



[2024] JMSC Civ. 15

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2016 HCV 05266

BETWEEN	NADIEA EVANS	CLAIMANT
AND	NATIONAL COMMERCIAL BANK JAMAICA LIMITED	DEFENDANT

OPEN COURT

Anthony A. Williams and Sharon A. Usim, Attorneys-at-Law, instructed by Usim, Williams & Co. for the Claimant

Symone Mayhew, K.C. and Leslie-Ann Stewart, Attorneys-at-Law, instructed by MayhewLaw, for the Defendant

Heard: November 20 - 22 & 24, 2023 and March 1, 2024

**Claim for recovery of damages for false imprisonment and malicious prosecution
- Whether the defendant had imprisoned the claimant or whether the claimant was detained by the police - Whether the claimant was imprisoned in the absence of reasonable and probable cause - Whether the defendant had prosecuted the claimant - Whether the claimant was prosecuted in the absence of reasonable or probable cause - Whether the prosecution of the claimant was actuated by malice**

ANDERSON K.J

BACKGROUND

The application before the court

[1] The claim is brought by way of claim form filed on December 20, 2016. The claimant is seeking to recover damages for false imprisonment and malicious prosecution against the defendant, National Commercial Bank Jamaica Limited. The claimant claims that in February 2009, she was an employee of the defendant in the capacity of a customer service representative, for approximately eight (8) years, when, on February 9, 2009, the claimant was falsely and maliciously accused of fraud by Richard Hines, a servant and/or agent of the defendant. The claimant further claims that Mr. Hines, without reasonable and/or probable cause, proffered a complaint against her to the Fraud Squad, resulting in her being falsely imprisoned, arrested and charged. The claimant was charged for conspiracy to defraud - that she conspired together with other persons unknown to Defraud the WISYNCO Group Limited in the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00). The claimant further claims that she was charged with intent to Defraud WISYNCO Group Limited in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00) for causing money to be paid out to Mr. Alex Brown for the use and benefit of himself and/or other persons.

In addition, the claimant claims that the criminal charges were dismissed in favour of the claimant by the Honourable Mrs. Lorna Shelly-Williams, then Senior Resident Magistrate, in the then Half Way Tree Resident Magistrate's Court. The claimant also claims that by reason of the said charges, her name was published in the *Daily Star* tabloid, on February 20, 2009.

Furthermore, the claimant claims that the malicious prosecution by the defendant has caused her serious loss, damage, humiliation, injury to her reputation, character and and integrity and put her to considerable expense and embarrassment. The claimant claims against the defendant:

- a. Special Damages in the amount of **\$10,499,918.00** (and continuing) to include

Attorneys' Fees for Bail Application in Half Way Tree Resident Magistrate's Court, Attorneys' Fees for Appearance Post Bail Application in Half Way Tree Resident Magistrate's Court, Loss of two (2) cellular phones (Nokia and Blackberry) and Loss of Earnings for 7 years and continuance since February 2009 @\$19,275.97 per month and continuing.

- b. Damages for Malicious Prosecution;
- c. Damages for Loss of Future Earnings;
- d. Attorneys' Costs on Issue in the sum of **\$10,000.00**;
- e. Court Costs in the amount of **\$5,000.00**.
- f. Such further and/or other relief; and
- g. Interest on Special and General Damages pursuant to the Law Reform (Miscellaneous Provisions) Act.

ISSUES

The following issues are now before the court for determination:

1. Whether it was the defendant bank that detained and/or directed the police to detain the claimant or whether it was the police who detained the claimant.
2. Whether the claimant was detained in the absence of reasonable and probable cause.
3. Whether the defendant bank initiated the prosecution of the claimant or whether the police had set the law in motion against the claimant.
4. Whether the claimant was prosecuted in the absence of reasonable and probable cause.
5. Whether the claimant was prosecuted on account of malice.
6. A determination of the measure of damages, including exemplary damages, if any, payable to the claimant.

LAW AND ANALYSIS

Claimant's Submissions - False Imprisonment

[2] It is the claimant's case that the defendant ('NCB') had falsely imprisoned her.

The contents of the claimant's particulars of claim filed on December 20, 2016 include the following:

- i. On or about February 9, 2009, the claimant was taken from her work station and escorted to the Omni Insurance office in the branch office by Mr. Richard Hines...which lasted for approximately one minute.*
- ii. On or about February 9, 2009, the claimant was restricted to the OMNI insurance office for approximately thirty (30) minutes and was marshalled at all material times by a police officer and officers of the defendant namely Mr. Richard Hines and Mrs. Joy Copeland.*
- iii. On or about February 9, 2009, the claimant was relieved of both cellular phones by the police and was refused permission to retrieve her cosmetic bag by Mr. Richards Hines.*
- iv. On or about February 9, 2009, at about 3:30 p.m., the claimant was escorted by Mr. Richard Hines and Mrs. Andrea Foster, a servant and/or agent of the defendant, in the full view of the entire staff of the branch office across the banking hall into the parking lot, then into a motor vehicle belonging to Mr. Mr. Richard Hines and/or the police where the claimant remained for approximately thirty (30) minutes in transit to the Fraud Squad office, Duke Street.*
- v. On or about February 9, 2009, the claimant was further detained by the police at the Fraud Squad Office for questioning for approximately 3 ½ hours and despite enquiries being made by the claimant as to the basis of her detention, the police failed and/or neglected and/or refused to provide the reason(s) for her detention.*
- vi. On or about February 9, 2009 at about 7:30 p.m., the claimant was taken from the Fraud Squad Duke Street office and transported for approximately thirty (30) minutes to the Duhaney Park Police Station lock up by servants and/or agents of the [defendant].*
- vii. The claimant remained at the Duhaney Park Police Station lock up from about 8:00 p.m. until 8:30 a.m. on February 10, 2009.*
- viii. On or about February 10, 2009, the claimant was taken from the Duhaney Park Police Station and was escorted to the Fraud Squad office which lasted for approximately thirty (30) minutes.*

- ix. *The claimant was immediately placed under supervision on arrival at the Fraud Squad office and was left there for about three and a half (3 ½) hours without being offered any refreshment until the [police] arrived for the Question and Answer session at approximately 12:00 p.m.*
 - x. *The claimant remained at the Fraud Squad until 5:00 p.m. when her attorney arrived for the Question and Answer Session which ended at approximately 5:30 p.m.*
 - xi. *On or about February 10, 2009, the claimant was taken from the Fraud Squad office and transported back to the Duhaney Park Police Station which lasted for approximately thirty (30) minutes by servants and or agents of the police and was held there for a further one and half (1 ½) hours until she was processed and released on bail.*
5. *By reason of the matters aforesaid, the claimant sustained pain, mental anguish, loss and damage.*
6. *On or about the 9th of February 2009, the defendant maliciously and/or without reasonable and/or probable cause, caused an information to be laid before the Half Way Tree Resident Magistrate's Court ('The Court') against the claimant for Conspiracy to Defraud and Causing Money to be paid out to Mr. Alex Brown by removing a hold on the account ('The Offence') and procured summons to be issued by the Court directed to the claimant requiring her to appear before the said Magistrate's court at Half Way Tree to answer the said information/charges.'*

Whether it was the defendant bank that detained and/or directed the police to detain the claimant or whether it was the police who detained the claimant.

