

IN THE HIGH COURT OF BELIZE, A.D. 2023

Claim No. 244 of 2022

BETWEEN

JUSTIN SHAQUIEL ESPAT

CLAIMANT

AND

**PC 1058 WAYNE TRAPP
COMMISSIONER OF POLICE
ATTORNEY GENERAL**

**1ST DEFENDANT
2ND DEFENDANT
3RD DEFENDANT**

Before the Honourable Madam Justice Geneviève Chabot

Date of Written Submissions: November 4th, 16th and 24th, 2022

Appearances

Oscar WA Selgado, for the Claimant

Samantha Matute, Imani Burgess, and Israel Alpuche, for the Defendants

RULING ON APPLICATION TO STRIKE OUT

1. The Claimant filed a Claim against the Defendants on April 4th, 2022. The Claimant claims damages arising from injuries received when the 1st Defendant allegedly unlawfully discharged his firearm upon a vehicle in which the Claimant was a passenger. The events at issue in the Claim occurred on April 11th, 2019.
2. On June 20th, 2022, the Defendants filed a Notice of Application to Strike Out the Claim on the ground that the Claim is statute-barred under section 27 of the *Limitation Act*.¹ The Defendants argue that the Claim is a claim in negligence against a public authority, and that it was filed more than one year after the cause of action accrued to the Claimant.

¹ Chapter 170 of the Substantive Laws of Belize, Red. Ed. 2020.

3. Having reviewed the written submissions of the parties, this Court finds that the Application is premature. The issue of whether the 1st Defendant was acting *bona fide* in the exercise of his powers and duties as a public authority cannot be resolved without a trial. The Application is dismissed.

Submissions

Defendants' Submissions

4. The Defendants argue that under section 27 of the *Limitation Act*, any action against a public authority for acts done in respect of any neglect must be commenced within one year from the date on which the cause of action accrued. Relying on *Freeborn v Leeming*,² cited in *Kimola Merritt v Dr. Ian Rodriguez, AG*,³ the Defendants submit that the instant Claim is statute-barred because the Claimant has initiated his Claim some three years after the cause of action accrued.
5. The Defendants submit that this Court should interpret section 27 of the *Limitation Act* as intending to protect public officers, even where they may be guilty of misconduct, against a stale claim. The Defendants rely on *Alves v Attorney General of the Virgin Islands (British Virgin Islands)*,⁴ a decision of the Privy Council interpreting a similar limitation provision in the Virgin Islands' *Public Authorities Protection Act*, in support of their contention on this point.
6. The Defendants contend that the *Public Authorities Protection Act*⁵ applies to this Claim. The Defendants are a "public authority" within the meaning of the *Public Authorities Protection Act*. The act complained of was done in pursuance to, or in the execution of the 1st Defendant's duty. In *Firestone Tire and Rubber Co. Ltd v Singapore Harbour Board*,⁶ the Privy Council cited with approval a passage from *Griffiths v Smith*⁷ in which the court said that "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".
7. Here, the 1st Defendant was empowered under the *Police Act*⁸ to perform duties for the prevention, detection and apprehension of offenders and the enforcement of all laws, regulations, rules, and orders. Those powers can be exercised with the use of arms. There is no evidence to suggest that the 1st Defendant was not on duty when the alleged injuries

² [1926] 1 KB 160.

³ [2015] JMCA Civ 31.

⁴ [2017] UKPC 42 ("*Alves*").

⁵ Chapter 31 of the Substantive Laws of Belize, Red. Ed. 2020.

⁶ [1952] AC 452.

⁷ [1941] AC 465.

⁸ Chapter 138 of the Substantive Law of Belize, Rev. Ed. 2020.

were inflicted on the Claimant. Thus, the action carried out by the 1st Defendant was carried out in the direct execution of the powers and duties conferred on him by the *Police Act*.

8. The Defendants submit that there has been unreasonable delay on the part of the Claimant in initiating the Claim. The Claimant has not offered any reasons at all for this delay. To grant the relief sought by the Claimant would be detrimental to the good administration of justice, and would go against the intent and purpose of the protection offered by the *Limitation Act*.
9. The Defendants further argue that the Claim is an abuse of process and it is in the interest of justice that it be struck out.

