

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Side
2013/CLE/gen/FP/00078**



BETWEEN

**KEVIN ARCHER
Plaintiff**

AND

**FREEPORT CONTAINER PORT
First Defendant**

AND

**HUTCHINSON PORTS (BAHAMAS) HOLDINGS LIMITED
Second Defendant**

AND

**THE ATTORNEY GENERAL
(As Minister Responsible for the Environment and Department of
Meteorology)
Third Defendant**

AND

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Side
2013/CLE/gen/FP/00079**

BETWEEN

**SAMUEL DONOVAN SWANN
Plaintiff**

AND

**FREEPORT CONTAINER PORT
First Defendant**

AND

**HUTCHINSON PORTS (BAHAMAS) HOLDINGS LIMITED
Second Defendant**

**AND
THE ATTORNEY GENERAL
(As Minister Responsible for the Environment and Department of
Meteorology)
Third Defendant**

AND

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Side
2013/CLE/gen/FP/00080**

BETWEEN

**HARRISON MOULTRIE
Plaintiff**

AND

**FREEPORT CONTAINER PORT
First Defendant**

**AND
HUTCHINSON PORTS (BAHAMAS) HOLDINGS LIMITED
Second Defendant**

**AND
THE ATTORNEY GENERAL
(As Minister Responsible for the Environment and Department of
Meteorology)
Third Defendant**

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mr. Osman Johnson for the Plaintiffs

Mrs. Metta MacMillian-Hughes for the First and Second Defendants

Mr. Franklyn Williams for the Third Defendant

HEARING DATES: November 6, 2020

RULING

Hanna-Adderley, J

This is an application to strike out the Plaintiffs Statements of Claim by the 3rd Defendant as against the the 3rd Defendant. Although not consolidated the Defendat has made the same application in Actions 2013/CLE/gen/FP/00079 and 2013/CLE/gen/FP/00080. This Ruling therefore relates to the 3 Summonses filed on December 11, 2018 in the respective actions.

Introduction

1. This is an application by the 3rd Defendant by way of Summonses ("**the Summonses**") filed December 11, 2018 pursuant to Order 18, Rule 19(1)(b) and (d) of The Rules of the Supreme Court ("RSC") and the inherent jurisdiction of the Court an Order that (1) the Writ of Summons filed in the above titled actions be struck out as against the 3rd Defendant on the grounds that it is frivolous and vexatious and otherwise an abuse of the process of the Court and (2) the Plaintiffs actions were not commenced within twelve months after the act, neglect or default complained of, and is barred by Section 12 of the Limitation Act, 1995; an Order that all further proceedings in the actions be stayed; an Order that the time limited for the service of the 3rd Defendant's Defence be extended to include December 14, 2018; an Order that the costs of this application may be provided for and the costs of and occasioned by striking out the 3rd Defendant's costs in any event and such further or other relief as may be just.
2. The other orders sought by the 3rd Defendant in its Summonses have already been dealt with by the Court in its Ruling dated November 6, 2020.
3. The 3rd Defendant filed the Affidavit of Alicia A. Gibson on December 11, 2018 in support of its applications and relies on its Written Submissions dated July 3, 2019.

4. The 3rd Defendant's application is opposed by the Plaintiffs and they rely on their Affidavits filed herein on August 29, 2019 respectively ("**the Plaintiffs Affidavits**") and they rely on their Submissions (undated).

Statement of Facts

5. The Plaintiffs filed their Specially Indorsed Writs of Summons on March 5, 2013 against the 1st Defendant for negligence and breach of statutory duty and against the 2nd Defendant for negligence following storm activity on March 29, 2010 that occurred at the 1st Defendant's port facility on Grand Bahama. In summary, the Plaintiffs allege that as a result of the storm and tornado activity on March 29, 2010 the cranes that they were operating at the time collided with another crane and as a result of the collision suffered physical injuries. They also allege that witnessing the collapsing of another crane resulting in the death of those persons operating the same subsequently caused them extensive psychological damage.
6. Amended Writs of Summons were filed on March 3, 2014 adding the Attorney General (As Minister Responsible for the Ministry of the Environment and Department of Meteorology) as the 3rd Defendant. The Plaintiffs allege against the 3rd Defendant inter alia:-

4. The 3rd Defendant is and was at all material times the Attorney General's Office, against whom this action is being brought pursuant to Section 4 of the Crown Proceedings Act and in respect of the acts and/or omissions of the Minister of the Environment and the Bahamas Department of Meteorology. The 3rd Defendant on behalf of the Ministry of the Environment and Department of Meteorology is and was at all material times responsible for maintaining an early weather warning system and/or meteorology station on the Island of Grand Bahama and in order to properly monitor and advise the public on weather systems affecting the Northern Bahamas Region.