[3] Counsel for the claimant relied on the case of *Bird v Jones (1845) 115 ER 668* to support his argument that the claimant was detained by the defendant or by its direction without reasonable and probable cause. In this case, it was held that *'The claimant's freedom of liberty in every direction must be restraint, i.e., - a taking control over or possession of the claimant or control over his will...The defendant must have an intention to exercise control over the claimant's movements or over his will and it*

*matters not what means are utilized to give effect to this intention...The restriction imposed upon the claimant's liberty **must** be unlawful.'*

[4] Counsel for the claimant also relied on the case, ***Bostien v Kirpalanis Ltd. (1979) High Court, Trinidad & Tobago No. 861 of 1975***. In this case, it was held that '*the restraint of liberty need not be committed by physical force or actual physical compulsion. It is enough if pressure of any sort is present which reasonably leads the claimant to believe that he/she is not free to leave or if the circumstances are such that the reasonable inference is that the claimant was under restraint even if the claimant was himself/herself unaware of such restraint.*'

[5] Counsel for the claimant further relied on the case of ***Mullings v Murrell (1993) 30 JLR 278*** which postulates that, '*a defendant may be liable for false imprisonment even though he did not personally arrest or detain the claimant and will be liable if he directed or authorized a ministerial officer of the law such as a police officer to carry out the arrest or detention.*'

[6] The claimant contends that she was falsely imprisoned by the defendant in the absence of reasonable and probable cause and that her witness statement filed on May 18, 2023, indicates that she acted in accordance with the bank's established policies and procedures. The relevant sections of her witness statement are as follows:
'7. *In May 2007...I was transferred from the Teller's Department and placed in the Customer Service Department as a Customer Service Representative. My duties included opening and closing accounts, assisting customers with queries, ensuring customer satisfaction and all needs of the customer until he or she leaves the bank. At all times I would perform my duties under the supervision of the person in authority. At the time my immediate supervisor was Cheryl Rumbolt.*
8. *In or about December 2007, Alex Brown who is my nephew, started visiting the bank frequently and would go to the Credit Department at Hagley Park branch to Mr. Lansford Cousins, the Personal Banker at the branch. Alex was employed briefly with NCB; he left NCB for employment at Cash Plus Limited.*

9. On January 8, 2009 while I was at Customer Service, Mr. Lansford Cousins, who was a Management Support Supervisor and senior to me, came to me and said that Mr. Alex Brown was going to come to me for financial assistance because at the time I was not attending to anyone. He informed me that Mr. Brown had a sterling cheque valued £1475.55 and I should deposit it to his account. When Mr. Brown came to me I looked at the cheque and told him to complete his deposit slip; while, he was doing so, I excused myself and went to Mr. Cousins and asked him to authorize the transaction since he had sent the customer to me. Mr. Cousins said 'Yes! He is a good boy.' I then drew his attention to the fact that the cheque was not in the name of the customer and he said that as long as it was properly paid over on the back of the cheque, I should go ahead and deposit it.

10. I then went to Miss Cheryl Rumbolt, the Senior Customer Service representative and told her what Mr. Cousins had said and she responded 'Ok'. I subsequently went back to Mr. Cousins and he verified and authorized the transaction in Finacle which was the Bank's operating system. The bank's procedure was followed and to the best of my knowledge information and belief, it was held for the requisite thirty (30) days.

11. On January 12, 2009, Mr. Alex Brown visited the Customer Service Department; he had an envelope which he asked me to give to Mr. Cousins. I took the envelope from him and went directly to Mr. Cousins' office and gave it to him. Later in the day, Mr. Cousins came back to me and asked me to post a deposit for him. I took the document from him, looked at the cheque and realized that the payee's name was different from that of the account holder (Alex Brown). Mr. Cousins told me it was ok I can deposit it because he knows the customer. I obeyed Mr. Cousins' instructions; however, out of an abundance of caution, I took the initiative and called Wisynco, the company that had issued the cheque.

12. I then posted in the system the option **OCTMWF** which would allow for three (3) working days for customer's funds to be cleared, and the authorized persons in NCB would have been able to do their checks prior to releasing the funds that had been deposited. The bank's procedures were followed.

13. NCB's normal operational procedures concerning posting cheques to a customer's account when the customer is not the payee is as follows:

- i) *Customer Service Representative would first verify that the cheque has been endorsed prior to depositing to the Outward Clearing Transaction Maintenance Withholding Funds (OCTMWF).*
- ii) *Funds are held for three (3) consecutive working days.*
- iii) *Once funds have been verified for release by OCTMWF, the funds become accessible to the customer.*
- iv) *If a deposit exceeds \$10,000 then a supervisor's intervention becomes necessary.*
- v) *If verification is required and a supervisor has the authority, the system mechanism is established for such verification.*

14. *Outward Clearing Transaction Maintenance Withholding Funds (OCTMWF) as the name implies gives that area of system operation a specific time in which to do an investigation into the legitimacy of cheque transactions...To my knowledge once posted the entry cannot be overridden and if it can be overridden, I cannot say how or by whom. I did not have the knowledge to override the system when a lodgement was posted...*

17. *On Monday February 9, 2009 at about 3:30 p.m. myself and other customer service staff members noticed that Mr. Richard Hines, an employee of NCB stationed at Head Office, the police, along with Mr. Brown, who was in handcuffs, stepped through the doors of NCB Hagley Park Branch...Shortly after, Sergeant Farquharson and Richard Hines came to the desk where we were standing and Sergeant Farquharson addressed me and said that he wanted to speak with me and asked me if my name was 'Evans'.*

18. *Sergeant Farquharson said that he needed an office and the Manager offered him the Omni Insurance office. I accompanied Sergeant Farquharson to the office...He then took my Blackberry and Lime phones from me...Richard Hines came in and said to me 'You know the man they have?'...'do you know the man they have?' I was so shocked and frightened that I answered 'No.'*

19. *Sergeant Farquharson then said 'you know what let me take her down to Fraud Squad for more questioning'...That throughout the entire period where I was kept in the Omni Insurance office, my liberty of movement was totally and completely*

restricted. I was then taken from the branch to the Fraud Squad in front of the entire staff at NCB Hagley Park Branch...in the vehicle belonging to Richard Hines along with Sergeant Farquharson for questioning...

