to ensure that the Hospital is properly maintained. They add that the work on the machine was carried out by employees of the State who were merely carrying out their duties as employees of the State and as such are entitled to the full protection of the Act.
- [4] Counsel for the Claimant submits that the Defendants have not pleaded that that they were acting in the execution of any Act, public duty or authority in order to attract the protection of the Act and cannot rely on submissions to provide the facts necessary to establish that the claim was statute barred. Counsel submits that the Defendants have not identified in the pleadings any Act, public duty or authority that would clothe the Defendants with the benefit of the Act.
- [5] I agree with Counsel in that it is a mandatory requirement of the CPR2000 and a general rule of pleadings that the material facts upon which the Defendants intend to rely have to be specifically pleaded (See CPR2000 Part 10.5). It is insufficient merely to plead that "*the Defendants plead section 2 of the Public Authorities Protection Act and state that the Claimant's claim is statute barred*" without stating the material facts that they are relying on to establish this defence. In the event that I am wrong, I also have difficulty in concluding without more, that because the work of renovating the Dialysis Unit was undertaken by public officers, the renovation was pursuant to a public duty, authority or Act. I am guided by the words of Lord Buckmaster LC in **Bradford Corporation v Myers**.

"...It is not because the act out of which an action arises is within the power that a public authority enjoys the benefit of the statute. It is because the act is one which either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of public authority. I regard these latter words as meaning a duty owed to all the public alike or an authority exercised impartially with regard to the public. It assumes that there are duties which are non public and that in the exercise or discharge of such duties or authorities this protection does not apply."

- [6] I have considered the submissions of Counsel as well as the following authorities which were quite useful.

Bradford Corporation v Myers (1916) 1 AC 242

Andrew Thomas Bell v Commissioner of Police BVI Civil Appeal 4 of 2001

Loretta Frett v The Attorney General BVIHCV2007/0137

Ereen Archibald v Attorney General of St Vincent SVGHCV2008/0039

Griffiths v Smith (1941) AC 170

[7] I would further conclude that this is the right approach because even taking the assertion by the Defendants in submissions that the renovation of the Dialysis Unit was in furtherance of the public duty to provide the Commonwealth of Dominica with health care, I am still not persuaded that the renovation of the Dialysis Unit was in direct execution of that duty rather than ancillary to it. In the circumstances, the application to strike out the claim is hereby dismissed.

[8] In summary, the Order is as follows;

The Application of the Defendants is dismissed with costs to the Claimant in the sum of \$1,500.00



**CHERYL MATHURIN
MASTER**