

IN THE SUPREME COURT OF BELIZE, A. D. 2016

CLAIM NO. 433 OF 2017

BETWEEN:

(ANTHONY ADDERLEY

CLAIMANT

(

(AND

(THE MAYOR OF DANGRIGA

FIRST DEFENDANT

(THE DANGRIGA TOWN COUNCIL

SECOND DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Said Musa, SC, for the Claimant/Respondent

Mr. Darrell Bradley for the Defendants/Applicant

J U D G M E N T

Facts

1. This is an Application to strike out a claim pursuant to the Supreme Court Civil Procedure Rules 15.2 and 26.3(1) (c).

The Claimant is the registered owner of a parcel of land described as Block 31, Parcel 1641 in Dangriga, Belize which he obtained in 2014. Since he

received his Certificate of Title, Mr. Adderley states that he has been renting stalls and spaces on the property to local peddlers who pay him rent of \$50 per week. A daily peddler fee of \$5 per day was also paid by the peddlers to the Dangriga Town Council. In November 2015, the peddlers were informed by the Dangriga Town Council that they had to cease operating unless they obtained a trade license. The Claimant alleges that the Mayor accompanied the police to evict the peddlers from his property. The substantive claim is for damages for trespass to the Claimant's property and for unlawful interference with the Claimant's business, *inter alia*. This application by the Defendant/Applicant seeks to strike out this Claim on the basis that the Claim is statute barred and that the Claimant/Respondent failed to give notice to the First Defendant pursuant to Section 3 of the Public Authorities Protection Act. The Defendant/Applicant also alleges that the Claimant's case discloses no reasonable grounds to bring the claim. The Claimant/Respondent resists this application. The court now considers the submissions for and against this Application to Strike Out Claim and gives its decision.

Legal Written Submissions on behalf of the Applicant/Defendant

2. The grounds of the application are as follows:

- i) The Claimant failed to give notice to the First Defendant as required by Section 3 of the Public Authorities Protection Act. The Claimant's notice dated 23rd May, 2017 only refers to claims against the Second Defendant and there is no mention of the First Defendant. The First and Second Defendants say that notice is a precondition of the commencement of a claim against a public authority, especially for private law claims such as trespass and failure to give notice is fatal to the Claimant's case.
- ii) The Claimant's case against the First and Second Defendants for trespass to property and for tortious interference with business are barred by time pursuant to Section 27 of the Limitation Act and therefore the entire claim should be dismissed or struck out.
- iii) The Claimant's case against the First and Second Defendants discloses no reasonable grounds for bringing the claim, including for declaratory relief arising from the failure to issue

peddler's licenses to certain persons purportedly renting from the Claimant because peddler's licenses and trade licenses are issued by the Trade Licensing Board pursuant to the Trade Licensing Act, Chapter 66 of the Laws of Belize and not by the First and Second Defendants.

- iv) The Claimant's case against the First and Second Defendants discloses no reasonable grounds for bringing the claim because the Claimant cannot recover damages for the tortious interference with business since the Claimant was carrying on the business of renting stalls illegally. The Claimant was not in possession of a trade license and was therefore acting contrary to the Trade Licensing Act.

3. Mr. Bradley submits on behalf of the Applicants/Defendants in respect of the claim for trespass to property and tortious interference with business, the Applicants/Defendants assert a limitation defence. As these claims are private law claims brought against a public authority for actions done in the course of a public duty, these claims are barred after one year. Learned Counsel for the Applicant/Defendants cites Section 27 of the Limitation Act as follows:

“(1) No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act or other law, or of any public duty or authority, unless it is commenced before the expiration of any such Act or other law, duty or authority, unless it commenced before the expiration of one year from the date on which the cause of action accrued:

Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased.

(2) This section shall not apply to any action to which the Public Authorities Protection Act does not apply or to any criminal proceeding.”

The foregoing section makes it so that all claims for which the Public Authorities Protection Act is applicable is barred after one year from the time when the cause of action accrued.

Mr. Bradley relies on ***Lois Young Barrow et al v Glenn Tillett*** Civil Appeal No. 20 of 2011 as authority for the point that the Public Authorities Protection

Act (PAPA) does not apply to public law cases such as judicial review or constitutional cases, but applies to all cases in private law including tort claims. There is no dispute that the claim in trespass accrued in 2015. The facts giving rise to this claim from the Statement of Claim are that in November 2015, police officers then the Mayor, came onto the Claimant's property. Mr. Bradley submits that the Claimant/Respondent grounds his claim on a specific date which falls outside the period of limitation. Similarly, the claim for unlawful interference with business is an economic tort which falls squarely in the realm of private law, as discussed in Claim No. 628 of 2015 *Iurii Davydov v. Victoria Berezkina et. al.*

The claim for trespass and for unlawful interference with business should therefore be struck out as these claims are private law claims which were not brought within the prescribed one year limitation period.

4. Mr. Bradley submits further that the Claimant's failure to give notice to the First Defendant pursuant to Section 3 of the Public Authorities Protection Act is fatal to the claim. There is no dispute that no notice was given to the Mayor of Dangriga by the Claimant, as the notice of May 23rd, 2017 only refers to claims against the Second Defendant. He contends that the claims against

the First Defendant must be struck out on that basis, and cites the **Glenn Tillet** case to say that where no such notice is given, the trial judge has no choice but to strike out the claim.

5. Mr. Bradley also argues that the Claimant has sued the wrong persons. He says that if the Claimant is saying that there was liability for failure to issue peddler's licenses to the Claimant's tenants then this type of claim should be brought against the Trade Licensing Board and not against the Mayor or the Town Council. This is because trade licenses and peddler's licenses are not issued by the Mayor or the Town Council, but are issued by a Trade Licensing Board established for each town and city by Section 3 of the Trade Licensing Act as follows:

"3(1) There shall be established in each town in Belize a Trade Licensing Board which shall consist of the members specified in subsection (2) below;

(2) Each Board shall consist of the Mayor or Chairman of the local authority administering the town and four members nominated and appointed by the local authority;

(3) The Mayor or Chairman of the local authority administering the town shall be Chairman of the Board;

(4) A quorum for a meeting of the Board shall be three members;

(5) The Clerk, City or Town Administrator or General Manager of the local authority administering the town, or any other officer nominated by him in writing, shall be the clerk to the Board.”

The powers of the Trade Licensing Board are set out under Section 5(1) of the Trade Licensing Act as follows:

“5(1) Every Board shall have the power-

(a) to hear and determine all applications for the issue of licences and for the renewal or transfer thereof;

(b) to grant licences;

(c) to forfeit licences; and

(d) to do such other things necessary to give effect to the provisions of the Act.”

Section 8 of the Trade Licensing Act says as follows:

“In deciding upon the applications made to it, a Board may take into account the need for such a trade in that town, the need for control of trades within the town and such other matters as to the Board

may seem fit or which may be set out in any regulations made by the Minister.”

6. Mr. Bradley submits that the Trade Licensing Board is a separate entity from the Mayor and the Council, although the Mayor chairs the Trade Licensing Board. It is the Trade Licensing Board that receives and determines applications and it is important to consider that the Trade Licensing Board has a wide discretion to refuse an application.

Claims for redress against the granting or refusing to grant licenses issued under the Trade Licensing Act should therefore be directed to the Trade Licensing Board, and not to the Mayor or Town Council. Such claims should cite the members of the board as defendants to those proceedings.

7. In addition, Mr. Bradley also argues that the Claimant’s tenants do not qualify for a peddler’s licence because they were not peddlers as defined by Section 26(1) of the Trade Licensing Act which reads as follows:

“26(1) Every person who -

(a) In any street or public place in any town sells or exposes for sale imported goods, or

(b) In any town acts as a pedlar or hawker of imported goods,

Shall obtain from the Board for that town a licence which, according to the nature of the goods to be sold shall be in one of the following forms, that is to say..."

Mr. Bradley submits that under the Act, a peddler is limited and circumscribed to one who sells imported goods, and there is no evidence that the Claimant's tenants were selling imported goods. Secondly, the dictionary defines a peddler as one who sells by moving around from place to place and does not vend from a fixed premises. Learned Counsel contends that that is why the Trade Licensing Act fixes a daily fee for peddlers, rather than the annual trade license fee because peddlers are to be charged every day that they vend since the law recognizes that their vending is intermittent. They may sell today and not tomorrow, and they can move around on all public areas for selling. The Claimant's tenants were tradespersons and required a trade license and not a peddler's license. In conclusion, the Claimant has no *locus standi* to bring any claim against the Trade Licensing Board for failure to issue peddlers license or trade licenses, as it is the peddlers themselves who should bring such a claim. The Claimant is also acting illegally as he does not have a trade license to be carrying out the

business of renting stalls. The Claim should therefore be struck out with costs to the Defendants.

8. **Written Legal Submissions on behalf of the Respondent/Claimant in Opposition to the Application to Strike Out Claim**

Mr. Said Musa SC contends on behalf of the Respondent/Claimant that the claim for damages for trespass and tortious interference is in accordance with Part 56.8 (1) of the Supreme Court (Civil Procedure) Rules which reads as follows:

“56.8 The general rule is that, where permitted by the substantive law, an applicant may include in an application for an Administrative Order a claim for any other relief or remedy that –

(a) arises out of, or

(b) is related or connected to the subject matter of an application for an Administrative Order.”

Mr. Musa SC submits that under Part 56.8(2) the Court may award damages. The Supreme Court CPR allows a combination of public and private law. Previously under the common law, public law and private law remedies had

mutually exclusive procedures. A comprehensive reading of Part 56 of the Supreme Court CPR 2005 makes clear that

- (i) Applications for an Administrative Order include applications for Judicial review, relief under the Constitution, declaration in which a party is the Crown, a Court , a tribunal or any other public body; and quashing orders(Part 56((1)
- (ii) Whereas an Application for Judicial Review must be made promptly and in any event within three months from the date when grounds for the application first arose (Part 56.5 (3), there is no time limit during which an application for an Administrative Order for declaratory relief must be filed.
- (iii) Under Part 56.8(1) as earlier stated, the applicant may include in an application for an Administrative Order, *“A claim for any other relief or remedy that (a) arises out of, or (b) is related or connected to the subject matter of an application for an Administrative Order”*.

Mr. Musa SC submits that the Fixed Date Claim, being essentially a claim for an Administrative Order for declaratory reliefs including permissible other

relief or remedies for damages for trespass and tortious interference with business, is not statute barred by time under Section 27 of the Limitation Act Chapter 170. The section itself, Section 27(2) expressly provides that *“This section shall not apply to an action to which the Public Authorities Protection Act does not apply...”* Learned Counsel submits that the case of ***Lois Young Barrow v. Glenn Tillett*** Civil Appeal No. 20 of 2011 cited by the Defendants decided that the Public Authorities Protection Act does not apply to matters falling within Part 56 of the Supreme Court Civil Procedure Rules, as in the case at bar. He relies on the dicta of Morrison J.A. who stated that the language of Section 3 of the Public Authorities Protection Act *“is plainly more appropriate to an action between disputing parties to enforce private rights than to an application to the Court to review the conduct of a public body”*.

Mr. Musa SC argues that the Claim for trespass and tortious interference which ordinarily would be considered private law claims, in this case where the action is against a public body they became part and parcel of an Administrative Order claim by virtue of Part 56.8(1) and (2) of the Supreme Court (Civil Procedure) Rules 2005. Since the Public Authorities Protection Act does not apply to applications for Administrative Orders claims against a

public body, it follows that by virtue of Section 27(2) of the Limitation Act, the one year time limitation does not apply to this fixed date claim.

9. Mr. Musa SC further contends that the act, neglect or default constituting the trespass and tortious interference in the circumstances of this case is a continuing one which comes within the proviso to Section 27 of the Limitation Act which states:

“27. Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued for the purposes of this subsection until the act, neglect or default has ceased.”

Learned Counsel argues that the Claimant’s case is that not only were the Claimant’s tenants evicted from his property by the Defendants and denied the grant of licences, but that the Defendants had prior to this been collecting peddlers’ fees from the Claimant’s tenants. The Defendants continue to refuse to grant the tenants/peddlers any license, despite a letter from Counsel from the Claimant to the First Defendant dated May 11th, 2017 asking that the tenants/peddlers be granted permission to operate on the Claimant’s property without hindrance by the Defendants.

10. In answer to the Applicants/Defendants' contention that the Claimant brought this action against the wrong persons, Mr. Musa SC argues that the witness statement of Neri Cocom shows that the Claimant's tenants/peddlers paid peddlers' fees to the Dangriga Town Council and the said Dangriga Town Council issued receipts of payment to the peddlers for a period of two years from 14th January 2013 to January 26th, 2016. Learned Counsel submits that based on this course of conduct by the Dangriga Town Council in representing that they had agency authority to charge and collect peddlers' fees on behalf of the Trade Licensing Board, the Defendants are estopped from asserting that the Claimant sued the wrong persons.

11. Finally, Mr. Musa SC describes as "*spurious*" the Assertion by the Defendants that there is no evidence that the peddlers were selling imported goods. He argues that there is no proof that the items being sold were not imported, and that it is only logical that peddlers in Belize would not be hawking clothing produced in Belize. The Defendants had for two years treated the persons operating from the Claimant's property as peddlers since they were charging and collecting peddlers' fees from the said persons. In supplemental written submissions the Claimant urged on this court the case of *Gordon Lemuel v The AG* 51 WIR 280 where the Privy Council held that the limitation

period of one year will not apply if it is established that the Defendants were not acting in bona fide execution of their duties so as to entitle the Defendants to rely on the Protection of the Act. The Privy Council allowed the appeal against the order to strike out, and held that the issues could not be resolved without a trial. Mr. Musa SC therefore asks this court to dismiss this application to strike out the claim, and that costs be awarded to the Claimant for opposing this application to be paid by the Defendants.

Oral Submissions on behalf of the Applicants/Defendants

12. In oral arguments on this application on April 10th, 2018, Mr. Bradley argued on behalf of the Applicants/Defendants that a subsidiary rule such as Supreme Court (Civil Procedure) Rules 2005 Part 56 cannot override the substantive rule provided in Public Authorities Protection Act and section 27 of the Limitation Act. It is a basic principle of law which is reflected in the civil procedure rules themselves as the qualification is “*where the substantive law provides*”. Learned Counsel submits that the claim for trespass to property and tortious interference are barred by the provisions of the Public Authorities Protection Act and by the Limitation Act. Section 27 of the Limitation Act, as the substantive law, actually provides a limitation period of one year for bringing claims against public authorities. When this

section is juxtaposed with Part 56.8 of the Supreme Court (Civil Procedure) Rules 2005, that rule actually says that one cannot bring a claim if it is barred by another law in the substantive law. The general rule is that “*where permitted by the substantive law*”; in this case, substantive law does not permit this action because there is a one year period of limitation. Mr. Bradley agrees that the *Glenn Tillett* case does set out exceptions to the requirement of notice under the Public Authorities Protection Act, in actions brought against the state for relief under the Constitution and judicial review, as well as declaratory relief under an administrative order. However, he argues that those exceptions do not apply to private law remedies such as those sought in this claim i.e. damages for trespass and for tortious interference. The nature of these claims is that they are for private law remedies, and they cannot be saved merely because the Claimant includes them in his claim for an administrative remedy. Under section 3 of the Public Authorities Protection Act the Claimant was required to provide notice to the Defendants because they are public authorities, and he was required to do so within the one year period of limitation pursuant to section 27 of the Limitation Act.

13. In addition Mr. Bradley submitted in answer to the Claimant's contention that the Defendants' failure to issue licences was a continuing act that it is not a continuing act that one claims, but the continuing damage or injury which is not important. It cannot be a continuing act if the injury continues. The material issue is that there would have been a date in time when something happened and the time flows from that date. Citing the case of ***Kerr v Atlantic and North-West Railway Co*** (1895) 25 SCR 197, Mr. Bradley submits that what is important is the time that the incident which caused the damage occurred, and not the fact that the damage flowing from that incident continues. According to the Claimant's own documents, the incident giving rise to their damage occurred more than two years before the limitation period expired. The relevant incidents on their evidence is that a trespass occurred when the Mayor of Dangriga went with police onto his land and they gave a date. Then the peddlers applied for peddlers' licences and they gave a date. In relation to the Claimant's argument that a letter was sent by the Claimant's attorney to the Dangriga Town Board, Mr. Bradley submits that a letter from an attorney is not an application for a licence and there is therefore nothing that would continue a claim into the future. The

claim for trespass and for tortious interference should be struck out for non-compliance with the Public Authorities Protection Act and the Limitation Act.

14. Mr. Bradley argues that the only claim which can validly subsist at this point is the claim for declaratory order that the refusal to allow the Defendants a peddlers' licence for the sale of merchandise without a valid reason is irrational, improper and unlawful. In answer to this claim, he reiterates his point that the Claimant has brought this claim against the wrong party as trade licences and peddlers' licences are issued by the Trade Licensing Board constituted within each municipality of Belize, not by the Mayor or by the Town Council. Learned Counsel also repeats his submission from his written arguments that the Claimant/Respondent has no *locus standi* to bring this claim for failure to issue peddlers' licences. The people who must bring this claim are the peddlers themselves; the Claimant never applied for a peddlers' license and he does not have an interest sufficient in this claim to bring such a claim. In answer to Mr. Musa SC's argument that the Dangriga Town Council treated these individuals as peddlers for two years and are therefore estopped from now claiming that they are not peddlers, Mr. Bradley submits that a Town Council can only do things pursuant to a law. Even if a town council acted wrongly in issuing a peddler's licence, the

person who received such a licence in the past cannot have a legitimate expectation to something that he is not legally entitled to. One can only have a legitimate expectation to something which the law provides that one can obtain. Any public authority is circumscribed by the law, and it would be the responsibility of a public authority to recognize that they acted in error in the past (in issuing these licences to persons who were not peddlers under the Act). Mr. Bradley makes the further point that to qualify as a peddler under the Act, one has to vend on public premises as the statute refers to selling in a street or a public place. Peddlers' fees are therefore collected every day as the law recognizes that peddlers move from place to place; this is in contrast to a trade licence which is issued to persons selling from fixed premises. The Claimant cannot claim declaratory relief because he never applied for any peddlers' licence. He is claiming on behalf of third parties who do not qualify for peddler's licences because they were vending from a fixed place that is not a public street, park or public reserve. The Claimant is also operating illegally as he is renting stalls on his land without having a trade license for that type of business.

Oral Submissions on behalf of the Respondent/Claimant

15. In response to these oral submissions, Mr. Musa SC argues that the question as to location is a factual issue which can only be determined at trial. There is a collision between what the National Government has done to give this Claimant title to this piece of land, and what the Mayor of Dangriga purports to do to declare a public reserve of that area. There cannot be a public reserve over private property, and there cannot be private property within a public reserve unless the national government so agrees.

16. Mr. Musa SC submits that the claim for damages for trespass and tortious interference is in keeping with Rule 56.8 which states that:

“56.8 The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy”.

Once the rule allows a claim for damages that can be included in an administrative order in that it arises out of or is related or connected to the subject matter of the application for an administrative order, it is allowed and should be allowed. Whereas an application for judicial review must be made promptly or in any event within three months, there is no time limit

during which an application for an administrative order must be filed. The submission is that the claim for trespass and tortious interference, though ordinarily considered private law claims, in this case where the action is against a public body, those become part and parcel of an administrative order by virtue of Part 56.8(1) and (2) of the Rules of the Supreme Court (CPR). Since the Public Authorities Protection Act does not apply to the application for administrative order claims against a public body, it follows that section 27(2) of the Limitation Act referring to the one year limitation period does not apply to this Fixed Date Claim. There was therefore no need for notice to be served on the Defendants.

17. Mr. Musa SC reiterates his arguments from his written submissions that based on the course of conduct in representing that they had agency authority to charge and collect peddler's fees on behalf of the Trade Licensing Board, the Defendants are estopped from asserting that the Claimant sued the wrong persons. He further submits that there are two limbs to section 26(1) of the Trade Licensing Act which defines peddler: "*(a) Every person who in any street or public place in any town sells or exposes for sale imported goods; or (b) in any town acts as a peddler or hawker of imported goods*". Learned Counsel submits that not only did these people

operate in the town of Dangriga on the private property of the Claimant but section 26(1)(b) does not confine peddling to a street or public place. The Claimant's tenants were therefore peddlers under that section of the Trade Licensing Act.

18. Mr. Musa S.C. concluded his oral arguments by referring to the case of ***Gordon Lemuel v The AG*** 51 WIR 280 where the Privy Council decided the meaning and scope of “*any act done in pursuance, or execution, or intended execution of any act or other law or of any public duty*”. Section 27(1) of the Public Authorities Protection Act of Jamaica was identical to that of our section 27 of the Limitation Act. The Privy Council held that the limitation period of one year will not apply if it is established that the Defendants were not acting in the *bona fide* execution of their duty so as to entitle them to rely on the protection of the Act. Mr. Musa SC cites this case to illustrate that this application to strike out this claim is inchoate and premature in the sense that there is evidence which can only be disclosed at trial regarding whether or not the Mayor and the Town Council acted *bona fide* in the execution of their duty as claimed by the Claimant by the fact that the Claimant seeks a declaration for discriminatory treatment as against the Defendants.

19. Mr. Bradley, in his brief Reply, sought to distinguish the facts of the *Gordon Lemuel* case from the case at bar by saying that the *Lemuel* case dealt with police officers who had run amok. The Privy Council said that they could only claim the protection of the Public Authorities Protection Act if they were acting as *bona fide* police officers, not if they were robbing and stealing and committing crimes. Learned Counsel submits that there is no evidence, based on the witness statements filed, that any of the Town Councilors or the Mayor did anything untoward such as robbing or stealing from any individual. There is no evidence that the Mayor in the case at bar was not acting as Mayor and there is nothing in the witness statements that says there was any kind of action which would rise to the level of what occurred in the *Gordon Lemuel* case. He reiterates that the Claimant is the one who has created two separate cause of actions by describing the events that led to his claim for damages for trespass and for tortious interference. Those are limited by time. On the issue of default and neglect, Mr. Bradley states that those cannot be continuing offences. The Claimant himself indicated that after December 2015, actions were taken and his business was shut down; however he does not say that after December 2015, he reapplied for a peddler's license. Based on their own evidence, none of the witnesses for

the Claimant continued to press for or to apply for peddlers' licenses, so there is no continuing act on the part of the Dangriga Town Council. Finally, the fact that fees were collected by the town council does not negate the fact that there is a board that you go to for the issuance of licenses.

Ruling

20. I am very grateful to both counsel for their extensive and comprehensive arguments, written and oral, on this application to strike out claim. Having reviewed all the arguments for and against this application, I find that the arguments of Mr. Bradley on behalf of the Applicants/Defendants must prevail with respect to the issue of the claim for licences. I also agree with Mr. Bradley's submissions that the claim for relief is brought against the wrong persons. The Mayor and the Town Council have no power to grant or to withhold licences under the Act; that portion of the claim should have been brought against the Town Board. I find that the Claimant has no *locus standi* to bring that portion of the claim which should be brought by the peddlers themselves; the Claimant never applied for a peddler's license and he does not have sufficient interest to bring this claim. The portion of the claim dealing with licences is therefore struck out. I agree with Mr. Musa SC's submission that the claim for damages for trespass and tortious interference

is usually considered private law claims, but in this case, this is a claim for an administrative order against public authorities so there is no need for notice based on the authority of the *Glenn Tillett* case. If the Claimant had a valid trade license at the time of these events, this court would have been prepared to go on to hold a full trial in order to determine on the evidence whether the Mayor and the Town Council committed a tortious interference with the Claimant's business. However, the Claimant has already admitted in his statement of facts and issues that he never held a trade license to conduct the business of renting stalls on his property. As the Claimant was clearly operating his business outside the parameters of the law, this Court cannot consider the matter any further. In my respectful view, the Claimant in these circumstances has no prospect of success if this matter were to proceed to a full trial. The Application to Strike Out this Claim is therefore granted. Costs awarded to the Applicants/Defendants to be paid by the Respondent/Claimant to be assessed or agreed.

Dated this Monday, 15th day of April, 2019

**Michelle Arana
Supreme Court Judge**