EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2009/0532

BETWEEN:

BRYAN JAMES

Claimant

and

ATTORNEY GENERAL

Defendant

Heard together with

CLAIM NO. SLUHCV 2009/0542

BETWEEN:

JAMES ENTERPRISES LIMITED

Claimant

and

ATTORNEY GENERAL

Defendant

Appearances:

Mr. Horace Fraser of Counsel for the Defendants/Applicants

Mr. Deale Lee of Counsel for the Claimant/Respondent

2013: September 20th and 24th

October 10th

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[1] Before this court are two applications, (1) filed by the claimants to strike out the claim of the defendant as disclosing no reasonable ground for defending the claim and for judgment to be entered for the claimants and (2) by the defendant to strike out the claim for failing to comply with mandatory statutory requirements and for being prescribed pursuant to article 2122 of the Civil Code of the Revised Laws of Saint Lucia Cap 4.01.

Brief history underpinning the applications.

[2] The undisputed facts are that the claimants are in the business of importing used and reconditioned vehicles for sale on the local market. Bryan James the claimant in SLUHCV2012/0532 is the Managing Director of James Enterprises Limited the claimant in SLUHCV2012/0542.

[3] On the 14th October 2009 and acting pursuant Section 94(1) and under the written orders of the Comptroller of Customs, officers of the Customs and Excise Department entered the business premises of James Enterprises Ltd and the private dwelling of Bryan James purportedly to carry out investigations into possible breaches of the Customs (Control and Management)Act Cap 15.05 of the Revised Laws of Saint Lucia (The Act). Pursuant to that exercise, five (5) vehicles were seized as liable to forfeiture and other documentation was retained. The defendant alleges that its actions were at all times sanctioned by the Act and in particular sections 94, 113, 114, 116 and 130 and accordingly was lawful.

[4] On the 11th November 2009, the claimants objected to the seizure by filing an opposition under the Act and in March 2011 the vehicles were eventually returned to the claimants. The claimants filed separate actions against the defendant for trespass, breach of statutory duty and unlawful detention of property. The application now filed by the claimants challenges the authority relied on in the defence to justify the actions of the Customs Department as being without merit and the issue of prescription raised, on the basis that it is bound to fail.

Submissions of the Claimants on the authority under the Act

[5] In so far as the power contained in section 94 (1) of the Act is interpreted to authorize the entry to premises to search, remove and detain by an administrative agency such as is the Customs and

Excise Department, the claimants state that this is contrary to the principle of separation of powers and the mischief underpinning that provision of the Act. They state that the power to sanction searches removal and detention in relation to private property is a judicial power excisable only under the authority of a warrant and subject to judicial sanction. Consequently the defendants wrongly interpreted the effect of Section 94(1) resulting in their violation of the claimants rights.

The Defendant's submissions in relation to the Act

[6] The defendant disputes the claimants' assessments of the defendant's conduct and their interpretation of Section 94(1) submitting instead that the language of Section 94(1) lends itself to two parallel means of authorizing entry search and detention of items namely (1) authorization by the Comptroller pursuant to section 94(1) and (2) authorization by the court pursuant to 94(2) of the Act. The actions of the Comptroller and his officers were proper and were executed in accordance with sections 94, 113, 114 116 and 130 of the Act.

Analysis of the Submissions

[7] Section 94 of the Customs Control and Management Act provides as follows:-

"Power to Search Premises

(1) Where an officer has reasonable grounds to believe that anything which is liable to forfeiture by virtue of any customs enactment is kept at or concealed in any building or other place or any offence has been committed under or by virtue of any customs enactment he or she may after being authorised by the Comptroller in writing so to do—

(a) enter any building or place at any time, and search for, seize, detain or remove anything which appears to him or her may be liable to forfeiture; and

(b) so far as is reasonably necessary for the purpose of such entry, search, detention or removal, break open any door, window or container and force and remove any other impediment or obstruction; and

(c) search for and remove any invoice, bill of lading or any other document or book relating to any assigned matter.

(2) Without prejudice to the power conferred by subsection (1) or to any other power conferred by this Act, if a magistrate is satisfied by information upon oath given by an officer that there are reasonable grounds to suspect as aforesaid, he or she may by warrant under his or her hand given on any day authorise that officer or any other person named in the warrant to enter and search any building or place so named.

(3) Where in the case of any entry, search, seizure, detention or removal, damage to property is caused and no goods which are liable to forfeiture are found, the owner of the building, place or goods damaged shall be entitled to recover from the Comptroller the costs of making good that damage to the property."

[8] The narrow dispute in these proceedings is the interpretation of the use of the power of the Comptroller under section 94 of the Act. This goes to the root of the issues raised in the claim, and the claim may well rise or fall based on a determination of the legitimacy of the actions of the Comptroller.

[9] The exercise of the authority of the court to strike out process is contained in Part 26.3 (1) of the CPR 2000 and it provides thus:-

"26.3 (1) In addition to any other power under

these Rules, the court may strike out a

statement of case or part of a statement

of case if it appears to the court that —

(a) ....

(b) the statement of case or the part to
be struck out does not disclose any reasonable
ground for bringing or defending a claim;

(c) ....

(d) ....

