

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. S-677 of 1997 (San Fernando)
H.C.A. No. 2255 of 1997 (Port-of-Spain)

BETWEEN

VERONICA VALDEZ

Plaintiff

AND

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice G. Smith

Appearances:

Mr. S. Jairam S.C., Ted Roopnarine for the Plaintiff

Mr. K. Narinesingh for the Defendant

JUDGMENT

Introduction:

1. This case arises out of a prior High Court Action No. SF 58 of 1996. In that action, the Plaintiff sued two police officers, a civilian and the State seeking damages for assault, false imprisonment and malicious prosecution.

In that said action Mr. Justice Best gave judgment for the Plaintiff with costs but only as against one of the two police officers and the civilian sued and ordered that damages be assessed before a Master. Those damages were assessed in 1997 and the costs of that prior action have been taxed.

The Plaintiff has now brought this present action to recover the fruits of the prior judgment and the costs as against the State alone.

2. At the trial of the present matter no evidence was led but the parties presented an agreed Statement of Facts and Bundle of documents dated 23rd June 2003 and amended on 12th December 2003.

3. The Issues which arose in this matter were:

- (i) Does the Plaintiff have any cause of action since her pleadings are based on the doctrine of estoppel which affords a defence to proceedings but which doctrine cannot be used as a cause of action?
- (ii) Is the Plaintiff in the present action estopped from pursuing these proceedings by reason of the doctrine of estoppel by the record or because they are an abuse of the process of the Courts?
- (iii) Is the State estopped from denying liability to the Plaintiff?
- (iv) If there is no estoppel against the State, then on the present facts, is the State still vicariously liable for the actions of the police officer against whom judgment was recovered in the prior action (P.C.

Alvarado) and hence liable to satisfy the Plaintiff for the judgment debt and the costs of that prior action?

4. For the reasons that follow, I decided that:
- (i) There is a claim for declaratory relief here which can, and does exist as a viable cause of action in this case.
 - (ii) The Plaintiff's claim is not barred by the doctrine of estoppel by the record nor is it an abuse of the process of the Court.
 - (iii) The State is not estopped from denying liability to the Plaintiff.
 - (iv) On the present facts, I cannot find that the State is vicariously liable for the actions of the P.C. Alvarado.

In all the circumstances, because of my findings at paragraphs (iii) and (iv) hereof, I found that the Plaintiff failed to discharge the onus of proving the claim against the State and her claim was dismissed and she was ordered to pay the costs of the Defendant.

ANALYSIS:

(i) Does the Plaintiff have a sustainable cause of action?

5. The State has alleged that the Plaintiff's case as pleaded is based on (a) the decision in the prior matter and (b) the alleged actions of the State which amount to an estoppel against a denial of liability. The State alleges that neither is a valid cause of action. In the case of the decision in the prior matter, there is no judgment against the State which is being sued on and in the case of the estoppels created by the State, these estoppels are defences to a claim and not causes of actions in themselves.

6. With respect to the decision in the prior matter, it was suggested that the present matter was an action for the full enforcement of the prior judgment, but this would only be correct if the judgment were a judgment against the State, which it is not, or if the State were estopped from denying a judgment against itself. As such, it is only the case based on estoppel which subsists as a viable claim.

7. I have noted that in the Statement of Claim the Plaintiff claims for, inter alia, a declaration that the State is liable to pay the judgment debt and costs of the prior action.

Order 15 Rule 16 of the Rules of the Supreme Court specifically provides for a claim for a declaration to subsist as an independent cause of action. The

learning in the 1997 White Book states “the jurisdiction to make a declaration under the rules is not confined to cases in which the Plaintiff has a complete and subsisting cause of action apart from the rule.

The action for a declaration has been given considerable impetus and importance as a procedural device for ascertaining and determining the rights of the parties or for the determination of a point of law.....” (see 15/16/1).

8. In this matter, the claim for the declaration that the State is liable to pay the prior judgment debt and costs is a claim to determine the rights of the parties on the agreed facts and/or a claim to determine the liability of the State as a point of law; these are both viable claims that can now be pursued.

(ii) Is the Plaintiff estopped from pursuing the present proceedings.

9. In the prior action the same Plaintiff sued P.C. Alvarado, P.C. Garcia, Saran Sampath (a civilian) and the State (through the Attorney General) and in a written judgment, Best J. decided that P.C. Alvarado and Saran Sampath were liable to the Plaintiff.

The State contended that it was necessarily implicit in that decision that P.C. Garcia and The State were not liable to the Plaintiff. In the result, the issue of the liability of the State has already been determined by a court of competent jurisdiction and that decision is an estoppel by record (res judicata) against the Plaintiff in this matter. Alternatively, the issue of the liability of the State could

and should have been pursued in the prior action and it is an abuse of process to attempt to litigate that issue now, especially when the Plaintiff could have appealed the prior decision and/or could have gone back before Best J. to have a specific order made with respect to the liability of the State.

