

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2012/0336

BETWEEN:

JOSEPH W. HORSFORD

Claimant

and

GEOFFREY CROFT

Defendant

Appearances:

The Claimant appeared in person.
Ms. E. Ann Henry Q.C for the Defendant.

2018: April 24th
November 19th

ORAL JUDGMENT

- [1] **WILKINSON J.:** Mr. Joseph W. Horsford (Mr. Horsford) filed his Amended Claim Form and Statement of Claim on 10th July 2012. Mr. Horsford alleged assault and battery on 10th April 2012, by Mr. Geoffrey Croft (Mr. Croft) knocking him down while driving his motor car along an allowed road established on land belonging to the Estate of William Horsford. Mr. Horsford sought by way of relief: (i) damages, including aggravated and exemplary damages for humiliation, assault and battery with a motor car causing physical injury, (ii) interest, (iii) special damages for a writing pen and costs of medical attention –\$155.00, (iv) such further or other relief as the Court deemed fit, and (v) costs.
- [2] There being no appearances of Mr. Horsford's witnesses Mr. Robert Jackson, Mr. Orthelneil Powell and Mr. Serge Gobinet, their witness statements were struck out. Only the evidence of Mr. Horsford and Mr. Croft was received at the trial.

Issue

- [3] The sole issue is whether Mr. Horsford has proved on a balance of probability that Mr. Croft assaulted and battered him.

The Evidence

- [4] The Court together with the Parties and Counsel conducted a site visit after trial on 9th May 2018.
- [5] The Parties are well known to each other. Mr. Horsford set out a historical account of matters between the Parties and which involved as the Court understands, more than 1 lawsuit over Mr. Croft's use of an allowed road established on land belonging to the Estate of William Horsford. Both men are of some vintage. According to the medical report disclosed by Mr. Horsford, he was 79 years of age at the time of the alleged assault and battery. Mr. Croft it was acknowledged suffers from hearing loss and this too was evident even to the Court at the trial.
- [6] Mr. Horsford is a business consultant. He is the administrator of the Estate of William Horsford. According to Mr. Horsford, Mr. William Horsford was the owner of a parcel of land at Monks Hill Estate which is identified as Registration Section: Falmouth and Bethesda Block 34 2482B Parcel 26. Parcel 26 it appears has gone through a number of subdivisions. In 1 of the subdivision there is set out an allowed road. Following a prior dispute between Mr. Horsford and Mr. Croft, Mr. Horsford engaged land surveyor Mr. Oliver Joseph to identify and point out boundaries between Mr. Croft's land and adjoining land of the Estate.
- [7] On 10th April 2012, Mr. Croft was called to a meeting at his boundary and in Mr. Horsford's presence, Mr. Joseph pointed out to Mr. Croft his boundaries and incursions by his construction into the land of the Estate. Mr. Horsford then said to Mr. Croft:
- "Now that you know, I want you to do two things, (i) remove your roof from over my land, and don't drive any vehicle on this path, you have no access on this road. Don't use this road, you know your access. You have no access here."
- Mr. Horsford said that Mr. Croft in response shouted at him:
- "I used it yesterday, I will use it today and I will use it tomorrow and after that I will continue to use it."
- [8] Thereafter, the surveyor left the site. Mr. Horsford then turned his attention to instructing his workmen on boundary mark pegs and was doing so when a motor car reversed on the allowed road. Mr. Horsford stood on the western side of the motor car talking to the driver, Mr. Gobinet. As he was standing talking to Mr. Gobinet, he heard one of the workmen say: "Croft coming down." He looked up and saw Mr. Croft in his motor car driving down the allowed road in the direction of the back of Mr. Gobinet's motor car. Mr. Gobinet moved his motor car and parked it on the left or

eastern side of the allowed road. Mr. Horsford said that he was then standing on the western side of the motor car.

- [9] Mr. Horsford stepped into the middle of the allowed road and turned and faced Mr. Croft's oncoming motor car. He raised his hand above his head and Mr. Croft brought his car to a stop about 8 to 10 feet from him. He said to Mr. Croft:

"Mr. Croft, you are not to drive on this lane. Turn back and go no further."

To this Mr. Croft responded:

"Get to fuck out of my way or I will run you over."

- [10] According to Mr. Horsford, then without a moment's hesitation, Mr. Croft drove off his motor car, it knocked him over and he fell upon a heap of thorn bush cuttings that were beside the allowed road. Mr. Croft kept on driving. 2 of Mr. Horsford's workers came to his aid, they lifted him out from amongst the thorns and helped to pull thorns out from his body.

