

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 399 OF 2007**



BETWEEN:

ST. VINCENT BREWERY LIMITED

Claimant

v

ALLIED SECURITY SERVICES LIMITED

Defendant

Appearances:

Mr. Samuel E. Commissiong for the Claimant

Mr. Jaundy Martin for the Defendant

2012: February 1
July 5

JUDGMENT

- (1) **THOM, J:** The Claimant operates the business of manufacturing and selling beverages at its property in Campden Park. The Defendant Company provides security services.
- (2) On the 13th day of May 1996 the Claimant entered into a written contract with the Defendant for the provision of security services for a period of two (2) years commencing from the 12th day of April 1996.

- (3) At the end of the two year period the parties held discussions but no written contract was signed. The Defendant continued to provide security services on the same terms as expressed in the contract of the 13th May, 1996.
- (4) The Claimant alleges that between November 19 and 20, 2005 a total of \$194,483.90 in cash and cheques was stolen from the Claimant's Administrative Building which is situate at the Claimant's business property at Campden Park. The building and a safe in the building were damaged. As a result of this loss the Claimant instituted these proceedings in which they allege firstly that the Defendant was in breach of the terms of the contract to provide security to the Claimant's business compound and secondly that the Defendant was negligent in the discharge of their contractual duties.
- (5) The Defendant in its defence contended that the contract to provide security services did not include the Administrative building and its contents. The Administrative building was constructed in 2005. Further it did not owe the Claimant a duty of care in relation to the Administrative Building. The Defendant also denied that thieves entered the Claimant's compound between the 19th and 20th days of November 2005.

ISSUES

- (6) The issues are:
 - a. Whether the Defendant had a contractual duty to secure the Administrative Building.
 - b. Whether the Claimant was in breach of the contract or was negligent in the performance of its contractual duties.

EVIDENCE

Claimant's Evidence

- (7) Three witnesses testified on behalf of the Claimant, being Mr. Samuel Goodluck, the Manager of the Claimant's Insurers, Mrs. Ingrid Caine the Claimant's Senior Accountant, Mrs. Joy Alexander the Claimant's Accounts Clerk.

- (8) Mr. Goodluck's testimony is that he is the Managing Director of St. Vincent Insurances Ltd. The Claimant had a Policy of Indemnity with St. Vincent Insurances Ltd. which provided that the Claimant would permit the St. Vincent Insurances Ltd. to use its name in accordance with the principles of subrogation in any litigation where the insurers had indemnified the Claimant for loss and or damage. The Insurer indemnified the Claimant in the sum of \$78,843.30 for loss and damage to its property which occurred between the 19th and 20th days of November, 2005.

- (9) Ms. Ingrid Caine testified that she is employed by the Claimant as a Senior Accountant. Between November 19 and 20, 2005 intruders broke into the Administrative Office of the Claimant and stole a total of \$194,878.28 in cash and cheques. The matter was reported to the police and several cheques were recovered except for a total sum of \$78,843.90. The safe in which the money was secured was damaged, as well as the part of the building in which the safe was secured. The cost of repairs amounted to \$9,090.55.

- (10) Ms. Joy Alexander testified that she is employed by the Claimant as a Senior Accounts Clerk. On Sunday November 20, 2006 she went to the Administrative Building at about 5:40p.m. She was unable to gain entry through the main door. She observed that the glass door leading to the Accounts Department was forced open. She had locked the door the day

before. She also observed that the door to the Human Resources Office was damaged, the Cashier's Office was ransacked and the lock on the vault was cut open. She made a report to the security guard. She further noticed that a part of the fence of the compound was cut open, the hole was big enough for an average sized person to gain entry to the compound.

- (11) Under cross-examination Ms. Alexander testified that she had access to the building at any time. She was not requested to report to anyone before going to the building. She was not aware if any other person had access to the building in the manner in which she did. She also testified that she was not responsible for the cleaner. When she arrived at the building the Sunday afternoon she did not meet the cleaner there.
- (12) Under re-examination Ms. Alexander explained that she would normally go to the building outside of normal working hours to deal with backlog of work. The Claimant's Manager was aware that she would do so.

Defendant's Evidence

- (13) Mr. Carlos Maloney the Manager of the Defendant testified that the Claimant and the Defendant signed a contract on the 13th day of May, 1996 for the Defendant to provide security services to the Claimant. The agreement took effect from the 12th day of April, 1996 and continued for a period of two years. Towards the end of the contract he realized that the number of security guards needed to be increased to make the system effective. This was discussed with the Claimant. The matter was further discussed with the Claimant at a meeting on 9th day of October 2000. During the year 2005, the Claimant constructed a new building on the compound. The Defendant was not informed of the purpose of the building. They were not contracted to provide security services for the new building and they did not do so. Mr. Maloney further testified that

when the building was being constructed he discussed with the Claimant's Manager Mr. Robert Collin the need for the installation of an alarm system on the building. He offered to provide security to the new building at an additional cost but there was no response from the Claimant.

Under cross-examination Mr. Maloney testified that the area of the fence that was cut was to the eastern corner of the property that was fenced off for the administrative building. That side of the property did not have lights. There was a track along the fence that leads to the beach. Mr. Maloney agreed that the Defendant's employees were required to patrol the perimeter of the compound.

- (14) Ms. Charmaine Charles testified that she is employed by the Defendant as a Security supervisor. Under the Agreement with the Claimant, the Defendant provided nine security guards who worked on a three shift basis at the Claimant's compound. Three guards worked on each shift. The guards controlled entry and exit to the compound. At nights one guard would control entry and exit and the other two guards would patrol the compound. The Claimant was informed that extra guards were needed to patrol the compound but the Claimant did not respond. In 2005, the Claimant constructed a new building on the compound. The Defendant was not informed of the purpose of the building. There was a fence separating the new building from the rest of the Claimant's compound. The Defendant was not given any instruction about securing the new building and the Defendant did not provide any security to the new building. The Defendant was not informed that cash and other security instruments were stored overnight in the building. The security guards had access to the factory building where they provided security but they had no access to the Administrative Building.

SUBMISSIONS

Claimant's Submissions

- (15) In relation to the claim in contract Learned Counsel submitted that when the written contract expired in April 1998, the Parties continued in a contractual relationship on a month-to-month basis on the same terms as were included in the written contract. The same number of security guards were provided and the same amount of remuneration was paid to the Defendant. Implicit in the provision of security services provided by the Defendant were the conditions that the security guards would be reasonably competent and demonstrate that fact by protecting life and property at the Claimant's premises. To be competent it was vital that the security guards be properly trained in a manner required to meet the security needs of the Claimant. Training by way of forty-five (45) minutes video could not amount to adequate training. Further the Defendant did not lead any evidence of the nature of the training contained in the video. Learned Counsel urged the Court to find that the Defendant was responsible for protecting the Claimant's money and they failed to do so.
- (16) In relation to the claim in negligence Learned counsel submitted that when the Defendant undertook to provide security services for the Claimant it undertook to exercise reasonable care and competence required to protect the Claimant's property including the Claimant's money. The Defendant owed a duty of care to the Claimant, there was a breach of that duty since the Defendant failed to take reasonable care in securing the premises from thieves. The loss of the money was a direct result of that breach by the Defendant. Learned Counsel referred the Court to the case of Stansbie v Troman (1948) 1 AER 599.

Defendant's Submissions

- (17) In relation to the claim in contract Learned Counsel for the Defendant submitted that the written contract which expired in April 1998 made no provision for the Defendant to provide security to the Administrative Building since the Administrative Building was not yet constructed. The Administrative Building was only constructed in 2005 several years after the written contract expired. There was no change in the terms of the contract to include providing security for the Administrative Building. The Claimant led no evidence on their assertion that the Defendant was contractually obligated to secure the Administrative Building and its contents. The evidence of the Defendant remains unchallenged. The burden of proof was on the Claimant to prove that there was a contractual obligation on the Defendant to secure the Administrative Building and they have failed to do so. There is no evidence from the Claimant as to when the theft occurred and how. The Claimant produced no evidence of police report or expert report as to how entry was gained into the building.
- (18) The Defendant's evidence that there were cleaners in the building on the Sunday November 20, 2005 and that they left shortly before Ms. Alexander arrived was not contradicted. It was not the responsibility of the Defendant to secure the contents of the Administrative Building. The Defendant's security guards were not aware of the contents of the Administrative Building. The Defendant's security guards had no access to the building. The Claimant's senior staff such as Ms. Alexander had keys to the building, they had unlimited access to the building.
- (19) In relation to the claim in negligence Learned Counsel submitted that the Claimant failed to prove that the Defendant owed a duty of care to the Claimant in respect of the cash and monetary instruments. Learned Counsel referred to the case of Henderson v Henry Jenkins & Sons and

urged the Court to apply the same principles of the burden of proof as outlined in the case.

- (20) Learned Counsel further submitted that since the Claimant's claim in negligence is based on the allegation that the Defendant owed a duty of care through its contractual obligation to secure the Administrative Building and the cash and monetary instruments therein, if the claim in contract fails then it follows the claim in negligence must also fail.

FINDINGS

- (21) It is not disputed that the parties entered into a written contract for a period of two years commencing April 12, 1996. At the expiration of the contract the parties continued on the same terms on a month-to-month basis. The Administrative Building was constructed several years after the contract expired.

- (22) It is useful at this stage to outline the relevant terms of the contract which sets out the services that the Defendant was to provide to the Claimant. They are contained in Appendix 1 of the contract and they read as follows:

- “1. The protection from any illegal entry on the premises.
2. Establish a check point to search all containers entering and leaving the premises including hand bags.
3. All employees must be issued with identification badges which must be surrendered to the Security on leaving the premises.
4. The provision of a secured telephone line to be provided by the Employer to the Contractor to permit its employees to reach the Contractor's security Main Office in the event of an emergency.

5. To install a security/watchman check operation which will be used by security offices who must regularly check specific points around the premises and provide the Employer with data of security patrol activity.
6. To enforce other security procedures as listed in the general post orders issued to the Contractor by the Employer.
7. To keep records of security operations and provide the Employer with copies of said records when requested.
8. To ensure that its Security Guards sent to any of the Employer's premises are fully rested and alert so as to be fit for the security services they are expected to perform.
9. To prepare and present to the Employer a written report of any breach of security known by the Contractor in the course of its duties within 48 hours of any such breach."

(23) The contract required the Defendant to provide security services at the Contractor's premises at Campden Park and/or Granby Street, Kingstown.

(24) The relevant requirements for security services to the surrounding external area were as follows:

1. Patrolling Surrounding Areas

Guards are to make regular patrol of surrounding areas.

2. Security Lights

Guards are to ensure that security lights (with fitted switches) are turned on during hours of darkness and switched off during day light hours.

3. Regular Inspection

Guards are to make regular inspection of the perimeter fence. Any cut holes or other damage to the fence are to be reported to management.

4. Vehicle Entering Compound

Guards are to ensure that vehicles entering the compound are parked in allocated parking spaces and not in a haphazard way.

5. Company Vehicles

Guards are to ensure that company vehicles parked on the compound are driven on or out of the compound by authorized personnel ONLY. If in doubt clarify with management.

The Claim in Contract

- (25) The onus was on the Claimant to show that the Defendant breached the contract. As stated earlier the Claimant called three witnesses, being, Mr. Samuel Goodluck, Ms. Ingrid Caine and Ms. Joy Alexander. Mr. Goodluck is the Manager of the Claimant's Insurers, his evidence therefore was in relation to the Claimant being indemnified the sum of \$78,843.90 by the insurers in accordance with the Claimant's insurance policy and that the proceedings were brought in accordance with the principles of subrogation as outlined in the insurance policy. Mr. Goodluck gave no evidence which could be considered to be evidence of breach of contract on the part of the Defendant.
- (26) Ms. Ingrid Caine who is the Senior Accountant of the Claimant simply testified of the amount stolen and the amount recovered and the damage that was done to the building and the safe.
- (27) Similarly the evidence of Ms. Joy Alexander is that on November 20, 2005 she discovered the building ransacked, and doors and the safe damaged. There was a hole cut in the fence of the premises.

- (28) While the terms of the written contract stated that the contract was for security services at the Campden Park premises and or Granby Street premises, the evidence does not show that security services were provided at Granby Street. The Claimant led no evidence to show any security services were provided at Granby Street where the Claimant had its Administrative Office prior to moving it to the Campden Park premises. The evidence led in this case related only to security services at the Campden Park premises.
- (29) The uncontradicted evidence of the Defendant is that the Administrative Building was constructed in 2005 to the eastern corner of the Campden Park premises. The Building was fenced from the rest of the Claimant's operation. It had its own entrance and some members of staff had keys to enter and leave the building at will. There is no evidence from the Claimant that the Defendant or its employees had any access to the Administrative Building. The Defendant's evidence that its employees had no access to the building was not contradicted. The provision for security as provided in the Appendix and the Rules and Regulations could not possibly apply to the Administrative Building as the building had its own entrance and exit over which the Defendant's security guards had no control. Patrol of the surrounding areas and perimeter of this area could only be done from outside of the premises as the area was fenced off from the rest of the premises.
- (30) There is no evidence from the Claimant of an agreement with the Defendant to provide security services to the Administrative Building which was separated from the rest of the Claimant's operation at Campden Park by a fence. Indeed, the evidence of Mr. Maloney which was not contradicted is that after the Administrative Building was constructed he had some discussions with the Claimant's Manager on the issue of security for the Administrative Building. Mr. Maloney's

evidence at paragraphs 8 thru 10 which was not contradicted read as follows:

- “8. *In the year 2005, the Claimant constructed a new building wing at its Campden Park site. I was not informed as to what was the purpose of the new building. The Claimant then moved its Administrative Offices which were in Kingstown into the newly constructed building. The new building was fenced off from the factory area that the Defendant secured. We were not contracted to do and did not provide any security for the new building.*
9. *The Guards had access to the factory building but had no access to the Administrative Building. We had no responsibility for any security to that New Building.*
10. *In fact when the new administrative building was being built I met with Mr. Robert Collin the then Manager of the Claimant and told him that an alarm system should be installed and that the Defendant would be prepared to provide additional security to the building at an additional cost. Mr. Collin did not act upon my suggestion and the situation continued with no alarm system being installed and no security being provided.”*

(31) Mr. Maloney’s testimony that the Defendant’s security guards did not have access to the Administrative Building was supported by the Defendant’s witness Ms. Charles who testified under cross-examination that the area of the administrative Building was fenced off. She further testified that to patrol that area a security guard would have to go outside of the compound and walk on the road to the end of the area.