10. In answer to this, the Plaintiff alleged that the State never denied that P.C. Alvarado was its servant or agent in the prior matter, and further no express decision was made on the liability of the State; so that the issue of the liability of the State was not a matter which was before the courts in the prior matter nor was there a judicial pronouncement on the issue. As such, there was no estoppel by record against the Plaintiff.

In any event the Plaintiff has pleaded matters which occurred after the decision of Best J., which allegedly raised an estoppel against the State. These matters were never the subject of the prior litigation and there was no estoppel by record against the Plaintiff in respect of these matters.

11. With respect to the question of abuse of process, Counsel cited the decision in Johnson v Gore Wood & Company [2001] 2 WLR 72 where the House of Lords made it clear that the question as to whether the raising of an issue which could have been decided in earlier litigation is an abuse of process depends on whether it would be unconscionable to allow such litigation to proceed or whether the litigation is merely designed to harass the opponent. In either event, it is for the Defendant to establish that it is an abuse to have him

subjected to the second action. Counsel contended that since the issue of the liability of the State was not specifically pronounced upon, it was not an abuse of process to have a final determination of the issue by the present action and as such this was not a case where the Plaintiff was acting unconscionably or harassing the State.

Counsel also cited Gairy v The A. G. for Grenada (No. 2) 59 W.I.R. 174 which stated that is not an abuse of process for a party to revive a claim previously made when circumstances have so changed to make it reasonable for a party to raise the issue or pursue the claims in later proceedings. Counsel contended that in this case there was a material change in circumstances when the State, after representing to the Plaintiff its intention to satisfy the judgment against P.C. Alvarado, after two years, made an about turn in its position and sought to rely on the fact that there was no order against the State. As such it was not an abuse of process to have this specific issue litigated.

12. In my opinion, even if the State could have alleged that the matters which occurred before the judgment of Best J. raised estoppels on the record or could not be pursued as being an abuse of process (which arguments seemed to be of cogent force) the matters which occurred after the decision of Best J. and which were now relied upon to form an estoppel did not run afoul of either form of estoppel since they were not and could not have been raised in the prior matter. In the result these matters can be pursued by the Plaintiff in this present action.

(iii) Is the State Estopped from denying liability to the Plaintiff?

13. In the skeleton submissions, the Plaintiff relied on several facts which, she alleged, proved an estoppel against the State denying liability to her. For convenience, they can be divided into two categories, namely (a) matters occurring up to the judgment of Best J. and (b) matters occurring after the judgment of Best J.

14. In respect of (a) these facts can be summarized as follows:

- (1) P.C. Alvarado was sued and found liable to the Plaintiff in his capacity as a police constable
- (2) There was one common Defence filed by all the Defendants;
- (3) There was no Defence that P.C. Alvarado was on a frolic of his own or that he was not a servant or agent of the State;
- (4) Justice Best's order was silent with respect to the liability of the State and as such it cannot be ruled out that the State may be liable for his actions;

15. In my opinion these facts are at best, neutral with respect to being proof of a representation of an acceptance of liability by and/or an estoppel against the State.

In the first place, the proceedings against P.C. Alvarado were against him in a personal capacity and not in a representative capacity; if it were the case that it was being alleged that P.C. Alvarado acted solely as an agent of the State,

then, based on the law of principal and agent, P.C. Alvarado ought not to have been joined as a party to the action. He was joined as a separate party against whom an order could have been made. Further, it is incorrect to say that P.C. Alvarado was found liable to the Plaintiff in his capacity as a police constable. No such pronouncement appears in the judgment of Best J.

Secondly, the fact that one Common Defence was filed and proffered by the Defendants did not make them jointly liable for the acts of one of them. The liability of each party before Best J. depended on the part each played in the arrest and prosecution of the Plaintiff. Neither did the fact that there was no allegation in the pleadings that P.C. Alvarado was on a frolic of his own mean that the evidence must point to the conclusion that P.C. Alvarado must have been acting as the servant or agent of the State. In the absence of admissions to the contrary, these were matters which had to be proved and tested by actual evidence.

Thirdly, the fact that no order was made against the State suggests strongly that the State was not liable to the Plaintiff for the actions of P.C. Alvarado and it did not assist the Plaintiff in the estoppel prayed for.

16. In respect of (b), (the matters occurring after the judgment of Best J.) these facts or representations can be summarized as:

- (i) An appeal against the judgment by Best J. was filed by P.C. Alvarado who was represented by the Chief State Solicitor;

- (ii) The Appeal was withdrawn and a bill of costs for the Appeal was taxed and paid through the Comptroller of Accounts;
- (iii) Thereafter on the assessment of damages and the taxation of the trial costs, State attorneys appeared on behalf of P.C. Alvarado. Further on the taxation of the costs for the assessment of damages, State attorneys held a “watching brief”.

