IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim No. 00517 of 2022

B E T W E E N

GESLIN PIERRE

Plaintiff

AND

SHIELD INSURANCE AGENTS AND BROKERS

Defendant

Before: The Honourable Mr. Justice Neil Brathwaite

Appearances: Bjorn Ferguson for the Plaintiff
G. Deon Thompson, Max Julien for the Defendant

DECISION

FACTUAL SUMMARY

[1.] The Plaintiff commenced this action by way of a Specially Endorsed Writ of Summons filed on 5th April 2022. The brief facts are that the Defendant was in the business of insuring motor vehicles, and the Plaintiff was a client who insured a 2009 Mitsubishi Colt with the Defendant for the period 11th January 2019 to 11th January 2019. The vehicle was then sold to a Mr. Patrick Tucker, and the Plaintiff claims that the Defendant was notified of the sale and a request was made to nullify the insurance policy. Subsequently, the insurance policy was renewed in the Plaintiff's name by the Defendant for the period 18th January 202 to 18th January 2022. The vehicle was then involved in a hit and run collision on 8th October 2021. The owner of the other vehicle involved, a Ms. Monette Cartwright, chased the Mitsubishi Colt and got the licence plate number, and also spoke with a male who identified himself as Geslin Pierre. The Plaintiff states that he was subsequently arrested

and detained by police. The Plaintiff therefore alleges that the Defendant was negligent, as a result of which the Plaintiff claims to have suffered humiliation and embarrassment at the hands of the police. The Plaintiff particularized the alleged negligence of the Defendant as follows:

a. Failed to terminate the motor vehicle Insurance policy on the 2009 Mitsubishi Colt, previously owned by the Plaintiff, after the Plaintiff formally requested such termination. The Defendant continued to renew the insurance policy with a third party, in the name of the Plaintiff, who was not party to the contractual relationship between the Plaintiff and the Defendant, after acknowledging that the Plaintiff was the only authorized driver and the policy holder on the insurance policy.

b. The Defendant failed to ensure that there was an insurable interest between themselves and the Plaintiff. The Plaintiff, after the sale of the 2009 Mitsubishi Colt, had no connection with the vehicle which was the subject matter of the insurance policy. The Plaintiff, was no longer in possession of the vehicle after March 1st, 2019 as there was a transfer of ownership. The absence of the connection between the Plaintiff, the Defendant and the vehicle rendered the contract between the parties void from as early as March 1st, 2019.

c. The Defendant failed to verify whether the Plaintiff was still in possession of the vehicle as ownership was transferred. The Defendant never contacted the Plaintiff or conducted an inspection to ascertain whether the Plaintiff was still in possession of the vehicle or who the third party was administering the unauthorized renewal of the motor vehicle insurance policy in the name of the Plaintiff.

d. The Defendant failed to upkeep the general standard necessary for mere authorization. The Defendant permitted a third party to renew the motor vehicle insurance policy, in the name of the Plaintiff, without any authorization or instruction, formal or informal, from the Plaintiff. The Defendant renewed the motor vehicle insurance policy as if the third party was acting on instruction from the Plaintiff. The Defendant permitted the third party to pay for the insurance policy in the name of the Plaintiff, but signed and authorized by the third party new owner of the vehicle. The automatic renewal of the insurance policy was the very essence of the negligence on the part of the Defendant and resulted in the Plaintiff suffering a loss.

e. As a result of the Defendant's negligence, the Plaintiff has been arrested and detained for extended periods of time resulting in a deprivation of his right to liberty as a citizen of the Commonwealth of The Bahamas. After the Defendant permitted the third party to renew the insurance policy, the third party was permitted to

operate the insured vehicle and commit criminal offences in the 2009 Mitsubishi Colt. As a result of the commission of these criminal offences the Plaintiff had been arrested and detained by the officers of the Royal Bahamas Police Force for the offences committed by the third party in the vehicle.

