IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO: C.L. M 502 of 1989

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| BETWEEN | MORRIS MULLINGS | PLAINTIFF |
| A N D | M. MURRELL | FIRST DEFENDANT |
| A N D | ROYDELL HALL | SECOND DEFENDANT |
| A N D | EVERALD PINNOCK | THIRD DEFENDANT |

MCKOY for the Plaintiff

LYTTLE for the Defendants

HEARD 23RD APRIL, 1992

DELIVERED 2ND JUNE, 1993.

J U D G E M E N T

COURTNEY ORR. J.

This is an action for malicious prosecution and false imprisonment arising out of the detention and subsequent arrest of the Plaintiff, who was then a Security Guard, on a charge of Warehouse Breaking and Larceny.

In his statement of Claim the Plaintiff alleges the following:

"That on the 17th June, 1985 the Defendants visited the plaintiff at his home at St. Johns' Road in the parish of Saint Catherine and maliciously and falsely accused the Plaintiff of Warehouse Breaking and Larceny and as a result the Plaintiff was taken into custody at the Spanish Town Police Station where he was detained for fourteen (14) days and later to the HUnts Bay Police Station where he was charged for Warehouse Breaking and Larceny and on the 4th July, 1987 the Plaintiff was Bailed in the sum of $400.00 to attend at the Resident Magistrate's Court for the parish of Saint Andrew holden at Half Way Tree on the 11th July, 1985.

That the Plaintiff attended Court on that date and several days after but the charges were never brought against him thereby determining the matter in his favour.

That as a result of the matters aforesaid the Plaintiff suffered humiliation, embarrassment, incurred expenses and suffered loss and damages". (Sic)

In their defence the Defendants admitted "that the Plaintiff was arrested at the place and date", but went on to deny liability in the following terms:

... the Defendants deny that thay have caused or procured the police to take the Plaintiff into custody as alleged or at all and will say that at the material time a complaint was made to Acting Corporal Davidson of the Spanish Town Police Station who on his own initiative carried out a search at the Plaintiff's house where three (3) tins of Berger Paints were found under the Plaintiff's bed and when asked by the Police to account he failed to do so to the satisfaction of the police. Hence he was arrested and taken into custody by Acting Corporal Davidson.

... the Defendants deny most vehemently that there was no reasonable or probable cause for laying the information to the police against the Plaintiff and for the police to act".

The Plaintiff filed a reply in which he asserted that only one tin of paint was found, and that in his kitchen.

He asserted that it belonged to his father. In addition he also stated that the first defendants told the policeman to arrest the Plaintiff when the former was reluctant to do so.

The defendants thus put the Plaintiff to proof and as will be seen the Plaintiff's evidence did not implicate the second and third Defendants.

The Plaintiff's case consisted of his testimony alone; whilst the first Defendant was the sole witness for the defence. Neither the second Defeandant nor the third Defendant attended the trial.

It is common ground between the parties that the Plaintiff was on the 17th day of June,1985,employed as a Security Guard to Vanguard Security Limited of which the first Defendant was the operations and personnel Manager. The second and third Defendants were also employed as Supervisors of Vanguard Security Limited.

It is acknowledge on both side that the Plaintiff had worked at Berger Paints Limited, Spanish Town Road on the night of the 16th June, 1985, in pursuance of his assingment by his employees to do duty there.

The main incident which gave rise to this case arose from a visit by the three Defendants and a policeman to the Plaintiff's home.

The parties while agreeing that the visit did take place, differ as to the events then and what transpired thereafter.

The Plaintiff's evidence was as follows:

He was asleep under a tree at his home about 1:00 p.m. on the 17th day of June, 1985, when he was awakened by the first defendants, who informed him that he had brought a police Constable to search his home.

The Constable, and the three Defendants proceeded to search his house, They found a tin of Berger paint in the kitchen; the paint belonged to his father.

