

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2012-04736

AZARD ALI

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Ms. A. Rambarran
Instructed by Mr. Kent Samlal

For the Defendant: Ms. A. Alleyne, Mr. Jones
Instructed by Ms. N. Simmons & Ms. K. Matthews

Date of Delivery: 8th June 2017

JUDGMENT

THE CLAIM

- [1] The Claimant claimed against the Defendant damages including aggravated and/or exemplary damages for false imprisonment.
- [2] He pleaded¹ that about 4:00 pm on the 4th December 2008 he was arrested by police officers for larceny of a circuit board from TSI Energy Services. The Claimant asserted that he was arrested by PC Harrysingh and another officer despite informing them that he had kept the circuit board in lieu of outstanding sums due to him by its owner. He was handcuffed, escorted to an unmarked vehicle and taken from his place of business to the San Fernando Police Station where he was kept in a cell for three (3) hours before PC Harrysingh took him to the Gasparillo Police Station where he was kept for a further three (3) hours before his eventual release which came about when the owner of the circuit board, one Mr. Bail visited the police station and made arrangements with the Claimant for the payment of outstanding monies. The latter was not charged.
- [3] The Claimant averred that his arrest and detention was unlawful and he was falsely imprisoned². He averred further that the conduct of the police officers who were servants/agents of the State and acting in the course of their duties was unconstitutional, arbitrary and oppressive; he therefore claimed aggravated and exemplary damages.
- [4] The Claimant further pleaded the following facts in support of his claim for aggravated and/or exemplary damages:
- i. The police officers refused to carry out further reasonable enquiries before the arrest of the Claimant was effected;
 - ii. The Claimant was handcuffed and arrested in his place of business in full view of his employees, friends, customers and members of the

¹ Statement of Case, para. 3

² Statement of Case, para. 9

public. He was jeered at by some of his employees and members of the public and as a result suffered shame, distress and embarrassment;

- iii. The Claimant was deprived of his liberty for a period of approximately six (6) hours at the San Fernando and Gasparillo Police Stations;
- iv. The Claimant was not given a meal or anything to drink while in detention for approximately six (6) hours;
- v. The Claimant was placed in filthy prison cells at the San Fernando and Gasparillo Police Stations where the conditions were unbearable due to the stench of the cells, which were littered with faeces and contained overflowing toilets;
- vi. The Defendant, its servants and/or agents failed to conduct reasonable enquiries, which would have revealed that the circuit board was being held by A and E Electrical Engineering Limited due to TSI Energy Services Limited's failure to pay outstanding monies with the consent of the said TSI Energy Services Limited;
- vii. The Defendant, its servants and/or its agents failed to allow the Claimant a reasonable opportunity to contact Stephen Bail and/or to produce documentary evidence in order to confirm that the Claimant's company had been withholding the said circuit panel with the agreement and consent of Mr. Bail until payment was made for the works completed;
- viii. The Defendant, its servants and/or its agents had no reliable evidence that the Claimant had in fact stolen the circuit board;
- ix. The Claimant has suffered severe anxiety, insomnia and mental stress as a result of his unlawful arrest and detention by the Defendant, its servants and/or its agents;
- x. The Claimant was denied and or refused his constitutional rights namely the right to an attorney at law contrary to Section 5.(2) (c) of the Trinidad and Tobago Constitution which provides for the right

of an arrested person to retain and instruct without delay a legal advisor of his own choice and to hold communication with him and the right to be informed promptly and with sufficient particularity of the reason for his arrest and detention.

- xi. The Claimant was denied and/or refused his constitutional right to communicate with a friend or relative via a telephone to inform them of his detention.

THE DEFENCE

- [5] The Defence denied that the police officer who accompanied PC Harrysingh failed to identify himself, or that the Claimant had explained to the officers that Mr. Bail had refused to pay him for the control panel and other jobs hence his retention of the circuit board. It was also denied that the Claimant informed them that he was holding the circuit board by agreement with Mr. Bail until payment was made³.
- [6] The Defendant pleaded that on the 3rd December 2008, PC Harrysingh received a report from Mr. Bail via telephone, in which the latter stated that the Claimant had stolen his circuit board after he, Mr. Bail, had fired the Claimant from a job that the latter was doing for him. Mr. Bail later made a telephone report to this effect at the Gasparillo Police Station.
- [7] The Defendant pleaded further, that on the 4th December 2008, PC Harrysingh viewed video footage of the Claimant removing the circuit board from the compound of Mr. Bail's company, TSI Energy Services Limited in Williamsville.
- [8] It was also pleaded by the Defendant that on the 4th December 2008 PCs Harrysingh and Phillips visited the Claimant at his office, and introduced

³ Defence para. 4, 5

themselves to him. PC Harrysingh told the Claimant that they were investigating a report that he stole a circuit board from the premises of Stephen Bail at TSI Energy Services Limited, Williamsville.