f. The Defendant caused the Plaintiff to be subjected to humiliation and embarrassment as he was pulled over on numerous occasions by the officers of the Royal Bahamas Police Force for offences committed by the third party in the 2009 Mitsubishi Colt, namely a motor vehicle accident and the car not being adorned with license plates.

g. As a result of the Defendant's negligence, the Plaintiff's image was circulated as the officers of the Royal Bahamas Police Force circulated a "Be On The Lookout" Code for the offences committed by the third party in the insured vehicle.

h. The Plaintiff has been harassed by the officers of the Royal Bahamas Police Force for offences committed by the third party in the vehicle insured by the Defendant in the name of the Plaintiff but without authorization from the Plaintiff.

i. The Plaintiff has been harassed by individuals who have suffered losses as a result of the motor vehicle accident committed by the third party in the insured vehicle. The individuals are seeking compensation for the losses they have suffered as a result of the acts committed by the third party in the vehicle that was insured in the name of the Plaintiff without authorization.

j. The Defendant has failed to apologize, in writing, for their conduct outlined herein.

k. By reason of the aforesaid particularized negligence of the Defendant above, the Plaintiff has suffered harassment occasioned by humiliation and embarrassment.

AND THE PLAINTIFF CLAIMS:-

i. General damages for the losses suffered by the Plaintiff as a result of the negligence of the Defendant.

ii. That the contractual agreement between the Plaintiff and the Defendant be declared null and void;

iii. That all offences against the Plaintiff be vacated and/or stayed;

iv. Interest pursuant to the Civil Procedure (Award of Interest) Act, 1992;

v. Cost; and

vi. Such further and/or other relief as the Honourable Court deems just and fit.

THE PLAINTIFF'S EVIDENCE

[2.] The Plaintiff was the sole witness in his case, and filed a witness statement which stood as his evidence in chief, and in which he stated the following:

2. That I was the owner and operator of a 2009 Mitsubishi Colt until on or about March 1st, 2019.
3. That the Car mentioned in Paragraph 2 was insured under a motor vehicle insurance policy with the Defendant and I was the only authorized driver and policy holder between the Defendant and I until on or about March 1st, 2019.
4. That on or about March 1st, 2019, I sold and transferred ownership of the 2009 Mitsubishi Colt to Mr. Patrick Tucker.
5. That on or about March 1st, 2019, I ceased to be the motor vehicle insurance policy-holder with the Defendant in reference to the 2009 Mitsubishi Colt.
6. That on or about March 1st, 2019, I notified the Defendant that I was no longer the owner or operator of the 2009 Mitsubishi Colt and requested that the motor vehicle insurance policy be cancelled.
7. That after informing the Defendant that I was no longer the owner and operator of the 2009 Mitsubishi Colt the Defendant renewed the motor vehicle insurance policy in my name authorized by Mr. Patrick Tucker. Mr. Patrick Tucker was not party to the previous contract with the Defendant and I
8. The motor vehicle insurance policy on the 2009 Mitsubishi Colt with the Defendant was renewed and signed for by Mr. Patrick Tucker, in my name, commencing on or about January 18th, 2021.
9. I did not authorize or approve any renewal of any motor vehicle insurance policy with the Defendant after the sale of the 2009 Mitsubishi Colt to Mr. Patrick Tucker.
10. The Defendant failed to verify whether I was still in possession of the 2009 Mitsubishi Colt before insuring the vehicle in my name and authorized by Mr. Patrick Tucker.
11. That as a result of the Defendant failing to ensure that an insurable interest still exists between us and failing to carry out a standard authorization procedure, I suffered significant losses. The losses I suffered included, but were not limited to harassment and embarrassment by/from the officers of the Royal Bahamas Police force in reference to offences committed by Mr. Patrick Tucker in the 2009 Mitsubishi Colt, that I no longer own.

12. My liberty was curtailed on multiple occasions as I was arrested, for extended periods of time, for offences which I did not commit, but offences which were committed by Mr. Tucker in the vehicle that was insured by the Defendant, in my name, at Mr. Tucker's request without my authorization or approval.

