EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

HCVAP 2011/034

BETWEEN:

[1] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA
[2] HOSPITAL SERVICES COORDINATOR

Appellants

and

CECILIA ROBIN

Respondent

Before:
The Hon Mr. Don Mitchell — Justice of Appeal [Ag.]

On written submissions:
Ms. Pearl D. Williams for the Appellants
Mr. James Gildon Richards for the Respondent

2012: June 27.

Civil appeal – Negligence – Public Authorities Protection Act, Cap 7:60 – Whether limitation defence applicable when the act complained of is not a direct execution of a public duty

The respondent is an acting staff nurse who, on 25th February 2011, brought a claim against the appellants for their alleged failure to protect her in the performance of her duties. She claimed that on 20th May 2010, whilst on duty, she suffered various injuries as a result of receiving an electric shock from turning on a light switch which was hanging loose due to renovation work at the Dialysis unit. The appellants filed a defence in which they raised the limitation point under the Public Authorities Protection Act ("the Act"). The Attorney General also filed an application to strike out the claim which was later denied by the learned Master. It is that ruling that the appellants are appealing.

Held: dismissing the appeal and awarding assessed costs to be paid by the Attorney General to the respondent in the sum of $3,000.00, that:

1. It is not because the act out of which an action arises is within their power that a public authority enjoys the benefit of the statute. The act complained of arose allegedly in the execution of a private obligation which the Hospital authorities owed to the respondent and not in the execution of any public obligation. The Hospital, as employers of the respondent, owed a duty of care to her personally.

   Bradford Corporation v Myers [1916] 1 AC 242 applied; Andrew Thomas Bell v The Commissioner of Police of the British Virgin Islands British Virgin Islands Civil Appeal No. 4 of 2001 (delivered 26th January 2004) applied.

2. The limitation defence under the Act would only be available where the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority. The act of renovating the Dialysis unit was not such an act, as such the limitation period of six months stipulated under the Act is inapplicable to the respondent's claim.

   Bradford Corporation v Myers [1916] 1 AC 242 applied; Andrew Thomas Bell v The Commissioner of Police of the British Virgin Islands British Virgin Islands Civil Appeal No. 4 of 2001 (delivered 26th January 2004) applied; Public Authorities Protection Act Cap. 7:60, Revised Laws of Dominica, 1990 applied.

JUDGMENT

[1] MITCHELL JA [AG.]: Cecilia Robin claims that she is an acting staff nurse employed by the Government of Dominica at the Princess Margaret Hospital in Goodwill. On 20th May 2010, while she was on duty in the Haemodialysis Unit performing her duties, she reached out her hand to turn on a light switch which was hanging loose in a corner of the room. She was jolted by a sudden electric shock which she alleges caused her to lose consciousness and to suffer various injuries. She claims that there were at the time ongoing renovation works at the Dialysis Unit and that her employers, the appellants, had not taken due care to protect her in the performance of her duties. She filed a claim form against them on 25th February 2011 some 9 months later. The appellants filed a defence in

which they raised the limitation point under the Public Authorities Protection Act ("the Act").[1]

[2] Subsequently, the Honourable Attorney General filed an application in the High Court supported by an affidavit seeking the striking out of the statement of claim on several grounds. The parties filed submissions on the limitation point and Master Mathurin considered their argument in Chambers. On 16th November 2011, she delivered a written ruling dismissing the application. She relied on the cases of Bradford Corporation v Myers;[2] Andrew Thomas Bell v The Commissioner of Police of the British Virgin Islands;[3] Loretta Frett v The Attorney General of the Virgin Islands et al;[4] Eileen Archibald v The Commissioner of Police of the Royal St. Vincent and the Grenadines Police Force et al;[5] and Griffiths and Another v Smith and Others.[6] She ruled that the renovation of the Dialysis Unit was not a direct execution of a public duty but rather ancillary to it and as such did not fall within the parameters of the Act.

[3] The Honourable Attorney General sought and obtained leave to appeal this interlocutory ruling. Both parties have filed very helpful submissions and bundles of authorities. The appeal has been passed to me for deciding on paper under rule 62.10(5) of the Civil Procedure Rules 2000. The notice of appeal takes issue with several findings of the learned Master, however the principal issue is whether she was right to find that the section 2 defence does not apply in the circumstances of this case.

[4] Section 2(1) of the Act, where relevant, reads:

> "2. (1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended

[1] Cap. 7:60, Revised Laws of Dominica, 1990.
[2] [1916] 1 AC 242.
[3] British Virgin Islands Civil Appeal No. 4 of 2001 (delivered 26th January 2004).
[4] British Virgin Islands BVIHCV2007/0137 (delivered 26th January 2010).
[5] Saint Vincent and the Grenadines Claim No. SVGHC2008/0039 (delivered 12th February 2010).
[6] [1941] AC 170.

execution of any Act, or of any public duty or authority, or of any alleged neglect or default in the execution of 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 the ceasing thereof.

(b) ...

(c) …

(d) ..."

[5] The seminal case in all the cases relating to the Act is the Bradford Corporation case. In that case the defendant municipal corporation, a public authority, was authorised by an Act of Parliament to carry on the undertaking of a gas company. They were bound to supply gas to the inhabitants of the district. They were also empowered to sell and deliver the coke produced in the manufacture of the gas. They contracted to sell and deliver a ton of coke to the plaintiff. By the negligence of their agent, the coke was shot through the plaintiff's shop window. More than six months later the plaintiff commenced an action of negligence against the defendants. They pleaded section 1 of the Public Authorities Protection Act, 1893, as a bar to the action. That section is almost identical, save for trifling details, to section 2 of the Act. The House of Lords held that the act complained of was not an act done in the direct execution of a statute, or in the discharge of a public duty or the exercise of a public authority, and that the Public Authorities Protection Act, 1893 afforded no defence to the action.

[6] The words of Lord Buckmaster LC in Bradford Corporation are always resorted to for a proper understanding of the application of the defence. So, at pages 247 – 248 he said:

> "... it is not because the act out of which an action arises is within their power that a public authority enjoy the benefit of the statute. It is because the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a 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 all the public. It assumes that there are duties and authorities which are not public, and that in the exercise or discharge of such duties or authorities this protection does not apply.
>
> This distinction is well illustrated by the present case. It may be conceded that the local authority were bound properly to dispose of their residual products; but there was no obligation upon them to dispose by sale, though this was the most obvious and ordinary way. Still less was there any duty to dispose of them to the respondent. No member of the public could have complained if the respondent had not been supplied; nor had any member of the public the right to require the local authority to contract with him.
>
> The act complained of arose because one of the servants of the appellants, acting in the course of an errand on which they had power to send him, but on which they were not bound in the execution of any Act or in the discharge of any public duty or authority to send him, in breach of his common law duty to his fellow citizens, caused damage by his personal negligence.
>
> In my opinion an action for such negligence is not within the class of action contemplated by the statute."

[7] Lord Haldane in the same judgment made an observation that has often been appealed to in these matters. He said at pages 251 – 252:

> "My Lords, in the case of such a restriction of ordinary rights I think that the words used must not have more read into them than they express or of necessity imply, and I do not think that they can be properly extended so as to embrace an act which is not done in direct pursuance of the provisions of the statute or in the direct execution of the duty or authority. What causes of action fall within these categories it may be very difficult to say abstractly or exhaustively. It is hardly easier to define a priori the meaning of being done directly than it is to define the number of grains that will make a heap. But just as it is not difficult to tell a heap when it is seen, so it may be easy at least to say of certain acts that they are not the immediate and necessary outcome of duty or authority in a particular case. In Sharpington v. Fulham Guardians[26] *[[1904] 2 Ch. 449]* Farwell J. decided that the Act did not apply where in the execution of a public duty the guardians had contracted with a builder to build for them a receiving house for children of paupers, and the builder was suing them for breach

> of the particular contract they had entered into. He pointed out that although the general duty made it intra vires to do so, there was no duty to enter into that particular contract. He declined to hold that the mere fact that the contract was within the power of a public body to make rendered the breach anything more than a breach of the private duty to the individual builder arising out of the terms of the contract."

Lord Atkinson and Lord Shaw of Dunfermline delivered supporting judgments along the same lines.

[8] Andrew Thomas Bell is an authority in the Court of Appeal from our own jurisdiction. There a police officer in the service of the British Virgin Islands Police Force was required to take part in firearm training with a variety of powerful weapons at Deadman's Chest. During the exercise he suffered injury including irreparable ear damage. This severely affected his hearing and forced him into permanent retirement. Some sixteen months after the injury he filed a statement of claim alleging that despite his requests the police force had failed to provide him with any protective equipment for his ears, and he claimed damages. The police force denied that Mr. Bell had requested protective equipment, and claimed that he had contributed to his injuries. In the alternative, they pleaded the limitation defence. The statutory provision in the Virgin Islands is almost identical to that in Dominica. Trying a preliminary issue whether the defence was applicable, the trial judge held that it was and found for the Commissioner.

[9] On appeal to the Court of Appeal, Redhead JA in overturning that finding held at paragraphs 24 to 27 of his judgment that the limitation defence did not apply. There was no statutory duty placed on the Commissioner of Police to require his police officers to undergo training in firearms. Neither could it be said that he was discharging a public duty or exercising a public authority to require police officers to undergo training in firearms. The action brought by Mr. Bell was one which involved master and servant issues. No one but Mr. Bell was entitled to bring this

action. In any event, he held, the duties of the Commissioner as they relate to Mr. Bell did not encompass a public authority, and therefore the Act was inapplicable.

[10] Applying Lord Buckmaster's reasoning and that of Redhead JA to the facts in our case it is not difficult to see that the Master was correct in her conclusion. The relationship between the parties in our case is almost identical to that in the Andrew Thomas Bell case. The principles must be the same. That is because the act complained of in our case arose allegedly in the execution of a private obligation which the Hospital authorities owed to Ms. Robin. The act complained of in this case arose because, allegedly, a contractor employed to do renovation work did so carelessly. It is not because the act complained of is one which is within their power that a public authority enjoys the benefit of the statute. Unlike the duty which the Hospital authority may owe to its patients, the duty which it owes to its employees is owed to the employees personally. No member of the public could complain if the Authority did not employ nurses, but any affected member of the public could complain if the Authority refused to accept a certain type or class of patient.

[11] For these reasons the appeal is dismissed. The Master awarded costs in the sum of $1,500.00. The appeal was entirely without merit and I would exceptionally assess costs to be paid by the Attorney General to Ms. Robin at twice the amount ordered below, i.e., in the amount of $3,000.00.

Don Mitchell
Justice of Appeal [Ag.]