

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division**

2008/COM/lab/00045

BETWEEN

SOPHIE DUMAS

Plaintiff

AND

THE COMMISSIONER OF POLICE

1st Defendant

AND

THE ATTORNEY GENERAL

2nd Defendant

Before Hon. Mr. Justice Ian R. Winder

**Appearances: Arthur Minns for the Plaintiff
Audirio Sears for the Defendants**

JUDGMENT

WINDER, J

- [1.] This is the plaintiff's (Dumas') claim against the defendants for wrongful arrest and detention and associated violations of her constitutional rights.
- [2.] The action was initially commenced by Dumas against three other defendants (the Chee-A-Tow parties) as well as the current defendants. The Chee-A-Tow parties were Dumas' employers at the, Chopard jewelry store on Paradise Island, where Dumas worked as the store manager.
- [3.] Dumas, a French national residing in The Bahamas on work permit, became engaged in a contentious relationship with her employers. The Chee-A-Tow parties described the contention in their defence as arising from an irregular sales transactions whilst Dumas says that the contention arose as a result of her questioning her employers' practices concerning tax compliance.
- [4.] Prior to the trial Dumas and the Chee-A-Tow parties came to terms to compromise the action in so far as it related to the Chee-A-Tow parties. The action proceeded against the defendants. The defendants did not enter a defence or call any witnesses.
- [5.] Dumas was the only witness at trial. Her evidence in chief was given in a witness statement and whilst she was tendered for cross examination she was not questioned by the defendants.
- [6.] Dumas' evidence was that on 21 March 2007 she was invited to her employers' home where, to her surprise, she was confronted by two police officers Inspector Barr and Sgt. Thompson. According to her, she was interrogated by the officers who appeared to know her employers personally. She says that she was intimidated and felt that the intimidation was designed to keep her from questioning them about their evasion of paying duty on their

high end jewelry. Dumas says that although she had not done anything wrong she felt that the men would take her away for no lawful reason.

[7.] Dumas says that at the end of the meeting she felt so violated and offended that she determined that she could no longer work for the Chee-A-Tow parties. She immediately ceased her employment and returned all of their keys and other items deposited with her as manager of the Chopard store.

[8.] Dumas says that following this incident she was served with a civil summons issued on behalf of the Chee-A-Tow parties to appear before the Magistrates Court on a claim for \$802.16. According to her, the claim was dismissed on a no case to answer submission. The substance of the claim was as settled in the Magistrates Court Summons as follows:

The Defendant in February, 2007 while being an employee (Manager) of one of the business store of Hillside Investment Limited, conducted a credit card transaction sale and in so doing through her neglegant (sic) conduct, over charge a customer in the amount of Three Hundred, Two Dollars and Sixteen Cents (B\$302.16). The actions of the defendant caused the Company (Hillside Investment Limited) to be liable for the said amount of Three Hundred, Two Dollars and Sixteen Cents (B\$302.16) thus having to re-imburse the customer the said amount. Therefore the Plaintiff takes this action and submit this claim in the amount of Eight Hundred, Two Dollars and Sixteen Cents (B\$806.16)

Reimbursement Amount \$ 302.16
Court Cost of 500.00

(Signed)
HILLSIDE INVESTMENT LIMITED

[9.] Dumas claims that on 12 June 2007 she was unlawfully arrested and wrongfully detained by the defendants after being invited to attend at the police station. According to paragraphs 19-28 of her witness statement:

19. That sometime in the early part of the year 2007, I returned to France temporarily to visit an unwell family member. Upon my return to the Bahamas, I was informed by my Attorney that the Criminal Detective Unit of the Royal Bahamas Police Force wanted to see me about a complaint

made by the 3rd and 4th Defendants. I immediately agreed to go because I knew that I had done nothing unlawful. Nevertheless, I was concerned that the 3rd and 4th Defendants herein, were continuing to pay certain police officers to intimidate me and to prevent me from exposing their unlawful action in evading payment of government taxes on imported high end jewelry for their stores in the Bahamas.

20. On July 12th 2007, my Attorney and I went to C.D.U. on Thompson Boulevard to meet with Woman Detective Deborah Thompson. Just as my Attorney informed the front desk officer who we were and why we were there, Detective Deborah Thompson appeared and invited us to the back. And without uttering any questions to me or my Attorney, Detective Deborah Thompson said that she was placing me under arrest. I was horrified and could not believe that this was happening to me or that this can happen to anybody in these circumstances, where I was not told what I was arrested for, nor was I told of my rights under arrest at that time.
21. I am aware and verily believe that my Attorney immediately ask Detective Thompson what was I under arrest for and how could there be an arrest without even asking a single question. Detective Thompson refused to answer and took me away to another room away from my Attorney.
22. I was taken to another room, where they took my picture and fingerprinted me in C. D. U. They then later took me to my residence in a police vehicle where they conducted a search of the premises, found nothing incriminating or illegal and then simply told me to return to the C. D. U. on the 13th of July 2007. (the next day)
23. The next day, July 13th 2007, I along with my Attorney returned to C. D. U. to have a face to face conference with Mr. Chee-A-Tow, the 3rd Defendant herein.
24. Noticing what was happening, my Attorney asked the Supervising Detective of the Commercial Crime Unit, Inspector Moxey to sit in on the interview, which he did. To this end, the exact claim that was made in the aforementioned Magistrate's Court claim above, was made by Mr. Chee-A-Tow again to the said Detective Thompson.
25. Within seconds of the meeting's completion, Inspector Moxey ordered my release and concluded that absolutely no crime was committed in the scenario presented by the 3rd Defendant or at all. I, however, feel that had Inspector Moxey not sat in that meeting, I would have been further detained and kept in a cell to intimidate me by woman Detective Thompson.
26. Having failed to have me incarcerated and failed to win a civil law suit against me, certain immigration and the police officers unlawfully raided

my apartment late one evening, on the basis that I overstayed my visit to the country and that I had no rights to be in the Bahamas. This happened on July 18th 2008 at 9:30 at night.