[3] In cross-examination, the Plaintiff admitted being the owner of GP Car Imports, which was in the business of importing and selling vehicles, and that he had had many cars licensed and insured in the course of running his business. He further accepted that he was well aware of the procedure to cancel a policy. He accepted that he sold the Mitsubishi Colt two months after insuring the same, and would thus have been entitled to a refund of $250.00. He claimed that a lady from the insurance company called him, and he told her he had already sold the vehicle. He claimed that the insurance company sometimes applied such refunds to his other accounts, and said that he did not check on it because he knew he was entitled to the refund, and that it would be there when he needed it. He denied selling the Colt as licensed and insured, and acknowledged signing the insurance contract, and that the contractual procedure for cancellation of the policy was not followed. He also admitted that he did not surrender the insurance certificate to the insurance company upon cancellation as required by law, and stated that he was not aware that he could have taken the license plates when selling the vehicle.

THE DEFENDANT'S EVIDENCE

[4] The Defendant filed a defence denying negligence, and claimed that the insurance policy had not been cancelled by the Plaintiff in accordance with the contract, and that the policy had been renewed on presentation of the Insurance Certificate, which was in the possession of the third party, Patrick Tucker, and which should have been returned to the company along with a request for cancellation by the Plaintiff. The Defendant attributed any negative effects on the Plaintiff at the hands of the Police to the fact that the vehicle had been sold with the license plates, which were registered to the Plaintiff. The Defendant also called one witness at trial, namely Lloyd Howard Knowles, whose witness statement stood as evidence in chief and read in material parts as follows:

> 2) That the Plaintiff, Geslin Pierre had been a customer with us from April 28 2017 until November 1st 2021, the latter being the date that we first had knowledge that the Plaintiff had sold his 2009 Mitsubishi Colt that was initially insured with us for the period January llth 2019 to January 11th 2020. The same only came to our knowledge as a result of a third party insurance claim form that was submitted to us by Ms. Monette Cartwright in connection with an accident that occurred on the 8th October 2021 involving the vehicle that was renewed with us for the period January 18th 2021 to January 18th 2022.

3) That upon realizing that the vehicle was no longer the possession or no longer in the possession of the Plaintiff, we cancelled the policy immediately.

4) That during the Plaintiff's time with us, he had previously held and cancelled motor insurance coverage on other vehicles wherein, he had followed the proper procedure in connection with the cancellation process. Therefore, he was fully aware of the procedure that was necessary to cancel a policy as mandated by section 9 of his insurance policy contract. In fact, we have independently verified that the Plaintiff regularly purchases vehicles for the purposes of sale and said vehicles are registered and insured in his name prior to sale. Therefore, he would have been frequently required to cancel his Insurance coverage upon sale and thus familiar with the standard Policy Cancellation requirement of returning his Insurance Certificates to facilitate cancellation.

5) Further, based on our records, the Plaintiff operated a car import company known as GP Imports, which remains in existence today for his vehicle import and sales business. Based on fact that the alleged Purchaser (Patrick Tucker) was in possession of the original Insurance Certificate, in addition to the Vehicle License Plates belonging solely to the Plaintiff, it is my firm belief that the Plaintiff may have engaged in the common local but unlawful practice of selling vehicles as licensed and insured. Had Mr. Tucker not been provided with the Insurance Certificate by the Plaintiff at time of sale, Mr. Tucker would not have known where the vehicle was insured.

6) That based on the third party claim form presented to us, (as mentioned in paragraph 2 of my witness statement), the third party, Ms. Monette Cartwright, indicated in her claim that she took pictures of the license plate attached to the Mitsubishi Colt. A copy of Ms. Cartwright's claim form will be presented at the trial hereof for its true import and effect.

7) Ms. Cartwright also indicated that subsequent to the hit and run chase, she followed the said vehicle and ended up in the yard of an older man who falsely identified himself as Geslin Pierre. The details of the license plate were presented to the police, which was then used for the purpose of issuing a police report.

