

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2005/0009

BETWEEN:

LESTER CADORE

Claimant

AND

ISLAND SECURITY LIMITED

Defendant

Appearances:

Ms. Anyika Johnson for the Defendant

Law Office of George E. D Clyne for the Defendant

2012: February 21st

2013: May 28

JUDGMENT

[1] **PRICE FINDLAY, J.:** This claim arises out of an incident which took place at the Spiceland Mall on 27th August 2004. As a result the Claimant claims the following:

- 1) Damages
- 2) Special damages
- 3) Further and/or other relief
- 4) Interest
- 5) Costs

[2] The Claimant's case is that he was assaulted by the servants and/or agents of the Defendant and falsely imprisoned.

[3] He claims that the Defendant's employees beat him in the head with a stick, struck him repeatedly all over his body, pushed him through a glass partition and squeezed his throat manually.

[4] He also alleges that he was kept handcuffed at an office at the said Mall against his will for approximately two hours. As a result of the treatment meted out to him, he suffered pain, injury, loss and damage.

He gives details of his injuries as: -

- (1) Hematoma over left temporo-parietal area of scalp with tenderness
- (2) Superficial lacerations to lateral aspect – lower and upper left arm
- (3) 3 cm laceration – upper left back and lower back laterally
- (4) Swelling and tenderness – both wrists and carpal area
- (5) Small laceration – top center of back

[5] The Defendants in their defence, justly deny that Dennis Sylvan, one of the men who was involved in the incident with the Claimant, was their employee. They assert that he was employed with Real Value Supermarket at the relevant time.

[6] They also assert that Alton Williams, their employee's sole involvement in the matter was to drive the Claimant from the Mall to the police station.

[7] Kendall Sylvan merely assisted Dennis Sylvan in restraining the Claimant by helping to handcuff the Claimant. This was done out of extreme necessity for their safety. They deny falsely imprisoning the Claimant except restraining him for their personal safety.

[8] The Claimant gave evidence that on 27th August, 2004 he had gotten a hire to go to Spiceland Mall Grand Anse. Having arrived at the Mall he dropped off his fare and parked his vehicle in front of Real Value Supermarket, and was speaking to friends.

[9] While speaking to his friends he was approached by a man who he did not know. The man was in civilian clothes. He was told that he could not remain there with his taxi as the Mall had its own taxi service. He was told not to return.

[10] He told the man that he could not stop him from coming to the Mall. He was surprised by the young man's attitude.

- [11] The Claimant further testified that the young man came up to him and he walked away. He said the young man did this three times. The Claimant and the young man exchanged words. The young man grabbed him by his collar and he in turn grabbed the young man by his collar.
- [12] No one intervened while this altercation was taking place. The Claimant saw a security guard in the uniform of the Defendant Company run up and grab him. He later learnt that this person's name was Dennis Sylvan.
- [13] The young man then took a bootoo from his waist and started to beat him in his head while Dennis Sylvan held him. He was then handcuffed by Sylvan and taken to a room inside the building.
- [14] When in the room the Claimant asked that the handcuffs be released but he was told by the young man that he would be killed, and the handcuffs were squeezed harder, causing intense pain.
- [15] He was searched by the two men, his wallet removed from his person and gone through. He tried to retrieve his wallet but was cuffed by the young man. He never got the name of this young man. He was told he would be killed.
- [16] He was in pain all over his body, and he was kept in the room for approximately ½ hour before the police arrived. When he asked the police to make the young man remove the handcuffs, he was attacked again by the same young man and pushed against a glass so hard that the glass broke and fell outside the office.
- [17] He was brought back to the office and appealed to the police to intervene, but to no avail. Nothing happened. He was then placed in a vehicle with the Defendant company logo driven by Alton Williams and taken to Central Police Station. At the station he was searched by the same young man in the presence of the police. He was then placed in a cell by the young man and then the young man had the police lock the door.

[18] The money he had in his wallet, EC \$40.00 and US\$300.00, he never saw again. The police took him to the Casualty Department of the hospital some time later, and he was attended to by one Dr. Thomas. The following injuries were recorded by the hospital authorities:

- (1) Hematoma over left temporo-parietal area of scalp with tenderness
- (2) Superficial lacerations to lateral aspect – lower and upper left arm
- (3) 3 cm laceration – upper left back and lower back laterally
- (4) Swelling and tenderness – both wrists and carpal area
- (5) Small laceration – top center of back

[19] The Claimant said that he later found out that the first young man who accosted him worked with the Defendant Company and was a security guard at the Mall. He testified that he was embarrassed about the incident and that the pain from the beating was intense.

