

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2010 of 4399

STEVE MCGILLVERY

Claimant

AND

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. G. Ramdeen for the Claimant.

Mr. D. Byam for the State

Reasons for Decision

The applicant sought an order pursuant to Part 58.4 of the Civil Proceedings Rules (CPR) declaring that no further information is reasonably required by the defendant for the entering of an appearance to the claim.

The claim was for damages for assault and battery arising out of an alleged incident on or about November 11 2006 at the Prison at Golden Grove, Arouca.

THE RULE

Part 58.4 is set out hereunder:

(1) *Where a claim is made in proceedings against the State the claim form or statement of case must contain **reasonable information as to the circumstances in which it is alleged that the liability of the State has arisen and as to the government department and officers of State involved.***

(2) *At any time during the period for entering an appearance under rule 9.3 (1) the defendant may request information under rule 35.1.*

(3) *The defendant's time for entering an appearance is then extended until –*

(a) 4 days after the defendant gives notice in writing to the claimant that he is satisfied with the information supplied; or

*(b) 4 days after the court on the application of the claimant **decides that no further information is reasonably required.***

The claimant alleged that Emergency Response Unit of the Prison Services, members of the Guard and Emergency Response (sic) of the Police Service and the special Anti-Crime Unit Trinidad and Tobago (paragraph 4) and members of the Trinidad and Tobago Regiment [paragraph 10 (a)] entered the remand section of the Golden Grove Prison, and had assaulted and battered persons including the claimant. He alleged in the statement of case that these persons were masked and armed.

Relevant paragraphs of the Statement of Case are set out hereunder.

4. *On the 11th November 2006 members of the protective services and members of the Emergency Response Unit of the Prison Services and the Guard and Emergency Response of the Police Service and the Special Anti-Crime Unit of Trinidad and Tobago entered the remand section of the Golden Grove prison. All of the officers of these respective units were masked and armed and were beating inmates in all sections of the Remand Prison.*

5. *The Claimant and other inmates were in the corridor of the Prison as the cells were opened minutes later. The said officers entered the prison from the lower level and started beating other inmates and fired shots upstairs. Some of the officers came up to the upper level and started to beat some of the other inmates and drag them all over the ground. On seeing these officers, the Claimant lay down on the ground in front of his cell. **A few officers** came up to the Claimant and began to beat him with batons and a bolt cutter about his body, whilst they kicked, cuffed and slapped him.*

6. ***The said officers** opened the Claimant's cell and kicked and cuffed him until he fell unto (sic) the ground inside the cell. After a few minutes, **another batch of masked officers** came to the Claimant's cell and dragged him out of the cell unto the ground of the corridor outside his cell, whilst they proceeded to search his cell. He was kicked, stamped upon and beaten with batons again as he lay on the ground and then thrown back into his cell after the search was completed*

In a response to a request for information made by attorneys at law for the State the claimant's attorney at law indicated that the claimant was not in a position to be requesting the identities of the persons committing the alleged assaults and battery upon him at the time of its commission, especially as they were masked.

The defendant made a request for information by letter dated November 29th 2010, which was responded to by attorney at law for the claimant on November 30, 2010.

It requested

- (i) A report from a medical practitioner.
- (ii) The names and /or regimental number and /or department/ unit of the officers referred to in paragraphs 5, 6, 10 (i), (ii), (iii), (iv), (v), (vii), (ix), 10(a), (d) (i), and 12 of the statement of case.
- (iii) The names and/or regimental numbers of the police officers referred to in paragraph 4 of the statement of case.
- (iv) The names of the prisoners who allegedly witnessed the alleged attack as referred to in paragraph 10 (vii) and 10 (h).
- (v) The basis for the claimant's claim for vindictory damages and
- (vi) The basis for his entitlement to interest.

The claimant's response was in effect that

- (i) it was not in possession of a medical report from a medical practitioner,

- (ii) that the officers referred to were masked, and therefore the claimant did not have information on their identities,
- (iii) The names of the other inmate witnesses were provided,
- (iv) The basis for the claim to vindictory damages and the basis for the claim to entitlement to interest were supplied.