...

10) Further, it was confirmed by the Road Traffic Department, that at the time of the road traffic accident reported by Ms. Monette Cartwright, the plates bearing number AA-8472, that adorned the 2009 Mitsubishi Colt, belonged to the Plaintiff. Therefore, regardless of whether or not the insurance policy presented by Mr.

Tucker was renewed in the name of the Plaintiff by us, he would have been stopped and detained by the police in any event because he failed to collect or remove his plates from the sold vehicle subsequent to the sale and thus allowed Mr. Tucker to retain possession of his plates. This is clearly negligence on the part of the Plaintiff. This negligent act as indicated before, is in direct contravention of Section 28 of the Road Traffic Act Chapter 220.

11) Further, according to our renewal call records for the year 2020, the Plaintiff was contacted regarding his renewal premium. When our renewals clerk contacted the Plaintiff, he made no mention nor rendered any particulars advising that the said vehicle had been sold.

12) Further, in 2021, during the pandemic, (wherein standard business practices were severely affected and abrogated), in an effort to limit in-person contact between staff and clients, we were forced to loosen our renewal procedures. Like most other insurance companies who relaxed their policies, we did not require policy owners, including the Plaintiff, to sign a renewal contract after a one-year break in coverage. Breaks in Insurance coverage were not uncommon during this period since there was no obligation to license vehicles. This relaxed procedure was in correlation to the emergency orders that were set in place by the competent authority; wherein, drivers were not required to license their vehicles during the lockdowns.

13) In 2021, when the policy coverage was renewed by Mr. Tucker, no adjustments or changes were made to the policy; i.e., no additional drivers were added nor was Mr. Tucker made an authorized driver. Further, it is not unusual for customers to have a third party renew a policy. This is allowed provided there are no changes being made. As a third party, because Mr. Tucker did not request any changes to the policy, (which would have raised a procedural red flag for our attending agent), the renewal of insurance and reissuance of the certificate thereof, was made based on the submitted original policy certificate in possession of Mr. Tucker and paid for in full by him.

[5] During cross-examination, Mr. Knowles accepted that an employee of the company called the Plaintiff a year after the policy was taken out to advise that the policy was up for renewal, but denied that this call had anything to do with cancellation. He denied being obligated to inspect the vehicle prior to renewal of the policy, and stated that vehicles were never inspected for third party coverage. Mr. Knowles also insisted that there was nothing improper about a third party renewing an insurance policy on behalf of the original policy holder, once no changes were made to the original contract.

THE PLAINTIFF'S SUBMISSIONS

[6] Upon the completion of the evidence in this case, the parties were directed to provide written closing submissions by 30th June 2023. Despite an extensive wait, no submissions were ever received from the Plaintiff. However, in reviewing the matter, it is apparent that the Plaintiff contends that the Defendant was aware that the vehicle had been sold, and should not have renewed the insurance policy, which amounted to negligence on the part of the Defendant. As a result of that alleged negligence, the Plaintiff contends that he was harassed by the members of the Royal Bahamas Police Force because of the collision involving Patrick Tucker, to whom the vehicle had been sold. The Plaintiff contends that the Defendant owed a duty of care to ensure that the person renewing the policy had an insurable interest, and that by failing in that duty, the Plaintiff suffered loss and damage.

THE DEFENDANT'S SUBMISSIONS

[7] The Defendant submits that the Plaintiff is required to establish that the Defendant owed a duty of care to the Plaintiff, and breached that duty, resulting in loss to the Plaintiff. It is suggested that the Plaintiff has provided no evidence to support the claim of negligence, and has failed to demonstrate that any harm suffered by the Plaintiff was reasonably foreseeable. The Defendant says that, on the evidence, the Plaintiff well knew the proper procedure to be utilized to cancel an insurance policy, but failed to follow that procedure, and is therefore in breach of clause 9 of the insurance contract.

