IN THE SUPREME COURT OF BELIZE A.D. 2020

CLAIM NO 35 OF 2020

BETWEEN

(DEON WOODYE	
(LEAH MILLER	**CLAIMANTS**
(	
(AND	
(ATTORNEY GENERAL OF BELIZE	**1ST DEFENDANT**
(MINISTRY OF HEALTH	**2ND DEFENDANT**
COROZAL COMMUNITY HOSPITAL	**3RD DEFENDANT**

Before: The Hon Justice Westmin R.A. James
Date: 25th March 2021
Appearances: Ms Alberta Perez, Attorney-at-Law for the Claimants
Crown Counsel Ms Kimberly Wallace for the Defendants

RULING ON STRIKE OUT APPLICATION

1. This is an application by the Defendants filed on 30th March 2020 for an order pursuant to Rule 26.3(1)(b) of the Civil Procedure Rules (CPR) to strike out the claim form and Statement of Claim of the Claimants filed on 21st January, 2020.

2. The ground of the application to strike out is that the action is an abuse of the process of the court in that it is statute barred having being filed after the expiry of the one year limitation period stipulated by section 27 of the Limitation Act. The Defendants argued that the twelve (12) month limitation period which would have started to run from 31st December, 2018 i.e., the date of the death of the Claimants' child.

Background Facts

3. The facts in this case are very unfortunate for a number of reasons including the loss of a child, inadequacy of pleadings and late filing of their claim. The Claimants

in their Statement of Claim indicated that they took their child, to the Corozal Community Hospital, the 3rd Defendant on or around 6:30 am on the 31st December 2018 suffering from diarrhea. The Statement of Claim goes on to plead that upon their arrival at the Hospital, there was a nurse on duty who told them that there was no doctor on duty and that they should go over to the Clinic section of the hospital. They went over to that section of the hospital and waited to be attended.

4. The Statement of Claim said they waited two hours before the saw an attending physician. Shortly after the baby was in the care of the doctor in the Emergency Room he died. The Claimants believe that if their child had received immediate attention upon arrival at the hospital that their child would be alive today.

5. The Statement of Claim thereafter sought damages for what they saw as negligence by the hospital in attending to their child. There were no particulars of negligence pleaded and the particulars of damage pleaded was an amount of $50,000.00, Special damages of $2,000.00, court fees $500.00 and Legal Practitioners fixed issue $5,000.00. There was no basis stated for the claim of $50,000.00 and no receipts, medical evidence or anything attached to the Statement of Claim.

6. That las three paragraphs outlined above was the extent of the Statement of Claim almost verbatim. There was also no indication in the Statement of Claim why each of the Defendants were being sued and what authority upon which they were being sued.

Principles Governing applications to Strike Out a Claim

7. The power of the Court to strike out a Statement of Claim is provided for by Rule 26.3 (1) (c) of the CPR which provide as follows;

> *"26.3 (1) In addition to any other powers under these Rules, the court may strike out a Statement of Claim or part of a Statement of Claim if it appears to the court –*
>
> *(b) that the Statement of Claim or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;*

(c) that the Statement of Claim or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or "

8. This is considered a nuclear option and the rule ought not to be used except in the clearest of cases where a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the Court.[1] Where an arguable case is presented or the case raises complex issues of fact or law its use is inappropriate and so the burden of proof in this regard is on the applicant.[2] The Defendants, as applicants, must satisfy the Court that no further investigation will assist it in its task of arriving at the correct outcome. The Applicant must persuade the Court either that a party is unable to prove allegations made against the other party; or that the Statement of Claim is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial.[3]

Issues

9. The issues which fall to be determined by the Court are:
   (a) Whether the Corozal Community Hospital is "a public authority" within the meaning of the Public Authorities Protection Act?
   (b) Is the act complained of by the Claimants an act done pursuant to or in execution of any Act or public duty by the Defendants?
   (c) Whether the Corozal Community Hospital is entitled to protection under section 27 Limitation Act?

Whether the Corozal Community Hospital is "a public authority" within the meaning of Public Authorities Protection Act?

