



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2011 No: 388

Lloyd Hilton Smith

Plaintiff

-v-

Mark Pettingill

Defendant

EX TEMPORE RULING

(In Chambers)

Date of Hearing: March 26, 2012

Mr. Lloyd H. Smith, Plaintiff in person

Mr. Dennis Dwyer, Wakefield Quin, for the Defendant

Introduction

1. The Plaintiff in this case Mr. Lloyd Smith issued a Writ of Summons on 17th October 2011 against Mr. Mark Pettingill. The claim was headed False Imprisonment, but the Indorsement of Claim makes it clear that Mr. Smith's complaint is that Mr. Pettingill acted negligently in his representation of the Plaintiff at a preliminary inquiry on May 30, 2003 and subsequently before his trial, at which he was eventually convicted and sentenced to approximately seven (7) years imprisonment.
2. It emerged in the course of this hearing which was a hearing of the Defendant's strike-out application, that:

- (a) Mr. Pettingill in fact ceased to act for Mr. Smith at some point during the trial; and
- (b) that Mr. Smith continued to represent himself and was acting in person at the time when he was convicted and at the time of his subsequent appeal.

Strike-out grounds

3. The Defendant sought to strike-out the claim on two grounds. Firstly, it was complained that the Writ disclosed no cause of action because it was a claim for false imprisonment. I reject that aspect of the strike-out application, because it seems to me that reading the Writ liberally in conjunction with other documents that the Plaintiff has filed, this is really a negligence claim.
4. However the second basis of the strike-out application was in effect that the claim was an abusive process and bound to fail, because any claim for negligence is clearly time-barred. The limitation period for actions in negligence under Bermuda law is six (6) years (I might add in passing that in some jurisdictions the limitation period is as short as three (3) years).
5. It is clear on the face of the Plaintiff's pleadings that the claim is time-barred and that the Defendant has a simple and clear cut defence which would be an obstacle to the Plaintiff's claim succeeding.
6. I gave the Plaintiff an opportunity to explain why it is that he did not bring the claim earlier and his explanation was; that he saw various lawyers while in custody but they were reluctant to act for him against the Defendant.
7. Be that as it may, it is quite clear that this is not the unusual type of case where the limitation period can be extended because the Plaintiff only knew that they had a claim at some date later than the date when the damage complained of occurred.

Findings

8. So the position that we are left in is that the Plaintiff's only claim is clearly time-barred. In addition it seems to me that the Plaintiff's motivation in bringing this claim is to seek to revisit the fairness of the criminal proceedings that resulted in his conviction. Those matters as I indicated in the course of his submissions to the court cannot be revisited by this course, because the way the criminal justice system operates is that once a court of competent jurisdiction reaches a final decision on a criminal matter, the only way to challenge those findings is by way of appeal.

9. I do accept entirely that it would have been theoretically possible for him to raise after the trial issues relating to allegations of negligence on the Defendant's part. It has to be said that no matter how genuinely aggrieved the Plaintiff feels, there is nothing that he has said which advances from a legal stand point any arguable case that Mr. Pettingill did in fact in legal terms act negligently in his representation of the Plaintiff.

10. These observations are made of course in the full knowledge that I do not have all the matters before me and that I am doing nothing more than making a comment on the limited material before the court. But that is not the basis of my conclusion that this claim is liable to be struck-out.

Costs

11. The Plaintiff's claim is struck-out. I award costs to the Defendant in the fixed amount of \$500.00.

Dated this 26th day of March, 2012 _____

KAWALEY J