

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

Claim No. ANUHCV2015/0635

Between:-

HOPETON WHITE ELVIS "KENNY" CHANCE

DAMIEN SCOTT

Claimants

And

EDWARD CROFT

As Director of ONDCP Office of National Drug and Money Laundering and Control Policy

Defendant

APPEARANCES :

Mr. Lawrence Daniels of Counsel for the Claimants

Ms. Carla Brookes Harris with Ms. Rose-Anne Kim of Counsel for the Defendant

Mr. Curtis Bird representing the Office of National Drug and Money Laundering and Control Policy present The Claimants present

Ms. Marcia Edwards, representative of the Defendant present

2017: April 25, July 24

Decision

[1] **WALLACE, M:** This is an application for assessment of damages in an action by the Claimants against the Defendant.

[2] The Claimants filed a Fixed Date Claim Form on 21st July 2015 against the Defendant. The Claimants sought the following reliefs:

"1. Damages for the unlawful and/or wrongful arrest and/or detention of the Claimants for seventy one (71) hours from 11:30pm on Monday 29th June, 2015 to Thursday 2nd July, 2015 at 9:00am contrary to section 5 (5) (a) and (b) of the Antigua and Barbuda Constitutional Order 1981.

2. Damages for unlawfully taking photographs of the Claimants at the Office of National Drug and Money Laundering Control Policy when the Claimants did not commit any offence and were not charged for any criminal offence.

3. Damages for the wrongful detention of one (1) Blackberry Curve valued \$500.00 and the Blackberry Q 10 valued \$1,800.00 which belongs to the Claimant, Hopeton White.

4. Damages for the wrongful detention of one (1) Blackberry Zee 10 valued \$1,000.00 and one Blackberry Q 10 valued \$1,800.00 which belongs to the Claimant, Elvis "Dexter" Chance when they had no authority to do so.

5. Damages for the wrongful detention of one (1) Blu cell phone valued \$900.00 and one Alcatel cell phone valued \$450.00 which belongs to the Claimant, Damien Scott when they had no authority to do so.

6. Aggravated and/or exemplary damages.

7. Interest pursuant to Section 27 of the Eastern Caribbean Supreme Court Act Cap 143.

8. Prescribed costs.

9. Any other relief this Honourable Court deems fit."

[3] The issue of liability was settled by a Consent Judgment dated 19th January 2016 entered in favour of the Claimants with damages to be assessed in relation to paragraphs 1, 6, 7, 8 and 9 of the Statement of Claim.

Background Facts

[4] The Claimants allege that on 29th June 2015 they were at the home of the first-named Claimant. Officers of the Office of National Drug and Money Laundering and Control Policy ("ONDCP") entered the premises, arrested them, placed them in handcuffs, conducted a search of the house and took photographs of various rooms in the house. Nothing was found at the house. Notwithstanding this, the ONDCP officers took the Claimants, still handcuffed, to the ONDCP Head Office where they were photographed and placed in a cell with persons who they alleged

were being held for various serious criminal offences. They were forced to sleep on the cold concrete floor of the cell which was dirty with garbage and had the smell of urine. They were not afforded the opportunity to have a bath for the entire period of incarceration.

[5] The Claimants also allege that the ONDCP had the Daily Observer publish an article on 1st July 2015, which stated that two Jamaicans residing in Antigua and one Vincentian who travelled recently to that country were picked up in the area where the First named Claimant lived (which was named in the article) when the ONDCP executed an operation there.

[6] The Claimants were kept in a cell at the police station for 57 ½ hours although they claimed they were in handcuffs even longer; they allege were handcuffed when they were initially apprehended at the house and taken to the ONDCP office. They were eventually released on 2nd July 2015 at 9:00am without charge and in violation of their constitutional rights.

[7] The Defendant alleges that the ONDCP officers arrived in the area, identified themselves, presented the search warrants and took the Claimants into custody while they searched the house. Drugs were not found on the premises that were the subject of the search warrant or any property belonging to the Claimants. However, drugs were found "within close proximity" of the premises. This, Officer Marvin Hall asserted, gave reason for investigators to suspect that a sophisticated drug trafficking operation¹ was taking place and was still in progress. On these bases there was reason to suspect that there may have been other persons involved whose apprehension was necessary, and it was therefore required that they question all persons detained and immediately prevent unnecessary communication between conspirators.

1 Paragraphs 16-22 of the Affidavit of ONDCP Officer Marvin Hall filed November 18th, 2016

[8] With respect to the news article, the Defendant asserted that the ONDCP was not responsible for the publication of article. It gave a standard briefing to the press and did not identify the persons detained. Upon completion of the investigation steps were taken to release the Claimants.

