

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2004 HCV 002969

BETWEEN	PATRICK ROBERTS	CLAIMANT
AND	AIR JAMAICA LIMITED	1 ST DEFENDANT
AND	DET. SGT. ALVON S. FERRON	2 ND DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	3 RD DEFENDANT

Ms. Jacqueline Cummings and Mr. Aon Stewart instructed by Archer and Cummings for Claimant.

Mr. John G. Graham and Ms. Khara East instructed by John G. Graham and Co. for 1st Defendant

Mrs. Trudy-Ann Dixon-Frith instructed by The Director of State Proceedings for 2nd and 3rd Defendants.

25th November and 2nd December 2009

BROOKS, J.

The twin threats of terrorism and drug trafficking facing the world have resulted in commercial air travel becoming an inconvenient, embarrassing and dehumanizing experience. States, in an effort to guard against these threats, have resorted to routinely searching the property and person of individuals who seek to use this moderately mundane mode of travel.

Mr. Patrick Roberts has, however, suffered greater indignity than a mere search. On October 16, 2000 he was removed from an aircraft in Kingston while he waited for it to take him to Florida. He was taken by police officers to the airport's police post, questioned, taken to another police station, questioned again and then finally released without charge. The eventual explanation for his unusual experience was that this was a case of mistaken identity.

He has filed this claim against the carrier, Air Jamaica Limited alleging that it improperly divulged to the authorities that he was on its flight, and against the

detaining police officer and the Attorney General for false imprisonment. A judgment has been entered in respect of the claim for the false imprisonment and therefore the issues in that regard are the appropriate compensatory award to be made and whether aggravated and/or exemplary damages should be awarded.

Air Jamaica has however resisted the claim and the issues to be decided, as against it, are whether there is any element of confidentiality in the contract of carriage between Air Jamaica and Mr. Roberts and whether Air Jamaica has breached that contract. I shall treat first, with the contractual issues and thereafter with the issues influencing the award of damages.

The Contractual issues

The pleadings

In his amended Particulars of Claim Mr. Roberts pleaded that there "was an express and/or an implied term...of the contract for the purchase of [his] ticket that [his] travel arrangements would remain private and confidential between [him] and [Air Jamaica]". He further pleaded that "[by] reason of [Air Jamaica's] breach of contract and (sic) confidentiality with [him] in releasing his flight information to [the police] and others [he] has suffered loss..."

The evidence

The evidence which was adduced to support these aspects of the pleading came from Mr. Roberts. He stated that he purchased a return ticket to travel from Florida to Jamaica and return. He successfully completed the first leg on October 13, 2000, spent three days in the island and boarded the designated aircraft expecting to be returned safely to his destination.

I shall describe anon, the manner in which he came to be detained but for the present purposes need only say that he was asked to deplane and when he complied he was met at the foot of the stairs leading from the airplane, by the second Defendant Sergeant Ferron.

The next relevant bit of evidence is that having been, later, released from detention and seeking to get another later flight out of the island, Mr. Roberts solicited the assistance of Sgt. Ferron. He says he then witnessed a discussion between Sgt. Ferron and the Air Jamaica supervisor who was then creating the

ticket for his later flight. Mr. Roberts continues at paragraph 27 of his witness statement thus:

“Sgt. Ferron says he acted because he was summoned by Air Jamaica and the Air Jamaica supervisor said they called him because my name matched a name on the list of restricted people the police provided the airline.”

According to Mr. Roberts' counsel, Miss Cummings, an incident occurring after that discussion made it clear that it was Air Jamaica which was instrumental in the police preventing his originally scheduled departure. The incident occurred when Mr. Roberts attempted to board his later flight. He was “again detained at the security check point before boarding”. Mr. Roberts' used forceful action which ensured that that incident was brief. Learned Counsel also submitted that the fact that Air Jamaica gave Mr. Roberts a J\$100.00 meal voucher and allowed him to travel without the payment of a further fee meant that Air Jamaica was compensating him for its action.

The law

In respect of the law, Miss Cummings submitted that a duty of confidentiality was imposed by this contract of carriage arising from the purchase of the ticket. She submitted that a term of confidentiality may be implied in circumstances where “confidentiality is clearly called for in the context of the relationship existing between the parties.”

Learned Counsel cited in support, the case of *Reigate v Union Manufacturing Co. (Ramsbottom) Ltd. and anor.* [1918] 1 K.B. 592. At page 605 of the report Scrutton, L.J. stated, however, that a term will only be implied into a contract if it is necessary to give business efficacy to the contract. In order to determine what is inferred, said the learned Law Lord, it is first necessary “to see what the parties have expressed in the contract”. He concluded that unless it is patent from the context of the agreement that a particular term must be implied, the court ought not to imply a term which the parties have not expressed.