[8] The Defendant also contends that they were not negligent in renewing the insurance policy as, they suggest, there is nothing prohibiting a third party from paying for and renewing a policy on behalf of another, as long as there are no changes to the policy As the policy had not been formally cancelled, the company had no notice that the Plaintiff no longer had an insurable interest in the vehicle. They also emphasize that on the admissions of the Plaintiff, the vehicle had been sold with the license plates attached, with the result that any harassment suffered by the Plaintiff was as a result of the actions of the third party, Tucker, being involved in a collision, and those plates being traced to the Plaintiff. It is therefore submitted that the Plaintiff is entirely responsible for any misfortune he may have endured, and, further, that no evidence has been led of any actual embarrassment or harassment, with the result that the Plaintiff has provided no evidence of any loss.

[9] The Defendant further submits that the Plaintiff has failed to establish that the Defendant committed any act which was injurious to the Plaintiff, or which caused any loss that is actionable. The Defendant relies on the authorities on **Wong v Parkside Health NHS Trust (2001) EWCA**

Civ 1721, and **Wainwright v Home Office (2003) UKHL 53** to support the contention that no actionable tort has been committed, and urge the court to dismiss this action with costs.

ANALYSIS AND DISCUSSION

[10] From the evidence of the witnesses, I make the following findings of fact. The Plaintiff was in the business of buying, importing, and selling vehicles, and was the owner of a 2009 Mitsubishi Colt, which he licensed. The vehicle was insured with the Defendant for the period 11th January 2019, to 11th January 2020. The insurance policy contained a clause at paragraph 9 of the section labelled "Conditions" which read as follows:

> "The Company may cancel this Policy by sending seven days notice by registered letter to the insured at his last known address and in such event will return to the insured the premium paid less the pro rata portion thereof for the time during the current Period of Insurance the Policy has been in force or the Policy may be cancelled at any time by the Insured on seven days notice and (provided no claim has arisen during the current period of Insurance and the current Certificate(s) of Insurance has been returned to the Company on or before the date of cancellation) the Insured shall be entitled to the difference (if any) between the premium paid and the premium calculated at the Company's Short Period rates for the time during the current Period of Insurance the Policy has been in force."

[11] The Plaintiff then sold that vehicle on 1st March 2019 to one Patrick Tucker, just two months after it was initially purchased, with the license plates attached. The Plaintiff claimed in his witness statement that on or about March 1st 2019, he notified the Defendant that he was no longer the owner of the vehicle. However, in cross-examination, he was asked whether he called and informed the Company that he had sold the vehicle and requested that the policy be cancelled, and he stated that they called him, and he informed them that he sold the vehicle. Later in his evidence, after indicating that he received a call from a member of staff at Shield Insurance, he stated that he was not familiar with the person, "but normally it is protocol, they does normally call you and ask you if you would like to renew your insurance and stuff. When the lady called I told her I already sold the vehicle and she said okay, she would make note of it." I therefore find this evidence to be in direct contradiction to the contents of the witness statement, as that conversation with a staff member could not have been in March 2019, as the policy did not require renewal until January 2020. I therefore do not find the Plaintiff to be a credible witness. As a result I reject the evidence of the Plaintiff, and accept the evidence of the Defendant, which I find to be credible. That evidence includes paragraph 11 of the Witness Statement of the Lloyd Howard Knowles, in which he indicates that the records of the Company do not indicate that anything was said during

the call about the vehicle being sold, with the result that the Company was not aware until after the collision that the Plaintiff no longer had an insurable interest in the vehicle.