5. On or about 2009 the 3rd Defendant on behalf of the Ministry of the Environment and Department of Meteorology was responsible for the closure of the Freeport Weather Services station which before had provided

Grand Bahama Island and all of the Northern Bahamas with sophisticated weather monitoring and early warning services. The actions of the 3rd Defendant on behalf of the Ministry of the Environment and Department of Meteorology in closing the aforementioned Freeport Weather Services station and failing to replace it with an alternative facility thereafter were negligent and caused and/or directly contributed to the losses which the Plaintiff and other employees of the 1st Defendant incurred due to there not being any system or facility in place to provide early warning for inclement weather systems.

PARTICULARS OF NEGLIGENCE OF THE 3rd DEFENDANT

6. Closure of the Freeport Weather Services station and failure to replace it with an alternative facility to maintain a weather monitoring and forecast capability for the Island of Grand Bahama and the Northern Bahamas despite being aware of the serious risk for hazardous weather which the Commonwealth of the Bahamas faces on a yearly basis from hurricanes and other violent weather events;

7. Failure to maintain an on-site weather monitoring system or capability on the Island of Grand Bahama which would allow for accurate and rapid weather warnings to the general public and citizens in the Northern Bahamas and despite being aware of the high frequency of dangerous weather systems and the serious risk of injury or death that hazardous weather systems causes to its citizens.”

7. The evidence of Alicia A. Gibson on behalf of the 3rd Defendant, in part, was that the Plaintiffs commenced the actions by Writs of Summons on March 5, 2013 and amended on March 3, 2014. The 3rd Defendant is the Attorney General who is being sued in a representative capacity for the Minister of the Environment and the Department of Meteorology pursuant to the Crown Proceedings Act. Ms. Gibson states that the Minister (Ministry) of the Environment and the Department

of Meteorology are respectively public authorities and exercise public duties with respect to meteorology and weather services. Exhibited to her Affidavits is a copy of an extract from the Extraordinary Gazette dated July 7, 2008 containing a list of the portfolio allocations made pursuant to Article 77 of the Constitution of The Bahamas which shows "Meteorology" and the Department of Meteorology as coming under the Ministry of the Environment. She further states that the facts and matters relied on by the Plaintiffs are that on March 29, 2010 a tornado struck the Freeport area and as a result several persons died and several were injured. Additionally, it is her evidence that section 12 of the Limitation Act, 1995 bars the bringing of any action against a public authority carrying out statutory or public functions if the action was not commenced within twelve months after the act, neglect or default complained of in respect of that authority. Lastly, she states that it is apparent on the face of the pleadings that the action was not commenced within twelve months of the facts and matters relied on, and was in fact commenced nearly three years later.

8. The evidence of Kevin Archer in part was that as a direct result of the tornado incident on March 29, 2010 he suffered both physical and psychological injuries which left him suffering from Post-Traumatic Stress Disorder ("PTSD") from the date of the incident to present. He exhibited a copy of a psychiatric report of Dr. Jean M. Turnquest, Psychiatrist and dated April 10, 2016 which he stated confirmed his diagnosis of PTSD. Further, he stated that the exhibit is documentary evidence that he was diagnosed with PTSD and require ongoing medical treatment for the chronic long term condition and that he is disabled as a result and was disabled at the material time when the Writ of Summons and Amended Writ of Summons was filed.
9. The evidence of Samuel Swann in part was that as a direct result of the tornado incident on March 29, 2010 he suffered physical injuries that left him permanently disabled from the date of the incident to present. He exhibited a copy of a letter from the National Insurance Board dated August 7, 2019 and entitled "CONFIRMATION OF DISABLEMENT BENEFIT SAMUEL D. SWANN -N.I.

#30953723". Further, he stated that the exhibit is documentary evidence that he was assessed at 40% disablement for life by the National Insurance Board following the incident and that he is permanently disabled as a result and was disabled at the material time when the Writ of Summons and Amended Writ of Summons was filed.

