

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2016-03492

BETWEEN

MARLON ALEXIS

Claimant

AND

ALLIED SECURITY COMPANY LIMITED

First Defendant

NO. 25049 ESTATE CONSTABLE BALLIRAM

Second Defendant

NO. 29556 ESTATE CONSTABLE HAMILTON

Third Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Mr. Beresford Charles instructed by Mr. Darryl. Giles

Defendant: Mr. Navindra Ramnanan

Date of Delivery: 11th November, 2019

JUDGMENT

THE CLAIM

- [1] The Claimant is the owner of premises situate at LP No. 5 Church Street, Couva where he resides (the said premises). In or around July 2013, the Claimant installed a Blink Vigilance System and Rapid Response Service from the Telecommunications Services of Trinidad and Tobago (TSTT) at his premises (the said alarm system.)
- [2] The Second and Third Defendants were at all material times employed by the First Defendant as security guards.
- [3] On the 23rd day of January 2016, the Claimant opened the front door of his house, forgetting to deactivate the alarm system and thereby accidentally triggering the said alarm. His attempt to deactivate the alarm was unsuccessful since he could not remember the code. About thirty minutes later the Second and Third Defendants responded to the alarm and approached the Claimant demanding the reason for his presence on the said premises. Despite the Claimant informing the Defendants that he owned the premises, they shot him in the stomach. He was shot a second time on the right leg as he attempted to rise after falling down after the first shot.
- [4] The police arrived sometime later, interviewed all parties present, then took the Claimant to the Couva Health Centre. He was later taken to the San Fernando General Hospital where he was warded and discharged after one day. The Claimant pleaded that he endured severe pain after being shot and was forced to take sick leave from his job. Additionally, from the 25th January 2016 to 18th May 2016, he attended the clinic at the San Fernando General Hospital.
- [] The Claimant claimed damages including aggravated and/or exemplary damages for assault and battery and/or trespass to the person as well as special damages in the sum of \$12,500.00.

DEFENCE OF THE DEFENDANTS

- [5] The First Defendant averred¹ that the Claimant's name was not listed in their records in relation to the said premises; one Stacy Peters' was.
- [6] The First Defendant denied that it was vicariously liable for the actions of the Second and Third Defendants on the ground that the officers acted in self-defence after being attacked by the Claimant who was armed with a cutlass.
- [7] The Defendants pleaded that a call was made to the First Defendant's command centre reporting an unusual occurrence from Stacy Peters' premises. The Second and Third Defendants were dispatched to the said premises and arrived there at approximately 1:30a.m. The Defendants saw the Claimant on the premises, identified themselves and asked the Claimant why he was on the premises. The Defendants pleaded² that the Claimant refused to respond but threatened them instead. It was denied that he ever stated that he was owner of the premises.
- [8] The Defendants admitted that the Second and Third Defendants shot the Claimant but asserted that they did so after the latter walked away from them to the back of the premises where the lighting was poor; he drew a cutlass and attacked the Second Defendant who had followed him; the 3rd Defendant moved away from the Claimant, running to the side of the Second Defendant who had drawn his pistol. The Second Defendant ordered the Claimant to drop the weapon and to stop his advance toward them. The Claimant continued his approach whereupon the Third Defendant shot him in the leg, fearing an imminent attack. He shot the Claimant once more, since the latter continued his approach. The Third

¹ Paragraph 1 of the Defence

² Paragraph 4(d) of the Defence

Defendant took a photograph of the Claimant after he fell to the ground, sitting next to his cutlass.

[9] In reply, the Claimant admitted that Stacy Peters' name is on the account with the First Defendant with respect to the said premises. However, it was asserted that upon installation Ms. Peters was given a code with two keys, one of which was given to the Claimant.

[10] He averred that he and Stacy Peters had been involved in a common law relationship for about ten years at the time of the shooting; further, they both resided on the premises with their son. The Claimant denied that he threatened the Second and Third Defendants verbally or with a cutlass as alleged by the Defendants. He denied the account of the shooting as related by them. Very importantly the Claimant denied that the photograph of him sitting next to a cutlass is a true depiction and claimed that it was a fraudulent document.

