THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2013/0019

BETWEEN:

VIOELT FRANCIS
PAULINE GOMES

Claimant

and

ATTORNEY GENERAL
COMMISSIONER OF POLICE

Defendant

Appearances:

Dr. David Dorsett for the Claimants

Ms. Alicia Aska for the Defendants

2014: January 20th, 27th
February17th

Judgment

[1] **Cottle, J.**: The First Claimant is the mother of the Second Claimant. They live together in a single household with the father of the Second Claimant. The First Claimant says that this has been the case for some three decades. She testified under cross-examination that their home was in the countryside but they sometimes live in a building at Runaway Beach. She described this structure as a two storey building. In this building the First Claimant says that she would be upstairs with Gilbert Gomes, the father of the Second Claimant, while the Second Claimant would occupy the lower level of the building. There is an internal staircase which connects the two levels but according to the First Claimant, they do not use it, preferring to access the downstairs portion of the building by means of an external staircase. The records at the Land Registry reveal that the property is owned by a company, DRB Ltd. The First Claimant swore that she did not know that

Gilbert Gomes was the sole beneficial owner of all the shares of DRB Ltd. In fact she said she did not know who owned DRB Ltd.

[2] The police applied for and obtained a warrant to search the premises of Gilbert Gomes located at Runaway Beach. The warrant authorized the police to enter at any time, by force if needed, to search the property, and any vehicles thereon, for unlicensed firearms and ammunition.

[3] During the early hours of 26th May, 2012, the police went to the house at Runaway Beach to execute the warrant. They knocked and no one opened the door. The party of officers heard the sound of a vehicle that was parked in the yard being locked. The lights of the vehicle flashed. The officers concluded that it was being locked by remote control. They could hear the sound of toilets flushing repeatedly. The officers broke the door of the upper storey and entered. They met Gilbert Gomes and the First Claimant. They recovered smashed cellular telephones from the toilet. They searched the upper storey and found nothing else of interest. They First Claimant says that she was taken to her bedroom by a female police officer and asked to disrobe completely. She told the officer that she would consent to a 'pat down' search but the police constable insisted that she disrobe. The First Claimant says she complied; the officer looked at her without touching her and left the room.

[4] The police then went to the lower storey. The Second Claimant says that she opened the door when she heard her father's voice outside. She saw police officers who said that they were there to search the premises. The Second Claimant says her father Gilbert told her to allow the police to search and she did so. A vehicle parked in the yard was also searched by the police. The Second Claimant says that the vehicle was hers and she did not consent to the search of the vehicle. The Second Claimant swore that she had been working with DRB Ltd. since 2002. Since 2010, she served as General Manager. She said the company operates hotels, restaurants and condominiums. She did not identify the hotels or condominiums operated by DRB Ltd. The restaurant she said was the Lobster Shack. She then admitted that the restaurant business was not operated or owned by DRB Ltd. but that the building housing the restaurant was owned by DRB Ltd. and rented to the operators of the restaurant. She testified that she and he father are registered shareholders of DRB Ltd. and that she was the company secretary. Despite this, she

was unaware that DRB Ltd. had been shuck of the Register of Companied since July, 2010. When he testified Gilbert Gomes swore that he was the sole shareholder of DRB Ltd. and had been the sole shareholder for more than 10 years.

[5] The claimants felt aggrieved by the actions of the police and filed a fixed date claim form seeking the following declarations and other relief:-

(1) A declaration that the search of the person of the 1st Claimant by police officers on 26th May, 2012 was in contravention of the rights of the 1st Claimant as guaranteed by section 10 of the Antigua and Barbuda Constitution Order 1981.

(2) A declaration that the search of the property and the entry onto the premises of the 2nd Claimant by police officers on 26th May, 2012 was in contravention of the rights of the 2nd Claimant as guaranteed by section 10 of the Antigua and Barbuda Constitution Order 1981.

(3) Damages awarded to the 1st Claimant for the tort of battery.

(4) Damages, to include vindicatory damages, to the Claimants for the contravention of their constitutional rights as guaranteed by section 10 of the Antigua and Barbuda Constitution Order 1981.

(5) Cost pursuant to CPR 200 r. 56.13(5).