10. The evidence of Harrison Moultrie in part was that as a direct result of the tornado incident on March 29, 2010 he suffered physical injuries that left him permanently disabled from the date of the incident to present. He exhibited a copy of a letter from the National Insurance Board dated August 7, 2019 and entitled "CONFIRMATION OF DISABLEMENT BENEFIT HARRISON R MOULTRIE –N.I. #30964741". Further, he stated that the exhibit is documentary evidence that he was assessed at 30% disablement for life by the National Insurance Board following the incident and that he is permanently disabled as a result and was disabled at the material time when the Writ of Summons and Amended Writ of Summons was filed.

The Law

11. Order 18, Rule 19 of the RSC states:-

"19. (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that —

- (a) it discloses no reasonable cause of action or defence, as the case may be; or (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1) (a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading."

12. The power to strike out is a Draconian remedy which should be employed only in clear and obvious cases where it is possible to say at the interlocutory stage and before full discovery that a particular allegation was incapable of proof (per Allen, J in **Bettas Limited v Hong Kong and Shanghai Banking Corporation Limited and HSBC Bank Plc SCCiv App No. 312 of 2013**).
13. Guidance on how this rule should be applied is set out by **Osadabey, JA** in **Hamby v Hermitage Estates Ltd SCCiv App No. 21 of 2008** and also by **Auld, LJ** in **Electra Private Equity Partners v KPMG Peat Marwick (a firm) & Ors [2001] 1 BCLC 589**. Osadabey, JA states in Hamby: "It is well settled that the jurisdiction to strike out is to be used sparingly and limited to plain and obvious cases where there is no need for a trial. There is no doubt that the exercise of that jurisdiction may deprive a party of the examination and cross examination of witnesses which can change the result of a case." At page 613 of **Electra Private Equity Partners**, Auld LJ stated: "It is trite law that the power to strike out a claim under RSC Ord.18, r.19 or in the inherent jurisdiction of the Court should only be exercised in "plain and obvious" cases. That is particularly so where there are issues as to material primary facts and the inferences to be drawn from them, and when there has been no discovery or oral evidence. In such cases, as Mr. Aldous submitted, to succeed in an application to strike out, a defendant must show that there is no realistic possibility of the plaintiff establishing a cause of action consistently with his pleading and the possible facts of the matter when they are known. Certainly, a judge, on a strike-out application where the central issue is one of determination of a legal outcome by reference to as yet undetermined facts, should not attempt to try the case on the affidavits. See **Goodson v Grierson [1908] 1 KB 761, CA**, per Fletcher Moulton LJ at 764-5 and Buckley LJ at 766; **Wenlock v Moloney**, per Sellers LJ at 1242G-1243D and Danckwerts LJ at 1244B ([1965] 1 WLR 1238); and **Torras v Al Sabah & others(unreported) 21 March 1997 CA**, per Saville LJ. There may be more scope for early summary judicial dismissal of a claim where the evidence relied on by the plaintiff can properly be characterised as "shadowy" or where "the story

told in the pleadings is a myth . . . and has no substantial foundation"; see eg **Lawrance v Lord Norreys (1890) 15 App Cas 210**, per Lord Herschell at 219-220. However, the court should proceed with great caution in exercising its power of strike-out on such a factual basis when all the facts are not known to it, when they and the legal principle(s) turning on them are complex and the law, as here, is in a state of development. It should only strike out a claim in a clear and obvious case. Thus, in **McDonald's Corporation v Steel [1995] 3 All ER 615, [1995] EMLR 527, CA**, Neill LJ, with whom Steyn and Peter Gibson LJJ agreed, said, at 623 e-f of the former report, that the power to strike out was a Draconian remedy which should be employed only in clear and obvious cases where it was possible to say at the interlocutory stage and before full discovery that a particular allegation was incapable of proof.

14. Section 12 of the Limitation Act states:-

"12. (1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the provisions of subsection (2) shall have effect.

(2) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or in the case of a continuance of injury or damage within twelve months next after the ceasing thereof."

Issues

15. The Court on these applications must determine whether the actions against the 3rd Defendant are statute barred and thus the filing of the Amended Writ of Summons adding the Attorney General as a Defendant is frivolous and vexatious and an abuse of the process.

16. I have considered the relevant submissions and cases relied on by both Counsel and now summarize below those applicable to the issues arising on this application.