[12] I further do not accept that the Plaintiff ever cancelled the insurance policy in accordance with clause 9 cited above, or at all. That clause requires the Insurance Certificate to be returned, which the Plaintiff accepted he never did, in breach of section 16(1)(b) of the Road Traffic Act Chapter 220, which requires the holder of an Insurance Certificate to surrender the same to the insurer within 14 days of the cancellation of a policy. The Insurance Certificate and the license plates for the vehicle were therefore in the possession of the purchaser of the vehicle, one Patrick Tucker, who was then able to present that certificate to the Company on 18th January 2021 and renew the Insurance, which was still in the name of the Plaintiff. The vehicle was then involved on 8th October 2021 in a hit and run accident with Monette Cartwright, who had to chase the vehicle to obtain the license plate information and make a report to the police. A claim was made to the Insurance Company, who then cancelled the policy.

[13] I further find that any contact between the Plaintiff and the police following this accident was as a result of the licence plates and disc which were attached to the vehicle, and which the Plaintiff had neglected to remove when selling the vehicle. The vehicle was therefore still registered in his name, which information would have been readily available upon checks being made at the Road Traffic Department.

[14] The Plaintiff complains that Patrick Tucker was able to insure the vehicle in the Plaintiff's name without authorization. That might be so, but Tucker was in fact in possession of the Insurance Certificate, which should only by then have been in the possession of the holder of the policy. I therefore conclude that the Plaintiff is solely responsible for the failure to surrender the Insurance Certificate. I am further unable to conclude that the Defendant was negligent in renewing the policy at Tucker's behest, given the policy of the Defendant to do so once there were no changes to the policy, and the fact that the insurance certificate was in Tucker's possession, and I further accept that it is not unusual or unreasonable for persons to send others to pay for a renewal.

[15] It is well settled that in order for a Plaintiff to be successful in an action for negligence, they must prove the existence of a duty of care, a breach of that duty, and damage flowing from that breach. In the landmark case of **Donoghue v Stevenson [1932] AC 562**, the following formulation was stated:

> **"The rule that you are to love your neighbour becomes, in law, you must not injure your neighbour; and the lawyer's question, 'Who is my neighbour?' receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be –**

persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected."

[16] It can be seen from this that it must be reasonably foreseeable that a breach of a duty of care owed to another will result in actionable harm. In considering the facts of this case, I am unable to conclude that it was reasonably foreseeable that a renewal of the insurance policy by the Defendant would lead Patrick Tucker to be involved in an accident, and to flee from that accident, and for the vehicle to then be traced to the Plaintiff, who was then justifiably questioned by the police and pursued for compensation by the person who suffered damage at the instance of Tucker. In fact, I am satisfied that any harassment or inconvenience suffered by the Plaintiff was as a result of his own actions in failing to secure the licence plates which were registered to him, and which were then undoubtedly used to trace the vehicle.

[17] The Defendant also takes the point that the Plaintiff has not established that he suffered any injury which is actionable, as there is no evidence of anything more than him being annoyed and inconvenienced. In the case of **Wainwright v Home Office (2003) UKHL 53** cited by the Defendant, the House of Lords said as follows:

41 Commentators and counsel have nevertheless been unwilling to allow Wilkinson v Downton to disappear beneath the surface of the law of negligence. Although, in cases of actual psychiatric injury, there is no point in arguing about whether the injury was in some sense intentional if negligence will do just as well, it has been suggested (as the claimants submit in this case) that damages for distress falling short of psychiatric injury can be recovered if there was an intention to cause it. This submission was squarely put to the Court of Appeal in Wong v Parkside Health NHS Trust [2003] 3 All ER 932 and rejected. Hale LJ said that before the passing of the Protection from Harassment Act 1997 there was no tort of intentional harassment which gave a remedy for anything less than physical or psychiatric injury. That leaves Wilkinson v Downton with no leading role in the modern law.

42 In Khorasandjian v Bush [1993] QB 727, the Court of Appeal, faced with the absence of a tort of causing distress by harassment, tried to press into service the action for private nuisance. In Hunter v Canary Wharf Ltd [1997] AC 655, as I have already mentioned, the House of Lords regarded this as illegitimate and, in view of the passing of the 1997 Act, unnecessary. I did however observe, at p 707:

"The law of harassment has now been put on a statutory basis ... and it is unnecessary to consider how the common law might have developed. But as at

present advised, I see no reason why a tort of intention should be subject to the rule which excludes compensation for mere distress, inconvenience or discomfort in actions based on negligence ... The policy considerations are quite different."

