

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2013/0002

BETWEEN:

[1] Cpl #48 ALEX FLETCHER
[2] PC #295 QUINTANA OGILVIE
[3] PC #164 LEWAN JOHN
[4] ATTORNEY-GENERAL

Appellants

and

CLINTON BELFON

Respondent

Before: The Hon Mr. Don Mitchell

Justice of Appeal [Ag.]

Appearances (on paper only):

Mr. Darshan Ramdhani, Solicitor General, for the Appellants

Mr. Derick F. Sylvester of Derick F. Sylvester & Associates, for the Respondent

2013: April 22.

Civil Appeal – Interlocutory appeal – Application to be removed as a party – Whether the learned Master erred in refusing the application to be removed as a party – Striking out a statement of case – Whether serious issue of fact which could only be determined at trial

In the early morning of Saturday, 14th April 2007, Clifton Belfon attended the Fantazia Night Club accompanied by his girlfriend and mother. At the club, Mr. Belfon became involved in an altercation with three men after he had pushed one of the three who appeared drunk and was gyrating on his (Mr. Belfon's) girlfriend. The three men ended up beating him up badly, and he later discovered that they were all police officers. Mr. Belfon

was arrested and taken to the police station. While in the police vehicle, one of the officers continued to strike Mr. Belfon, who had to be hospitalised the following day.

Mr. Belfon was on 14th April 2007 charged with several summary offences brought by the Commissioner of Police which included a charge for the offence of assaulting Alex Fletcher, a police officer in the exercise of his duty. He was also charged with resisting arrest and causing harm to a police officer in the execution of his duty. Mr. Belfon was acquitted of assaulting a police officer and of resisting arrest but was convicted of causing harm and was reprimanded and discharged. Mr. Belfon filed a claim against the three police officers and the Attorney General on behalf of the Crown as their employer. Two of the police officers filed defences disputing the claim. The Attorney General's defence was that the police officers were not officers on duty at the time of the incident.

There were two applications filed before the master, one by Mr. Belfon on 7th April 2008, requesting that the defences of the defendants be struck out, and the other by the Attorney General to be removed as a party on the basis that the three police officers were not officers on duty at the time. The learned master ordered that the defences of the two police officers be struck out and ordered judgment against the three police officers with damages to be assessed. The master refused the Attorney General's application to be removed, struck out the amended defence and entered judgment against the Attorney General with damages to be assessed. The Attorney General appeals against this Order.

Held: dismissing the appeal with costs to Mr. Belfon assessed in the sum of EC\$1500.00, that:

1. The state of pleadings before the learned master indicated that the Commissioner of Police in the charges brought against Mr. Belfon clearly asserted that the police officer in question had been acting in execution of his duty. This was in stark contrast to the Commissioner of Police's naked denial and bare submissions.
2. The master was entitled to find that there was no serious live issue of fact which could only be determined by hearing oral evidence.

Ian Peters v Robert George Spencer, ANUHCV2009/0016 applied.

3. The master acted properly in saving Mr. Belfon the expense and protraction of a trial which from the pleaded documents could only have been resolved in his favour.