(6) Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act the cause of action arising on 26th May, 2012.

(7) Interest pursuant to section 7 of the Judgments Act.

(8) Any other relief that the court deems fit."

[6] The Counsel for the claimants filed helpful written submissions. He posited that two issues fall for determination. He identified these as:-

1. The lawfulness of the strip search of the first claimant.
2. The lawfulness of the search of the premises and property of the second claimant.

The claim for battery was abandoned at the trial.

Issue 1

[7] I will adopt the formulation of counsel for the claimants. The Constitution of Antigua and Barbuda at Section 10 prohibits the search of any person or his property save with the consent of the person concerned. This prohibition is not absolute. Section 10 (2) (c) permits searches reasonably required for the purpose of preventing or detecting crime. Section 10 (2) (e) authorizes searches pursuant to a court order.

[8] As far as the relevant facts go, there is dispute. The female police officer says that she did ask the First Claimant to disrobe. Upon hearing this, the First Claimant became tearful and distressed. She said she was a cancer survivor and had undergone a mastectomy. The officer says that she was sympathetic as she had recently lost a younger sister to cancer. She discontinued the search and did not require the First Claimant to undress. The First Claimant's version differs of course. I saw the witnesses. I preferred the evidence of the police officer on that point. However, even on the version of the First Claimant there is no infraction of her constitutional rights in the circumstances. It is not contested that the police had a valid warrant to search the premises. They knocked and were not admitted. The failure to admit them and the circumstances of the flushing toilets and subsequent discovery of cellular telephones which the occupants were apparently trying to dispose of are enough to excite the suspicions of a reasonable police officer. In those circumstances, I find the visual cursory search of the first claimant in the privacy of her own bedroom, to have been reasonably required for the purpose of detecting or preventing crime.

[9] Counsel for the claimants cited the case of R.V. Golden 2001 3 R.C.S. 679.That case considered the lawfulness of a search of an individual involving the forcible removal of 10.1 grams of crack cocaine from the anal cavity of Mr. Golden. This intrusive search was carried out in the stairwell of a building and not at the police station. The relevant Canadian constitutional provisions differ. Section 8 of the Canadian Charter of Rights and Freedom simply provides that:

> "Everyone has the right to be secure against unreasonable search and seizure."

The facts are thus distinguishable from the present case.

[10] Without wishing to lay down any general guidelines as to the lawfulness of strip searches, it would seem to me that if a search is carried out for a valid objective in the pursuit of criminal justice, such as the discovery of evidence, and the search is not done in an abusive fashion then such a search may well be justified under section 10 (2) (c) of the constitution.

Issue 2.

[11] The Second Claimant complains that there was no valid warrant to search her premises which she identifies as the lower storey of the house or her vehicle.

[12] There can be no question that the warrant authorized the search of any vehicles on the premises of Gilbert Gomes. Mr. Gomes who gave evidence, does not dispute that the premises, albeit registered to DRB Ltd., are his premises. He makes no complaint about the search of the upper storey. The yard where the vehicles was parked form part of the premises and the vehicle is thus included as having been permitted to be searched by the court order.

[13] The evidence of the First Claimant is that the family constitutes a single household. All parts of the building are connected. The fact that they may opt not to use the interior staircase is neither here nor there. Mr. Gomes explained that the internal staircase was too steep and that is why he did not use it. I am content that the two storeys of the building constitute a single set of premises.

[14] According to the Second Claimant, Gilbert Gomes told her to permit the search and she did so. I have no hesitation in lifting the corporate veil and considering DRB Ltd. and Gilbert Gomes as one and the same person for the purposes of this case. The evidence also satisfies me that there was consent to the search.

[15] The claim of both claimants is without merit and I dismiss the claim against the defendants.

[16] Quite often in matters like this one, no order is made as to costs. I depart from that usual regime in this case. The claimants will pay the defendants costs in the sum of $7,500, being prescribed costs. I do so because the claimants expressed that their aim in bringing the claim was to 'punish'

the police for what they view as harassment. According to the second claimant, the police had investigated her before and conducted searches though nothing was found. I find this to be an unreasonable motive to bring the claim which I have already found to be completely without merit.

Brian Cottle
High Court Judge