- [9] The Defendant averred that the Claimant denied that he had removed the circuit board or that he was in possession of same. When informed that PC Harrysingh had seen a video of him removing the said circuit board, the Claimant remained silent.
- [10] It was admitted by the Defendant that the Claimant was arrested and taken to the Gasparillo Police Station; however, the Defendant asserted that the Claimant was informed of his legal rights and privileges. It was also denied that the Claimant was first taken to the San Fernando Police Station and kept there for three (3) hours. The Defendant pleaded that the Claimant was taken directly to the Gasparillo Police Station upon his arrest.
- [11] The Defendant also denied that the Claimant was not informed of his rights and privileges and indeed averred that the Claimant asked to speak to his attorney and was permitted to do so.
- [12] The Defendant also pleaded that the Claimant arrived at the Gasparillo Police Station at 6:35 pm and was released at 9:40 pm after Mr. Bail arrived at the station and indicated that he would not pursue the charge against the Claimant after the latter returned the circuit board to Mr. Bail at the station. The Claimant also informed the police in Mr. Bail's presence that the latter owed him money.
- [13] The Defendant denied that the arrest of the Claimant was unlawful and asserted that there was reasonable and probable cause for such arrest. The Defendant also denied that the action of the police officers in arresting the Claimant was arbitrary, oppressive and unconstitutional and could form the basis of a claim for aggravated and/or exemplary damages. The

grounds upon which the Claimant relied to base his claim for aggravated/exemplary damages were also denied by the Defendant.

REPLY

[14] In his Reply, the Claimant denied that he was employed by Mr. Bail and had been fired by him due to the latter's dissatisfaction with work done by the Claimant. It was also denied that the Claimant stole the circuit board.

[15] He asserted that his retention of the circuit board was a result of the nonpayment of monies due by Mr. Bail's company TSI Energy Services Limited to the Claimant's company A&E Electrical Engineering Limited; as such his retention of the Board did not amount to larceny but arose out of a breach of contract.

[16] It was further pleaded that Mr. Bail arrived at the station around 11:00 pm and not before. He agreed that he owed \$20,000.00 to the Claimant and it was only upon his agreement to repay this sum that the circuit board was released to Mr. Bail. After this transaction was completed, he was released.

EVIDENCE FOR THE CLAIMANT

Witness Statement of Azard Ali

[17] The Claimant gave a witness statement which, in the main, was consistent with his Statement of Case.

[18] Mr. Ali testified that on the 4th December 2008 PC Harrysingh told him that he had evidence that he (the Claimant) had stolen the circuit board, however, at no time did the officer disclose this evidence to him.

- [19] Further, the Claimant asserted that he explained to the officer that his company was hired by Mr. Bail's company to complete works on the said control panel. He related to them that Mr. Bail, the Managing Director of the TSI Energy Services Limited, failed to pay monies due and owing to his company for the repairs and other outstanding jobs. It was also the Claimant's evidence that he told the officer that the circuit board was kept by him until payment with Mr. Bail's consent. He sought an opportunity to produce documents in support of this transaction but the officers did not afford him the opportunity to do so. He also asked the officers to allow him to call Mr. Bail to verify what he was saying but PC Harrysingh proceeded to arrest him for the offence of larceny of the circuit board.
- [20] Mr. Ali related that he was escorted in handcuffs to an unmarked vehicle in the presence of his employees, customers, neighbours and passersby. He felt embarrassed and humiliated as a result.
- [21] He was taken to a filthy cell at the San Fernando Police Station which had a foul stench. The Claimant asserted that there was faeces on the ground and on the toilet which caused him to feel sick. He reiterated that he was not offered a telephone call during the three hour period that he was held at this station.
- [22] He was later taken the Gasparillo Police Station where he was placed in a cell measuring four (4) feet by four (4) feet which was unkempt and smelled of urine and faeces.
- [23] Mr. Ali testified that his arrest and detention for larceny has affected his business and personal reputation. He has lost customers who now believe that he is dishonest and a con man. The Claimant revealed that he has since sued Mr. Bail for the balance of the \$20,000.00 which he had agreed to pay to him at the Gasparillo Police Station.