ASSESSMENT OF DAMAGES

[9] The Claimants claim for general damages for unlawful and/or wrongful arrest and/or detention. They also claim aggravated and/or exemplary damages. They each filed Affidavits in support of the application for assessment of damages.

[10] The learned authors in **McGregor on Damages 2** state that the object of an award of damages is to give the plaintiff compensation for the damage, loss or injury suffered.

[11] The Claimants cited the following cases in support of the assessment of damages:

Elihu Rhymen v. The Commissioner of Police et al³ where the Court of Appeal awarded the Claimant Appellant the sum of \$20,000.00 for three (3) hours unlawful detention. None of the charges were pursued before the Magistrates Court.

Omarra Small v. Attorney General of Dominica⁴ in which the Court awarded the sum of

\$100,000.00 for false imprisonment, \$50,000.00 for malicious prosecution and \$20,000.00 for exemplary and aggravated damage. Therein the Court cited an unreported decision of **Raymond Warrington and Karl Peters v. Cleville Mills and the Attorney General of Dominica 5** where the Court awarded the claimants \$20,000.00 and \$25,000.00 respectively for six (6) and nine (9) hours of unlawful detention and/or false imprisonment.

2 Eighteenth Edition Para 1-021

3 BVI Civil appeal No. 13 of 1997

4 Claim No DOMHNC 2010/0012

5 Claim No. DOMHCV 2006/0038

Shannoid Bass v. Sergeant Venesia Williams and the Attorney General of St. Kitts and Nevis 6 in which the Court awarded the sum of \$30,000.00 for false imprisonment of the Claimant who was detained for seven hours and forty five minutes by the Defendants at the Basseterre Police Station and \$10,000.00 for aggravated damages.

[12] The Defendant submitted that the sum of EC\$20,000.00 to each Claimant is an appropriate and reasonable award and cited **Everette Davis v Attorney General 7 , Yohann George v Vernon MO Brien and the Attorney General of the Commonwealth of Dominica 8 , Danny Ambo v Michael Laud and the Attorney General of Dominica 9 , Emmanuel Johnson Chijioke v The Commissioner of Police of Saint Vincent and the Grenadines et al 1^o and Benjamin Fiifi Danquah v The Commissioner of Police of Saint Vincent and the Grenadines et al 1 .**

Unlawful/wrongful arrest

[13] Each of the Claimants alleged that he was wrongfully detained from about 8:30pm on Monday 29th June (when the officers of ONDCP came to the house and handcuffed them), taken into custody, transported to ONDCP Headquarters and subsequently transported to St. John's Police Station. The Claimants remained at the Police Station until 2nd July at 9:00am, after which they were released without being charged.

[14] The Defendant's contention is that the Claimants initial arrest and detention was lawful as there were reasonable grounds to arrest them. It only became unlawful after the forty eight (48) hours of lawful detention¹² expired. Consequently, only 6 hours is relevant for the purpose of the assessment of damages for unlawful detention.

[15] To my mind, the issue is at what point did the unlawful detention commence? Was it (a) at the point when the ONDCP Officers handcuffed the Claimants prior to the commencement of the

6 Claim No SKHVC 2010/0312

7 Claim No. SKBHCV 2013/0220

8 Claim No. DOMHCV 2010/0013

9 Claim No. DOMHCV 2010/0030

1° Claim No . 232 of 2010 (Saint Vincent & The Grenadines)

11 Claim No. 233 of 2010 (Saint Vincent & The Grenadines)

12 Section 5(5) of the Constitution of Antigua and Barbuda

search or (b) when the Claimants were taken into custody despite nothing of interest being found at the home or (c) after interrogation at the ONDCP Headquarters or (d) after the forty-eight (48) hours had elapsed?

[16] It is a bedrock of the Antigua and Barbuda Constitution that a citizen's freedom of person and of movement is inviolable except where the law unequivocally gave the state power to restrict it. The power to detain (and search) arises only where conditions prescribed by law, i.e. reasonable and probable grounds, exists.

[17] Even if I were to accept that although there were no allegations that the Claimants were doing anything wrong or interfered with the search of the premises, it was necessary on the grounds of security to restrict the movement of those in occupation of the premises when the premises were being searched¹³, I cannot see how such a detention could possibly remain lawful after nothing illegal was found on the premises.