Claimant's Submissions

10. The Claimant denies that his Claim is an abuse of process. The Claimant argues that section 27 of the *Limitation Act* can only be invoked if the 1st Defendant was acting lawfully and had used justifiable and lawful force when he shot the rounds that injured the Claimant. The Claimant relies on the Privy Council's decision in *Gordon (Lemuel) v Attorney General*,⁹ a case in which the Attorney General made an application to strike out the claim on the ground that the *Limitation Act* had barred the claim. The Privy Council denied the application, stating:

The statement of claim had raised two issues (ie whether the police officers had been acting bona fide in the execution of their duty and, if they had not, whether the Crown was nonetheless liable for their actions); neither issues could be resolved without a trial and, accordingly, the writ should not have been struck out.

11. The Claimant also relies on the decision of the Belize Court of Appeal in *Attorney General v Cheryl Schuh and Arthur Schuh*.¹⁰
12. The Claimant notes that he was never charged with any offence by the police after he was shot. This, according to the Claimant, is "indicative that the policeman was on a frolic of his own and was acting outside the scope of his lawful duties" The police used unjustifiable and unlawful force by shooting the vehicle in which the Claimant was a passenger without ascertaining what had occurred and who were the persons responsible for those alleged occurrences, causing him to suffer injuries.
13. The Claimant argues that the Defendants interpret the case law without any consideration of their true legal enunciations. According to the Claimant, it is strict law that any illegal act committed by any agent of the State will not be governed by the *Limitation Act*. The

⁹ [1997] 51 WIR 280 ("*Gordon*").

¹⁰ Civil Appeal No. 5 of 2013 ("*Schuh*").

shooting of the Claimant and the inability of the Police Department to bring charges against the Claimant for any illegality “is the epitome of police abuse of authority and the use of unjustifiable and illegal force under the guise of the State uniform worn by Policemen in Belize”.

14. The Claimant submits that the overriding objectives of the *Supreme Court (Civil Procedure) Rules, 2005* (the “*Rules*”) would allow for a trial of the matter. Striking out the Claim would deprive the Claimant of his entitlement to the reliefs he seeks.

Defendants’ Reply

15. The Defendants note that the Claimant’s contention that the 1st Defendant “was on a frolic of his own” is not pleaded in the Claim. In the Claim Form, the Claimant has accepted that the 1st Defendant was at all material times acting as an agent of the 2nd and 3rd Defendants, and as such that they are vicariously liable for the actions of the 1st Defendant. The Claimant’s contention should not be considered by this Court, and the Claimant cannot rely on the decisions in *Gordon* and *Schuh*.

Analysis

16. This Court is empowered, under Rule 26.3(1)(b) of the *Rules*, to strike out a statement of case if it constitutes an abuse of process of the Court:

26.3 (1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court –

[...]

(b) that the statement of case 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;

17. The Defendants submit that this Claim is statute-barred under section 27 of the *Limitation Act*. Section 27 provides as follows:

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, Cap. 31 does not apply, or to any criminal proceeding.

18. The Defendants' Application to Strike Out the Claim on the basis that it is statute-barred under section 27 of the *Limitation Act* is premature.
19. This Court finds no basis to distinguish this case from *Gordon* and *Schuh*. In *Gordon*, the Privy Council overturned a decision of the Court of Appeal confirming a decision of the lower court striking out a claim on the basis that it was statute-barred. The provision in the *Public Authorities Protection Act* relied upon by the courts was similar to section 27 of the *Limitation Act*. In *Gordon*, the plaintiff alleged that two police officers on duty acted maliciously and without reasonable and probable cause when they shot his son in the head, killing him. The plaintiff claimed damages under the *Fatal Accident Acts* and the *Law Reform (Miscellaneous Provisions Act)*. No defence had been filed. The Privy Council found that the claim was not statute-barred. While the plaintiff admitted that the police officers were acting in the course of their duty when they shot his son, the question whether the police officers were acting in the *bona fide* execution of their duty so as to entitle them to rely on the *Public Authorities Protection Act* had yet to be determined. The Privy Council relied on the following passage in the House of Lords' decision in *Newell v Starkie* in support of its finding:

The second observation I have to make is that the [*Public Authorities Protection Act*, 1893] necessarily will not apply if it is established that the defendant had abused his position for the purpose of acting maliciously; in that case he has not been acting within the terms of the statutory or other legal authority; he has not been *bona fide* endeavouring to carry it out. In such a state of facts he has abused his position for the purpose of doing a wrong, and the protection of this Act, of course, never could apply to such a case.¹¹

20. In *Gordon*, the Privy Council noted that mere allegations of malice do not deprive a public authority of the protection of the *Public Authorities Protection Act*. However, on the facts of the *Gordon* case, the Privy Council found that the allegations raised an issue to be tried.
21. The Belize Court of Appeal's decision in *Schuh* stands in further support of the principle that a court must consider evidence of the exercise of the public authority's power or duty before deciding whether a claim is statute-barred under section 27 of the *Limitation Act*. In

¹¹ (1919) 83 JP 113 at 117.