Cross examination of Aazard Ali

- [24] The Claimant indicated that he was an Electrical Engineer who had been contracted by Mr. Bail's company, TSI Energy Services to perform repairs on a control panel owned by TSI Energy Services. His repair of the circuit board was not completed because Mr. Bail owed him money for jobs previously done and refused to pay. Notwithstanding this fact, he continued to extend credit to him and did other jobs for him. He acknowledged that he said in his witness statement⁴ that he had completed the job.
- [25] The Claimant also stated that when the officers came to his place of business on the 4th December 2008, he showed them documents in support of what he was saying – that Mr. Bail owed him money and he kept the circuit board until payment by consent. This statement was in contradiction of paragraph 7 of his witness statement where he testified that he offered to show the officers his documents relative to the money owed him by Mr. Bail but PC Harrysingh refused to see them.
- [26] Mr. Ali admitted to removing the circuit board but insisted that he did so because of nonpayment of bills by Mr. Bail. He indicated that the documents that he had in his possession to show to the police included an invoice for the job.
- [27] Mr. Ali also stated that he asked the officer to call Mr. Bail; he did so in Mr. Ali's presence but they were unable to contact him. He also acknowledged that he was given the opportunity to call his attorney before he left his business place but his attempt to contact his attorney was unsuccessful.
- [28] This witness asserted that when he was handcuffed and taken to the unmarked police vehicle, some of his employees said "Look the boss get

⁴ Witness Statement of Azard Ali para 6

lock up.” In answer to Counsel, he acknowledged that none of his employees are witnesses in this case.

[29] The Claimant denied that he was advised of his right to an attorney by PC Harrysingh when he first met him at his place of business on the 4th December 2008. He also denied that Officer Ifill informed him of his rights at the station.

EVIDENCE FOR THE DEFENCE

Witness Statement of PC Harrysingh

[30] PC Harrysingh gave a witness statement on behalf of the Defendant in which he elaborated on the facts pleaded in the Defence.

[31] This officer testified that after receiving a report on his cellular phone from Mr. Bail on the 3rd December 2008 that the Claimant, an employee fired by him, had stolen his company’s circuit board, he advised Mr. Bail to make a report at the Gasparillo Police Station which was the station for the district in which the alleged theft took place. PC Harrysingh, who was attached to the San Fernando Criminal Investigation Department at the time, stated that he had met Mr. Bail before in the course of his duties. Later that day he called the Gasparillo Police Station to confirm that Mr. Bail had reported the stolen circuit board.

[32] PC Harrysingh also testified that he visited the Claimant at A and E Electrical on Navet Road, San Fernando where he informed Mr. Ali of the report and cautioned him.

[33] It was also this officer’s evidence that upon being informed of the report, the Claimant denied that he had taken the circuit board and was in possession of same. The Claimant also told PC Harrysingh that he had

been working for Mr. Bail and had been fired by him. PC Harrysingh also denied handcuffing the Claimant⁵.

[34] He denied that the Claimant was arrested in the full view of employees, friends, customers and members of the public or that he was jeered by said employees or the public. PC Harrysingh asserted that there was only one person at the Claimant's place of work when he and other officers, all dressed in plain clothes, arrived.

Cross examination of PC Harrysingh

[35] This witness denied that Mr. Bail was his friend and stated that he came to know Mr. Bail sometime before as a victim of a crime. He denied that the Claimant asked to speak to Mr. Bail on the 4th December 2008. Officer Harrysingh stated that he 'could not recall' the Claimant telling him that Mr. Bail owed him money. He denied outright that the Claimant told him that he had documents in support of what he said.

[36] This witness testified that he arrested the Claimant based on the video footage which he saw and the report made by Mr. Bail. He also denied that the Claimant told him that he had a contractual relationship with Mr. Bail.

[37] PC Harrysingh acknowledged that he had not adduced any station diary report to support his contention that the Claimant was taken to the Gasparillo Police Station at 6:30 pm. He could not say for how long the Claimant was kept at the Gasparillo Police Station.