Submissions

17. Counsel for the 3rd Defendant, Mr. Franklyn Williams submitted in part that the jurisdiction to strike out ought to be sparingly exercised and the authorities emphasize that the Court should only strike out in plain and obvious cases. See **Drummond-Jackson v British Medical Association** (supra).
18. Mr. Williams referred the Court to the provisions of Section 12 and 24 of the Limitation Act and submitted that those provisions are intended to protect the acts of public authorities when exercising a public power or duty in respect of matter properly within the ambit of the Act. It was his submission that to bring an action within the scope of Section 12 and engage the protection of the one year limitation period available to public authorities the following elements need to be established, (i) that the action prosecution or proceeding is in respect of an act done in pursuance of the execution of a written law, public duty or by a public authority; or, alternatively, is in default or neglect of any written law, public duty or public authority; (ii) that the action, prosecution or proceeding was not commenced within 12 months after the act, neglect or default complained of; or alternatively, was not commenced within 12 months of the ceasing of the act, default or neglect, in the case of a continuing injury or damage.
19. He submitted that the Plaintiffs in their respective actions alleged that there has been an act (or acts) and/or default or neglect in the performance of a public duty by a public authority. He drew the Court's attention to paragraph 4 of the Amended Writ of Summons where the Plaintiffs asserted that the actions are being brought in respect of the "acts and/or omissions of the Minister of the Environment and the Department of Meteorology" and frame the said allegations at paragraph 5 of each Statement of Claim. Mr. Williams contended that while there is no statutory footing for the Department of Meteorology, there can be no doubt that both the Minister/Ministry of the Environment and the Department of Meteorology would qualify as a part of the Government and therefore public authorities and referred the Court to paragraph 5 of the Affidavit of Alicia Gibson.

20. Mr. Williams also contended that it is clear that the duty to provide meteorological broadcasts by Government can only be a public duty, such duty that can only exist in a public context and does not engage any private obligations. He relied on the speech of Lord Hughes at paragraphs 10 and 23 of **Alves v Attorney General of the Virgin Islands** [2017] UKPC 42 as to the qualifications of a public authority and the difference between public duties and rights arising from them and private duties and consequent rights arising from them. Mr. Williams pointed out that the Court in *Alves* (supra) determined that the limitation defence was not available to the Attorney General but highlighted paragraph 37 of the decision in support of his contention. **"37. Despite the potentially wide words of PAPA, it must, as has consistently been held, be construed restrictively. It only applies to public authorities, and not to all persons acting under statutory authority. It does not apply to all actions performed by public authorities, but only to those where the obligation sued upon is owed generally to the public or to a section of it. Where the obligation sued upon arises simply out of a relationship with the claimant which would be the same for any non-public person or body, and where there is no question of a public law challenge, the Act has no application. The duty of care which the government is admitted to have owed to Mrs Alves qua employer was accordingly a private obligation exactly the same as is owed by any employer, and not a public obligation for the purposes of PAPA. The six month limitation period did not apply."** Further, he submitted that the Plaintiffs themselves admitted that it was a public duty at paragraph 4 of the Amended Statement of Claim.

21. Moreover, it is his submission that the action was brought outside of 12 months and on the face of the pleadings it showed that the complaint of the 3rd Defendants' failure to provide warnings of severe weather systems was on March 29, 2010 when the tornado which caused the injury or damage occurred. Therefore, he asserted that the Plaintiffs had until March 30, 2011 to be within the limitation period provided for public authorities. Further, he submitted that the initial action

was not commenced until March 5, 2013 and the Attorney General was not named in the action until March 3, 2014, some three years out of time.

22. Lastly, he submitted that there are no circumstances to adjust the timelines as a result of continuing injury or damage and that the injuries or damages suffered by the Plaintiffs, i.e. the neglect or omission was a one-off event occurring on March 29, 2010 and that the Plaintiffs were all sui juris at the time of the incident and not under any disability (a person is treated as being under a disability while he is an infant or of unsound mind). Additionally, he referred the Court to paragraph 11 of Justice Winder's decision in **Shepherd v The Attorney General of the Bahamas and others** [2018] 1 BHS J No. 6 where he considered the adjustment of the time period prescribed by Section 12(2) of the Limitation Act, "The only jurisdiction to adjust the time period prescribed by section 12 of the Limitation Act is found in Section 12(2), which allows for the calculation of the period to commence at the cessation of an injury where the injury complained of is continuous. In the instant case however, after the alleged demolition of the concession stand on 28 September 2015, no further action occurred by the defendant with respect to the cause of action."