JUDGMENT

- [1] **MITCHELL JA [AG]:** Clinton Belfon was a 22 year old sales clerk residing with his mother when, in the early morning of Saturday, 14th April 2007, he attended the Fantazia Night Club accompanied by his girlfriend and her mother. At some point he noticed a man, whom he did not know at the time but who he later learned was Cpl #48 Alex Fletcher, gyrating on his girlfriend who was standing alongside him close to the stage. The man appeared to be drunk and, despite repeated requests by the girlfriend to stop, he continued his gyrations. A conversation ensued between Mr. Belfon and the man. When the man lifted his hands at his girlfriend, Mr. Belfon pushed him away from her.
- [2] Sometime later, the man, together with two other men, returned to the spot where Mr. Belfon was standing close to the stage. The three men began punching Mr. Belfon in his face and body. The first man and Mr. Belfon fell to the ground throwing punches at each other. The two other men stood over them kicking Mr. Belfon and beating him. The three men pulled Mr. Belfon by his hair outside into the parking lot. There, the first man instructed a uniformed police officer to bring the transport, at which point Mr. Belfon realised the three men who had been beating him were police officers.
- [3] The officers placed Mr. Belfon in the back seat of the police vehicle. While in the vehicle the first man, Cpl Fletcher, continued to strike Mr. Belfon causing him to black out five or six times. Mr. Belfon attempted to avoid the blows by burying his face in Cpl Fletcher's lap, but Cpl Fletcher continued to beat him, using his elbow to knock Mr. Belfon in the back of his neck and head. He attempted to stick his fingers in Mr. Belfon's eyes, saying, 'I must take something from you tonight. I am a soldier and I don't like nobody disrespect me.'
- [4] When they arrived at the South St Georges Police Station, Cpl Fletcher took Mr. Belfon's hand and hit himself with it in his face saying to Mr. Belfon, 'Hit me

now. Hit me now.' According to the amended statement of claim, the particulars of which were never disputed by any pleading, the Sergeant at the station told Cpl Fletcher, 'Stop getting on like that in the station.' They placed Mr. Belfon in a cell where he spent the night, and in the morning he was taken to the General Hospital for medical attention. He claimed to have been in tremendous pain, and sustained numerous injuries including bruises to both sides of his face, the inside of his mouth, and blood was coming from his nose.

- [5] Mr. Belfon was forced to stay away from work, losing income, and had to wear a neck collar due to injuries to his spine at the level of the C4-C7 vertebrae which gave him limited neck movement. The medical report indicated he suffered abrasions and swelling below both eyes and cheeks, small abrasions of the inner left upper lip, cervical spine tenderness, and had an area of erythema and tenderness to the left side of his back. He exhibited with his statement of claim copies of his sick leave certificates, photographs evidencing his injuries, a copy of his medical report, and a copy of his receipts in support of his claim for special damages.
- [6] Mr. Belfon was subsequently, on 14th April 2007, charged with several summary offences brought by the Commissioner of Police. These included a charge for the offence of 'assaulting Alex Fletcher a police officer in the execution of his duty contrary to section 67(3) of the Police Act Chapter 244 of Volume VI of the 1990 Revised Laws of Grenada.' He was also charged for resisting arrest and causing harm to a police officer in the execution of his duty.
- [7] After a trial in the Magistrate's Court on 26th August 2010, Mr. Belfon was acquitted of the charges of assaulting the police officer and of resisting arrest. He was convicted of causing harm, but the Magistrate merely reprimanded him and discharged him, ordering that no conviction was to be recorded.

[8] Meanwhile, on 8th October 2007, Mr. Belfon filed and served a claim form and a statement of claim naming as defendants the three police officers, Cpl #48 Alex Fletcher, PC #295 Quintana Ogilvie, and PC#164 Lewan John, and against the Attorney General on behalf of the Crown as their employer. On 21st December 2007, Mr. Fletcher and Mr. John filed purported defences to the claim. The defences are identical and read:

"DEFENCE

I dispute the claim on the following grounds-

I certify that all the facts set out in my Defence are true to the best of my knowledge information and belief."

That was the sum total of the two filed defences. Each of them is signed, the one by Cpl Fletcher and the other by PC John. The defences both consist solely of the above-quoted words.

[9] On 16th January 2008, the Attorney-General filed an acknowledgment of service indicating his intention to defend the claim. On 18th February 2008 the Attorney General filed his defence. The nub of the defence is that the three police officers were not on duty on that particular occasion. Otherwise, he pleaded, he had no knowledge of the matters set out in the statement of claim.