- [11] According to Mr. Horsford, he had bruises on his right forearm and a painful right hip. He said that there was blood oozing from the punctures about his body as well as from the bruises on his right forearm. Mr. Horsford says that he was greatly embarrassed and deeply shaken by Mr. Croft's attack on him.

- [12] Mr. Horsford visited Dr. Carolyn Thomas. She examined him and sent him for an x-ray at the Mount Saint John's Medical Centre (the public hospital). He was told by Dr. Thomas that the pain would disappear within 1-2 weeks. The pain subsided and subsequently disappeared. The effects of the bruises and punctures took much longer.

- [13] Dr. Thomas's medical report dated 30th April 2012, read as follows:

"This patient was examined by me on 10th April 2012. He complained that he was struck by a moving vehicle. He complained of pain to his right hip and multiple abrasions to his right forearm.

On examination the patient's right hip was not swollen but tender. The posterior aspect of his right forearm just below the elbow, showed multiple less than 0.5cm abrasions and two 1.5cm x1.5 cm bruises. An x-ray of the pelvis showed no abnormalities.

The patient was treated with analgesics and discharged."

- [14] Mr. Horsford's claim for special damages totalled \$155.00 this being loss of \$5.00 for a pen and \$150.00 for medical attention.

- [15] Under cross-examination Mr. Horsford said that he agreed that when Mr. Croft's motor vehicle came to a stop upon his instructions that there was a curb running along the western side. The Court observed on its site visit that it was a concrete curb of a few inches in height.

- [16] Under cross-examination Mr. Horsford said that when Mr. Croft moved off he jumped out of the way and in doing so, Mr. Croft knocked him on his hip/backside. He then said that he was hit on his upper leg to upper extremity of the leg more to the backside.

- [17] Mr. Horsford also said under cross-examination that he was looking straight at Mr. Croft with his hands up in the air when Mr. Croft revved up and he used an expletive. He jumped out of the way.
- [18] Under cross-examination, when Mr. Horsford was asked if he was standing in the way, he responded that he was standing in the road and about 2 feet from the curb and 10 feet from Mr. Croft's vehicle. And he was in front of the motor vehicle when Mr. Croft revved up his engine. He said that on impact with Mr. Croft's motor vehicle, he was tossed off the road.
- [19] On a question from the Court, Mr. Horsford described the road as being 1 lane. He did say on further inquiry of the Court that the road was wide enough to allow 2 motor vehicles to pass abreast in opposite directions. The Court on the site visit did observe that the road was wide enough to allow 2 motor vehicles to traverse the road in opposite directions at the same time.
- [20] Mr. Croft's evidence on the events complained about by Mr. Horsford was different on key points. While he agreed on the date, him driving his motor vehicle, and Mr. Horsford saying something to him, his evidence on the location of Mr. Horsford at the time and what was said to him were different.
- [21] According to Mr. Croft, historically, Mr. Horsford had repeatedly demanded that he stop driving his motor vehicle along the allowed road in issue. He nevertheless according to him, continues to drive along the allowed road because it provides him with access to and from the public highway in the Cobbs Cross area.
- [22] Mr. Croft said that on the day in question, he was driving down the hill from his home along the allowed road heading towards the public highway to St. John's for a meeting. He had travelled approximately 300 yards when Mr. Horsford who had been talking to Mr. Gobinet in a parked motor vehicle ran across the road in front of his motor vehicle forcing him to stop his motor vehicle. Mr. Horsford then stood about 2-3 feet from the right side of his motor vehicle and shouted at him saying that he should park his motor vehicle on the side of the road, come out of it and walk down the hill. His response was "Out of my fucking way, Mr. Horsford. I have an appointment in Town." Having said that, he started driving down the hill. He was not driving fast.
- [23] According to Mr. Croft, the road is 24 feet wide and so there was ample space for him to pass Mr. Gobinet's motor vehicle which was parked on 1 side of the road. As his motor car started to move, he observed that Mr. Horsford stepped backwards and trip over the 10 inch curb that runs along the western side of the road, fall into bushes alongside the road, then get up and brush himself off.
- [24] Mr. Croft denies that he threatened to run over Mr. Horsford with his motor vehicle,
- [25] Mr. Croft denies that his motor vehicle ever touched Mr. Horsford. He said that it was utterly impossible for his motor vehicle to have hit Mr. Horsford because he was standing at the side of his motor car, addressing him thru his motor car window and in order for his motor car to hit Mr. Horsford, the motor car would have had to have moved sideways.
- [26] According to Mr. Croft, the present claim is another attempt by Mr. Horsford to harass him. He is of this view that Mr. Horsford made a complaint to the Police because there was a case in the

magistrate's court for the same incident and it was called several times. He attended all the hearings but Mr. Horsford never attended and the case was finally dismissed on 15th July 2013.