*20. That I asked Sergeant Farquharson to explain why I was taken to the Fraud Squad but instead of an explanation, Richard Hines said 'I know about the Two Hundred and Fifty Thousand Dollar cheque', and that I was saying that I was given instructions by my Senior Supervisor Lansford Cousins to deposit this cheque to Mr. Alex Brown's account and it was deposited in the system option **OCTMWF** which will not allow the customer to get cleared funds unless the Authorized persons have done their checks and this would have taken three working days and after that the customer's account would be released.'*

21. I responded to Richard Hines and said 'I have done nothing wrong because I followed the bank's procedures and guidelines when posting this transaction.' Richard Hines then asked me why I was taking the Management Support Officer Lansford Cousins side. I responded to him and said this seemed like a cover up but that God will pull me through.

22. Richard Hines then instructed Sergeant Farquharson to 'lock her up, lock her'. I came out of the office and sat in one of the cubicles outside. I could not understand why I was being treated in this manner and why Richard Hines was demanding that I be locked up...'

Defendant's Submissions - False Imprisonment

[7] It is the defendant's submission that neither the defendant, National Commercial Bank Jamaica Limited nor its officers, detained the claimant. Instead, the defence claims that '*a person or institution who merely gives information to a police officer, who, in the exercise of his own independent discretion, decides to arrest the plaintiff, will not be liable for false imprisonment.*' The defence relied on the Jamaican Court of Appeal case of **Salmon v Roache (1995) 32 JLR 406** which held that '*At common law a police constable may arrest a person if he has reasonable cause to suspect that felony has been committed although it afterwards appears that no felony has been committed, but that is not so when a private person makes or causes the*

arrest [the private person] must prove, among other things, that a felony has actually been committed...A private individual is justified in himself arresting a person or ordering him to be arrested where a felony has been committed and he has reasonable ground of suspicion that the person accused is guilty of it.'

[8] The defence submits that the defendant had reasonable grounds of suspicion in reporting the matter to the police and that imprisonment was done at the discretion of the police. In his witness statement filed on May 18, 2023, Mr. Richard Hines, officer of the defendant, avers, inter alia:

'3. In my role as Manager of the Fraud Prevention Unit, I am tasked with supervising all personnel who identify, monitor and record fraudulent and suspicious debit and credit activities of customer accounts and I undertake investigations on behalf of the Bank into allegations of fraud whether internally or by customers. Where our internal investigations reveal any fraudulent or other criminal activity, the matters are usually reported to the police for their further action and investigation. This is the policy and practice of the Bank...

5. The process of negotiating cheques at NCB is clear and the timeline for a cheque to clear is dependent on the Bank and branch on which the cheque is drawn. Once a customer presents a cheque to a cashier (who may be a teller, supervisor or manager), the cashier must first examine the cheque and ensure that the person presenting the cheque is the same person to whom the cheque is drawn. This person may be the payee on the cheque but that may not be so in all circumstances. Accordingly, the cashier must ensure that the payee on the cheque matches the name on the account to which it is being deposited. If a cheque is presented for deposit in an account which is in a name other than the payee on the cheque, then the cashier must further examine the cheque to see if there have been endorsements on the cheque to direct the proceeds to the person who is presenting the cheque. If the cheque has not been so endorsed, then it must not be deposited to another account and the transaction is declined. If the cheque is deposited without any evidence of endorsement, then the cheque should not be negotiated as there may be a fraud and the Bank may be liable to the true payee and/or payor of the cheque.

6. Where a cheque is compliant in all respects with the procedures and processes of the bank, when accepting the cheques for processing, a cashier must place his or her crossing stamp on the cheque which bears the name of the specific NCB Branch, the date, a specific and unique identifier assigned to the cashier and the Branch code number.

7. If a cheque is presented at the same branch as the home branch for the account on which the cheque was drawn, then the funds will be made available immediately to the customer if there are funds in the account. However, if a cheque is not drawn on the same branch as the home branch for the account on which the cheque is drawn, then the funds are automatically held on the customer's account for three days before the funds are paid out. Branches and other banks have three days within which to return a cheque for insufficient funds, any discrepancy in the body of the cheque or any other reason, to include fraud. A cheque may be returned any time up to six years for fraudulent endorsement...

9. On my arrival at the branch, Mr. Alex Brown was already in an office for questioning by the policemen. I entered the room in which he was brought for questioning and was present there in my role as manager of Special Investigations Officer of the Fraud Prevention Unit...

11. Mr. Brown was questioned by the police in my presence about several transactions on his account to include:

i. A Great British Pound cheque deposited to his account on January 8, 2009 in the sum of 1,475.55;

ii. A cheque in the sum of \$250,000.00 drawn on the account of the Wisynco Group and made payable to the Violence Prevention Alliance which was posted to his account by Ms. Nadiea Evans on January 12, 2009;

iii. A withdrawal from his account in the sum of \$188,000.00 which was done on January 15, 2009.

12. It was noted that both GBP cheque and the cheque drawn on the account of Wisynco Group Limited were negotiated at the Hagley Park Branch of NCB, although the branch for his (Alex Brown) account is located at Duke Street. During the course of his interview by the police, Alex Brown indicated that he did most of his transactions at

the Hagley Park Branch as both Mr. Lance Cousins, his Personal Banker, and Nadiea Evans, Customer Service Supervisor, his aunt, were assigned to that Branch...

14. Whilst at the Duke Street branch, I was able to view the Bank's electronic and paper records in relation to Mr. Brown's account no. 064111655 to include the transactions mentioned above. I recall seeing the cheque in the sum of \$250,000.00 drawn on account of Wisynco Group Limited which was deposited to Mr. Alex Brown's account. A close examination of the cheque showed that the cheque was drawn on account for Wisynco Group Limited for the sum of \$250,000.00 in favour of 'Violence Prevention Alliance', which based on my investigations was a non-profit organization operating out of the University of the West Indies, Mona Campus.

15. The cheque bore no endorsements or any indication of any other person to whom the proceeds were to be directed to other than the named payee 'Violence Prevention Alliance'. This suggests that the cheque was negotiated in contravention of the Bank's processes and was likely indicative of fraudulent activity...