⁵ Defence para. 7 & Witness Statement of PC Harrysingh para. 3, 6

Witness Statement of Ronald Phillip

- [38] The Defendant also called retired police officer Ronald Phillip who gave a witness statement on its behalf.
- [39] Mr. Phillip testified that on the 4th December 2008 he was attached to the San Fernando Criminal Investigation Department; he went on inquiries with PC Harrysingh who had told him that he, Harrysingh, was investigating a report of larceny of a circuit board made by Mr. Bail in which the latter alleged that the Claimant had stolen the said circuit board.
- [40] Mr. Phillip related that when the Claimant was informed of the report by PC Harrysingh, the former denied the allegation of larceny. Of note is the fact that this witness also stated that the Claimant told them that he had been doing contractual work for Mr. Bail; this differed from PC Harrysingh's report that the Claimant said that he had been working for Mr. Bail. In any event, he too stated that the Claimant denied taking the board.
- [41] This witness supported PC Harrysingh's evidence in chief that he cautioned the Claimant and allowed him to call and speak with his attorney before taking him to the Gasparillo Police Station. He too asserted that the Claimant was not handcuffed but was taken directly to the Gasparillo Police Station upon arrest.

Cross examination of Ronald Phillip

- [42] This witness admitted that he did not see the video footage of the Claimant removing the circuit board but stated that it was not necessary for him to do so. Although he had a pocket diary with him that day, he made no notes of the interview with the Claimant on the 4th December 2008. This officer

testified that he could not recall the Claimant attempting to show to him and PC Harrysingh documents supporting his contention that Mr. Bail owed him money and he had taken the circuit board until payment of these outstanding sum by Mr. Bail.

- [43] He supported PC Harrysingh's evidence generally; however, he did say that while the Claimant was on the telephone with his attorney, that PC Harrysingh made notes which contradicted the latter who gave no evidence of having taken notes during this confrontation with the Claimant.

Witness Statement of Keith Ifill

- [44] Keith Ifill, an officer attached to the Gasparillo Criminal Investigation Department on the 4th December 2008, also gave a witness statement on behalf of the Defendant.
- [45] He testified that on the 4th December 2008 he was informed of a report of larceny made by one Stephen Bail on the 3rd December 2008. He perused the telephone message book which contained details of the report of larceny made by Stephen Bail against the Claimant. Officer Ifill stated that he was detailed to conduct inquiries relative to the said report.
- [46] This witness testified that he spoke to PC Harrysingh who informed him, inter alia, that he had seen video footage of the Claimant removing the circuit board from Mr. Bail's premises and that he intended to arrest the Claimant at his place of business and bring him to the Gasparillo Police Station.
- [47] He later met the Claimant and PC Harrysingh in the charge room of the Gasparillo Police Station. After introducing himself and telling the Claimant of the report, the latter told him that Mr. Bail owed him money and that he could call his brother to bring the circuit board to the station.

Mr. Ali was allowed to call Zainool Ali; after the call he was placed in a cell. Meanwhile Officer Ifill called Mr. Bail and asked him to attend the Gasparillo Police Station. The Claimant was then put in a cell.

[48] Officer Ifill denied that the cell in which the Claimant had been placed was filthy and had a foul smell. He testified that in December 2008 the Gasparillo Police Station was only three years old, the cell was new and cleaned every day by MTS. He asserted that the cell inhabited by the Claimant was air conditioned, well-lit and clean.

[49] Zainool Ali brought the circuit board to the station and it was handed over to Mr. Bail after the latter identified it as belonging to him. Significantly, Mr. Bail also confirmed that the Claimant had ongoing contractual work with him and that the incident arose out of a money dispute. PC Ifill advised the parties to pursue the money dispute in the High Court.

Cross examination of Keith Ifill

[50] This officer indicated that he did not see the video footage relied on by PC Harrysingh to arrest the Claimant even though he was the investigating officer relative to the inquiry. He admitted that at the time he was assigned to investigate the matter he was unaware that Mr. Bail owed the Claimant money; he was also unaware that there were documents which showed that Mr. Bail owed the Claimant money. He could not say when the Claimant arrived at the station – however, he met him there at 7:45 pm. This witness admitted that the Claimant was released at 9:40 pm and he denied that the Claimant was placed in a dirty cell.

ANALYSIS

[51] The sole issue that falls for determination is whether there was reasonable and probable cause for the arrest of the Claimant.

[52] The principles to be applied in determining whether a police officer has reasonable and probable cause to detain someone are well established.