27. Despite me showing officers my duly stamped passport, which permitted me to be in the Bahamas, the said officers again detained me at the said residence and spoke to me in an extremely rude manner. They even threatened to take me away and deport me from the country. What concerned me more than anything else is that there were so many of these said officers who came to my residence, surrounded it and they all had guns with them. Some were shot guns and pistols and they were in their hands. I thought I was going to be executed that night.
28. After seeing my documents, searching my place and finding that everything was in order, these said police officers and immigration officers verbally assaulted me before leaving. This was extreme intimidation and I felt as though this was a well-paid for raid on me and my personal property. At all times, I knew that the 3rd and 4th Defendants were orchestrating these events, just as they did with the meeting at their home, the meeting at C. D. U. and the baseless Magistrate Court Civil Claim.

[10.] The only evidence at trial therefore was that of the plaintiff, whose evidence I accept. I accepted that, on balance, the evidence substantiates a claim for unlawful arrest, the plaintiff having not been told of the nature of the claim against her until the following day when Mr Chee-A-Tow gives a statement in terms of the civil claim before the Magistrate of the negligent overcharging of a customer.

[11.] If the arrest was wrong, it follows that the detention was likewise unlawful. There was no evidence of any foundation for the search of the plaintiff's home in respect of allegations of overcharging a customer.

[12.] In the circumstance I find that the plaintiff has made out her case against the defendants. I bear in mind that there has been a compromise with respect to the Chee-A-Tow parties which has not been disclosed to the Court. I therefore, in order to ensure that there is no possibility of double recovery, I will confine any award to claim for which the defendants bear singular responsibility.

[13.] The plaintiff submits that I should make an award in line with award made in the case of *Merson v Cartwright et al [2002]BHS J No. 17* in my assessment of the damages in this case. Notwithstanding there are some similarities, the claims in *Merson* are, by far, considerably more egregious than the plaintiff faced in this case. Paragraphs 3 and 4 of the decision of the Court of Appeal in *Merson*, which sets out the salient facts, demonstrates the distinction:


3 The circumstances surrounding this matter were most distressing. The plaintiff then a 29-year-old teacher and citizen of the USA, came to the Bahamas in July 1987 to visit her father who was a resident here. The police alleged that they had evidence that the father had been operating a bank contrary to law, and on 13 August, 1987, armed with a search warrant, police officers, led by Sgt. Cartwright, went to the father's home at Freeport. The father, a paraplegic, was at the time in England for medical attention, so the plaintiff was alone at home. It was the beginning of some fifty-seven hours of the most harrowing and excruciatingly degrading experiences a young lady visiting the Bahamas could possibly encounter. She was wrongfully arrested, falsely imprisoned, and maliciously prosecuted. In addition to a claim for damages in tort, the plaintiff also claimed damages for breaches of her constitutional rights guaranteed under Article 17 (not to be subjected to inhuman or degrading treatment) and Article 19 (not to be unlawfully arrested or detained).

4 In a comprehensive judgment defined by a wide ranging analysis of both the legal and factual issues, the learned then Chief Justice (Dame Joan Sawyer) catalogued the high-handed attitude of Sgt. Cartwright and his officers who practically frog-marched the plaintiff to the police station, placed her in the most appallingly filthy cell without food or water, exposed her to the indignity and defencelessness of spending an entire night with two male prisoners in the same cell with her, and shattering her modesty and womanhood by having male officers take the plaintiff to an equally filthy toilet, while demanding that she kept the toilet door ajar as she used it. It was no mis-use of language in our view when the learned Chief Justice described the arrest as "Gestapo Style" and relegated the conditions of the cell, perhaps as an understatement, to the "Black Hole of Calcutta." In short, the learned judge irresistibly found that the police had behaved in a callous, unfeeling, high-handed, insulting, and malicious and oppressive manner both with respect to the arrest and false imprisonment as well as the malicious prosecution, the latter on the basis that the police falsely alleged that she had abetted the commission of the alleged offences of illegally operating a bank. The charges were clearly a ruse to justify the arrest. All the charges were subsequently withdrawn.

In all the circumstances therefore I make a global award of \$40,000 for all of the plaintiff's claims.

[14.] I award interest at the rate of 2% per annum from the date of filing of the Amended Statement of Claim to the date of judgment and to accrue thereafter at the statutory rate. The defendants shall pay the plaintiff's reasonable costs to be taxed in default of agreement.

Dated this 30th day of June, 2021

A handwritten signature in black ink, appearing to read 'I-R. Winder', written in a cursive style.

Ian R. Winder
Justice