17. The cheque deposit slip also had the inscription 'b/o' (by order of) Violence Prevention Inner City Movement'. Therefore, anyone examining the deposit slip would have been led to believe that Violence Prevention Alliance was the issuer of the cheque and had listed it in favour of Alex Brown.

18. It was not a practice of the Bank to permit the deposit of cheques drawn by a company and made payable to another company to an individual's account without authorization or indication from the payee company in the form of an endorsement on the cheque. Officers of the Bank, including Ms. Evans, are aware that any cheque presented by a person for negotiation that is not made payable to that person, and which does not bear any endorsement, should be declined...

20. The Bank classifies certain level of employees as 'A' signers. 'A' signers are permitted to prematurely lift holds on accounts on the Bank's computer system before the standard 30 days to allow for proceeds of foreign cheques to be made available for use in the account to which they are deposited. Ms. Evans was not an 'A' signer nor a Manager. However, in her capacity as Customer Service Supervisor, she could manually remove the 30-day hold on foreign cheques; however, she would have to seek authorization from the branch manager of the Bank, which she did not receive.

21. Mr. Brown was taken to the Hagley Park Branch and then to Fraud Squad Office by the Police for further questioning. Based on the interrogation of Mr. Brown, the policemen determined that they would need to attend the Hagley Park Branch to interview Nadiea Evans.

22. The police officers attended the NCB Hagley Park Branch. I also attended. Upon reaching the branch, Nadiea Evans approached me and started frantically stating that she did not know Alex Brown and that he was just a customer of the bank and that she did not know him otherwise. I asked why she was offering this information when she was not asked. She stated that she did so because she saw him enter the Bank with the police and thought that something was wrong.

23. I asked her about the cheque in favour of Violence Prevention Alliance that she had deposited to his account and why she had done so when obviously it was not intended for that account. She stated that she thought it was a 'Trading Account' that Alex Brown had and she knew him to be associated with some Inner City Program.

24. I also asked her why the cheque was not endorsed at all. She only informed me that she had called Wisynco Group Limited to verify the cheque. However, when asked why she would be verifying the payee of the cheque when Violence Prevention was clearly marked on its face, she could give no answer. After this exchange, I reported our interactions with the policemen who were present.

25. I am aware that Nadiea Evans was taken into a room by the police at the Hagley Park Branch for questioning and then subsequently to the Fraud Squad and interviewed.

26. After Nadiea Evans was interviewed by the police, she, along with Alex Brown, was charged by the police with Conspiracy to Defraud and Causing Money to be paid out in relation to the cheque drawn on the account from Wisynco Group Limited in the sum of \$250,000.00...

28. I conducted further investigations and uncovered other irregularities. When I attempted to ask her about these transactions, she stated that her attorney had advised her not to speak about anything related to the fraud. As there were ongoing investigations, she was placed on suspension pending the conclusion of the investigation of transactions handled by Ms. Evans. Ms. Evans was invited to

disciplinary proceedings in respect of the breach of Bank policy and procedures. However, she did not attend the hearing on two occasions and so her employment with the Bank was terminated. This was communicated via written correspondence from the Bank to Ms. Evans dated May 8, 2009.

29. My further investigations into the irregularities revealed that the sums of \$188,000.00 and \$22,000.00 were withdrawn from Mr. Brown's account on January 15, 2009 and that Ms. Nadiea Evans had personally handled the withdrawal.

30. I visited the offices of the Wisynco Group Limited and spoke with two of the Directors, Messrs Andrew and William Mahfood. Both confirmed that the cheque for \$250,000.00 in favour of Violence Prevention Alliance was in fact forged. My investigations revealed other fraudulent cheques in their account. The Bank had to compensate Wisynco Group Limited the sum of \$250,000.00 and all other sums that were deemed to be fraudulently deducted from their account.

31. I also attended the offices of the Violence Prevention Alliance. This entity also confirmed that the cheque in the sum of \$250,000.00 was never received by them. The Chairman of the board provided a written statement in the matter which was given to the police.'

Who was really responsible for the detention of the claimant?

[9] On the question of who is liable for the imprisonment, ***Clerk & Lindsell on Torts, Twentieth Edition, 2010, page 1008***, propounds '*...it is quite a different thing if a party simply gives information, and the constable thereupon acts according to his own judgment. In such a case the informer incurs no responsibility in the tort of false imprisonment. The critical test is whether the defendant was responsible for the claimant's arrest by directing or requesting, or directly encouraging the officers to arrest the claimant; and in that respect, did they go beyond laying information before police officers for them to take such action as they saw fit.*' Based on the facts presented in this case, I am of the view that the claimant was detained, interviewed, arrested and brought before the criminal court by the police, not the defendant. Mr. Hines, in his capacity as Manager of the Fraud Prevention Unit of the defendant, merely supplied information to the police regarding his findings related to Mr. Alex Brown's account

which the claimant worked on. It is worthy of note that the claimant, in her own particulars of claim, admitted that she was '*marshalled at all material times by a police officer*'.

[10] I am also of the view that Mr. Hines' actions in having reported his suspicions to the police, were in keeping with his professional functions in accordance with paragraph 3 of his witness statement. In addition, it is in alignment with ***Halsbury's Laws of England Tort, Volume 97A, 2021, paragraph 143***, which posits that '*the mere giving of information to a police officer, although it may lead to an arrest, does not make the giver of the information liable for the imprisonment.*' Therefore, after the defendant gave the relevant information to the police, I find that the police acted on their own accord and discretion to carry out further investigations into the matter. I find that, in the circumstances, the claimant was imprisoned; however, it was the police who had detained her and not the defendant.

[11] The claimant claims that when she was being questioned in the Omni Insurance office by the police, Mr. Hines purportedly instructed Sergeant Farquharson to '***Lock her up. Lock her up***' (paragraph 22, claimant's witness statement) and that this supports her argument that it was the defendant who had detained her. I do not accept this evidence. The demeanour of the defendant's witness (Mr. Hines) indicates otherwise, since he does not strike me as having an intemperate disposition. The court took into consideration and paid careful note of the two witnesses in this case. Having seen and heard Mr. Hines, the defendant's witness appears to be a witness of truth. He gave his evidence in a frank and forthright manner without hesitation and without any apparent concoction. He answered the questions asked of him, promptly and precisely. On the other hand, the claimant appears partially truthful. I further find that there is no evidence to indicate that the defendant manifested a clear intention to control or restrain the liberty of the claimant.