Based on that guidance from Scutton, L.J. I do not accept Miss Cummings' submissions as being valid. Firstly, no evidence of the terms of the contract was adduced. Air Jamaica's witness, Miss Nerine Small, though

generally unhelpful (mainly because she was not associated with Air Jamaica in 2000), testified in cross examination that when a person purchases an airline ticket the terms of the ticket form a part of the contract and a convention, or two conventions, form the other part. However, no ticket was put in evidence and neither of the conventions or their terms was specified or adduced into evidence. The court therefore has no basis on which it can say either that there was an express term of confidentiality or that a term of confidentiality can be inferred from the context of express terms.

Mr. Graham, for Air Jamaica, submitted that there is a basis for inferring a duty of confidentiality from the very nature of some contracts, such as those involving industrial know-how, or patents but that the purchase of the ticket does not by itself imply confidentiality. He further submitted that the claimant has failed to establish that there was any duty of confidentiality imposed on Air Jamaica. I agree with Mr. Graham on both counts.

Even if I were to take judicial notice that airlines do not, generally, disclose the names of their passengers in advance of the completion of the passenger's trip, I do not think that that is sufficient to imply a contractual duty. In my view there is nothing in confidentiality which necessarily brings business efficiency to this type of contract. Although I accept, as true, Mr. Roberts' testimony that the Air Jamaica supervisor admitted that Air Jamaica had informed the police that a Patrick Roberts was on its flight, that in my view, did not result in a breach of any confidence which might be implied in the contract of carriage. It was, however, foreseeable that the passenger identified would have been detained by the police and could have missed his flight.

In the circumstances Mr. Roberts has failed in his claim against Air Jamaica and there must be judgment for the airline.

False Imprisonment

Before moving to consider general damages for false Imprisonment I should note that Mr. Roberts did not plead for the recovery of special damages and so, although he sought to set out these losses in his witness statement, he

cannot recover them. (*Robinson & Co. and anor. v Lawrence* (1969) 11 J.L.R. 450 at page 453 and *Murphy v Mills* (1976) 22 J.L.R. 119 at page 121)

The evidence

The evidence in respect of the claim for general damages for false imprisonment is that Mr. Roberts is a distributor of LED lighting. He travels often by air, and at the time of this incident was a consultant to a bank in Haiti. He says that at that time he was earning US\$250.00 per day, though no documentary proof was presented to support this claim. Nothing else is known, by the Court, of Mr. Roberts except the effect which, he says, the incident had on him.

At 6:30 a.m. when he was met at the airplane steps by Sgt. Ferron, he was taken to the police post at the airport where he was questioned and his luggage searched several times during the process. He was denied food or refreshment although he offered to purchase them at his own expense.

He says that he was taken, at about 10:30 a.m. to the Olympic Gardens Police Station by police officers, one of whom called him "Prisoner boy" and kicked Mr. Roberts' foot in seeking to arrest his attention. At the Olympic Gardens Police Station he was put to sit at the foot of some steps in a "holding area" where other persons, who were shackled, were. He was not, himself, handcuffed. He was released at about 4:00 p.m. on the intervention of an Assistant Commissioner of Police; the father of one of Mr. Roberts' friends.

The whole affair caused Mr. Roberts to wish to leave Jamaica as quickly as he could. He would have taken the first flight out of Jamaica regardless of its destination; so anxious was he to get out of the country. Although his daughter and mother lived in Jamaica and he gives an Omara Road address as being his then home, he says that he, thereafter, stayed away from Jamaica for some time although he would previously visit the island twice or three times per year.

Compensatory Damages

The award of damages for false imprisonment is primarily to compensate the wronged party for the loss of time, "the injury to his feelings, that is, the indignity, mental suffering disgrace and humiliation, with any attendant loss of social status". See *McGregor on Damages* 16th Ed at paragraph 1850. Those

sentiments are reflected in the judgment of Courtney Orr J. in *Mullings v Murrell & Others* (1993) 30 J.L.R. 278 at page 283.

Although a number of cases was cited by Mrs. Dixon-Frith (counsel appearing for Sgt. Ferron and the Attorney General), in a very thorough presentation, I find two unreported cases most helpful. These are *Ellis v the Attorney General & Anor* SCCA 37/01 (delivered 20/12/04) and *Attorney General & anor. v Morgan* SCCA 11/03 (delivered 14/3/08). In Ellis's case, the claimant was a government employee, a Justice of the Peace and otherwise of some standing in the community. He was detained for some seven (7) hours and during that time was "not offered refreshment or any opportunity to obtain food or drink" (page 14). He was awarded \$100,000.00 as damages for false imprisonment. When this award is updated using the Consumer Price index (CPI) for October 2009 (147.15) the result is approximately \$175,400.00.

In Morgan's case, an award of \$124,173.30 was made under this head for a detention of 10 hours duration. Mr. Morgan was, like Mr. Ellis, a forester employed to the Government of Jamaica and a prominent member of the Portland community. Indeed, it seems that their respective cases arise from the same incident. When Mr. Morgan's award is updated using the October 2009 CPI the result is approximately \$149,000.00

I find, using the abovementioned cases as guides, that an appropriate award for Mr. Roberts in light of the fairly limited information about his circumstances, is \$160,000.00.