43 Mr Wilby said that the Court of Appeal in Wong's case should have adopted this remark and awarded Ms Wong damages for distress caused by intentional harassment before the 1997 Act came into force. Likewise, the prison officers in this case did acts calculated to cause distress to the Wainwrights and therefore should be liable on the basis of imputed intention as in Wilkinson v Downton [1897] 2 QB 57.

44 I do not resile from the proposition that the policy considerations which limit the heads of recoverable damage in negligence do not apply equally to torts of intention. If someone actually intends to cause harm by a wrongful act and does so, there is ordinarily no reason why he should not have to pay compensation. But I think that if you adopt such a principle, you have to be very careful about what you mean by intend. In Wilkinson v Downton Wright J wanted to water down the concept of intention as much as possible. He clearly thought, as the Court of Appeal did afterwards in Janvier v Sweeney [1919] 2 KB 316, that the plaintiff should succeed whether the conduct of the defendant was intentional or negligent. But the Victorian Railway Comrs case 13 App Cas 222prevented him from saying so. So he devised a concept of imputed intention which sailed as close to negligence as he felt he could go.

45 If, on the other hand, one is going to draw a principled distinction which justifies abandoning the rule that damages for mere distress are not recoverable, imputed intention will not do. The defendant must actually have acted in a way which he knew to be unjustifiable and either intended to cause harm or at least acted without caring whether he caused harm or not. Lord Woolf CJ, as I read his judgment [2002] QB 1334, 1350, paras 50-51, might have been inclined to accept such a principle. But the facts did not support a claim on this basis. The judge made no finding that the prison officers intended to cause distress or realised that they were acting without justification in asking the Wainwrights to strip. He said, at paragraph 83, that they had acted in good faith and, at paragraph 121, that: "The deviations from the procedure laid down for strip-searches were, in my judgment, not intended to increase the humiliation necessarily involved but merely sloppiness."

46 Even on the basis of a genuine intention to cause distress, I would wish, as in Hunter's case [1997] AC 655, to reserve my opinion on whether compensation should be recoverable. In institutions and workplaces all over the country, people constantly do and say things with the intention of causing distress and humiliation to others. This shows lack of consideration and appalling manners but I am not sure that the right way to deal with it is always by litigation. The Protection from Harassment Act 1997 defines harassment in section 1(1) as a "course of conduct" amounting to harassment and provides by section 7(3) that a course of conduct must involve conduct on at least two occasions. If these requirements are satisfied, the claimant may pursue a civil remedy for damages for anxiety: section 3(2). The requirement of a course of conduct shows that Parliament was conscious that it might not be in the public interest to allow the law to be set in motion for one boorish incident. It may be that any development of the common law should show similar caution.

47 In my opinion, therefore, the claimants can build nothing on Wilkinson v Downton [1897] 2 QB 57. It does not provide a remedy for distress which does not amount to recognised psychiatric injury and so far as there may be a tort of intention under which such damage is recoverable, the necessary intention was not established. I am also in complete agreement with Buxton LJ [2002] QB 1334, 1355-1356, paras 67-72, that Wilkinson v Downton has nothing to do with trespass to the person.

[18] In the circumstances of this case, there is no evidence that the Plaintiff suffered any actionable injury, nor is there any evidence of any intentional actions on the part of the Defendant which led to the distress of the Plaintiff, so that, even if the Defendant had been found to have been negligent and breached a duty of care, which I have not found, there is no evidence of any damage flowing from that supposed breach.

CONCLUSION

[19] In all the circumstances of this case, and for the reasons set out above, the action is dismissed, with costs to the Defendant to be assessed by this court if not agreed.

Dated this 21st day of August, A.D. 2024

Neil Brathwaite
Justice