[12] It is my view that although an officer, who is also a witness for the defendant, travels in the same vehicle as the claimant and the investigating officer, to the Fraud

Squad office, this does not mean that the officer is acting in anything other than a professional role on behalf of the defendant. In the case at hand, because the defendant's suspicions regarding the claimant were aroused upon its findings related to Mr. Brown's account, it reported those concerns to the police. This action, without more, would not make the defendant guilty of falsely imprisoning the claimant. Further, the claimant claims that the car which transported her to the Fraud Squad was driven by and owned by Mr. Hines. Mr. Hines, the defendant's witness, has given sworn oral evidence that he had driven the vehicle which transported the claimant and Sergeant Farquharson to the Fraud Squad office. However, Mr. Hines also testified that the vehicle is owned by a leasing company and not the defendant. In any event, it is worthy of note that there is no authority which even states that, if an alleged perpetrator is driven to the Fraud Squad by an officer, who is a witness for the entity which reported the alleged perpetrator's actions to the police, that would result in the entity being the detainer for the purposes of an action in false imprisonment. That there is no authority for such a proposition, is to put it mildly, unsurprising. That is an unmeritorious proposition.

[13] It is the claimant's case that the defendant had imprisoned her because she could not use the bathroom unless accompanied by a staff member neither could she leave and collect her personal items herself while she was in the Omni Insurance office. It is to be noted that the claimant averred in her witness statement that it was Sergeant Farquharson who requested the use of the office. The evidence suggests that he, being the investigating officer, used the office to conduct his preliminary interview of the claimant before he decided to take her to the Fraud Squad office. Because of the nature of the investigation, I do not find it highly unusual that Sergeant Farquharson, would want to ensure that the claimant, at the material time, was closely monitored while he carried out his investigations. I am of the view that this, without more, does not mean that the defendant had detained the claimant. I further find that there is no evidence to indicate that the defendant manifested a clear intention to control or restrain the liberty of the claimant. It was the police personnel who did that.

[14] Whilst that conclusion of mine would be sufficient to dispose of the claimant's claim against the defendant for damages for false imprisonment, nonetheless, in the event that I may be considered to be wrong in having reached the conclusion that the claimant was not detained by the defendant, I will go on to address the issue as to whether the claimant was detained, in the absence of reasonable and probable cause.

Whether the claimant was detained in the absence of reasonable and probable cause.

[15] *Hicks v Faulkner (1878) 8 Q.B.D. 167* defines reasonable and probable cause as '*...an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be: first, an honest belief of the accuser in the guilt of the accused; secondly, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion; thirdly, such secondly-mentioned belief must be based upon reasonable grounds, by this I mean such ground as would lead a reasonably cautious man in the defendant's situation so to believe; fourthly, the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused.*' Paragraphs 5, 6 and 7 of Mr. Hines' witness statement unearth some of the defendant's procedures and policies which the claimant, in her position of customer service representative, should have known and should have followed while she was in the employ of the defendant. On the other hand, paragraphs 14,15,17,18, 22, 23, 24, 30 and 31 of the said witness statement, illuminate the reasonable grounds and/or set of circumstances upon which the defendant had formed an honest belief of the guilt of the claimant, and upon that belief, reported its observations and findings to the police.

[16] The case, *Glinski v Mclver (1962) AC 726*, is the authority for determining that reasonable and probable cause is two-fold characterized by an objective and a

subjective test as follows:

- i. Whether a reasonable man, having knowledge of the facts which the defendant knew at the time they instituted the prosecution, would have believed that the claimant was probably guilty of the crime imputed (objective); and*
- ii. Whether the defendant did himself honestly believe the claimant was guilty based on the facts (subjective test).'*

In the case at bar, the defendant claims, in paragraphs 3 and 7 of his defence filed on February 10, 2017, that checks carried out on Alex Brown's account revealed several discrepancies including the following:

- 3. '...A cheque in the sum of \$250,000 drawn on the account of the Wisynco Group and made payable to the Violence Prevention Alliance was posted to Alex Brown's account by the claimant. There was no endorsement or otherwise on the cheque indicating that it was payable to Alex Brown instead of the Violence Prevention Alliance. The claimant was unable to give any proper explanation as to why she posted a cheque payable to Violence Prevention Alliance to Alex Brown's account ...The discrepancies raised a strong inference of fraud and collusion between Alex Brown and the claimant. The bank's policy...is to report all suspected cases of fraud against the bank and/or its customers in the course of its business to the police whether or not the suspected fraud involved employees of the bank or external persons...*
- 7. The report made to the police in relation to the cheque for \$250,000 was not on the basis of the removal by the claimant of an automatic 3-day hold on the cheque. At all material times, the discrepancy surrounding that cheque and the report made to the police related to the claimant's wilful deposit of the cheque \$250,000 to Alex Brown's account although the said cheque was made payable to the Violence Prevention Alliance and there being no indication on the cheque or otherwise that Alex Brown was entitled to the proceeds of the cheque. The claimant being a Senior Teller with approximately 10 years' experience would have known that negotiating a cheque to anyone a part from the payee and without the payee's consent amounted to fraudulent conversion for which the bank would be liable. In so depositing the cheque to Alex Brown's account, Alex Brown and/or his servant and/or agent was able*

to withdraw sums from the account after the cheque was cleared.'

[17] The evidence above, in addition to paragraphs 14,15,17,18, 22 - 24 and 30 - 31 of the defendant's witness statement, regarding how the claimant treated with certain transactions involving Alex Brown's account, suggests a departure from the known and established methods utilized by the defendant. Therefore, I find that any reasonable man, who, in this case, would be the defendant, armed with the information which speak to various irregularities, inconsistencies and discrepancies in procedure surrounding Mr. Brown's account, would have believed that the claimant was probably guilty of the crime imputed. The findings of fact in this case indicate that the objective test has been satisfied. I further find that the answer for the subjective test is likely in the affirmative since it appears that Mr. Hines acted upon his findings by reporting the matter to the police because he believed in the guilt of the claimant. It would follow then, that the imprisonment of the claimant was lawful.

[18] Moreover, defence counsel, in his oral submissions maintained vehemently that the defendant did not provide any evidence such as bank records, statements of account or other witnesses to testify to the state of Mr. Brown's account and/or the accounting process utilized by the bank. However, the defendant has maintained that it only brought its suspicions to the police, without more, and that the police acted upon said suspicions. Therefore, it appears that the defendant relied on the police to act further in the interests of justice, in the matter. Accordingly, this position, held by the defence, serves to bolster the argument that it was the police who were in charge of further investigations into the matter and decided whether to imprison and further prosecute the claimant based on their own findings.

[19] It is my considered view that the claimant has not discharged her burden of proving, on a balance of probabilities, that it was the defendant that had detained her on February 9, 2009. Further, the claimant has not proven that she had been unlawfully detained, because the facts and evidence presented in the case at hand, indicate that the police had reasonable and probable grounds for the detention.

Malicious Prosecution - Claimant's Submissions

[20] The claimant claims that the defendant maliciously prosecuted her. The claimant further claims that the particulars which give rise to malice and/or absence of reasonable and probable cause are as follows:

- ' i. The defendant caused and/or procured the police to arrest, charge and prosecute the claimant for the said offences before the said court when the defendant knew or ought to have known that once cheques are lodged by a customer and entered into the defendant's computer system via **OCTMWF (where cheques are automatically held for 3 days)** by an authorized staff then only an 'A' Signer and/or a 'Manager' of the defendant's bank can reverse the **OCTMWF** entry by the input of a special code known only to and/or by the said 'A' Signer/Manager.*
- ii. The defendant caused and/or procured the police to arrest, charge, and prosecute for the said offences before the said court knowing or ought to have known that the claimant was not an 'A' Signer nor 'Manager' nor had the special code to reverse the **OCTMWF** transaction or alternatively, had no means of overriding or reversing the said **OCTMWF** entry.*
- iii. The defendant knew or ought to have known that the bank teller who actually processed Mr. Alex Brown's subsequent withdrawals in respect of the lodgement of **Two Hundred and Fifty Thousand Dollars (\$250,000.00)** ('the subject cheque') could not have done so unless the subject cheque was cleared at the material time the said teller processed the withdrawals.*
- iv. The defendant caused and/or procured the police to arrest, charge and prosecute the claimant for the said offences when they knew or ought to have known that the subject cheque remained in Alex Brown's account for three (3) days in keeping with the **OCTMWF** security hold of three (3) days.*
- v. The defendant caused and/or procured the police to arrest, charge and prosecute the claimant knowing or ought to have known that it was a practice of the defendant (**during the course of the claimant's employment August 1999 - February 2009**) to lodge cheques drawn by the drawer (which is a company) to a*

payee (which is a company) and negotiated by an individual/lodged to the individual account under their Know Your Customer (KYC) policy and for such cheques to be entered via **OCTMWF** by its staff and which the claimant did at the material time when the Wisynco cheque #109430 for Two Hundred and Thousand Fifty Dollars (\$250,000.00) was lodged to the said Alex Brown's account.

vi. The defendant caused and/or procured the police to arrest, charge and prosecute the claimant for the said offences knowing and/or ought to have known that at the material time(s) when moneys were lodged and/or withdrawn from Alex Brown's account between 12/01/2008 - 09/02/2008, the said withdrawals were cleared funds.

viii. The defendant caused and/or procured the police to arrest, charge and prosecute the claimant for causing the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) to be paid out to Alex Brown via Information #2430/09 without properly or carefully conducting or analyzing or perusing Alex Brown's account; otherwise, they would have known or ought to have known that \$250,000.00 was never withdrawn from Alex Brown's account during the period 12/1/2008 and 5/2/2008...

ix. The defendant caused and/or procured the police to arrest, charge and prosecute the claimant knowing and/or ought to have known that she followed, observed, abided by and carried out her employment particularly by placing a hold on Alex Brown's lodgement via **OCTMWF** for three (3) days in accordance with and pursuant to the bank's established Policy and Procedure.

7. On the 22nd of August 2011 the said charges were dismissed by the Learned Resident Magistrate, Mrs. Lorna Shelly-Williams, as no further evidence was offered by the prosecution and the claimant was found not guilty.

8. By reasons of the matters aforesaid, the claimant's marriage has broken down irretrievably, [she] lost her job and all prospects of working in the banking sector and other places of employment, her opportunity to obtain a United States visa was compromised, greatly suffered injury to her credit, character, reputation and has suffered considerable inconvenience, humiliation, anxiety, embarrassment and expense.

9. *That by reason of the said prosecution of the said arrest, charges, and prosecution of the claimant, the Gleaner Company Limited published the case in its Daily Star Newspaper on 21st February 2009; as a consequence, the claimant was extensively embarrassed, humiliated and scorned by the wider society especially family members, spouse, co-workers and her community.*

10. *That several financial institutions and other places of employment have denied the claimant employment consequent on the charges against the claimant and her subsequent dismissal from employment by the defendant.'*

[21] Learned counsel for the claimant has relied on the case of ***Wills v Voisin (1963) WIR 50*** to highlight the critical elements which must be established by a claimant to ground a case of malicious prosecution. The claimant must prove:

- i. That the law was set in motion against the claimant on a charge of criminal offence, i.e., the defendant was actively instrumental in setting the law in motion against the claimant;*
- ii. That the claimant was acquitted of the charge(s) or that the charge(s) was otherwise determined in the claimant's favour;*
- iii. That the defendant acted without reasonable and probable cause when he set the law in motion;*
- iv. That the prosecutor/defendant was actuated by malice when he set the law in motion; and*
- v. That the claimant suffered damage as a consequence of the prosecution.'*

[22] Learned counsel for the claimant has also relied on the case of ***Irish v Barry (1965) 8 WIR 177*** to provide a definition for 'malice' being '*...the same circumstances showing that an arrest was without reasonable and probable cause may be sufficient to establish malice on the part of the prosecutor.'*

Malicious Prosecution - Defendant's Submissions

[23] Learned counsel for the defence also relied on ***Wills v Voisin*** to establish the elements of malicious prosecution as outlined above. Learned counsel has highlighted

that each element of the tort of malicious prosecution must be satisfied in order for the claimant to be successful in her action.

[24] Defence counsel has further relied on the cases, **Lattibeaudiere and Warrick v Jamaica National Building Society 2010 JMCA Civ 28** and **Martin v Watson [1996] 1 AC 74**, both of which establish that *‘where the defendant merely informs the police of certain facts which incriminate the plaintiff, and as a result the police decide to prosecute, the defendant will not be regarded as having instituted proceedings, since the decision to prosecute is not his and the stone set rolling [by the defendant] is a stone of suspicion only.’* These decided cases advance that *‘Where a civilian gives information to the police which he honestly believes to be true and as a consequence, the police, employing their own independent discretion, initiate criminal proceedings, even if the information proves to be false, no liability can be attributed to the citizen. If, however, he deliberately supplies the police with information which he knows to be untrue, then, liability as a prosecutor may be ascribed to him. He may also be said to be the prosecutor where he withholds information which if disclosed, the police would not have prosecuted; or where he suborns witnesses; or where, he, by some other dishonest means brings about the prosecution of a claimant. As shown, an essential feature of the tort is that the informant engaged in some act which rendered the prosecution of a claimant an unwarranted exercise.’*

[25] Counsel for the defence has advanced that the court should adopt the definition utilized in **Hicks v Faulkner** to determine reasonable and probable cause which is: *‘an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.’* Further, it is the defence’s case that the two-fold test applied in **Glinks v Mclver** should be applied to the case at bar. This was discussed in paragraphs 16 - 17 of this judgment.

