

EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: SVGHCV2017/0002

Between Damon James
Jomal Mc Master
and
The Attorney General
Claimants
Defendant

Appearances:

Ms. Ashelle Morgan of Counsel for the Claimants
Mr. J-Lany Williams of Counsel for the Defendant

2018: May, 14th
August, 7th

JUDGMENT

[1] MOISE, M.: The claimants brought this action on 5th January, 2017 for special damages arising from the destruction of a vessel and for general damages for wrongful imprisonment. Pursuant to an order of the Court dated 21st March, 2017 the claimants were granted leave to amend the statement of claim and duly complied by 24th March, 2017. The defendant was granted leave to file a defence by 26th April, 2017 and failed to do so. Judgment in default was obtained by the claimant on 26th September, 2017. An application to set aside the judgment in default was denied by me on 24th January, 2018. In these circumstances the claimants now file their application for an assessment of the damages to which they are entitled.

The facts

[2] The claimants allege that on 5th January, 2016 at about 10:00pm they were returning from **Canouan on the vessel "Angel", which was owned by the 1st Claimant.** They stopped off near the coast of Bequia to refuel. Both claimants assert that it was dark and a large vessel appeared "out of nowhere" and collided with the right side of the boat. **This vessel then circled and hit the left side of the claimants' vessel. Jomal Mc. Master indicates that it was at that point he realized that it was the coast guard who collided with their vessel.** He

insists that no indication was given prior to the collision that this boat was being operated by the coast guard.

- [3] According to the claimants, the officers of the coast guard fired shots and told them to put their hands in the air. They came on board the vessel and conducted a search, during **which guns were pointed in the claimants' direction. Nothing illegal was found. The claimants' vessel was then towed to the coast guard base.** They arrived at this base at approximately 3:00a.m. The claimants assert that they were taken to a holding area at the coast guard base where they were questioned and their responses recorded by the police. They were later transported to the Calliaqua Police Station where they remained until the following morning. They claim further, that at approximately 8 or 9am on 6th January, 2016, they were taken back to the coast guard base where a further search of the vessel was conducted. Again nothing illegal was found. They were then taken to the Central Police Station and placed in holding cells.
- [4] Both claimants complained that the cells were in a very bad condition. There was a strong scent of urine and body odour. The 1st Claimant states that there were bed bugs, roaches and rats in his cell. He states that he is a former police officer and this incident caused him embarrassment. He also asserts that he had never been in trouble with the law prior to that incident. The claimants state that they were denied a right to a phone call and were never questioned by the police during the period in which they were detained in these cells. They were released at approximately 4:00pm on Thursday 7th January, 2017.
- [5] The 1st claimant asserts that he returned to the coast guard base on a number of occasions to retrieve his vessel but was unsuccessful until 11th January, 2016. He states that the vessel was badly damaged. However, he was given a form to sign in order to ensure that the vessel was released to him. This form, he states, contained a clause which indicates that the vessel was returned to him in good condition. He indicates however, that he pointed out to the officer with whom he communicated on that day that the boat was damaged, but was informed that the vessel would not be released until he signed the form. On that basis he signed the form and retrieved his vessel. It is his evidence that the boat **was then towed to Howard's Marine for repairs on his instructions.** These repairs were done over the course of a month and he presents an invoice to the court regarding the cost of repairs as well as the cost of towing the vessel to the premises of Howard's Marine.
- [6] On the basis of these facts, the 1st claimant claims special damages for repairs to the boat and other associated costs. He also claims loss of use, as he has indicated that his main

source of income is derived from tours conducted with this vessel during the tourist season. Both claimants claim damages for false imprisonment.

- [7] It is worth noting at this stage, that the defendant has not provided any evidence to contradict that which has been provided by the claimants. In fact, the basis of the application to set aside the judgment in default was, at least partially, due to the challenges experienced by the defendant in scheduling meetings with the coast guard officers who were involved in the incident. I did not accept this as a sufficiently good explanation as to why a defence was not filed on time, given the fact that some 9 months had elapsed since the initial claim was served on the defendant. Further, 5 months elapsed from the service of the amended claim to the date on which the judgment in default was granted. I am reminded of the words of Ramdhani J in the case of *Everette Davis v. The Attorney General of Saint Kitts and Nevis*¹ where he states that “[t]he law enforcement arm of the state wields considerable coercive power that must not be exercised except for good cause. Thus, when the time comes for accountability, more must be given to the court to show such good cause.” Whilst the present case was maintained in private law, the nature of the case was such that the officers ought to have availed themselves to provide an explanation as to what transpired on the day in question. To my mind there was more than sufficient time to do so. **In the circumstances, the claimants’ evidence stands uncontroverted.**

Special Damages

- [8] I would not be stating anything particularly novel if I were to simply say that special damages must be specifically pleaded and proved by the claimants. Insofar as special damages is concerned these are claimed by the 1st claimant. He exhibits a certificate from the registry of the Maritime Administration to prove that he is the owner of the vessel referred to as “Angel”. **He provides an evaluation of the vessel by KP Marine Boat Evaluation Service which indicates that the vessel was valued as \$42,000.00EC at the time of the incident. The cost of repairs, according to an invoice from William Glasgow Fiber Glass Service and Repair Workshop was \$10,927.29EC inclusive of labour. The defendant requests that the court rejects this evidence on the basis that no comparable prices were presented by the claimants. I do not accept this submission. I can see no reason in law or otherwise to deny the 1st claimant’s claim for damages for the actual costs of repairing his vessel. I would award him the sum of \$10,927.29EC as prayed.**

¹ SKBHCV 2013/0220

[9] Further, the first claimant presents an invoice from Howard's Marine in the sum of \$460.00EC for pull and push services. I do not find this to be unreasonable in any way and would award this sum in special damages to the 1st claimant.