EVIDENCE

[11] The Claimant relied upon the evidence of Stacy Peters and himself while the Defendant called Estate Constables Balliram, Hamilton and WPC Laptiste.

[12] The Claimant testified that the house in which he lived was previously owned by his father Sonny Maynard however all the utility rates are payable in his name. He related that on the 23rd January 2016 Stacy Peters was away from the premises, visiting her father with their son. He had returned from purchasing a meal when he opened his door having forgotten to deactivate the door. When the alarm went off, he tried without success to deactivate it.

[13] He later went to the back of the house where his washroom was located in order to wash some clothes and clean his steel tipped boots. He stated that

thirty minutes later when standing at the washroom door at the back of the house, Balliram shouted at him “Boss, what you doing in the back dey?” when he replied “Boss here is whey ah living.” Balliram instantly shot him in his stomach causing him to fall to the ground. While attempting to get up he told Balliram “Boss ah tell you is here ah living and you shoot me?” Balliram shot him a second time on his right leg. He had a remote key attached to his pants waist; at this time he showed the Defendants the key, pressed it and the alarm went off, he went inside the house changed his shirt to go to the hospital. He asserted that when he came out of the house he blacked out; when he regained consciousness, police officers were present.

- [14] In cross examination Mr. Alexis stated that Stacy Peters informed the First Defendant that he was the owner of the said premises and an authorized person although he could adduce no documents to support this. He also revealed that he usually used the remote to arm and disarm the system, not the code. That night when he went to purchase food he armed the house with the remote; when he returned and tried to disarm the system with the remote, it failed to disarm. He then used his key to unlock the front door, thereby triggering the alarm. Allied Security officers arrived about half hour later. He denied consuming alcohol at the bar where he purchased the food.
- [15] When the alarm sounded, Mr. Alexis indicated that he did not attempt to contact the First defendant – he expected a call from TSTT because that is what usually happened.
- [16] At the time that he first saw Estate Constable Balliram, he had a cup of Breeze in one hand and his steel tipped boots in another. Balliram was six feet away from him when the former shot him while Hamilton was fifteen feet away.

- [17] He admitted that he owned two cutlasses – one under his dryer and another on top of a septic tank under some material. He asserted that on the night of the incident he was bareback and was wearing green short pants.
- [18] Stacy Peters testified that she and the Claimant are involved in a common law relationship and have one child together. He testified further that in July 2013 she and the Claimant decided to install the Blink Vigilance Alarm system and Rapid Response from TSTT. After the installation she was given a code for the system and two keys one of which she gave to the Claimant since she knew that he would not remember the code. On the 23rd January 2016 she and their son went to her father's home in Phoenix Park to spend the night. At approximately 2:00a.m on the 24th January 2011, she was informed that the Claimant had been shot and was at the Couva Health facility but was being transferred to the San Fernando General Hospital.
- [19] In cross-examination Ms. Peters asserted that she informed TSTT that the Claimant owned the subject premises; they did not ask for his authorization to install the alarm system. Ms. Peters stated that she informed TSTT that the Claimant lived on the property with her. She filled out a form with this information but could not locate it. She also signed a contract. Ms. Peters revealed that she had had a problem with Blink Vigilance before but had not received a text from them as she should have. She indicated that after a break-in or unlawful entry, Blink Vigilance would send a text to her and the Claimant, followed by a telephone call. The Rapid Response would then come to the premises. When the house was previously broken into in 2014, she received a call.
- [20] After this incident occurred, she received neither a text not a call from TSTT.

[21] She did not recognise the photograph or the yard in the photograph adduced by the Defendants.

Evidence for the Defence

[22] Estate Constable Hamilton gave a witness statement and was cross examined.

[23] He testified that after the Claimant was shot for the second time, he sat on the ground shouting “Dougl”, “Dougl”. Hamilton also testified that he is required to take photos of ‘any activity that [he] responded to.’³ He therefore took a photograph showing the Claimant sitting on the ground with the cutlass that he had been threatening the Second and Third Defendants with on the ground. After the arrival of the Couva Police, and the transportation of the Claimant to the hospital, he gave the police a statement.