The defendant resisted the claimant's application on the following grounds –

1. In an affidavit sworn on December 13th 2010 in support of the application instructing attorney indicated (paragraph 4), without stating the source of his information and belief, that **some of the officers, were masked**. It was contended that this constituted an admission on the part of the claimant via his attorney that the claimant was in a position to identify some of them (presumably the ones who were not masked), and **must** therefore provide that information, before an appearance could be entered.

It was also submitted, almost in the same breath, that the court should take note of the fact that the source of information and belief of that statement was not provided. The suggestion seemed to be that that information was hearsay and not admissible.

It may be noted however that the application comprised not only that statement in the affidavit, but also the **written response** of the attorney at law for the claimant dated November 30 1999 which was exhibited, in which the statement as to the alleged masked assailants was **not** qualified by the word "some".

Further the allegation that they were masked, in the **statement of case**, equally was **not** qualified by the word “some” – That statement in the statement of case was certified directly by the claimant by his **certificate of truth**.

It was contended in effect that that “admission” on the supporting affidavit by the attorney at law for the claimant superseded and took precedence over the references above, and bound the claimant , and that a court could not ignore it.

2. The second submission made was that the claimant was able to allege that three agencies were involved. Therefore he must go further and identify which of the agencies each of the alleged assailants belonged to.
3. The third submission was that no pre action protocol letter had been issued, which would have provided the defendant at an earlier stage with the opportunity to make earlier, and presumably more successful inquiries.

The defendant did not suggest that it had made any inquiries itself as to the identity of the alleged assailants.

Further the claimant’s attorney referred to an affidavit by the defendant in another matter alleged to be related, which was exhibited to the claimant’s application as “CW6”, in which it was stated *that the identity of persons with knowledge of the matter* (and presumably, possibly the identity

of the alleged assailants) *only became known to the Defendant (in that matter) subsequent to the last date of hearing.*

Reasons

As to the first submission it was not accepted. Not only was it inconsistent with the suggestion that the “admission” was itself inadmissible, but it ignored the fact that there was other evidence before the court of greater weight, confirmatory of the claimant’s position that he was not in a position to ascertain the identity of the alleged assailants because they were masked. Even were they not masked, the situation alleged by the claimant, of what he contended was a vicious assault and battery, was not one where introductions and identifications would be expected to be a priority, and it would be understandable if, as he alleges, he did not know their identities.

The second submission was rejected as being equally technical, pedantic, and arbitrary.

The third submission, the absence of a pre action protocol letter, was explained by the fact that there remained less than one month before the expiration of the limitation period, not allowing sufficient time for the issue of a pre-action protocol letter.

This submission in any event would have carried greater credibility if there had been any suggestion of inquiries by the defendant, even unsuccessful ones, based on the information it had. There was no such suggestion.

Conclusion

The matters alleged were within the knowledge of the defendant. Entry into a state prison facility, especially by personnel of other agencies, must be, or at least should be, authorized by someone. The agencies allegedly involved must have, or should have commanding officers. An exercise of the type alleged must have associated records, or at least should have such records, of personnel deployed. If this is not the case, at the very least the defendant should be in a position to say so.

Part 58.4 of the CPR could not have been intended to cast a claimant into legal limbo on the bald assertion by the State that sufficient information has not been supplied as to the identity of State personnel involved.

A claimant must of course produce all the information of this nature that he has in his possession.

The circumstances must be considered. The instant circumstances alleged are as set out above from the statement of case, together with the response of the claimant to the request for information. I consider that in the circumstances that the claimant has provided all the information that can reasonably be expected to be in his possession and that no further information is reasonably required.

In fact there can be no conceivable reason for him not to have done so. Further some of these matters must be within the knowledge of agents of the State.

In the circumstances so as to progress the matter and to permit the issues to be addressed frontally and factually it was ordered as follows:-

1. That no further information is reasonably required by the Defendant of the Claimant for the entering of an Appearance by the Defendant to the Claim herein;
2. That the Defendant do enter an appearance within four (4) days from the date of the making of this Order, in default permission is granted to the Claimant to enter Judgment in default of Appearance;
3. That time is extended for the filing of a Defence to 31st March 2010;
4. Costs of the Application are reserved.

Dated this 27th day of January, 2011.

Judge

Peter Rajkumar