[53] In **Harold Barcoo v The Attorney General of Trinidad and Tobago**⁶ the then Justice Mendonca outlined the test to be applied in cases of false imprisonment or wrongful arrest. He opined that the test whether there is reasonable and probable cause has both subjective and objective elements. They are:

1. Did the arresting officer honestly have the requisite suspicion or belief?
2. Did the officer, when exercising the power, honestly believe in the existence of the “objective” circumstances which he now relies on as the basis for that suspicion or belief?
3. Was his belief in the existence of these circumstances based on reasonable grounds?
4. Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?

The Learned Judge opined further that the first two questions are subjective and the second two are objective. If the answer to any one of these grounds is no, then there would be an absence of reasonable and probable cause for arrest.

[54] On the facts of this case, it is not disputed that the Claimant removed the circuit board from Mr. Bail’s premises. The issue is whether the removal of the board in the circumstances of this case caused PC Harrysingh to

⁶ HCA No 1388 of 1989

honestly suspect/believe that the offence of larceny was committed and whether he had reasonable and probable cause to suspect that the Claimant had committed the offence of larceny.

[55] The offence of larceny is committed when a person removes and takes away property belonging to another, without the latter's consent, in the absence of a claim of right made in good faith, with intent to permanently deprive the owner of possession of the property⁷.

[56] The facts of this case do not establish that the offence of larceny was committed; however, that is not the test that I must apply in order to determine whether the officer had reasonable cause to suspect that the Claimant had committed the offence⁸.

[57] In **Hussein v. Chong Fook Kam**⁹, Lord Devlin described the distinction between a *prima facie* case and reasonable suspicion as required by a provision similarly worded as Section 3(4) as follows¹⁰:

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: “I suspect but I cannot prove.” Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is complete; it is ready for trial and passes on to its next stage. It is indeed desirable, as a general rule, that an arrest should not be made until the case is complete. But if an arrest before that were forbidden, it could seriously hamper the police.”

⁷ Section 3 of the Larceny Act Cap 11:12 “A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with intent, at the time of the taking permanently to deprive the owner thereof;

⁸ Section 3 (4) of the Criminal Law Act Cap 10:04 “Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.”

⁹ 1970 AC 942

¹⁰ Hussein v. Chong Fook Kam, (page 948 para B)

[58] He opined further¹¹ that “the ordinary effect of this is that a police officer either has something substantially more than reasonable suspicion before he arrests or that, if he has not, he has to act promptly to verify it.”

[59] PC Harrysingh’s testimony is that he received a report by telephone from Mr. Bail that the Claimant, an employee who had been fired by him, had stolen his circuit board. PC Harrysingh went to Mr. Bail’s premises, viewed video footage of the Claimant removing said circuit board and thereafter went to the Claimant’s premises with the intent of arresting him¹². This alleged offence was committed in the Gasparillo Police Station District while PC Harrysingh was attached to the San Fernando Police Station. He deemed the matter of such urgency that it required him to investigate even though he was not the assigned investigator to the case, yet he failed to comply with his own Standing Orders ¹³ with respect to such an investigation. No record/evidence of an interview conducted with Mr. Bail was disclosed in these proceedings. Indeed, there was no evidence from PC Harrysingh relative to the contents of the video which excited his suspicion that the offence of larceny had been committed. An interview with Mr. Bail may have disclosed that the Claimant was rightfully on Mr. Bail’s premises, carrying out repairs that he was contracted to perform; that although the video footage showed the Claimant removing the circuit board, that there were circumstances which negated any suspicion of an unlawful removal of the item.

¹¹ Pg 948 E

¹² Witness Statement of Keith Ifill para. 3

¹³ **SO 16 6(a-c)** *“The Pocket Diary is the Police Officer’s best safeguard against allegation of dishonesty and acting in bad faith when performing his/her duties. Therefore the officer shall – (a) record therein all activities connected with the performance of his duties, (b) record any details of all reports made to him including the name(s) and address(es) of person(s), observations, details of any investigations made and statements (where necessary), (c) record descriptions of wanted, kidnapped and missing persons, stolen and lost property, lighting up hours and any other matter which it is necessary to record.”*

[60] I did not accept PC Harrysingh's evidence relative to the report that he received from Mr. Bail for the reasons cited above and other reasons outlined later.