23. Counsel for the Plaintiffs, Mr. Osman Johnson contended in part that Section 4 of the Crown Proceedings Act allows the Plaintiffs to bring an action in tort as against the 3rd Defendant; that the Writ of Summons and Amended Writ of Summons are not statute barred as it is trite law that the limitation period for the tort of negligence is six years under Section 5(1)(a) of the Limitation Act. Further, he submitted in the alternative that the Plaintiffs knowledge of the cause of action as against the 3rd Defendant only accrued as of the date of the filing of the initial Writ of Summons and therefore Section 10 of the Limitation Act would be applicable.

24. In response to the 3rd Defendant's submission, he asserted that Section 12(2) of the Limitation Act is applicable to the present matters and in circumstances where there has clearly been a continuance of the Plaintiffs' injuries for an extended period even up to the present day and the actions themselves were filed and amended within the stipulated 12 months next after the ceasing thereof. He

referred the Court to the Plaintiffs Affidavits filed in support whereby they exhibit documentary evidence of the continuance of their respective physical and psychological injuries and/or damages and their circumstances are consistent with the provisions of Section 12(2) of the Limitation Act. Further, he submitted that the 3rd Defendant's reliance on **Shepherd v the Attorney General** (supra) does not assist the Court and can be distinguished on the facts as the Plaintiffs have suffered continued physical injuries whereas in Shepherd there was a loss of property.

25. Mr. Johnson also submitted that if the Court did not accept the applicability of the caveat under Section 12(2) of the Limitation Act, then the provisions of Section 13 (4)(b) of the Limitation Act would apply as these actions have been pleaded in negligence against the 3rd Defendant.

26. Mr. Johnson, in response to the ground of the actions against the 3rd Defendant as frivolous and vexatious submitted that no reasonable person nor any Court could properly treat the Plaintiffs' respective causes of action against the 3rd Defendant as anything other than bona fide. Further, he contended that their claim is based upon the 3rd Defendant's failure to maintain a facility for the benefit of public safety, which they had done and which was replaced very shortly after the incident that forms the subject of these actions. Additionally, he submitted that the present claims by the Plaintiffs have a clear prospect of success and there is no legal or common law basis upon which to adopt the draconian measure of striking out the Plaintiffs' claims.

Analysis/Discussion

Statute Barred

27. Counsel for both parties provided the Court with many authorities and submissions on the issues to be determined. However, it is not the Court's intention to distinguish each case or submission but will comment on those that are relevant in the Court's Judgment.

28. The Court accepts Counsels' submissions that the power to strike out a case is a draconian remedy and should only be exercised in plain and obvious cases.

29. Both Counsel drew the Court's attention to the case of **Ronex Properties Ltd. v John Laing Construction et al (supra)** in support of their respective submissions.

30. In **Ronex Properties** the Court dismissed the appeal on the basis that the application to strike out the third party notice on the ground that it disclosed no reasonable cause of action could only properly be made where it was manifest that there was an answer immediately destructive of the claim and that since a defence under the Limitation Acts barred the remedy and not the claim and that that defence had to be pleaded, the application to strike out the pleadings was misconceived. Donaldson, LJ in his Judgment sought to review previous authorities where the Court struck out claims under the grounds that the pleadings were frivolous and vexatious and an abuse of the court process and thus was statute barred. It was noted that in the **Ronex Properties** case, the sole ground before the Court was that the party brought the application under the ground that the notice disclosed no reasonable cause of action and thus no evidence would be admissible by the partying relying on that ground. Therefore, Donaldson, LJ concluded that it was understandable that the Court in the other authorities struck those claims out as the parties in those actions brought their application under other grounds which they could rely on admissible evidence. He continues further at page 405 and stated **"Where it is thought to be clear that there is a defence under the Limitation Acts, the defendant can either plead that defence and seek the trial of a preliminary issue or, in a very clear case, he can seek to strike out the claim upon the ground that it is frivolous, vexatious and an abuse of the process of the court and support his application with evidence. But in no circumstances can he seek to strike out on the ground that no cause of action is disclosed."** Sir Sebag Shaw at page 408 in agreement with Donaldson L.J. stated **"In such a case it would, as I understand Stephenson L.J. will observe in the course of his judgment, be a waste of time and money to allow the matter to be pursued so as to give rise to what would be an abuse of the process of the court."** Further,