[20] In cross-examination, the Claimant stated that prior to that day he never went to the Mall with his taxi just to see if there were passengers who wanted a taxi. He was unaware that Spiceland Mall had a taxi stand on the compound and was unaware that there was a rule that only designated taxis could ply for customers at the Mall.

[21] He insisted that he was not working that day at the Mall. Once he had dropped off his passenger at the Mall, he had stopped working and was speaking to his friends.

[22] He asserted that it was Dennis Sylvan who grabbed him, and when this happened the other young man in uniform came and assisted Sylvan. Dennis Sylvan was not wearing a uniform at the time of the incident.

[23] He repeated what he had said in his witness statement about being grabbed and grabbing the person back. He admitted that he was upset.

- [24] He said that Sylvan told him to shut up and that Sylvan threatened to kill him. Sylvan then held him and put his hands behind his back.
- [25] He said that when he was pushed through the glass the police asked the young man what he was doing. When he fell and got up the police took the keys and unlocked the handcuffs. His hand was cut. He reiterated that he was shoved forcibly through the glass.
- [26] He denied that he ran himself into the glass while he was being carried away by a police officer and a security guard.
- [27] He denied using obscenities to the man who approached him at the Mall. No one told him that if he did not stop using obscenities that he would have to be removed from the Mall. He denied punching Dennis Sylvan or anyone during the course of the altercation.
- [28] Jake Cadore gave evidence on behalf of the Claimant. He is the Claimant's cousin. He said that on the day in question he was on a bus on his way to Grand Anse in the direction of Spiceland Mall when he saw two guys in a physical altercation with the Claimant. One man was in uniform and one was in plain clothes.
- [29] He came out of the bus and headed towards where the altercation was taking place. He saw the uniformed man grab the Claimant and take him in a back room behind the Mall.
- [30] He went to look for the Claimant but was told if he want to get what the Claimant was getting. He was told to leave the premises. He did so. He stopped working. About 45 minutes later the police came and took the Claimant to Grand Anse Police Station.
- [31] He went to the station, and he was allowed in and the Claimant gave him the keys to his car and his watch. He then left the station. In cross-examination he said

that he was on his way into the Mall on a bus named 'Replacement'. The bus was going round the parking lot in the Mall.

[32] He also said that he did not leave the Mall, he just walked away from the person who spoke to him. He came back to the front of the Mall.

[33] Howard Harbin was the first witness for the Defendant. He testified that he is the Manager of the Defendant Company. He was the Chief Executive Officer (CEO). On 27th August 2004 the company had two employees working at Spiceland Mall. They were Alton Williams and Kendell Sylvan.

[34] He stated that at the time of the incident, Dennis Sylvan was not employed by the Defendant. He stated that Dennis Sylvan began his employment with the Defendant in October 2004.

[35] He denied that the Defendant was liable for any injuries suffered by the Claimant. In cross-examination, he testified that he would be the best person to say where the employees were stationed that day as he was the hands on day-to-day Manager of the company.

[36] He believed that on the day in question the Supervisor was Kelly Reuben, and there would have been more than one Supervisor throughout the course of the day.

[37] He admitted that apart from the two employees that he named, there may have been other employees at the Mall on the day in question. The Defendant Company had an office at the Mall on the relevant date. They had surveillance operators and dispatchers in that office around the clock.

[38] He could not say whether the incident happened as the Claimant had stated, as he was not present when the altercation took place. He stated that he had received a written report on the incident but could not produce it as it along with other documents belonging to the Defendant Company, were lost in Hurricane Ivan.

- [39] Dennis Sylvan testified that on September 2004 he began working as a security officer with the Defendant Company. He testified that on 27th August 2004 when the incident occurred, he was not employed by the Defendant Company; he was an employee of Real Value Supermarket.
- [40] He testified that on the day in question he was on duty at the Spiceland Mall. He saw an employee of the Defendant Company in a compromising position. He went over to see what the problem was.
- [41] He was informed that the Claimant had violated the Mall taxi rules by offering his services to customers on the premises. He introduced himself to the Claimant and reinforced the rules to the Claimant about taxi services at the Mall.
- [42] He stated that the Claimant ignored him and approached customers who were leaving the Mall and offered them taxi services. He directed the customers to the designated taxi services, and this made the Claimant angry. He began cursing, using obscene language. Sylvan told the Claimant to stop swearing or he would be removed from the compound.
- [43] The Claimant approached him aggressively in a confrontational way. The Claimant was in his face. He stepped back but the Claimant kept coming up to him. The Claimant lifted his arm in a fist and was about to hit him. He blocked the blow by holding onto his arm and he dropped the Claimant to the ground.
- [44] The claimant got up, grabbed him and kept saying that he had a gun in his vehicle. The Claimant made attempts to go to his vehicle.
- [45] While they were wrestling, the claimant punched him in his face so he took his baton and struck the Claimant and he fell to the ground. The Defendant Company employee came to assist him and hand cuffs were placed on the Claimant to restrain him.
- [46] The Claimant was then taken to a secure area and searched to make sure that he had no weapons in his possession.