17. No rule of law or of practice was cited to me that debarred the State from representing a public servant sued in a private capacity; neither was any rule of law or practice cited to me which indicated that if State Attorneys acted for a public servant this necessarily meant that the State was either accepting liability for such a public servant or was creating an estoppel against itself.

The very presumptions upon which it was sought to found an estoppel against the State, had not been shown to exist.

18. Further, the very facts relied upon to found the estoppel, were at best, neutral. Even the most probative of the acts relied on, namely, the payment of the costs of appeal by the Comptroller of Accounts, was not necessarily indicative of an acceptance of liability. Was this payment made as a result of a loan to P.C. Alvarado for this purpose? Was the payment made as a special facility to P.C. Alvarado, and the State would recover it from him later?

These and many other scenarios which did not implicate the State in an acceptance of liability for the acts of P.C. Alvarado were likely inferences from the facts.

19. In the circumstances, the issue whether these or any of the alleged representations made, amounted to an estoppel were as much a matter of fact, as of law, and without having called any evidence to establish that they were actually representations of fact made to the Plaintiff, the Plaintiff failed to make out a case on the issue of estoppel.

20. A point that was raised by the State and not satisfactorily answered by the Plaintiff was whether the Plaintiff acted to her detriment as a result of any or all of the alleged representations made. Counsel for the State cited authority to the effect that change of position is necessary to found an estoppel by representation (See Spencer Bower and Turner – The Law Relating to Estoppel by Representation 3rd ed pages 17 and 18). No authority was cited contrary to this by Counsel for the Plaintiff.

21. In this matter the Plaintiff has failed to plead or prove how she acted to her detriment based on any of the alleged representations of the State. She did not, for instance, allege as a result of any representation that she did not file an appeal from the order of Best J. or apply to Best J. to recall his or vary his order; or that she could not now get witnesses to prove her claim against the State or

that any circumstances had arisen which would make it, or would have made it oppressive or impossible to now prosecute or to have prosecuted a claim before now against the State.

In these circumstances, the argument of estoppel against the State based upon alleged representations of fact, was doomed to failure.

(iv) *Vicarious Liability of the State for the actions of P.C. Alvarado.*

22. The Plaintiff contended that in any event, on the facts of this case, the State was responsible for the acts of P.C. Alvarado who was found liable for the unlawful arrest and malicious prosecution of the Plaintiff. Despite there being no order made against the State, through the Attorney General, in the original action, the fact that Best J. found P.C. Alvarado liable was sufficient to cast an obligation and responsibility onto the State to indemnify P.C. Alvarado and to satisfy the Plaintiff's judgment for damages and costs. The cases Bryan v Lindo [1986] 44 W.I.R. 295 (C.A. Jamaica) and Gordon v The Attorney General [1997] 51 W.I.R. 280 (P.C. from Jamaica) were cited in support of this proposition.

23. As the cases cited by the Plaintiff indicate, a master is vicariously liable for the acts of his servant if they were performed bona fide in the execution of his duties; further, a master may even be liable for the wrongful acts of his servant even when the servant was not acting in the execution or intended execution of his duties based upon the closeness of the connection of the wrongful act to the

servant's duties; in either case, and in the absence of an admission to the contrary, the questions of (i) whether a servant was acting bona fide in the execution of his duties or was on a "frolic of his own" and (ii) whether the wrongful act complained of was so closely connected to the duties of a servant as to make his master liable for them, are questions of fact to be decided at a trial. (See especially Gordon v The A.G. cited above at page 284 h - j and 284 a - c).

24. In the present matter the State did not admit liability for the actions of P.C. Alvarado, and this was a matter that would have had to be proved by evidence. The mere fact that P.C. Alvarado arrested and prosecuted the Plaintiff did not necessarily fix the State with liability for his actions. In fact there seemed to be a presumption against vicarious liability in the State here since, in the previous trial both the other officer involved in the arrest of the Plaintiff (namely, P. C. Garcia) and the State were not found liable to the Plaintiff even though they were parties to that action and there had been a trial of that case on the merits.

25. In the circumstances, the Plaintiff having led no evidence on the issue, and in the absence of an admission that P.C. Alvarado was the servant or agent of the State, the Plaintiff failed to establish that on the present facts, the State was vicariously liable to indemnify the Plaintiff for the prior judgment obtained against P.C. Alvarado and the costs of that action.

Conclusion:

26. In all the circumstances, the Plaintiff's claim was dismissed and she was ordered to pay the costs of the Defendant.

Dated this 21st day of June 2004

**Justice Gregory Smith
JUDGE**