[61] This officer's evidence relative to his confrontation with the Claimant was also not credible. I accepted the Claimant's evidence that he informed PC Harrysingh that he was contracted by Mr. Bail to undertake repairs of his premises, that Mr. Bail refused to pay for his services and that he had removed and kept the circuit board until payment. PC Harrysingh's evidence that the Claimant told him that he had been 'working for Mr. Bail and had been fired by him', suggesting an employer/employee relationship between the two, is patently false. It is contradicted by the evidence of PC Phillip who testified that the Claimant told PC Harrysingh that he had been doing contract work for Mr. Bail. I accept the evidence of Mr. Phillip that the Claimant told PC Harrysingh that he had been engaged by Mr. Bail to do contract work for TSI Energy Services Limited. Upon receipt of this information, it was incumbent upon PC Harrysingh to ask the Claimant for any documents in his possession which would substantiate his claim that he was not an employee but a contractor performing certain repair works for Mr. Bail on behalf of TSI Energy Services Limited. PC Harrysingh was duty bound to conduct a fair investigation; he ought to have realized, that if what the Claimant said was true, Mr. Bail had made a false report of larceny by a servant, and he was required to investigate the matter further, before arresting the Claimant. In my view, at that stage, there was/were no ground(s) for the arrest of the Claimant. In order to satisfy himself that there did in fact exist reasonable grounds for suspecting that the Claimant had committed the offence of larceny, PC Harrysingh ought to have returned to Mr. Bail at that point, and further questioned him about his report and the circumstances under which the Claimant removed the circuit board from his premises. As happened in the case of **Hussien v Chong Fook Kam** supra, "the police made the mistake of

arresting before questioning; if they had questioned first...there would have been no case against them.¹⁴”

[62] I did not accept the officer’s evidence that the Claimant denied possession of the board or that he remained silent upon being informed that there was video footage of his removal of the circuit board. The Claimant was an electrical engineer with his own business. Even if PC Harrysingh had been told by Mr. Bail that Mr. Ali was his former employee, there was sufficient evidence by the time of his confrontation with the Claimant to put him on notice that this was not a case of larceny by a servant as was allegedly reported to him. On the basis of his own evidence, no interview was conducted with the Claimant in light of the report that he had received.

There was no reason for the Claimant to deny taking the circuit board in the circumstances that he has described, given that it is common commercial practice for a creditor to retain the goods or property of a debtor where monies are owed the creditor by that debtor. In such a case the issue is one to be resolved in the civil courts, as indeed PC Ifill advised the parties at the Gasparillo Police Station when Mr. Bail admitted that the incident arose out a dispute over money¹⁵.

[63] Further, on the basis of PC Ifill’s evidence¹⁶, PC Harrysingh intended to arrest the Claimant on the basis of the alleged and undisclosed report of Mr. Bail and the alleged and undisclosed video footage which even the investigator had not seen.

[64] In my view, there was not, nor could there be any honest belief by PC Harrysingh in the existence of any objective circumstances which formed the basis of a reasonable suspicion that the Claimant had committed the arrestable offence of larceny. As already noted, the failure by this officer to

¹⁴ Pg 949 G

¹⁵ Witness Statement of PC Ifill filed on the 8th April 2015 para. 6

¹⁶ Witness Statement of PC Ifill filed on the 8th April 2015 para. 3

make and disclose a record of his interview with Mr. Bail, in breach of the Police Standing Orders¹⁷ and professional investigative procedure, served to undermine his credibility. The failure to put evidence before the court for examination of the material which formed the basis of the objective circumstances upon which he based his suspicion is fatal in this case; also of note is the fact that there was no station diary entry of a report by Mr. Bail. The fact of the non-production of relative records led me to the conclusion that PC Harrysingh was doing Mr. Bail a favour rather than making any professional attempt to conduct a police investigation of a report of a crime.

[65] I therefore hold that PC Harrysingh did not honestly suspect or believe that the Claimant had committed the offence of larceny, based on his untruthful evidence about what the Claimant told him about his working relationship with Mr. Bail, and his failure to interview the Claimant before arresting him. I have also concluded that the oral report of Mr. Bail of larceny by a servant and the alleged video footage of the Claimant removing the circuit board could not, in the circumstances of this case, constitute reasonable grounds for suspecting that the offence of larceny had been committed by the Claimant.

[66] In the circumstances, I also hold that PC Harrysingh, the arresting officer, did not have reasonable and probable cause for the arrest of the Claimant.