[1] ***Brian Ali v. The Attorney General of Trinidad and Tobago***, CV 2014 02843 Kokaram J at para 13; **Baldwin Spencer v The Attorney General of Antigua and Barbuda et al (Civil Appeal No. 20A of 1997)**

[2] ***Tawney Assets Limited v East Pine Management Limited and Ors*** [2012] ECSC J0917-4; ***Ian Peters v Robert George Spencer*** [2009] ECSC J1222-1

[3] ***Tawney Assets Limited v East Pine Management Limited and Ors*** [2012] ECSC J0917-4

10. Crown Counsel for the Defendants, argued that the application before the Court was based on the application and interpretation of the section 27 of the Limitation Act. She further noted that section 27 of the Act states that:

> *"27.-(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, or in respect of any neglect or default in the execution of any such Act or other law, duty or authority, unless it is 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."*

11. With respect to the issue as to whether Corozal Community Hospital is a public authority, Counsel for the Defendants cited the case of ***Littlewood v George Wimpey & Co. Ltd. and British Overseas Airways Corporation [1953] 1 WLR 426*** where Parker J declared that:

> *"in determining whether the corporation is or is not a public authority, I must consider the duties imposed as opposed to the powers given, the degree, if any of public control; and to whose benefit any profit is going to accrue."*

12. She also relied on ***Griffiths v Smith [1941] AC 170*** where Park J stated:

> *"a distinction must be drawn between a body carrying out transactions for private profit and those working for the benefit of the public. Profit they may undoubtedly make for the public benefit ..... but they must not be a trading corporation making profit for their corporators."*

18. Counsel pointed out that the Medical Services and Institutions Act Chap 39 of the Laws of Belize provides for the control of government hospitals, and medical

services is primarily vested in the Director of Health Services, subject to any directions by the Minister.

19. She further point to sections 8 and 9 of the Medical and Institutions Act which provides

> *"8. The Director of Health Services, medical officers, medical subordinates and hospital servants shall each perform such duties as may from time to time be imposed on them by this Act or by any other legislation or by any statutory instrument and also such medical and sanitary duties as may from time to time be directed or required by the Minister.*
>
> *9. The Director of Health Services, shall, subject to the directions of the Minister, have the general control of all the medical institutions."*

20. With respect to the funding of the Hospital, Counsel pointed out that the Hospital offers services on behalf of the Government of Belize who funds the 3rd Defendant, and is a public hospital.

21. I agree with the Defendants that the 3rd Defendant is a public authority a fact not challenged by the Claimants.

Is the act complained of by the Claimants an act done pursuant to or in execution of any Act or public duty by the Defendants?

21. In turning to the issue of whether the act complained of by the Claimants was done in pursuance or execution of a public duty or intended execution of an Act, Counsel cited the Privy Council decision of ***Firestone Tire and Rubber Co. Ltd. v Singapore Harbour Board [1952] AC 452***. In that case, Lord Tucker cited with approval a passage from ***Griffiths v Smith [1941] AC 465*** when he stated:

> *"it is sufficient to establish that the act was in substance done in the course of exercising for the benefit of the public an authority or a power conferred on the public authority not being a mere incidental power."*

Counsel has also argued that the actions of the 3rd Defendant were done in the exercise of their public duty. She relied on the case of ***Millen v University Hospital of the West Indies Board of Management (1986) 44 WIR*** 274. In ***Millen*** the claimant who was a patient of the University Hospital was fitted with a Shirodka suture to facilitate her pregnancy and allow her to carry her baby to full term. This type of suture would be removed at least two weeks before delivery, but where the patient was unsure of her dates the suture would be removed or cut just before delivery. The claimant gave birth and was discharged from the hospital, however, after experiencing pain and discomfort she visited a private doctor and the remains of suture was found which was believed to be the cause of her problems. The claimant sued the hospital for negligence for failure to remove the suture before delivery and also for negligence for failure to remove the suture after birth. While the hospital was seen to be negligent in its post-natal care of the claimant, the appeal was dismissed since the hospital was entitled to the protection of the PAPA in respect of the negligence of its employees. The Court said:

> *"... the Board of management was charged with the duty of operating a hospital and providing treatment to its patients. It was in the provision of these services that the neglect complained of occurred, and it is very clear that the hospital was doing what it was charged with doing, caring for the sick. This was no side-wind or extra-curricular activity, but the very object for which it had been clothed with statutory powers."*

22. While not referred to by the Learned Counsel for the Defendants, her submissions were largely based on the reasoning of Master Charlesworth Tabor (Ag) in ***Arinna Nazli v Mount St John Medical Centre Board and Uretha Gasper*** [2013] ECSC J0828-3 which had facts similar to that of the present case. In that case the Master likewise relying on ***Millen*** held that the action of the hospital in providing medical services to the public was a public duty.