They put him in a car belonging to Vanguard Security Company, and took him to the premises of Berger Paint Limited. He went of his own free will. When they arrived there the three Defendants and the Constable got out of the car. They returned to the car and the Constable inquired of the first Defendant what he should do with the Plaintiff; where upon the first Defendant replied "Lock him up!".

The Plaintiff further testified that he was then taken to the Spanish Town Police Station in a car belonging to Vanguard Security Comapny and all three Defendants accompanied him there. He went voluntarily. He spent fourteen (14) days in custody there and was then transferred to Hunts Bay Police Station where he spent four (4) days, and it was not until the 4th day of July 1985, that he was cahrged with Warehouse Breaking and Larceny and released from custody.

He attended the Half Way Tree Court on four (4) occasions, and on the last occasion the Judge told him to go home. (The case was dismissed) He denied that he was told the reason for the search of his premises. He and the first Defendant had little differences before.

After his release on bail he received a letter from the first Defendant. He went to see him, and he offered him back his job, but he refused the offer.

## THE FIRST DEFENDANT'S EVIDENCE

The first Defendant said that when he awoke the Plaintiff he was told the reason for the search, namely, "it is alleged you took paint from Berger Paints". He maintained that thre (3) tins of paints were found under a bed. Apart from this the first Defendant said he could not recall if he had a conversation in which he instructed the Constable; or if he accompanied the Plaintiff from his home to Berger Paints Limited.

He considered the finding of paint in the Plaintiff's house evidence of Larceny.

## THE ISSUE OF LIABILITY

### (a) False Imprisonment

I accept the evidence of the evidence of the Plaintiff. I find that the first Defendant said to the Constable, "Lock him up" and that thereafter he was taken to Spanish Town Police Station and placed in custody there.

I find that the first Defendant clearly requested, indeed demanded that the Constable, a Ministerial Officer should arrest the Plaintiff, and so duly authorised his arrest. I also find that the arrest was unjustified as only one tin of paint was found in the Plaintiff's kitchen.

I therefore find the first Defendant Liable for False Imprisonment. There is no evidence against the second and third Defendants on this issue and I therefore give judgement in their favour.

(b) Malicious Prosecution

There are five (5) essential elements of this tort.

(i) There must have been a prosecution of the Plaintiff by the Defendant.

(ii) There must have been want of reasonable and probable cause for the prosecution.

(iii) The Defendants must have acted maliciously (i.e. with an improper motive and not to further the ends of justice).

(iv) The prosecution must have terminated in favour of the Plaintiff.

(v) The Plaintiff must have suffered damage as a result of the prosecution.

The Plaintiff fails on the very first requirement. In this regard it is appropriate to quote from Clerk and Lindsell on Torts 14th Edition, paragraph 1887.

"What is a prosecution? To prosecute is to set the law in motion, and the law is only set in motion by an appeal to some person clothed with Judicial authority in regard to the matter in question, and to be liable for malicious prosecution a person must be actively instrumental in so setting the law in motion.

IF A CHARGE IS MADE TO A POLICE CONSTABLE AND HE THEREUPON MAKES AN ARREST, THE PARTY MAKING THE CHARGE, IF LIABLE AT ALL, WILL BE LIABLE IN AN ACTION FOR FALSE IMPRISONMENT, ON THE GROUND THAT HE DIRECTED THE ARREST AND THEREFORE IT IS HIS OWN ACT and not the act of the Law." (Emphasis mine).

## THE ISSUE OF DAMAGES

(1) Special Damages

Mr. Lyttle conceded that the special damages claimed were reasonable and so I award special damages as pleaded and proved:

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| (a) | Loss of income 12 weeks at $104.40 per week. | $1252.80 |
| (b) | Travelling to Court | 100.00 |
| | Total | $1352.80 |

(2) General Damages

The plaintiff claimed exemplary damages. Although I was not addressed on this subject I hold that this case obviously does not fall within the second law category, that is,conduct calculated to result in profit. As regards the first common law category, oppresive conduct by Government servants, this falls within a grey area. Lord Hailsham in Broome vs Cassel and Co. (1972) AC 1027 at 1078 B remarked that he was "not prepared to say without further consideration that a private individual misusing legal powers of private prosecution or arrest ..... might not at some future date be assimilated into the first category". In view of the fact that out courts have followed the English lead in limiting exemplary damages, it seems to me that this motivation is likely to prevent our courts from extending awards for exemplary damages into this area hinted at by Lord Hailsham. I do not regard the Defendant's conduct as meriting exemplary damages.