[10] The 1st Claimant also claims the sum of \$30,873.60EC in damages for loss of earnings. He states, firstly, that the vessel was not fully repaired until 11th February, 2016. As such, he was unable to generate income for a period of 5 weeks. He further, states that during the tourist season he earns approximately \$300.00US daily from his tour operations. The 1st claimant was however unable to provide any invoices or receipts to substantiate this assertion. He does not indicate whether the income claimed was from gross profits or was his net take home pay. In my view, the claimant would no doubt incur some costs in operating the vessel which he did not undertake during the period of repairs.

[11] Further to this, I am of the view that the sum claimed for loss of income is particularly unreasonable for a period of only one month. Whilst it has long been recognized that claimants may not always be in a position to prove loss of earnings by pay slips and other forms of documentary evidence, the court has consistently stated that such claims must be reasonable. In the circumstances I will award the claimant the sum of \$200.00EC per day for the loss of earnings during the period within which the vessel was being repaired. The total number of days amounts to 37 and in these circumstances I award the sum of \$7,400.00EC as compensation for loss of earnings to the 1st claimant.

General Damages for False Imprisonment

[12] In the Trinidadian case of *Millette v. McNicolls*² de la Bastide CJ provided some guidance on the factors to be considered in assessing damages for false imprisonment. He states as follows:

“there is an element of initial shock when a person is first arrested and imprisoned which must first be taken into account and compensated in the assessment of damages for wrongful arrest and false imprisonment, regardless of whether the term of imprisonment is long or short. The extent of the compensation for the initial shock will depend on the facts of the case (and not the length of the imprisonment) and factors which may be relevant include: the way in which the arrest and initial

² Civil Appeal No. 14 of 2001

*imprisonment are effected, any publicity attendant thereon, and any affront to dignity of the person. While any normal person will adjust to some extent to the circumstances of imprisonment is to be taken, the longer the imprisonment lasts the more burdensome it becomes: and the length of the imprisonment is to be taken into account in this context. Damages in such cases should not however be assessed by dividing the award strictly into separate compartments (initial shock, length imprisonment, etc) but by taking all such factors into account and **then approaching the appropriate figure in the round” compartments, one for initial shock, the other for length of imprisonment and so on. All the factors are to be taken into account and an appropriate figure awarded.”***

[13] I have already outlined in some detail, the facts on which the claimants have relied on in their claim for general damages. Without repeating them now, it would suffice to say that I find the guidance of de la Bastide CJ to be particularly helpful in this assessment and I would adopt the principles in arriving at a reasonable sum to be awarded in general damages.

[14] The claimants refer to the case of *Malcolm Payne v. Chief Magistrate et al*³ and *Kishola Levine v. Kenny Smart and the Attorney General*⁴ in which damages in the sum of \$10,000.00EC was awarded for false imprisonment for a period of 3 and 4 ½ hours respectively. I have also considered the case of *Raymond Warrington and Karl Peters v. Cleville Mills and the Attorney General of Dominica*⁵ in which the sums of \$20,000.00EC and \$25,000.00EC were awarded to the defendants for 6 and 9 hours of false imprisonment respectively. The claimants were also awarded \$10,000.00EC for aggravated and exemplary damages for their ordeal. Also, in the case of *Elihu Rymer v The Commissioner of Police et al*⁶ the claimant was awarded the sum of \$20,000.00EC for 3 hours of unlawful imprisonment. I note that this case was decided in 1999 and that some adjustment ought to be made for inflation.

[15] In the present case, both claimants were detained for a longer period than those of the authorities cited. This ordeal lasted approximately 2 days and the claimants were detained

³ ANUHCV2001/0261

⁴ GDAHCV2007/0296

⁵ DOMHCV2006/0038

⁶ BVI Civil Appeal No 13 of 1997

at two separate facilities over the 2 day period. I take this into account and in the circumstances I would award each claimant the sum of \$40,000.00EC for unlawful imprisonment. For the avoidance of doubt the total award is \$80,000.00 to be apportioned equally between the two claimants.

[16] I therefore make the following orders:

- (a) The defendant is to pay the sum of \$11,387.29EC in special damages to the 1st claimant;
- (b) The defendant is to pay damages for loss of earnings in the sum of \$7,400.00EC in favour of the 1st Claimant.
- (c) Interest on special damages at a rate of 3% per annum from 5th January, 2016;
- (d) The defendant is to pay general damages for unlawful imprisonment in the sum of \$40,000.00EC per claimant
- (e) Interest on general damages at a rate of 6% per annum from the date of judgment;
- (f) Costs to be prescribed in accordance with the CPR 2000.

BY THE COURT

REGISTRAR