[26] Defence counsel has submitted that the claimant needs to prove 'malice' and relied on two cases which defined 'malice':

i. *[any] motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice*' per Alderson B in **Steven v Midland Counties Railway Co. (1854) 156 ER 480**; and

ii. *Malice in the widest and vaguest sense, has been said to mean any wrong or indirect motive; and malice can be proved either by showing what the motive was and that it was wrong, or by showing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor.*' This definition for malice was confirmed in the case,

Brown v Hawkes (1891) 2 QB 177. Defence counsel has further submitted that the claimant is likely to be unable to prove this element of the tort as the evidence will show that the defendant's sole motive in reporting the matter to the police was to see that justice was done.

Whether the defendant bank initiated the prosecution of the claimant or whether the police had set the law in motion against the claimant.

[27] I am in agreement with both counsel for the claimant and the defendant that the case of **Wills v Voisin (op. cit)** establishes the ingredients to be satisfied by a claimant who seeks to prove a claim for damages for malicious prosecution. Further, I concur with defence counsel that each element outlined in the said case must be satisfied by the claimant in order for the court determine that the claimant was maliciously prosecuted. From the evidence provided by both the claimant and the defendant, in the case at bar, it is my considered view that the defendant, through its employee, Mr. Hines, merely reported its suspicion of fraud relating to Mr. Brown's account to the police, and that thereafter, the police conducted their own investigation. The cases of **Lattibaudiere and Warrick v Jamaica National Building Society** and **Martin v Watson** are quite clear on the law that where a defendant merely puts certain facts to the police, which incriminate the claimant, and the police decide to prosecute the claimant upon the said facts, the defendant will not be responsible for initiating proceedings against the claimant.

[28] The case at hand reveals that Mr. Hines, in his capacity as Manager of the Fraud Prevention Unit of the defendant, at the material time, observed that there were inconsistencies in how Mr. Brown's account was handled by the claimant. He saw that these irregularities breached the defendant's procedures and policies and further intimated the commission of fraud. As a result, he took necessary action by consulting the police. I find that Mr. Hines' observations and findings concerning Mr. Brown's account, fuelled his suspicions of fraud and that he responded in a way that any prudent, responsible and vigilant officer of a financial institution would respond in the circumstances. In light of this, it is the police who launched their investigations and made a determination to and did, in fact, prosecute the claimant based on their own findings. Therefore, it is clear that the law was set in motion against the claimant on charges of Conspiracy to Defraud and Causing Money to be paid out in relation to the cheque drawn on the account from Wisynco Group Limited in the sum of \$250,000.00. However, I find that the law was set in motion by the police and not the defendant.

[29] In *AB v Hunt [2009] EWCA Civ 1092*, the Court of Appeal ruled that *'even if an alleged victim of an offence had gone straight to the police and made it clear that he wanted the alleged perpetrator prosecuted, the independent intervention first of the police and the CPS [Crown Prosecution Service], would in the absence of proof that the prosecution was in reality the complainant doing and not theirs, have made the latter the prosecutor for the purposes of an action for malicious prosecution...'* Accordingly, the claimant has proffered no real evidence to prove that the defendant was the prosecutor in the circumstances. Also therefore, whilst this conclusion of mine, would be sufficient to dispose of the claimant's claim against the defendant for damages for malicious prosecution, I will nevertheless, in the event that I may be considered wrong, in having so concluded, go on to address other issues, in respect of the alleged malicious prosecution of the claimant, by the defendant.

Was the claimant acquitted of the criminal charges laid against her?

[30] It is clear from the facts of the case at bar that the claimant was acquitted of the charges laid against her. The claimant has tendered into evidence a letter dated

November 17, 2011 from the Corporate Area Resident Magistrate's Court, Criminal Division, Half Way Tree, which advised that the claimant had appeared before Her Honour Mrs. Lorna Shelly-Williams on the 22nd day of August 2011. The letter further advised that no further evidence was offered and the claimant was found not guilty.

Whether the claimant was prosecuted in the absence of reasonable and probable cause.

[31] For the same reasons I outlined in paragraphs 15 -17 of this judgment, I find that there was reasonable and probable cause for the claimant's prosecution. ***Glinski v McIver*** postulates that '*...there are many cases where the facts and information known to the prosecutor are not in doubt. The plaintiff has himself to put them before the court because the burden is on him to show there was no reasonable or probable cause. The mere fact of an acquittal gets him nowhere. The plaintiff must prove that the law was wrongfully set in motion without reasonable or probable cause and instituted with malice.*' This case makes it clear that it is not sufficient that the claimant in a malicious prosecution suit has proven that he or she was acquitted of the charges laid against him or her. Instead, the claimant must go further to prove to the court that there was no reasonable or probable cause for the prosecution and that the prosecutor acted with malice.

[32] The case of ***Tims v John Lewis & Co. Ltd. 1951 2 KB 459*** establishes that '*the question in an action for malicious prosecution [of] whether there was an absence of reasonable cause for the prosecution has to be determined subjectively: it is a question which the court has to determine objectively on the evidence before it; that is to say, the question is not what, on the evidence known to the prosecutor, he did in fact think, but what, as a reasonable person, he ought, in the view of the court, to have thought*'. I am of the view that, on the evidence provided in the case at bar, any reasonable person in Mr. Hines' position at the defendant, after having reviewed Mr. Brown's account as handled by the claimant, would have thought that a crime had been committed against the defendant, by the claimant.