[24] In cross examination, Mr. Hamilton stated that the First Defendant responds to Blink Vigilance alarms. Officers such as himself, are given the name(s) of the homeowners, but not photographs. He acknowledged that upon arrival at a residence, he would not know if the person found on premises was the owner, occupier or intruder before the person identified themselves.

[25] Mr. Hamilton stated that when he and Balliram arrived, he introduced himself and Balliram to the Claimant and asked if Stacy Peters lived there. At this point the Claimant stepped and walked away to the back of the premises.

[26] He asserted that he did not see Balliram shoot the Claimant. He accosted the Claimant, not knowing whether he was armed; he did not see anything

³ Paragraph 13 Witness Statement of Estate Constable Hamilton

in his hand until he pulled the cutlass. He saw when Balliram drew his firearm and cautioned the Claimant who was firing chops at him (Hamilton). He disagreed with the Defence's averment that they arrived at the premises at 1:30am and stated that in fact they arrived at 1:00a.m. He later said that they arrived at 1:15a.m. as stated in his witness summary.

[27] Mr. Hamilton said that he did not tell the police that he saw a man of African descent with a rasta hairstyle exiting the back door of the house even though it was in a statement that he gave to the police. He denied that he ever saw anyone leaving through the back door of the house. He disputed the contents of the Defence and doubted that his signature was affixed thereto.

[28] He testified that he followed the Claimant into a dark area of the premises, unarmed. He contradicted his witness summary by saying that the Claimant did not open a door but 'some kinda ting'. He acknowledged that he did not tell the police that the Claimant opened what appeared to be a door and drew a cutlass; that when the Claimant shouted the name Dougla after he was shot, someone on neighbouring premises answered asking him what was wrong.

[30] Mr. Hamilton asserted that he only discovered that the Claimant lived on the premises weeks afterward. He was also unaware that there was a washroom at the back of the house.

Estate Constable Balliram

[31] In his statement to the police, this officer stated that the Claimant opened a door at the back of the house, pulled out a cutlass and attempted to chop Hamilton after they had introduced themselves to him and asked if the premises belonged to Stacy Peters. When the Claimant continued to advance toward them after Balliram warned him to stop, he, Balliram shot

Mr. Alexis first on the right leg, when he continued to approach, he shot him in the stomach. Whereupon the Claimant dropped the cutlass and sat on the ground.

[32] In cross-examination he acknowledged that he did not know, upon arrival on the premises, whether the Claimant was an occupant or intruder. When he fired the first shot at the Claimant, the latter was six feet away from him when the Claimant walked to the back of the house. Hamilton followed half an arm's length behind. When the Claimant drew the cutlass Balliram was about ten feet away from him, under a shed.

[33] He too, backtracked from his statement that he saw the Claimant open a door at the back of the house. He denied that Hamilton was ever standing together with him and asserted that this statement was an error. He revealed that the shed under which he stood was attached to the house. He found out the name of the person that he had shot when he got to the police station.

WPC Laptiste

[34] This officer interviewed the Claimant at the hospital and took a statement from him upon his discharge.

[35] Laptiste stated that the Claimant was hostile and uncooperative and gave his name as Marlon Alexander; however this was contradicted by the station diary entry which noted that upon being interviewed at the Couva Health Facility he gave his correct name, age, address and phone number. The officer claimed that this entry was a misprint.

[36] When she received his report on the 24th January 2016, she had not been told that he attacked the security officers with a cutlass.

PC Prince

- [37] This officer stated that his entry in the station diary was based on what was told him by Estate Constable Hamilton. He asserted that Hamilton told him that he and Balliram saw the Claimant exiting a door of the house. He said that he saw a cutlass a short distance away from the Claimant but took no photos nor did he say this in his station diary entry.
- [38] He admitted that he did not state in the station diary extract that Hamilton attempted to speak to the Claimant who reacted in a hostile manner. He also admitted that on the scene the Claimant gave his correct name to him.
- [39] In answer to Mr. Ramnarine, PC Prince claimed that the Claimant said that he wanted to keep the incident quiet and deal with it in time.