23. This Court referred the parties to the case of ***Alves v Attorney General of the Virgin Islands (British Virgin Islands) [2017] UKPC 42*** where a nurse in the employ of a public hospital was injured during the course of her work. She brought an action

against the hospital in tort for damages for personal injury. The hospital pleaded as its defence the provision of the Public Authorities Protection Act somewhat similar provision to section 27 of the Belize Limitation Act held:

> *35. Although the many conflicting decisions on Public Protection Acts cannot all be reconciled, the Board is satisfied that the principle which properly underlies the statutes can be extracted from Bradford Corpn v Myers, and particularly from the speech of Lord Shaw, having been accurately foreshadowed by Farwell J in Sharpington. It lies in the oft-repeated proposition that the essential test lies in the difference between a public duty owed to the public generally and a private duty incurred in the course of acting under statutory enabling. The Acts were clearly passed, as Lord Shaw said in Myers, to protect public authorities from late challenges to the exercise of their statutory functions. That was considered desirable, no doubt, to protect annual budgets from having to be adjusted in subsequent years, and no doubt similar considerations applied to the desirability of policy decisions not being exposed to delayed assaults. The same policy is, very broadly, these days reflected in commonplace provisions requiring that applications for judicial review, challenging the performance or non-performance of public powers or duties, must be brought speedily. In England and Wales such a claim must be made promptly and in any event within three months: see the England and Wales Civil Procedure Rules 54.5(1). In the Eastern Caribbean jurisdictions, rule 56.5 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 is less specific but has the same aim. It provides that, quite apart from any legislative time limit, relief may be refused if the judge considers that there has been unreasonable delay in making the application. Moreover, it provides that in assessing whether there has been such unreasonable delay the judge must consider whether a grant of relief would be detrimental to good administration.*
>
> *36. By contrast, where there is a general common law or statutory duty of the kind which is the same for a public authority as it would be for a non-public person or company, there is no reason for a much-abbreviated limitation period, indeed every reason why the period should be no different for a public body defendant as for anyone else. The duties of an employer to his employees, or of a transport undertaker to his passengers, or of any contractor to his contractual counterparty, are classic*

examples of particular duties. They may of course arise in the course of performing public functions, but they are not public duties owed generally to the world or to a section of the public.

37. Despite the potentially wide words of PAPA, it must, as has consistently been held, be construed restrictively. It only applies to public authorities, and not to all persons acting under statutory authority. It does not apply to all actions performed by public authorities, but only to those where the obligation sued upon is owed generally to the public or to a section of it. Where the obligation sued upon arises simply out of a relationship with the claimant which would be the same for any non-public person or body, and where there is no question of a public law challenge, the Act has no application. The duty of care which the government is admitted to have owed to Mrs Alves qua employer was accordingly a private obligation exactly the same as is owed by any employer, and not a public obligation for the purposes of PAPA. The six month limitation period did not apply.

24. Alves suggested that the limitation of 12 months might not apply to a breach of an individual duty owed by a public authority to an individual person as opposed to the public generally.

25. The Defendants sought to distinguish ***Alves*** arguing that the provisions in Belize Limitation Act was broader that the provision in the British Virgin Islands and so limited reliance can be placed on it. I do not agree. The purport of both legislation and the evaluation of the Virgin Island provision and the English provisions were well traversed within that judgement and the legislation do largely the same thing and apply in the same way. Section 27 must be restrictively construed to do otherwise would as stated in ***Burmah Oil Co (Burma Trading) Ltd v Lord Advocate*** allow *"… what was intended as a reasonable protection for a public authority would become an engine of oppression…"*

26. This restrictive interpretation can be seen in the decisions of the Court of Appeal of Belize in ***City Council and Gordon*** and ***Foryland Gilharry v Transport Board*** and the Privy Council decision of ***Durity v AG of Trinidad and Tobago [2009] 4 LRC 376*** which established that the Public Authorities Act and the limitation

section against public authorities do not apply to administrative actions such as constitutional motions and judicial review.