[10] The test to applied by the courts in this jurisdiction continues to be that applied by Byron CJ in **Baldwin Spencer v The Attorney General of Antigua and Barbuda et al** (Civil Appeal No. 20 A 1997). Sir Byron said:—

> "This summary procedure should only be used in clear obvious cases, when it can be seen on the face of it, that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court…….."
>
> "...the operative issue for determination must be whether there is 'even a scintilla of a cause of action'. If the pleadings disclose any viable issue for trial then the court should order the trial to proceed but if there is no cause of action the court should be equally resolute in making that declaration and dismissing the appeal."

[11] In more recent cases of the court decided under the CPR 2000 the court's approach has remained consistent. In **Julian Prevost v Rayburn Blackmore** DOMHCV2005/0177, Rawlins J (as he then was) reasoned:—

> *"The court has always had jurisdiction to strike out actions on this ground if having examined the claim it finds that the action will have no chance of success even if the pleading process were to continue and the matter goes to trial. This is a jurisdiction which the court exercises very sparingly and only in the most clear and* obvious *cases, for example when it is clear that the case has no legal basis. This is because the court errs on the side of having trials on the merit of cases."*

[12] Invoking this summary procedure at this stage is unreasoned. There is nothing trite about the response proffered in the defence. It answers the controversy directly by stating that the trespass, unlawful searches and detention and breaches of statutory authority alleged were in fact specifically sanctioned by law and the Act and there was no misinterpretation of the guiding legislation. This in my view raises what is a most logical defence to the claim. The application of the claimants undoubtedly is seeking a premature determination of the central issue of the

construction and meaning of Section 94. At this stage of the proceedings such a request is inappropriate and unlikely. The application is therefore dismissed with costs to the defendant.

Application pursuant to Article 2124

[13] The second basis of the application to strike proffered by the claimants is that the defence is foredoomed to fail on the issue of prescription pursuant to Article 2124 of the Civil Code of Saint Lucia. The actions of the defendant the claimants assert were in bad faith and as such any pleading asserting prescription is unsustainable and ought to be dismissed.

[14] Article 2124 provides as follows:-

> "*Actions against public officers in respect of acts done by them in good faith and in respect of their public duties are prescribed by 6 months."*

[15] I deal with this issue shortly by agreeing with the submission of the defendant that the issue of whether the actions employed by the Customs and Excise Department were in good or bad faith is a triable issue to be determined on the investigation of the merits of the claim and should not be precipitately tried.

Respondent's /Defendant's application

[16] By further application of the defendant filed on the 23rd of November 2012, the defendant requests a dismissal of the action brought by the claimants on the ground that the statements of claim filed on the 25th of October 2012 in relation to an incident occurring on the 14th October 2009 was filed in violation of Art 2122. The defendant's submit that more than 3 years elapsed since the cause of action arose, to the date of filing and as such, the action is prescribed and the court is not seized with jurisdiction to hear the matter. Additionally the defendant applies that the claimants have failed to comply with the mandatory provisions as to service of the notice of intended suit of Article 28 of the Code of Civil Procedure, in fatality to his claim.

[17] Article 2122 of the Civil Code and Article 28 of the Code of Civil Procedure read as follows:-

> *2122. The following actions are prescribed by 3 years;*

1. *For seduction, or lying-in expenses;*
2. *For damages resulting from delicts or quasi-delicts, whenever other provisions do not apply;*
3. *For wages or salaries of employees not reputed domestics and who are engaged or hired for a year or longer period;*
4. *For sums due to schoolmasters and teachers, for tuition, and board and lodging furnished by them.*

Article 28:—

> *"No public officer or other person fulfilling a public duty or function can be sued for damages by reason of any act done by him in the exercise of his functions, not can any judgment be rendered against him, unless notice of such suit has been given him at least one month before the issuing of the writ of summons.*
>
> *Such notice must be in writing, it must specify the grounds of the action, it must be served upon him personally, or at his domicile and must state the name and residence of the claimant"*

[18] The action of the claimants have been brought in trespass and unlawful detention of goods arising from events that occurred on the 14th November 2009 is in any event covered by Article 2122(2). Consequently the defendants argue that both the right and the remedy have both been extinguished.

[19] In relation to Article 28 the defendant submits that a failure to meet the mandatory requirement and to plead its compliance in the statement of claim is fatal to the claim. The defendant relies on the often cited authority of **Castillo v Corozal Town Board and Ano** (1983) 37 WIR 86, and **Peter Clarke v The Attorney General** SLUHCV1999/0475 which confirmed the reasoning in **Castillo**.

[20] There has been no response to the application of the defendant, perhaps with reason. The authority of Castillo is one either embraced or dreaded by practitioners of public law depending on the side you stand on. Its implications are dire for a person caught not in compliance. There is no latitude for flexibility or the exercise of a discretion, its provisions are

inviolable. I am without flexibility and must dismiss the action for the failing of the claimants in this preemptive step.

[21] Based on my finding it is unnecessary to deal with the issue raised in relation to Article 2124. Nevertheless I am satisfied that that action too is hopeless being one for trespass; for unlawful detention of goods; and for breach of statutory duty it is covered by Art 2122(2) for which a three year limitation applies.

Costs

[22] The parties are to agree the costs payable to the defendant on the two applications.

V. GEORGIS TAYLOR-ALEXANDER

HIGH COURT MASTER