Schuh, the plaintiffs alleged that agents from the Commissioner of Income Tax and the Police Department fraudulently seized money from the plaintiffs, and failed to comply with the provisions of the *Income and Business Tax Act*. The Attorney General applied to the court for the claim to be struck out on the basis that it was statute-barred under section 27 of the *Limitation Act*. The claim had been brought more than six years after the cause of action arose. The trial judge denied the application on the basis that “the search and the taking of the monies on an arrest warrant for income tax purposes appeared to be an abuse of the powers of the police; and therefore was not done in pursuance of their public duty or authority”.

22. On appeal, the Attorney General contended that the trial judge misconstrued the law when he found that the claim was not statute-barred. The Court of Appeal agreed. According to the Court of Appeal:

[47] In my view, the case of *Gordon* is distinguishable from the instant case. The police officers in *Gordon*, in the course of their duty had acted maliciously and without reasonable and probable cause when they arrested the deceased and fatally shot him in the head. In this instant case, there is no evidence of abuse of process or that the police had acted maliciously and without reasonable and probable cause. This is borne out by the evidence of Spt. Grinage.

[...]

[53] The trial judge refused to strike out the claim on the basis that the police had only an arrest warrant and not a search warrant. The judge did not examine the evidence to determine the belief of the police. The evidence in this case does not show that the police abused their position for the purpose of acting maliciously and without reasonable and probable cause. Accordingly, the learned trial judge erred in refusing the application of the Attorney General to strike out the claim pursuant to section 27(1) of the *Limitation Act*. The respondents brought the claim more than six years after the cause of action arose which is contrary to section 27(1) of the *Limitation Act* [emphasis added].

23. On the basis of *Gordon* and *Schuh*, this Court is compelled to find that the Defendants’ Application is premature. It does not appear to be disputed by the Claimant that the 1st Defendant was acting in the course of his duty as a police officer when he shot the Claimant. The 1st Defendant is not being sued as a private citizen, but as a police officer. The 2nd and 3rd Defendants are included in this Claim by reason of their alleged vicarious liability for the actions of the police officer. The Statement of Claim is brief, but refers to the 1st Defendant’s service firearm and to a complaint made to the Police Professional Standard Branch. Nowhere in the Claim does the Claimant allege that the 1st Defendant was acting in any other capacity than in his capacity as a police officer.

24. At issue is whether the 1st Defendant was acting *bona fide* in the execution of his powers and duties as a police officer so as to entitle him to rely on section 27 of the *Limitation Act*. The Claimant claims that the 1st Defendant acted unlawfully and used unjustifiable and excessive force when he fired his service firearm upon the vehicle in which the Claimant was a passenger, injuring him. The Court is unable to opine on the *bona fide* nature of the 1st Defendant's exercise of his powers and duties as a public authority at this time. The Claim is in its infancy. The Defence has not been filed. There is no evidence in the form of documents, affidavits, or witness statements to substantiate the allegations in the Claim. Applying *Gordon* and *Schuh*, it would not be appropriate for this Court to strike out the Claim on the basis that it is statute-barred before satisfying itself that the 1st Defendant acted *bona fide* in the exercise of his powers and duties as a public authority.
25. The decision of the Privy Council in *Alves v Attorney General of the Virgin Islands (British Virgin Islands)*¹² is of no assistance to the Defendants. *Alves* deals with a claim in negligence by the employee of a hospital injured in the performance of her duties. At issue in *Alves* was whether the limitation of 12 months in the *Public Authorities Protection Act* applied to a breach of a duty owed by a public authority to an individual person, as opposed to the public generally. It is in that context that the Privy Council's observation that the *Public Authorities Protection Act* is "intended for the protection of public officers who are defendants" and that "it assumes misconduct, and it is designed to protect public officers even where they have been guilty of misconduct" must be read. Contrary to *Gordon* and *Schuh*, *Alves* does not address a situation where a public authority owing a duty to the public generally, as police officers do, is alleged to have acted outside the lawful bounds of their authority.

IT IS HEREBY ORDERED

- (1) The Application is dismissed.
- (2) The Defendants shall file a Defence to the Claim within 28 days of the date of this decision.
- (3) The Claimant is awarded costs on an agreed-upon basis.

Dated January 10th, 2023

Geneviève Chabot
Justice of the High Court

¹² [2017] UKPC 42 ("*Alves*").