[18] Taking an objective view of the circumstances, the question to be resolved is would a reasonable officer have considered that he had reasonable and probable grounds to suspect that the drugs that were found related to Claimants? I find that, looked at objectively and taking into account the absence of evidence as to how many metres away were the drugs found and the proximity of other houses or persons to the location where they were found, there was no reasonable and probable grounds for detaining the Claimants after the search was conducted. Therefore, I find that there was no legal justification for the detention of the Claimants between the period 11:30 pm on 29th June to 9:00am on 2nd July, some 57 ½ hours.

[19] In arriving at that conclusion I have considered the case of **Hepburn v Chief Constable of Thames Valley Police 14**. In that case, the English Court of Appeal had to consider whether the claimant's arrest and detention which occurred in similar circumstances was based on reasonable suspicion. The Court ruled that there was no reasonable ground for the arrest and detention.

¹³ See **Director of Public Prosecutions v Meaden (2004) 4 All ER 75**

¹⁴ [2002] EWCA Civ 1841

Damages for unlawful /wrongful arrest

[20] In computing damages for false imprisonment **McGregor on Damages¹⁵** states: "*the details of how damages are worked out in false imprisonment are few; generally it is not a pecuniary loss but a loss of time considered primarily from a non-pecuniary viewpoint, and the injuries to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status*".

[21] According to the evidence, the Claimants, who are nationals of Jamaica and Saint Vincent, are well known businessmen and tradesmen established in Antigua for several years. They were placed in handcuffs where the neighbours could see. They were placed in cells at the police station with persons charged with various serious offences. They endured the discomfort during the period of incarceration of being forced to sleep on the cold concrete floor of the cell which was dirty with garbage and smelling of urine. They also were not afforded the opportunity to have a bath for the entire period on incarceration.

[22] I take into consideration the awards made in several authorities previously cited and rate of inflation and will award each of the Claimants the sum of \$50,000.00 for unlawful detention.

Aggravated Damages/Exemplary Damages

[23] The law relating to aggravated damages is stated in part in **Winfield & Jolowicz on Tort**¹⁶ as follows:

"... [T]he Claimant is entitled to substantial award for the wrong against him...Part of the award in these cases will reflect the injury to the claimant's feelings and the mental distress he has suffered as well as the need to vindicate his rights. The injury to hurt feelings and distress may however, be increased by the bad motives or willful behaviour of the defendant and it is then possible to make a corresponding increase in the award as 'aggravation' of damages. Such aggravated damages, unlike exemplary damages, are compensatory nature."

¹⁵ Eighteenth Edition, at paragraph 37-011

¹⁶ Sixteenth Edition, at paragraph 22.8

[24] In **McGregor on Damages** ¹⁷, the learned authors had this to say with respect to aggravated/exemplary damages:

"In certain torts, particularly those of defamation, false imprisonment and malicious prosecution the measure of damages may be affected by the conduct, character and circumstances of both plaintiffs and defendant. These factors are said to go in aggravation or in mitigation of the damage. Thus the damage is most commonly aggravated and the damages correspondingly increased by defendant's bad motives or willfulness ...the damage may also be aggravated by reason of the good character and reputation of the plaintiff."

[25] In **Rookes v Barnard**¹⁸, it was noted that exemplary damages are awarded where the offender's behaviour amounted to oppressive, arbitrary and unconstitutional action.

[26] The facts in this case do not prove that the Defendant acted with malice, spite or oppression with respect to the Claimants. I am not satisfied that an award under this head should be awarded over and above what I have considered in making the award for the unlawful/wrongful arrest which I think is adequate compensation in the circumstances.

Interest

[27] Section 5 of the Judgments Act Cap 227 of the Revised Laws of Antigua and Barbuda confers jurisdiction to award interest for the period after judgment. It provides as follows:

"Every judgment debt shall carry interest as the rate of five percentum per annum from the time of entering up the judgment . . . "

[28] The Claimants are therefore entitled to post judgment interest.

17 Supra, note 16, paragraph 7-009

18 (1964) AC 1129

Costs

[29] The Defendant will pay Prescribed Costs calculated in accordance with Part 65.5 of CPR 2000 (as amended).

[30] I am indeed grateful to counsel for their very helpful written submissions.

ORDER

[31] It is hereby ordered for the Claimants as follows:

- (1) General damages in the sum of \$50,000.00 to each of the Claimants for a total of \$150,000.00.
- (2) Interest on the total judgment at the rate of 5% per annum from today's date to date of final payment.
- (3) Prescribed Costs to the Claimants calculated in accordance with Part 65.5 of CPR 2000.

Yvette Wallace

Master (Ag)

By the Court

Registrar