ANALYSIS

- [40] The determination of this case depends upon the view I take of the evidence and which version of the facts I accept as more probable/plausible.
- [41] The incontrovertible fact is that the Claimant was shot on his own premises by the Second and Third Defendants who responded to an alarm from the Blink Vigilance System installed thereon. The Claimant has asserted that the Second and Third Defendants shot him twice despite his informing them that he owned the premises. The Defendants, on the other hand, asserted that they shot the Claimant in self-defence after he attacked them with a cutlass. The onus fell on the Defendants therefore, to establish on a balance of probability that they honestly and reasonably believed that they were under imminent attack by the Claimant. The Defendants' account of events leading up to the shooting was therefore important.

- [42] The Defendants pleaded that the Third Defendant Estate Constable Hamilton fired his weapon once at the Claimant's leg, hitting him when the Claimant continued to advance toward him and the Second Defendant; he also fired his weapon a second time, hitting the Claimant in his stomach. In the witness summary filed on behalf of the Third Defendant, it was stated that it was the Second Defendant Estate Constable Balliram who drew his firearm and shot the Claimant hitting him on his right leg, and later in his stomach when the Claimant continued advancing toward them.
- [43] During cross examination, the Third Defendant said that he was unarmed- it was Balliram who shot the Claimant. The Second Defendant, Balliram, admitted that he shot the Claimant twice.
- [44] Both the Second and Third Defendants in their reports to the police indicated that they saw the Claimant exiting the house from a back door when they arrived on the premises. They vociferously denied ever having told the police this and asserted that the Claimant was under a shed on the premises and walked off threatening them to the back of the house where he drew a cutlass and attacked them with it. PC Prince, however confirmed that both Hamilton and Balliram told him that they saw the Claimant emerge from a back door of the house. This is important given that the Claimant pleaded and testified that he entered his house and was at the back of the house at the door of the washroom when the Defendants approached him and shot him.
- [45] I found that the Defendants' account of the incident to be unreliable and lacking in credit. Given that they were responding to an alarm at 1:00a.m, did not know the Claimant, it was highly unlikely that they, especially the Third Defendant would follow the Claimant to the dark area of the back of the house. Even more astonishing is the evidence of Balliram that the Second Defendant, unarmed, followed the Claimant within an arm's length

to the back of the house. Given their closeness, had the Claimant fired chops at the Third Defendant from that distance, he could not have missed.

[46] I do not attribute any weight to the photograph adduced by the Defendants in proof of their claim that the Claimant had a cutlass and attacked them. Hamilton, a trained security officer, understood the importance and significance of the cutlass which he alleged the Claimant had in his possession with which he attacked them. His failure to photograph the face of the person is suspicious to say the least. No explanation was forthcoming for that lapse. The fact that the Claimant may have told the police that the yard depicted in the photograph was his, or the cutlass looked like his, does not plug this gap. I take judicial notice of the fact that a digital camera was used and that backgrounds could be manipulated in those photographs.

[47] The evidence of the police officers were also contradictory and unreliable. I did not accept that the Claimant was hostile and uncooperative when interviewed by the police on the morning of the incident either at the scene of at the Couva Hospital. The police conducted no independent investigation of the incident. I noted that no one- not the Defendants nor the police asked the Claimant how he came to be on the premises. It was not sufficient for them to rely on the fact that Stacy Peters was the account holder; the Defendants must realise that Ms. Peters may have licencees, friends or family on the premises – they had a duty to make the inquiry or call TSTT or the police. I am of the view that the course that they pursued was an unreasonable one. I hold that they were not acting in self-defence but shot the Claimant based on the fact that they assumed that he was an intruder.

[48] The evidence supports an award of damages, including aggravated damages. The Claimant was shot twice on his own premises. The First

Defendant is liable for the actions of its employees the Second and Third Defendants. The Defendants denied wrongdoing and pursued the case to trial.

[49] In the circumstances I make the following Orders:

- i. Judgment for the Claimant against all of the Defendants
- ii. The Defendants to pay to the Claimant the sum of \$200,000.00 by way of damages which includes an uplift for aggravated damages.
- iii. The Defendants to pay interest on the sum of \$200,000.00 at the rate of two percent from the 17th October 2016 to the 11th November 2019.
- iv. The Defendants to pay to the Claimant prescribed costs on the above sums.

Joan Charles
Judge