[10] On 26th March 2008, the Attorney General filed an application supported by an affidavit of the then Commissioner of Police, Mr. Winston James, for an order that he be removed from the claim on the basis that the three police officers were not officers on duty at the time. At the time that this application was filed, Mr. Belfon was awaiting trial of the criminal charges filed against him in the name of the Commissioner of Police arising out of the incident in question.

[11] On 7th April 2008, Mr. Belfon filed an application requesting that the purported defences be struck out and judgment be entered for him against all four

defendants. On 18th April 2008, with the leave of the court, an amended statement of claim was filed and served on the Attorney General adding a claim that at all material times the three police officers were exercising their function as police officers and were so acting in the execution of their duties, and stating that the Attorney General was, pursuant to the **Crown Proceedings Act**,¹ responsible for the torts of the officers while performing or purporting to perform their duties. It also added the particulars of the summary offences instituted against Mr. Belfon by the Commissioner of Police, and claiming that, as a result, the three police officers were acting at all material times as servants or agents of the Attorney-General pursuant to the **Crown Proceedings Act**.

[12] On 3rd June 2008, the Attorney General filed and served an amended defence in which he particularised his assertion that the police officers were not on duty on that particular occasion, and were not servants and/or agents of the Attorney General pursuant to the **Crown Proceedings Act**. He also asserted that the only valid charge preferred against Mr. Belfon was instituted by the Commissioner of Police upon the complaints made by Cpl Fletcher while acting in a private capacity and not in the execution of his duty. A copy of the Charge Sheet is exhibited to this amended defence. The only Charge Sheet exhibited shows the charge as quoted above at paragraph 6.

[13] On 4th December 2012, the two applications came up before acting Master Debra Burnette. On the application of Mr. Belfon, the Master ordered that the purported defences of Cpl Fletcher and PC John are struck out as disclosing no reasonable grounds for filing a defence, and she ordered judgment to be entered against the three police officers with damages to be assessed. She also gave directions for filing affidavits in support of and in opposition to the assessment of damages. There is no appeal against this Order.

¹ Cap. 74, Revised Laws of Grenada 2010.

- [14] On the same date, the learned master refused the Attorney General's application to be removed as a party in the matter, and she struck out the amended defence, and entered judgment against him with damages to be assessed. It is this order that is appealed.
- [15] I presume that leave has been granted for this appeal, though contrary to rule 62.4(3) of the **Civil Procedure Rules 2000** ("CPR") no copy of the order granting leave to appeal is attached to the copy of the notice of appeal shown to me. Nor, contrary to CPR 62.10(2) does the notice of appeal state in its heading that it is an interlocutory appeal made under CPR 62.10, so that I am left to guess from the fact that the court office has passed this appeal to me acting as a single judge pursuant to CPR 62.10(1) that it is such. Nor, contrary to CPR 62.4(2) is a copy of the order appealed against attached to the copy of the notice of appeal shown to me. Nor is there any form of record of appeal filed by the appellant as required by CPR 62.10(1), which would have included the master's notes and reasons. There is no indication that the appellant has ever requested from the court office the necessary documents for completing the required record. However, Mr. Belfon's attorneys have, with their skeleton arguments filed on 6th February 2013, helpfully included a copy of the master's order and most of the documents that should have been filed by the appellant, so that I am not hampered in considering and disposing of this appeal.
- [16] The grounds of appeal are three:
- "(a). The Learned Master erred in fact and law by refusing the application of the Appellant to be removed as a party in the matter herein on the ground that the criminal charges laid against the Respondent at the Magistrates Court was commenced on behalf of the First, Second and Third Appellants acting in the course of their employment as police officers and accordingly, the Appellant must be held vicariously liable for the First, Second and Third Appellants.
 - (b). The Learned Master erred in law and fact by relying on the criminal charges laid against the First, Second and Third

Appellant at the Magistrate Court [sic], in holding that the First, Second and Third Appellants were acting in the course of their employment as police officers and that the Appellant is vicariously liable for the acts of the First, Second and Third Appellants.