Stephenson, L.J. in agreement with the others stated at page 408 " **There are many cases in which the expiry of the limitation period makes it a waste of time and money to let a plaintiff go on with his action. But in those cases it may be impossible to say that he has no reasonable cause of action. The right course is therefore for a defendant to apply to strike out the plaintiffs' claim as frivolous and vexatious and an abuse of the process of the court, on the ground that it is statute-barred. Then the plaintiff and the court know that the Statute of Limitations will be pleaded; the defendant can, if necessary, file evidence to that effect; the plaintiff can file evidence of an acknowledgment or concealed fraud or any matter which may show the court that his claim is not vexatious or an abuse of process; and the court will be able to do, in I suspect most cases, what was done in *Riches v. Director of Public Prosecutions* [1973] 1 W.L.R. 1019: strike out the claim and dismiss the action."**

31. It is not disputed by the parties that the incident which gave rise to these actions occurred on March 29, 2010.
32. As highlighted by their Lordships in **Ronex** above, on an application to strike out a claim on the ground that it is statute-barred, a defendant can make an application to strike on the ground that the claim is frivolous and vexatious and an abuse of the court's process and the defendant if necessary file evidence to that effect. The 3rd Defendant's application to strike is pursuant to Order 18, Rule 19(1)(b) and (d) thus the Court on this application also considers the Affidavit evidence (as summarized above) in contemplation of its determination.
33. The Plaintiffs in their respective Statements of Claim (as summarized above) all allege that the Minister and the Ministry of the Environment and Department of Meteorology had a duty to maintain an early weather warning system and/or meteorology station for Grand Bahama; a duty to advise the public on weather systems and that certain acts and/or omissions i.e. the closing of the Freeport Weather Services station in or about 2009 and failing to replace it with an

alternative weather facility was negligent and directly contributed to the alleged losses of the Plaintiffs.

34. The 3rd Defendant in support of its application and submissions has exhibited to its Affidavit in Support a copy of an Extraordinary Gazette containing a list of portfolios that fall under the Ministry of Environment. The Department of Meteorology is listed under a Ministry or Department of Government which the Minister of Environment and Minister of State is responsible for.
35. The Plaintiffs assertion in their respective Statements of Claim that these parties above were responsible for maintaining, replacing and advising the public on possible weather systems that could affect the island of Grand Bahama leads this Court to form the view that the Plaintiffs accept that these parties operated in the performance of a public duty by a public authority. Further, the evidence of the 3rd Defendant exhibited to its Affidavit in Support is accepted by the Court as the state of affairs under which the portfolio for the Department of Meteorology was assigned and the portfolio for the Ministry of the Environment was assigned at the time of the incident. Therefore, I accept that these parties at the time operated in the performance of a public duty by a public authority.
36. In considering the provisions of Section 12 of the Limitation Act I find that the date on which the cause of action arose for the respective Plaintiffs was March 29, 2010, the date on which they sustained the injuries as a result of the incident which occurred. Therefore, the Plaintiffs had until March 28, 2011 to commence proceedings against the 3rd Defendant for what the Plaintiffs allege were negligent acts and/or omissions of the 3rd Defendant. Therefore, I find that the filing of the Amended Writ of Summons adding the 3rd Defendant as a party is well outside of the prescribed limitation period to which an action can be brought against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority.

Extension of Prescribed Limitation Period

37. Mr. Johnson has submitted that Section 12(2) of the Limitation Act applies as the Plaintiffs evidence (as summarized above) shows a continuance of injuries for the requisite period and as such the filing of the Amended Writ of Summonses was done within the stipulated 12 months after the ceasing thereof.
38. As I understand Mr. Johnson's submission above, he alleges that because the Plaintiffs continue to suffer physical and psychological injuries as a result of the incident on March 29, 2010, the Plaintiffs filing of their Amended Writ of Summonses on March 3, 2014 were well within the prescribed twelve month period as their injuries continue. Mr. Williams in response submitted that there are no circumstances to adjust the timelines as a result of any "continuing injury or damage" and the injuries or damages suffered were as a result of what they alleged was the negligent act and/or omission of a one-off event occurring on March 29, 2010. To my mind, this view taken by Mr. Johnson cannot be what Parliament intended when drafting such legislation. The Plaintiffs' claims all arise out of personal injuries sustained as a result of the incident on March 29, 2010. It is these personal injuries that are continuous and not the alleged tortious act complained of i.e. the alleged negligent acts and/omissions as found in paragraphs 4 and 5 of the respective Statements of Claim. Therefore, I accept the submission made by Mr. Williams.
39. Mr. Johnson also submitted that Section 36 of the Limitation Act is also applicable as the Plaintiffs evidence (summarized in their respective Affidavits above) in respect of the injuries sustained constitute a "disability" and therefore the Plaintiffs actions may be brought any time before the expiry of six years from the date when the person ceased to be under a disability. Mr. Williams submitted in response that the Plaintiffs were all sui juris at the time of the incident and not under any disability.
40. Section 2 of the Limitation Act provides in relation to disability that:-
- "(2) For the purposes of this Act, a person shall be deemed to be under a disability while that person is an infant or of unsound mind.