¹⁷ SO 16 6(a-c), SO 16 (9) (1) and (2)

DAMAGES

[67] False imprisonment may be defined as “intentionally but without lawful jurisdiction subjecting another to total restraint of movement either by actively causing his confinement or preventing him from exercising his privilege of leaving the place where he is.¹⁸” False imprisonment has also been defined¹⁹ as ‘[a]ny total restraint of the liberty of the person, for however short a time, by the use of threat of force or by confinement...’

[68] The Honourable Mr. Justice Kokaram, in **Dharam Basdeo v The Attorney General of Trinidad and Tobago**²⁰ opined:

*“The relevant principles were usefully summarised in the recent decision of the Privy Council **Chandrawtee Ramsingh v The AG No. 0111 of 2010** Lord Clarke as follows:*

- i. The detention of a person is prima facie tortious and an infringement of Section 4(a) of the Constitution of Trinidad and Tobago.*
- ii. It is for the arrestor to justify the arrest.*
- iii. A police officer may arrest a person if, with reasonable cause, he suspects that the person concerned has committed an arrestable offence. Thus the officer must subjectively suspect that that person has committed such an offence.*
- iv. The officer’s belief must have been on reasonable grounds or, as some of the cases put it, there must have been reasonable and probable cause to make the arrest.*
- v. Any continued detention after arrest must also be justified by the Defendant.*

¹⁸ Civil Action against the Police, pg. 147 para 3-034.

¹⁹ Halsbury’s Laws of England, 5th Edition, Volume 97 at paragraph 542

²⁰ CV 2012-00763 para. 49

[69] In **Uric Merrick v The Attorney General of Trinidad and Tobago**²¹ the Court of Appeal set out the factors that must be considered when assessing damages for false imprisonment. Smith J. A. opined:

“21. The principal heads of general damage for this tort are firstly, compensation for the injury to liberty and secondly, compensation for the injury to feelings. Under the head of compensation for injury to feelings, matters that can be considered include the indignity, mental suffering, disgrace, humiliation and loss of reputation suffered.

22. The award of damages under the two heads of compensation for the injury to liberty and the injury to feelings involves many subjective factors. So much so that one can safely say that no injury to liberty or feelings will be the same as between different persons. Hence in assessing general damages for false imprisonment:

*“Any one person trying to fix a sum as compensation will probably find in his mind a wide bracket within which any sum could be regarded by him as not unreasonable— and different people will come to different conclusions. So in the end there will probably be a wide gap between the sum which on an objective view could be regarded as the least and the sum which could be regarded as the most to which the plaintiff is entitled as compensation.” (per Lord Reid in **Cassell & Co Ltd v Broome and Another [1972] 1 All ER 801 H.L. at page 836.**)*

²¹ CA 146/2009

- [70] Having found that the arrest of the Claimant was unlawful, the issue of damages for his unlawful detention arises. On the totality of the evidence before me, I hold that the Claimant was detained for a period of approximately four (4) hours 10 minutes – from 5:30 pm to 9:40 pm.
- [71] The circumstances of his detention amounted to an abuse of police authority and oppressive conduct by agents of the State against a citizen. PC Harrysingh employed the coercive power of the State to arrest a citizen, thereby depriving him of his liberty, in order to force that citizen to return a circuit board that was held as a lien against payment of outstanding debts. It is instructive that Mr. Bail acknowledged to PC Ifill that this incident arose out of a payment dispute between himself and the Claimant. There was no need, in my view, to either detain the Claimant or keep him in custody for that period. On the evidence, it would appear that the purpose of this detention was to break Mr. Ali's will and cause him to return the circuit board to Mr. Bail regardless of the contractual issues between them.
- [72] The Claimant is an Engineer – a professional. He is the owner of a company which provides electrical engineering services to the public. A public arrest must affect his professional and business reputation and serve to lower him in the eyes of his employees. I accept his evidence that he was handcuffed which is supported by the Defendant's plea in its defence.
- [73] I also hold that the Claimant is entitled to an award of exemplary damages in this case having regard to the oppressive and unconstitutional actions of PC Harrysingh on the 4th December 2008.

CONCLUSION

[74] I therefore award:

1. General damages for false imprisonment including aggravated damages in the sum of \$80,000.00;
2. Exemplary damages in the sum of \$25,000.00;
3. Interest in General damages at the rate of 5% from the 4th December 2008 to 8th June 2017;
4. Prescribed costs on these figures.

Joan Charles

Judge