(c). The Learned Master erred in law by refusing the application of the Appellant to be removed as a party in the matter herein and holding that the First, Second and Third Appellants were acting in the course of their employment as police officers, without there being any relevant evidence that the First, Second and Third Appellants were in fact, acting in the course of their employment as police officers."

[17] The Honourable Solicitor General in his written submissions filed on 13th January 2013 submits that the main issue is whether the court ought to have based its decision on the ground that 'the criminal charges laid against the First, Second and Third Appellants [sic] reveals [sic] that the First, Second and Third Appellants were officers acting in the execution of duties'. I note that there are no first, second and third appellants to this appeal, which is clearly stated to be brought by the Attorney-General alone. Adding their names to the title of the appeal does, not without more, make them appellants. Nor have any charges been brought 'against the First, Second and Third Appellants'. The only charges were brought by the Commissioner of Police against Mr. Belfon. Working one's way around the grammatical and other errors in both the grounds of appeal and the submissions, and attempting to make sense of them, one concludes the Honourable Solicitor General really means that the learned master ought not to have relied on the fact that criminal charges had been laid by the Commissioner of Police against Mr. Belfon alleging that he had assaulted Cpl Fletcher while he was acting in the execution of his duty, and had also resisted Cpl Fletcher while he had been acting in the execution of his duty, in finding that the police officers had been officers acting in the execution of their duties as police officers at the time of the incident.

[18] The Honourable Solicitor General also submits that the court ought to have conducted a finding of fact to determine the issue of whether the first, second and

third appellants were in fact acting in the execution of duties, in the absence of clear and compelling evidence. The Solicitor General submits that on the face of the criminal charges laid against Mr. Belfon the record shows that there was no reference to the fact that Cpl Fletcher was a police officer.

[19] Without hesitating to explain any apparent contradiction, the Honourable Solicitor General then submits that the mere laying of a charge that Mr. Belfon assaulted Cpl Fletcher while he was acting as a police officer cannot be seen as conclusive of the fact that the Attorney General or the Commissioner of Police had accepted that the officers were acting in the course of their employment. It was a question of fact whether he was or was not acting in the course of employment. The learned master should, he submits, have conducted 'a finding of facts to determine the issue of whether at the very least and in the alternative, the Officers were in indeed [sic] acting in the course of duties as alleged.' The Honourable Solicitor General relies on the case of **Ian Peters v Robert George Spencer**² as supporting his submission that a statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence.

[20] I have difficulty in following the Honourable Solicitor General's reasoning in his submissions. Indeed, other than the bare suggestions and assertions quoted above, there is nothing submitted in their support. The state of the pleadings before the learned master indicated that the Commissioner of Police, in the charges brought against Mr. Belfon and exhibited to the statement of claim, clearly asserted that the police officer in question had been acting in execution of his duty. This clear assertion stands in stark contrast to the Commissioner's naked denial (in his affidavit in support of the Honourable Attorney General's application) and the bare submissions of the Honourable Solicitor General. What more

² Antigua and Barbuda High Court Civil Appeal ANUHCVAP 2009/0016 (delivered 22nd December 2009, unreported)

evidence than that assertion could the master have required? The master was clearly entitled to take that evidence into consideration. The law on how the master is to exercise her discretion on dealing with an application to strike out a statement of case is well established and is not in dispute and has been clearly stated by George-Creque JA in the **Ian Peters** case. There is no need for me to repeat it here. This was a clear case where the master was entitled to find that there was no serious live issue of fact which could only be determined by hearing oral evidence. The master acted quite properly in saving Mr. Belfon the expense and protraction of a trial which from the pleaded documents could only have been resolved in his favour.

[21] I would dismiss the appeal with costs against the Honourable Attorney General to Mr. Belfon which I assess at EC\$1,500.00.

Don Mitchell
Justice of Appeal [Ag.]