(32) The Defendant’s evidence that the employees of the Claimant had unhindered access to the Administrative Building was not contradicted. The Defendant’s evidence that cleaners were in the building on Sunday November 20, 2005 was not contradicted. Further the report of theft was made by Ms. Joy Alexander an employee who had access to the building

and did access the building on Sunday November 20, 2005 at about 5:30p.m. without going through the security system of the Defendant.

- (33) Having reviewed the evidence, I find that the Defendant did not have a contractual responsibility to provide security to the administrative building and the contents of the administrative building. I also find that the Defendant did not breach the terms of its contract with the Claimant.

Claim In Negligence

- (34) The main thrust of Learned Counsel for the Claimant submission in relation to the claim in negligence is that the Defendant's security guards were not adequately trained for the job and their negligence resulted in the theft of the Claimant's money. However, the issue of improper training of the security guards was discussed by the Claimant and the Defendant in 2000. Two letters outlining the discussion were tendered in evidence. In the letters tendered in evidence the Defendant undertook to deal with the complaint of the Claimant. It must be pointed out that these discussions took place since the year 2000. Mr. Maloney's evidence that the concerns raised by the Claimant in 2000 were addressed was not contradicted.
- (35) The Defendant's evidence that the security guards received continuous training in addition to the video training referred to by Learned counsel for the Claimant was not contradicted.
- (36) Indeed there is no evidence of any complaint by the Claimant of the security services provided by the Defendant after 2000. The Defendant continued to provide security services for the Claimant. This incident occurred five (5) years after complaint was made and Mr. Maloney testified the matters complained of were addressed. Further in the

correspondence between the Defendant and the Claimant in 2000 the Defendant raised the issue of the inadequacy of the number of security guards and suggested that the numbers should be increased to provide better security. However no agreement was reached on this proposal between the parties.

- (37) I agree with the submission of Learned Counsel for the Defendant that the Claimant has failed to prove on a balance of probabilities that the Defendant owed the Claimant a duty of care.
- (38) The case of Stansbie v Troman referred to by Learned Counsel for the Claimant does not advance the case for the Claimant. In Stansbie's case the Claimant was a painter and decorator who was contracted to work at the Defendant's house. The Defendant went to work and his wife went out leaving the Claimant alone in the house. The Claimant was aware that he was the only person in the house. On previous occasions when the Defendant and his wife were away, the wife reminded the Claimant to pull in the front door when he was leaving. The front door had a yale lock so by pulling it in the door would be locked. On this occasion the Claimant needed to buy some wall paper. In order to regain entry into the house he pulled back the catch for the lock, the door was therefore unlocked. While he was away for approximately two hours someone entered the house and stole jewellery valued over £300.00. The English Court of Appeal held that in those circumstances the Claimant owed a duty to the Defendant to take care of the premises, he had breached that duty and as a result of that breach the Defendant had suffered loss. In holding that the Claimant owed the Defendant a duty of care Tucker L.J. at p.300 paragraph B said:

“...I agree that the duty must be within the scope of the contractual relationship between the parties, but I think that that contractual relationship did impose a duty on the plaintiff to take reasonable care with regard to the

state of the premises if he left them during the performance of his work or at the conclusion of the working day. That I think was the measure of the duty."

- (39) In my opinion Stansbie's case can be distinguished from the present case in that the circumstances in Stansbie's case are different from the present case. In the present case the Defendant's employees had no access to the building which was separated by a fence from the rest of the Claimant's operation where the Defendant provided security services. Some of the Claimant's employees had unlimited access to the building and they were not required to report to the Defendant's employees when they entered or exited the building. Further while there was evidence of damage to the building, no evidence was led to show whether the damage was from the outside in or the inside out. In other words there was no evidence to show that there was forced entry into the building.
- (40) In view of the above I also find that the claim in negligence fails.
- (41) In conclusion I find that the Claimant has failed to prove on a balance of probabilities that the Defendant was in breach of contract and/or that the Defendant was negligent in the performance of its duties under the contract. I find that the Defendant is not liable for the loss claimed.
- (42) It is ORDERED THAT:
- i. The claim is hereby dismissed.
 - ii. The Claimant shall pay the Defendant prescribed costs.


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Gertel Thom

HIGH COURT JUDGE