- [47] The South St. George Police were contacted and officers arrived. The police took the Claimant to the vehicle. Sylvan was holding one hand and an officer the other hand of the Claimant.
- [48] While they were headed outside, the Claimant pushed himself into the glass door and it broke. Police Officer Gludd asked the Claimant if he did that to say that Sylvan had done this to him.
- [49] As a result of the glass breaking, the Claimant received a cut to the head which began to bleed. They took the Claimant back to the office and Officer Gludd instructed Sylvan and Alton Williams to use the Defendant Company vehicle to take the Claimant to the police station. They did so.
- [50] At the station he gave a statement and the Claimant was brought back to the Mall where the police searched his vehicle. He denied liability for any injuries which the Claimant suffered.
- [51] In answer to Counsel for the Claimant, he said there was no physical confrontation between the Claimant and the Defendant Company employee, it was a verbal situation that he observed.
- [52] He repeated that the Claimant was angry and aggressive. He determined that he was aggressive by the way the Claimant approached him.
- [53] He described how he brought the Claimant to the ground when he raised his fist to hit him. A scuffle ensued after the Claimant got up from the ground. The Claimant punched him in his face, he hit the Claimant with the bootoo, not in his head but on his foot. He went on top of him when he fell. He was trying to restrain the Claimant who was struggling and fighting.
- [54] It was then that the Defendant Company employee came with the handcuffs and placed them on the Claimant. Both the Defendant Company employee and Sylvan placed the handcuffs on the Claimant. The Claimant was being violent.

- [55] He stated that the Claimant went to the police station in his vehicle. He did not know who Jake Cadore was and recalled no conversation with Jake Cadore. He agreed that the Claimant did ask for handcuffs to be removed but he said he told him to wait until the police arrived.
- [56] It was not true that the handcuffs were tightened. They did not push the Claimant into the glass; he pushed himself through the glass! He admitted that it was possible that the Claimant may have received injuries to his arm or leg when he brought the Claimant to the ground.
- [57] He denied beating or assaulting the Claimant in any way, he denied threatening the Claimant's cousin. I have looked at all the evidence in the matter and I prefer the evidence of the Defendant over that of the Claimant.
- [58] The Claimant's contention that he was attacked while just standing and speaking with his friends at the front of the Mall simply does not ring true. The guards would have had no reason to accost the Claimant in the manner which he describes if he were merely standing peaceably while speaking with other persons.
- [59] Further, his witness can only speak to the altercation, not to the cause of the altercation. It is more plausible to this Court that the Claimant was trying to solicit passengers for his taxi when he was told that he could not do so.
- [60] I believe that he was angered by being told that he could not do so and he began to use obscene language to the security officers. He became agitated and physically confronted the officers, who were forced to restrain him given his violent behaviour.
- [61] I do find that he was wrestled to the ground and handcuffed by the officers to prevent his behaviour from escalating. I find that they were within their rights to protect not only themselves but other persons in the Mall from the aggressive behaviour of the Claimant.

- [62] In the circumstances I do not find that the officers used unnecessary force to subdue the Claimant. I find that their actions were reasonable and justifiable. They did no more than was necessary in order to restrain the Claimant.
- [63] I also find that the Claimant in his aggressive mood was responsible for propelling himself into the glass and that in doing so, the glass broke resulting injuries which the Claimant suffered.
- [64] More importantly, I find that Dennis Sylvan was the person who had the confrontation with the Claimant, and I also find that at the relevant time Dennis Sylvan was not an employee of the Defendant Company but was employed by the Real Value Supermarket.
- [65] I am fortified in that finding in that the Claimant himself testified that Dennis Sylvan was not wearing a uniform when he saw him at the Mall that day.
- [66] The evidence led by the Defendant that Dennis Sylvan was not an employee of the company until either September or October 2004 was not refuted in any way by the Claimant.
- [67] Therefore, even if I were to find that Dennis Sylvan had attacked the Claimant without cause, the Claimant still could not succeed as vicarious liability would not have attached to the Defendant.
- [68] In the circumstances, I dismiss the Claimant's claim and enter judgment for the Defendant with costs in the sum of \$5,000.00.
- [69] I wish to thank Counsel for their insightful submissions.

Margaret A. Price Findlay
High Court Judge