In an action for false imprisonment damages are primarily assessed on the basis of a non-pecuniary loss - loss of dignity and the like; and under this rubric the main heads are:

(a) Injury to liberty i.e. the loss of time considered mainly in a non- pecuniary sense.

(b) Injury to feelings - the indignity, mental suffering, humiliation, disgrace and embarrassment ; and of course any resultant loss of social status.

Also to be taken into account is any injury of reputation. See Walter vs. Altoods (1944) 61 TLR 39. There has been no evidence of physical injury, so I do not use this as a factor in assessing general damages.

I bear in miknd these factors and the duration of the Plaintiff's incarceration, (18 days) his embarrassment, and award him $54,000.00 for non-pecuniary loss.

The case of Childs vs. Lewis 1924 40 T L R 870 is authority for the proposition that a Plaintiff who loses business or employment as a result of a false imprisonment may recover damages accordingly. This plaintiff lost his job. The Defendant did write to him offering him his job again on 30th July, 1985 - some 43 days after his arrest. The Plaintiff refused this belated offer of mitigation and I regard his explanation as reasonable - that he "did not feel good being with them" his former employers.

In cases of wrongful dismissal, a Plaintiff may on reasonable grounds refuse an offer of re-employment and not be in breach of his duty to mitigate his loss - Yelton vs. Eastwoods Fray (1967) I WLR 104. To my mind this reasoning applies a fortiori to cases of false imprisonment, where the employer authorised the Plaintiff's arrest, and he loses his job as a result.

In Shindler v. Northern Railway Company (1960) I WLR 1038 another case of wrongful dismissal it was held that the Plaintiff was justified in refusing an offer of

re-employment on terms requiring the Plaintiff to work under the directionof persons with whc. he had quarrelled in the course of his dismissal.

I hold that the plaintiff was well within his rights to refuse the first defendant's offer. I also find that as he said, he was able to obtain only odd jobs on and off for three (3) years after his release from imprisonment. Unfortunatley, as so often happens, he did not give precise figures for the times he was employed.

In all the circumstances, in spite of the fact that it is the Plaintiff's clear duty to give an accurate account of his loss and not to throw figures at the Court and say "Make the best of them", I think that the Plaintiff deserves at least one (1) years compensation for loss of employment, I have had regard to the charge made aginst him which would cause persons to hesitate to employ him, the high unemployment rate, and the fact as in wrongful dismissal cases that one could not expect him to take employment which would involve a lowering of status.

I wi award compensation at the weekly rate at which he was paid at the time of his arrest. The award is therfore 52 weeks at $104.40 per week. This amounts to $5,428.80¢.

In fine therefore the plaintiff shall have judgement against the first defendant in the sum of $60,834.60 being Special damages of $1,352.80 with interest of 3% per annum from the 17th June 1985 to 2nd June 1993, and General Damages

of $59,428.80 with interest of 3% per annum from 11th January, 1988 the service of the writ, to 2nd June, 1993.

The Plaintiff shall have his costs against the first Defeandant, to be taxed if not agreed.

Judgement is entered for the second and third Defendants with costs to be taxed if not agreed.

Cases referred to

1. Broome v Cassell and Co (1972) AC 1027
2. Wacher v. Retoola (1924) 61 TLR 39.
3. Childs v Lewis (1924) 40 TLR 870
4. Yetton v Eastwoods Frey (1967) 1 WLR 104
5. Shindler v Northern Railway Company (1960) 1 WLR 1038