[33] The claimant asserted in her evidence, both oral and written, that on more than one occasion when she attended to Mr. Brown regarding the deposit of cheques at the defendant, she highlighted seeming irregularities regarding the cheque which was to be posted to Mr. Brown's account such as that *'the cheque was not in the name of the customer [Alex Brown]'* or that *'the payee's name was different from that of the account holder (Alex Brown)'* and that on these occasions her superiors gave her permission to conduct the transactions despite the apparent deficiencies. I must say that I find this evidence quite curious because the defendant, like any other financial institution, would likely put security measures in place and enforce said measures in order to guard against offences like fraud which is a hazard of the business. It seems highly unlikely that the claimant's superiors, who should know and adhere to the bank's policies and procedures and who should demand maximum compliance, would be permitting transactions to be conducted when there appeared to be irregularities. Under cross examination, the claimant asserted that she knew the standard operating procedure of the bank as regards to the posting of cheques to customers' accounts yet she approached both Mr. Cousins and Ms. Rumbolt to authorize a transaction concerning Mr. Brown's account (paragraphs 9 and 10 of claimant's witness statement). One is left to wonder why the claimant needed the input of her superiors at the material time.

[34] The claimant, under cross examination, admitted that on the 12th of January 2009, she had deposited a cheque to Alex Brown's account. She further admitted that the drawer of the cheque was Wisynco Ltd. and the payee reflected on that same cheque was Violence Prevention Alliance. Moreover, the claimant admitted that *'the back of the cheque is not endorsed to Alex Brown'* and that *'the payee - Violence Prevention Alliance has not endorsed the cheque to Alex Brown'*. The claimant further admitted that on the said date she did not know Violence Prevention Alliance to be a customer of the defendant and that she did not make any attempt, before processing the deposit to Alex Brown's account, to contact Violence Prevention Alliance. The claimant also admitted that it was her responsibility when posting a cheque to an account, which is different from the payee, to ensure that the cheque was endorsed to the account holder. To my mind, a reasonable man, in considering the actions of the claimant aforementioned,

would have reasonable or probable cause to suspect that the claimant's actions were suspicious in the circumstances.

Whether the claimant was prosecuted on account of malice.

[35] The Court of Appeal case of ***Peter Flemming v Detective Corporal Myers and the Attorney General [1989] 26 JLR 525*** posits that '*in order to succeed in an action for malicious prosecution, the appellant must prove that the respondent either acted maliciously or without reasonable and probable cause. Malice covers not only spite or ill will but also any other motive other than a desire to bring a criminal to justice.*' This ruling is in alignment with what was expressed in ***Steven v Midland Counties Railway Co.*** and ***Brown v Hawkes (op. cit.)***.

[36] It is the claimant's case that the defendant's representative (Mr. Hines) had instructed the police to '***Lock her up. Lock her up***' when the police were conducting their interview of the claimant in the office of the defendant. Further, the claimant alleges that Mr. Hines had made unsolicited outbursts after court directed at her, her husband and her former attorney, who had conduct of the fraud matter, that '*NCB has all the time, money and power in the world so we can come and sue.*' I reject this evidence for it reflects the statements of an intemperate person. Again, the demeanour of the defendant's witness, indicates otherwise, since he does not strike me as having an intemperate disposition. Having seen and heard Mr. Hines, the defendant's witness appears to be a credible witness. On the other hand, the claimant appears to be less than credible and only partially truthful, at best. Thus, I reject the evidence above, for the same reasons I gave in paragraph 11 of this judgment.

[37] The defendant's representative, in his evidence, asserted that his suspicions were aroused on account of how the claimant treated with Mr. Brown's account especially related to the cheque in the sum of \$250,000.00 drawn on the account of the Wisynco Group and made payable to the Violence Prevention Alliance which was posted to Alex Brown's account by the claimant on January 12, 2009. Paragraphs 3 and 7 of the defendant's defence, as well as paragraphs 14,15,17,18, 22 - 24 and 30 - 31 of Mr.

Hines' witness statement, provide information which suggests that the methods utilized in processing certain transactions surrounding Mr. Brown's account, which was handled by the claimant, were not the defendant's established and standard procedures. It is highly likely that this discovery by the defendant's representative motivated him to get the police involved as he very likely believed that fraud was being committed against the said bank. This, to my mind, shows the presence of reasonable or probable cause.

[38] In order to establish the ingredient of malice, counsel for the claimant also argued that the defendant did not provide evidence such as bank records, statements of accounts and other witnesses to establish the technological or accounting process related to Mr. Brown's account. I hold that the absence of the evidence aforementioned serves to shed light on what may be considered a less than perfect process of investigation. This, however, does not prove that the defendant did not, at the material time, have reasonable or probable cause to form suspicions surrounding the transactions conducted regarding Mr. Brown's account.

[39] *Peter Flemming v Detective Corporal Myers (op. cit.)* further established that *'Malice can be expressed or implied and sometimes be inferred from want of reasonable or probable cause but it is not bound up with it.'* The evidence in the case at hand does not indicate that the defendant and the claimant had an acrimonious relationship prior to the events which gave rise to criminal charges being laid against her. Neither the claimant nor defendant has proffered any testimony to the effect that there had been ill will between them or that anything had occurred in their work relationship that would cause the defendant to act out of spite, or to be malicious toward the claimant. To this end, I find that the prosecution of the claimant was not actuated by malice, since there is no evidence that attributes an indirect motive to the defendant, nor any desire, other than to attain justice.

The claimant's claim for damages and other relief

[40] The claimant has proffered some evidence to support her claim for damages on account of losses and/or damage she claims to have suffered as a result of the

defendant's actions and inactions. However, since she has not proven to the court that the defendant had falsely imprisoned her, or maliciously prosecuted her, then I have no need to expound on that. It is my considered view that the claimant has not proven, on a balance of probabilities, that she was falsely imprisoned by the defendant, nor has she proven, on a balance of probabilities, that the defendant had maliciously prosecuted her. In the circumstances, she is not entitled to any relief, whatsoever.

CONCLUSION

[41] Based on the above considerations, I find that the claimant has not proven that the defendant had falsely imprisoned her nor has she proven that the defendant had maliciously prosecuted her. I further find that the claimant was lawfully imprisoned by the police who had reasonable or probable cause to do so. I am of the view that the claimant was prosecuted by the police who had reasonable and probable cause to so act. I am also of the view that the prosecution was conducted in the absence of malice and that it was lawfully conducted, albeit that the criminal case against the claimant, was eventually dismissed for want of prosecution. I would add that in the circumstances, the court has no need to consider nor make a determination of damages, including exemplary damages, if any, payable to the claimant, since damages would flow from a finding that the defendant was liable for false imprisonment and malicious prosecution against the claimant.

DISPOSITION

[42] This court, therefore, now orders as follows:

1. The claimant's claim is, in its entirety, denied.

2. The costs of this claim are awarded to the defendant and such costs shall be taxed, if not sooner agreed.

3. The claimant shall file and serve this order.