(3) For the purposes of subsection (2), but without prejudice to the generality thereof, a person shall conclusively presumed to be of unsound mind —

(a) while that person is liable to be detained or subject to guardianship under the Mental Health Act or under the provisions of any other Act relating to the detention of persons suffering from mental disorder; and (b) while that person is receiving treatment as an inpatient in any hospital within the meaning of the Mental Health Act without being liable to be detained thereunder, being treatment which follows without any interval a period during which the person was liable to be detained or subject to guardianship under that Act or by virtue of any written law repealed or excluded by that Act.”

41. Mr. Johnson’s submission and the evidence of the Plaintiffs I find does not meet the criteria as outlined by Section 2 of the Limitation Act to qualify the Plaintiffs to be deemed to be under a disability and as such extend the prescribed limitation period.
42. Mr. Johnson has submitted that Section 5 of the Limitation Act is also applicable as it provides that actions founded on simple contract or tort shall not be brought after the expiry of six years from the date on which the cause of action accrued. However, the Plaintiffs allege that they suffered personal injuries and damages as a result of the collision of their cranes and witnessing their co-workers perish while working during a tornado on March 29, 2010. Therefore, Section 5 of the Limitation Act is not applicable in the instant matter.
43. As stated above, the cause of action arose on March 29, 2010 when the cause of the injuries occurred. Section 9 of the Limitation Act provides that **“(1) Subject to subsection (6), this section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by any written law or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty**

consist of or include damages in respect of personal injuries to the plaintiff or any other person. (2) Subject to subsection (3), an action to which this section applies shall not be brought after the expiry of three years from — (a) the date on which the cause of action accrued; or (b) the date (if later) of the plaintiff’s knowledge” (emphasis mine). As stated above, the Plaintiffs claim damages in respect of personal injuries sustained as a result of the incident that occurred on March 29, 2010.

44. Mr. Johnson also submitted that the cause of action against the 3rd Defendant only accrued as of the date of the filing of the initial action against the 1st and 2nd Defendant on March 5, 2013 and as such relies on Section 10 of the Limitation Act in that the time began to run on the date of the Plaintiffs knowledge. The Plaintiffs however, have failed to adduce any evidence as to when they each had knowledge of the facts provided by Section 10 of the Limitation Act. These facts include: (a) that the injury in question was significant; (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; (c) the identity of the defendant; and (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant, and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant. Further, the pleadings of the Writ of Summons first filed on March 5, 2013 makes reference to the Bahamas Department of Meteorology releasing a severe weather alert for Grand Bahama sometime on March 29, 2010. To my mind, the Plaintiffs argument relating to knowledge is not sustainable as the initial pleadings themselves evidence the Department’s involvement on the day of the incident.

Conclusions and Disposition

45. Therefore, having read the submissions of Counsel, read and considered the Affidavit evidence, having read the relevant authorities and statutes, I find that the Plaintiffs Amended Writs of Summons as against the 3rd Defendant is statute

barred and are hereby struck out and the action dismissed as against the 3rd Defendant.

46. On one final matter, that of the delay in delivering this Ruling, the Court reserved the delivery of its Ruling to a date to be fixed, regrettably, the lockdowns, disruption and delays caused by the Covid 19 pandemic are events which greatly interfered with the Court's writing schedule. I apologize profusely for the delay in this matter.

47. Cost usually follow the event. I see no reason to depart from that general principle. The Plaintiffs shall pay the costs of the 3rd Defendant, to be taxed if not agreed.

Dated the 20th day of May, 2022



Petra M. Hanna-Adderley
Petra M. Hanna-Adderley
Justice