27. In ***Alves*** the Privy Council evaluated the case of ***Bradford Corporation v Meyers [1916] AC 242*** which have been applied in cases within the Caribbean.[4] the Defendant local authority was enabled by statute to carry on a gas undertaking. It was under a statutory duty to supply gas to its inhabitants, and it had an express statutory power to sell the coke by-product of the gas production process. In making a delivery of coke to a purchaser, it was alleged negligently to have discharged the load through the customer's window. The House held unanimously that the abbreviated PAPA 1893 limitation period did not apply. The reasoning of their Lordships were not identical. The Privy Council held that the dicta of Lord Shaw at page 262 was most instructive. Lord Shaw said:

> *"It is not enough that the neglect occurs in the doing of a thing which is authorized by statute, but the thing done is not every or anything done* ***but must be something in the execution of a public duty or authority, and it is only neglect in the execution of any such duty or authority that is covered by the statute. This restriction appears to me to be vital****. The Act seems to say: - there are many things which a public authority, clothed, say, with statutory power, may do, which the limitation will not cover; but when the act or neglect had reference to the execution of their public duty or authority - something founded truly on their statutory powers or their public position - to that, and that only, will the limitation apply."*

28. It has thus been well established that the Public Authorities Protection Acts and likewise section 27 of the Limitations Act does not protect every act done by a public authority. The question for this Court to decide is whether the act complained of by a Claimants was done act done in pursuance, or execution, or intended execution of any Act or other law, or in respect of any neglect or default in the execution of any public duty or authority owed to the Claimants by the 3rd

[4] ***Attorney General of Antigua v Williams (1993) 45 WIR 169; Andrew Thomas Bell v Commissioner of Police of the BVI, Civil Appeal No. 4 of 2001; Attorney General of the Commonwealth of Dominica et al v Cecelia Robin HCVAP 2011/0034.***

Defendant. Crown Counsel submitted that the duty owed by the Defendants to the Claimants is a duty to the public at large to provide medical treatment and the duty owed to the Claimants' child is grounded in the statute, a public and common law duty owed to the Claimants by the Defendants and falls within the ambit of the limitation period. The Claimants did not make any submissions on this point but the converse argument would be that the 3rd Defendant was operating on a personal duty to the Claimants and not a public one and so does not fall within section 27 of the Act.

29. I agree with the dicta of Lord Tucker from ***Griffiths v Smith*** *"it is sufficient to establish that the act was in substance done in the course of exercising for the benefit of the public an authority or a power conferred on the public authority not being a mere incidental power."* In the present case the hospital being a public hospital is under a statutory duty to provide medical care to members of the public. The act complained of by the Claimantss was negligence on the part of the 3rd Defendant in the provision of care to their child. These acts therefore were acts done by the 3rd Defendant in direct execution of the public duty and the very object for which they were created.

Whether the Corozal Community Hospital is entitled to protection under section 27 Limitation Act?

30. The issue also arises whether the Defendants are not entitled to the protection of section 27 since the complaint of the breach of contract and breach of duty of care was owed to the Claimants personally.

31. The public duty of providing medical services to the public is correlative to the public right which the Claimants have in common with all other members of the public to access the services of the public Hospital. The duty owed to the Claimants did not arise solely from a private bargain or an employer employee relationship but is directly correlated to the public duty owed by the 3rd Defendant to all its patients.

32. The Claimants main argument in opposition to the strike out application is that pursuant to the overriding objective of the CPR and human rights that this is a

case in which I should extend the time for the filing of the claim. The CPR does not give that jurisdiction to a Court to extend a statutory limitation period for the filing of the claim. Further, the authorities used by the Claimant's Attorney-at-Law on the UK Limitation Act is not applicable as Belize does not have a provision like that of the UK and Trinidad and Tobago for extension of time of the limitation period.

33. I am therefore satisfied that the act complained of by the Claimants was an act done in the direct execution of the duties of the Defendants and therefore would be entitled to protection pursuant to section 27 of the Limitations Act.

34. In the circumstances and for the reasons outlined in the foregoing, I agree with the Defendants that the case as filed by the Claimants is statute barred pursuant to section 27 and 28 of the Limitation Act.

35. I would also like to say that the pleadings of the Claimants are woefully inadequate to sustain a claim in negligence. The Claimants claim sets out no particulars of negligence or medical facts upon which the contention is based. There was not even a pleaded case of *res ipsa loquitor*. There are no pleadings as the various Defendants and the basis of them being sued. The pleadings in relation to damages are also inadequate. As a result, the claim was also liable to be struck out as even if true, it did not not disclose a legally recognizable claim.

36. Having regard to circumstances of this case, the impecuniosity of the Claimants, the tragedy and loss suffered which this Court could only imagine the Court would make no orders as to costs.

Order

37. The statement of claim is struck out as an abuse of the process of the court as the claim is statute barred having being filed after the 12 months limitation period pursuant to section 27 of the Limitations Act.
38. No orders as to costs

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Westmin R.A. James
Justice of the Supreme Court (Ag)