Aggravated Damages

Mr. Roberts also claims an award of aggravated damages. This was included in the prayer at the end of his Particulars of Claim. As I hope to demonstrate below, although no particulars were given, this prayer was sufficient for the purposes of the Civil Procedure Rules (CPR).

I, therefore, must consider his unchallenged evidence, especially as regards the deprivation of refreshment, the insulting words used to him and the kicking of his foot. Aggravated damages may be awarded when the court is of the view that the compensatory award is not sufficient to satisfy the requirement

of a punitive or exemplary element. Our Court of Appeal, in *Attorney General and Burton v Anderson* SCCA 76 of 2004 (delivered 17/3/06) cited *Thompson v Commissioner of Police of the Metropolis* [1998] Q.B. 498 at page 516 B-C where Lord Wolf said in respect of aggravated damages:

“Such damages can be awarded where there are aggravating features about the case which would result in the plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award”

In my view there is an element of aggravation in this case which requires the court to make an award above the figure required for compensation for the treatment meted out to Mr. Roberts. I am mindful of the need for moderation in these matters and I am of the view that an award of a further \$40,000.00 is appropriate in the circumstances.

Exemplary Damages

Mrs. Dixon-Frith complained that no particulars were pleaded to support a claim for exemplary damages and the claim should therefore fail. Although authority for Mrs. Dixon-Frith's submission may seemingly be found in the *post*-2003 (the year of the implementation of the CPR) judgment of Rattray, J. in *Currie v Attorney General* CL. 1989/C315 (delivered 10/8/09), both the learned judge in that case and Mrs. Dixon-Frith, rely on the case of *Attorney General and anor. v Gravesandy* (1982) 19 J.L.R. 501 in support of the principle. *Gravesandy's* case is, however, based on the rules of the regime which pre-existed the CPR and the *Currie* case had been filed pursuant to those rules. The learned judge was therefore, in my respectful view, applying the appropriate law.

The situation in the present dispensation is that Rule 8.7 (2) of the CPR does not require particulars in support of a claim for exemplary damages. The rule states:

“A claimant who seeks aggravated damages and/or exemplary damages must say so in the claim”.

There is no mention of particulars being required. The equivalent provision in the English Civil Procedure Rules is rule 16.4 (1) which states:

“Particulars of Claim must include ...

*(c) if the claimant is seeking aggravated damages or exemplary damages, a statement to that effect **and his grounds for claiming them.***” (Emphasis supplied).

As there is no requirement in our rules for a statement of the grounds for claiming exemplary damages, it is my view that the framers of the rules did not intend for those particulars to be given. This is evident from the fact that rule 8.7 (3) requires a claimant who is seeking interest to “(a) say so in the claim form, and (b) include in the claim form or particulars of claim details of (i) the basis of the entitlement....”

Mrs. Dixon-Frith is, therefore, not on good ground in relying on the pre-CPR principle in the instant case.

That rule 8.7 (2) may need reconsideration is reflected in the fact that Mr. Roberts, 9 years after the event, has included in his witness statement, details of humiliating treatment meted out to him, when no inkling of such treatment was given in his amended particulars of claim.

I find, however, that the evidence as presented and as I have related it, does not justify an award of exemplary damages and I shall make no such award.

Conclusion

Mr. Roberts has failed to prove that the contract of carriage between the Air Jamaica and himself included any term, either express or implied, of confidentiality. I therefore find that in disclosing to the police that a Patrick Roberts was on its flight, Air Jamaica did not breach any aspect of its contract with him. His claim against Air Jamaica must therefore fail.

In respect of the assessment of damages for false imprisonment, although there is no element of the treatment meted out to him which requires an award of exemplary damages, an award of aggravated damages is appropriate. This is in respect of one of the police officers kicking Mr. Roberts and referring to him in a derogatory way and for him having been refused refreshment.

As I intend to order Mr. Roberts to pay the costs of Air Jamaica I should explain that this is as a result of the fact that Mr. Roberts' claim against Air

Jamaica was placed on an entirely different basis to that against the police. The Attorney General should not, therefore, be requested to pay the costs of that foray.

Based on the above it is, therefore, ordered that:

1. Judgment for the 1st Defendant as against the Claimant;
2. Damages as against the 2nd and 3rd Defendant are assessed as follows:

(a) False Imprisonment	\$160,000.00
(b) Aggravated Damages	<u>\$ 40,000.00</u>
	\$200,000.00
3. Interest on the sum of \$200,000 at 3% per annum from 7/12/05 to 2/12/09;
4. Costs to the Claimant as against the 2nd and 3rd Defendant;
5. Costs to the 1st Defendant as against the Claimant;
6. Costs are to be taxed if not agreed.