- [27] Under cross-examination Mr. Croft said that from his viewpoint within his motor car, he had a clear view of Mr. Horsford on the side of his motor car; Mr. Horsford's body was not near the motor car.
- [28] According to Mr. Croft, he made the statement "Out of my fucking way." not because Mr. Horsford was in his way but as a normal reactive comment.
- [29] According to Mr. Croft, Mr. Horsford jumping back when he moved his motor car was a natural reaction.

Findings and Analysis

- [30] The matter of whether or not Mr. Croft's motor car came in contact with Mr. Horsford is conflicted on the evidence. If Mr. Croft's motor car did make contact then the incident would properly be called an accident as the Court does not believe on the evidence that there was an intention on Mr. Croft's behalf to do injury to Mr. Horsford despite their long litigation history.
- [31] Mr. Horsford's claim is that of assault and battery. Assault is an act by which a person intentionally or possibly recklessly, causes another person to fear reasonably the immediate application to himself of unlawful violence¹. Battery involves the actual, intended and direct use of unlawful physical force on a person without his consent. It includes even the slightest force; though no actual harm need result.
- [32] Each Party was adamant in their position as to how the incident giving rise to the claim occurred.
- [33] Mr. Horsford having said that Mr. Croft revved his car, he sought to suggest that there was speed. In fact, under cross-examination he said that he was "tossed" on impact. This Mr. Croft denies. The Court looks to the medical report to see if it finds the level of damage that could occur if contact is made with a motor car that is travelling with speed.
- [34] On review of the medical report, it is clear that 'something' happened to Mr. Horsford. However, in the first instance, there is no record on the medical report of pricks or marks from the "thorns" that Mr. Horsford had said had "pierced" his body. Secondly, there was no cleaning of oozing blood at any point by Dr. Thomas.
- [35] Mr. Horsford then said that he had bruises to his right forearm and here too he had blood oozing from the bruises. According to the medical report, there were multiple less than 0.5cm abrasions and there were 2 bruises recorded and measuring approximately 1.5 cm x 1.5 cm each (i.e. approximately .59 inch). There was no mention in the medical report about oozing blood. To the Court's mind, all of these were very small bruises.

¹ Fagan v. Metropolitan Police Commissioner [1969] 1 QB 439.

- [36] Lastly, the medical report spoke of Mr. Horsford's right hip being "not swollen but tender." This suggest to the Court that Mr. Horsford's hip did come in contact with something, although not hard enough for it to bring about fracture, bruising or swelling.
- [37] While the Parties disagree on how Mr. Horsford came to be there, the one thing that both Parties are agreed on is that Mr. Horsford fell to the ground over the curb.
- [38] The Court believes that if indeed Mr. Croft had revved his motor car's engine so as to move off at speed and hit Mr. Horsford with such force as to toss him, then the double contact with the moving motor vehicle and with the ground would have resulted in greater injury than a tender hip, multiple abrasions of less than 0.05cm and 2 small bruises as were recorded by Dr. Thomas. The minor nature of injuries do not support a fast moving motor car that tosses one aside.
- [39] The Court believes that Mr. Horsford's hip was injured to the point of being tender when he hit the ground after falling over the curb. Whether it be as Mr. Horsford said under cross-examination, when he jumped out of the way or as Mr. Croft said, stepped back and tripped over the curb.
- [40] The Court in considering all the evidence and the nature of the injuries believes that Mr. Horsford was, as Mr. Croft had said, on the side of the road.
- [41] The Court therefore finds that there was no battery by Mr. Croft.
- [42] On the issue of assault, both Parties confirm that Mr. Croft told Mr. Horsford to move out of his way before he drove off his motor car. The timing between the 2 activities might have been very short. It therefore would not have been a surprise to Mr. Horsford and so to put him in fear, when Mr. Croft moved off his motor vehicle.
- [43] The Court therefore does not find an assault by Mr. Croft.
- [44] Court's order:
1. Mr. Horsford's claim is dismissed.
 2. Prescribed costs is awarded to Mr. Croft and is payable in 30 days.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar