



[2024] JMCC Comm 02

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO: SU2021CD00400

BETWEEN	BONUS CAR RENTAL AND SERVICES LIMITED	CLAIMANT
AND	IAN DUNN	DEFENDANT

IN OPEN COURT

Appearances: Mr. Harrington McDermott instructed by McDermott Reynolds  
McDermott for the Claimant

Mr. Ronald Paris instructed by Paris & Co for the Defendant

Heard: 10<sup>th</sup> October 2023 and 23<sup>rd</sup> January 2024

Assessment of Damages – Detinue – Breach of Fiduciary Duty – Equitable  
Damages

**BROWN BECKFORD J**

**INTRODUCTION**

[1] The genesis of this Assessment of Damages is grounded in a derivative claim brought by Bonus Car Rental and Services Limited (“**the Company**”), against one of its directors, Ian Dunn. The Company sought an injunction and damages for breach of fiduciary duty and/ or conflict of interest, detinue and/ or conversion, and losses as a

consequence of operating without its property. The Defendant's liability was determined by Default Judgment granted on 28<sup>th</sup> March 2022, with damages to be assessed.

[2] At the close of the hearing, the parties were ordered to file written submissions by 31<sup>st</sup> October 2023. Submissions were filed on behalf of the Claimant but none were received on behalf of the Defendant.

## **BACKGROUND**

[3] The Claimant is a limited liability company incorporated under the laws of Jamaica with its core business being the rental of motor vehicles. Mr. Robert Sprague provided the startup capital for the company, he said by way of a Director's Loan, while Mr. Ian Dunn had the responsibility of overseeing the day-to-day operations of the business. Each had a fifty percent (**50%**) shareholding in the Company, and both were named the first Directors.

[4] Differences developed between Mr. Dunn and Mr. Sprague, and Mr. Sprague purported to remove Mr. Dunn from the day-to-day supervision of the Company's operations and assign him to supervise the daily operations of the Company's companion business, Bonus Parts Accessories & Auto Imports Limited. A discussion between the two men on the 8<sup>th</sup> of December 2020 to resolve the issues came to naught, and on or about 9<sup>th</sup> December 2020, Mr. Dunn ceased to work or engage with the operations of the Company. Subsequent to his departure, Mr. Dunn supposedly:

- (i) removed four (**4**) of the Company's motor vehicles along with their respective titles, registration papers and road licences;
- (ii) changed the password on the Company's car rental tracker application, thereby preventing the Company from tracking the whereabouts of the vehicles;
- (iii) withdrew the sum of One Million Six Hundred and Forty Thousand Dollars (**JMD\$1,640,000.00**) from the Company's business account, said withdrawal not being accounted for as a Company expense; and

(iv) used the Company's vehicles detained by him in the operation of his newly formed business, Falcon Auto Parts & Vehicle Accessories Limited.

[5] Between 29<sup>th</sup> December 2020 and 15<sup>th</sup> April 2021, several requests were made to Mr. Dunn for the return of the vehicles and the relevant documents. However, each appeal was met with silence or bare refusal. On 15<sup>th</sup> April 2021, Mr. Sprague gave notice of a Board of Directors meeting to Mr. Dunn, complying with **S. 212 of The Companies Act** of Jamaica, the agenda being to authorize the Company to take action against Mr. Dunn if he continued to detain the property of the Company. Mr. Dunn did not attend this meeting.

#### *COURT PROCEEDINGS & EVENTS FOLLOWING*

[6] Mr. Sprague sought leave of the court to commence a derivative action pursuant to **S. 212 of The Companies Act** on behalf of the Company, against Mr. Dunn, for the breach of his fiduciary duties to the Company and to recover all assets, items and property of the Company. Batts J granted permission for the commencement of the claim. The claim was filed on 16<sup>th</sup> September 2021 and served on Mr. Dunn. Mr. Dunn failed to file an Acknowledgement of Service or a Defence within the time stipulated by the **Civil Procedure Rules ("CPR") 2002 (as amended on the 3rd of August 2020)**. Consequently, on 28<sup>th</sup> March 2022, this Court entered Default Judgment against the Defendant, granting the following orders inter alia:

1. Application is granted as phrased in terms of paragraphs 1-3 of the Notice of Application filed on the 18<sup>th</sup> January 2022:
  - I. Judgment is entered against the Defendant.
  - II. An injunction requiring the Defendant to quit and deliver up possession of all the Claimant's property including:
    - (i) Motor vehicles:
      - (a) Nissan Latio with license plate no. 7520HR and chassis no. N17000118;

- (b) Toyota Hiace with license plate no. 9219HT and chassis no. KDH2230015222;
  - (c) Toyota Vitz with license plate no. 5409HQ and chassis no. NSP1302082247;
  - (d) Nissan Sylphy with license plate no. 3653HS and chassis no. TB17005956;
- (ii) Keys for said motor vehicles identified at 2(i) above;
- (iii) All documents relating to the ownership and / or control of said motor vehicles but not limited to:
- a. Vehicle Titles;
  - b. Registration Papers;
  - c. Road Licences;
- III. All other assets of the Claimant that are in the Defendant's possession and/ or control;
- IV. All stamps and seals that belong to the Claimant that are in the Defendant's possession and/or control.
- V. Damages to be assessed.
2. The Defendant is to comply with orders 1 & 2 within 7 days of the date of service on him of this order. This order is to be endorsed with Penal Notice;
3. Pre-trial Review for assessment of damages is fixed for September 20<sup>th</sup> 2022 at 11:00 am for 1 hour;
4. Cost of the claim and this Application to the Claimant to be agreed or taxed.

5. The Claimant's Attorneys-at-Law are to prepare, file and serve a copy of this order.

[7] Mr. Dunn did not comply with the Order for the return of the Company's vehicles. Consequently, Mr. Sprague engaged the services of a Bailiff who was able to successfully retrieve the motor vehicles and the relevant documents on 3<sup>rd</sup> November 2022.

## **SUBMISSIONS**

[8] The Court was grateful to receive the skeleton submissions and final submissions filed on behalf of the Claimant and had regard to them in their entirety, though only portions of them are referred to in the Judgment.

## **CLAIMANT'S SUBMISSIONS**

[9] Counsel on behalf of the Claimant, Mr. Harrington McDermott, submitted that in cases where goods were detained and have been returned damages should be awarded for detinue. He submitted that the Defendant detained the Claimant's profit earning goods thereby causing the Claimant to suffer substantial loss. He relied on **Dion Moss v The Attorney General of Jamaica Anor** [2017] JMCA Civ 13, for the principle that the normal measure of damages is the loss suffered through the detention of the goods, which sum would be the market rate at which the goods could have been hired during the period of detention. He also submitted, relying on the same case, that damages for detinue should be assessed from the date of the Defendant's refusal to deliver up the motor vehicles to the date of their return.

[10] Further, Counsel contended that in assessing a reasonable award the Court is required to take into account any vagaries, imponderables, vicissitudes and imprecision in the calculation of the Claimant's loss. Recognising that the vehicles would not have been rented every day, he recommended that the Court reduce the amount of rental income claimed by fifteen percent (**15%**).

[11] It was also submitted that in instances of breach of fiduciary duty the Court can award equitable compensation for its losses. To this end reliance was placed on **Remedies for Torts and Breach of Contract**, 2<sup>nd</sup> Edition. Counsel contended that the Defendant, as a director of the Company, caused the Company to suffer loss as result of his detention of the motor vehicles, forming a competing business with that of the Claimant and using said detained motor vehicles in the competing business. However, Counsel noted that the compensatory objective for detinue, breach of fiduciary duty and conflict of interest is substantially the same. Therefore, the award for damages for the detention of the Claimant's motor vehicles would be sufficient to compensate the Claimant for being unable to benefit from the hiring out of said vehicles.

[12] Lastly, it was Counsel's submission that the Defendant should be ordered to pay the Claimant equitable compensation in the sum of One Million Six Hundred and Forty Thousand Dollars (**JMD\$1,640,000.00**) for its breach of fiduciary duty arising out of the Defendant's withdrawal of said sum from the Claimant's Bank of Nova Scotia account.

## **LAW AND ANALYSIS**

### *DAMAGES*

[13] The Claimant seeks damages for detinue, breach of fiduciary duty and/or conflict of interest. The fundamental compensatory principle underpins the assessment of damages in contract and tort law. The principle provides that the purpose of an award of damages is to compensate the injured party for loss, rather than to punish the wrongdoer. The general rule is that damages should, so far as a monetary award can, place the claimant in the same position as if the contract had been performed or the tort had not

been committed. In **Murray v Lloyd and others** [1990] 2 All ER 92 (“**Murray**”) the England & Wales Chancery Division summarized the general principle of damages as:<sup>1</sup>

*The starting point is that the object of any award of damages is to give a plaintiff compensation for damage, loss or injury suffered. The measure of damages is, in general, the sum required to put an injured party in the same position as he would have been in if he had not suffered the wrong for which compensation is being awarded.*

[14] This principle is equally applicable at common law and at equity. In the case of **AIB Group (UK) Plc v Mark Redler & Co Solicitors** [2014] UKSC 58 (“**AIB Group**”), the Court, in reviewing the dicta of Lord Browne-Wilkinson in the case of **Target Holdings Ltd (a firm) v Redferns** [1996] AC 421, stated:<sup>2</sup>

*He observed that...at common law there are two principles fundamental to an award of damages. First, the Defendant's wrongful act must cause the damage of which complaint is made. Second, the Plaintiff is to be put “in the same position as he would have been in if he had not suffered the wrong for which he is now getting his compensation or reparation” (Livingstone v Rawyards Coal Co (1880) 5 App Cas 25, 39, 44 JP 392, 28 WR 357, per Lord Blackburn). **Equity, he said, approaches liability for making good a breach of trust from a different starting point, but the same two principles are applicable as much in equity as at common law. Under both systems liability is fault-based: the Defendant is only liable for the consequences of the legal wrong he has done to the Plaintiff and to make good the damage caused by such wrong.** (emphasis mine)*

## DETINUE

[15] Detinue is a cause of action which aims to protect the proprietary interest of a litigant in personal property. It concerns unjustifiable refusal to return one’s property after a valid demand for the return of said property has been made. A claimant must show that he has title and the right to immediate possession of the property, that the property has some value, that the property is uniquely identifiable and was in the possession of the defendant prior to the claim being made. To succeed in a claim for detinue the claimant

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<sup>1</sup> [1990] 2 All ER 92, pg 96

<sup>2</sup> [2014] UKSC 58, para 26

must prove, to the civil standard, that he had a better right to possession of the property than the defendant, that an unconditional and specific demand was made for the return of the property and that the defendant unreasonably refused to return it. (See **Carol Campbell v The Transport Authority of Jamaica** [2016] JMSC Civ. 148)

[16] The law as applied in this jurisdiction was recently restated by the Court of Appeal in **Rowena Johnson Dennie v T/A Inspector Emmanuel and Others** [2023] JMCA Civ 40. Straw JA, with whom the other members of the Court agreed, said:<sup>3</sup>

*[35] The learned trial judge, in my view, properly stated the law as it relates to establishing detinue. The authorities on which she relied are the seminal authorities for our jurisdiction and bear repeating. Waddington JA, in the case of *George and Brandy Ltd v Lee* (1964) 7 WIR 275 at page 278E, stated:*

*“The gist of the cause of action in detinue is the wrongful detention, and in order to establish that, it is necessary to prove a demand for the return of the property detained and a refusal, after a reasonable time, to comply with such demand. The authorities establish that a demand must be unconditional and specific ...”*

*[36] Likewise, the Halsbury’s Laws of England, 3rd edition, Volume 38, at paragraph 1294 provides:*

*“Where, however, a person has possession of the goods of another and a valid demand is made for them by the owner, an unqualified and unjustifiable refusal to deliver them up entitles the owner to sue in detinue ...”*

*[37] The learned author, John G Flemming in *The Law of Torts* 8th edition, at page 58, opines as follows:*

*“10 - Merely being in possession of another’s goods without his authority is not a tort. If lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep them adversely or in defiance of his rights. (see: *Spackman v Foster* (1883) 11 QBD 99) ... To establish that the detention has become adverse and in defiance of his rights, the claimant must prove that he demanded return of the chattel and that the defendant refused to comply... but such refusal must be categorical; if*

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<sup>3</sup> [2023] JMCA Civ 40, para 35-3



*qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the plaintiff's rights, it amounts to neither detinue nor conversion. One does not always act unreasonably in refusing to deliver up property immediately on demand but may inquire first into the rights of the claimant. Moreover, a mere omission to reply to a letter of demand cannot itself be construed as a refusal (see: Nelson v Nelson [1923] QSR 37). ..."* (Emphasis supplied)

[17] In light of the authorities, the claimant may recover the specific item or be compensated in damages for the time he is without the property. In the case of **General & Finance Facilities Ltd v Cooks Cars (Romford) Ltd** [1963] 1 WLR 644, Diplock LJ espoused:<sup>4</sup>

*... an action for detinue today may result in a judgment in one of three different forms: (1) for the value of the chattel as assessed and damages for its detention; (2) for return of the chattel or recovery of its value as assessed and damages for its detention; or (3) or return of the chattel and damages for its detention.*

[18] The measure of damages was explained by Harrison JA in **Workers Savings & Loan Bank et al v Horace Shields** (unreported) Court of Appeal, Jamaica Supreme Court Criminal Appeal No 113/1998, judgment delivered 20 December 1999, who said:

*A person who is deprived of his chattel is ordinarily entitled to sue for its full value, together with any special loss that he may have suffered during the period of the unlawful detention, or he may sue in conversion or both, depending on the circumstances. **If the said property detained is a profit earning one, the loss to the plaintiff is the normal market rate at which the said property could have been hired out.** (Emphasis mine)*

[19] The Claimant relied on the case of **Dion Moss v The Attorney General of Jamaica and Anor** [2017] JMCA Civ 13, ("**Dion Moss**"). This case concerned a Bahamian national who brought his privately licensed airplane to Jamaica to explore a business opportunity, however, he was taken into custody by the narcotics police and his plane was seized by the United States Government. Subsequently, the appellant was sent back to the Bahamas without any charges being laid against him and it was later

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<sup>4</sup> [1963] 1 WLR 644, pg 650

discovered that the plane was ultimately forfeited by the United States authorities and sold at public auction. The plane was detained for approximately 18 years. The court had to determine whether the appellant would have earned an income from the aircraft for the entire period of 18 years. Morrison P (as he then was) found that, in light of the law on detinue, it was indisputable that the appellant was entitled to be awarded damages for loss of use of the aircraft from the date of the wrongful detention until the date of judgment.

**[20]** There is no challenge that Mr. Dunn detained the motor vehicles for approximately six hundred and ninety-four (**694**) days. The Company's submission that time began to run the moment Mr. Dunn refused to return the motor vehicles and ended on the date of said retrieval is unassailable. The Court of Appeal in **Attorney General and Transport Authority v Aston Burey** JMCA Civ 6, stated:<sup>5</sup>

*In detinue, time begins to run from the date of the refusal of the demand. Importantly, the act of the detention of the bus continues to be wrongful by reason of the appellant's failure to return it and the wrong continues until judgment – see Rosenthal v Alderson & Sons Ltd.*

**[21]** The core business of the Company is the rental of motor vehicles. The possibility that the detention of its motor vehicles would affect the earning potential of the Company is without doubt, therefore, it was foreseeable that the Company would suffer loss from the actions of Mr. Dunn. The following is the Company's evidence for each of the motor vehicles detained by Mr. Dunn and the rental fee payable per day.

- (i) Nissan Latio licensed 7520HR - USD\$40.00
- (ii) Toyota Hiace licensed 9219HT - USD\$85.00
- (iii) Toyota Vitz licensed 5409HQ – USD\$35.00
- (iv) Nissan Sylphy licensed 3653HS – USD\$50.00

The Company claims damages for the duration of the six hundred and ninety-four (**694**) days that the vehicles were detained, discounted by fifteen percent (**15%**) as the

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<sup>5</sup> JMCA Civ 6, para 12

Company has acknowledged that there was insufficient evidence to determine the frequency of the rental of the relevant motor vehicles. In support of its claim, the Company exhibited rental receipts from GeoPaul Car Rentals and Sales Limited, a company with who the Company had a sub-rental contract. The sub-rental agreement was dated 14<sup>th</sup> May 2022 and was executed by Mr. Sprague and Mr. George Edwards, Director of GeoPaul Car Rentals, on 19<sup>th</sup> August 2022 and 14<sup>th</sup> August 2022, respectively. The date of the execution of this agreement was in line with Mr. Sprague's evidence that the detention of the vehicles by Mr. Dunn resulted in these vehicles not being included in the sub-rental agreement with GeoPaul.

**[22]** The evidence presented by the Company was deficient in a number of respects. Firstly, there was no evidence of the frequency of the rental of the detained motor vehicles prior to their detention, or any of the other motor vehicles for that matter. Secondly, there is no evidence of them being rented or the frequency of their rental subsequent to their release.

**[23]** The sub-rental contracts with GeoPaul does not establish the number or frequency of the vehicles rented by it (as admitted by the Claimant). This sub-rental contract with GeoPaul Car Rentals was however just one element of the business which the Company operated, as the Company still had the option of renting vehicles directly to their consumers. This was made evident in clause 9 of the sub-rental contract.<sup>6</sup> Therefore, if the Company's motor vehicles were being rented otherwise than through GeoPaul, the Company should have provided its own receipts evidencing such rental of its vehicles. However, there were none.

**[24]** The Court draws a negative inference as to the frequency of the rental of its vehicles from the Company not providing any such evidence. On assessing the evidence therefore, all that was before the Court for consideration were receipts for rentals spanning 25<sup>th</sup> May 2022 – 1<sup>st</sup> April 2023.

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<sup>6</sup> Exhibit 4

[25] I accept that it was owing to this period of detention that the vehicles were not included in the list of vehicles to be used under the contract with GeoPaul, and, as such, none of the rentals receipts from GeoPaul concerned any of the four (4) vehicles.

[26] On closer examination of the GeoPaul receipts, the Court took note of several inconsistencies which led to the reliability of the document being questioned. On some receipts the period of rental was not consistent with the sums charged or there were unexplained refunds. In light of the foregoing, I find that the evidence of Company is inadequate, the result being that the Court is unable to precisely compute the frequency at which the motor vehicles in question would have been rented.

[27] I wish to emphasize that there is no way to exactly quantify the amount of the losses of the Company, consequently, the award of damages is based on the probabilities. I find the case of **SPE International Ltd v PPC (UK) Ltd** [2022] EWHC 881 (Ch) ("**SPE International Ltd**"), instructive on the path to be embarked on by the Court in circumstances such as these. In that case, Counsel submitted that there was no basis for an assessment of damages considering that there was an absence of evidence to support licensing arrangements for shotblasting machines for which royalty was paid. In considering this submission, Rimer J had this to say:<sup>7</sup>

*[86] I have to say that I find that submission an unattractive one. The absence of any evidence as to a relevant licensing arrangement does not mean that such an arrangement is an impossible one. In principle, I can see no reason why a notionally willing licensor and a like licensee should not come to an arrangement for the licensing of a shot blasting machine in consideration of the payment of a royalty calculated on some appropriate basis. The fact that there is no solid evidence that this has been done before does not mean that it cannot be done at all. Equally, if someone makes an unauthorised use of another's machine for his own purposes, I can see no good reason why he should not pay proper compensation for the damage occasioned to the other's property right by the unlawful use so made. Compensation by reference to a notional fee for the unauthorised use would, in my view, ordinarily be regarded as a fair and proper basis on which to provide compensation. For the court to refuse any compensation at all simply because there was no evidence that machines of that sort had*

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<sup>7</sup> [2022] EWHC 881 (Ch), para 86 - 87

*ever been licensed out for a royalty would appear to me to involve a denial of justice. In *Watson, Laidlaw & Co Ltd v Pott, Cassels, and Williamson* [1914] 31 RPC 104, Lord Shaw said at p 119 that: ". . . wherever an abstraction or invasion of property has occurred, then, unless such abstraction or invasion were to be sanctioned by law, the law ought to yield a recompense under the category or principle, as I say, either of price or hire." He had also said earlier, on p 118, that: "The restoration by way of compensation is therefore accomplished to a large extent by the exercise of a sound imagination and the practice of a broad axe.*

*[87] In this case, my rejection of Mr Dean's evidence means that SPE is left seriously short of material by way of proof of its loss under this head. But even with that evidence, it has real difficulties in the way of proof, since there is still no safe or reliable guide as precisely when the four infringing machines were made, or as to their respective use over the years until the expiry of the copyright on 31 July 1999, or as to how a fair royalty rate might be calculated. **However, SPE's failure - and to some extent inability - to adduce better evidence than it has ought not, in my view, to mean that it should simply be left to recover nothing,** which is what Mr Counsell and Mr Glew urged. PPC's manufacture and use of its infringing machines has involved a damage to SPE's property right and is analogous to the unauthorised use of another's property. The admissible evidence I have heard satisfies me that SP20s are valuable, and potentially very profitable, machines, and that PPC made intensive use of its infringing copies over a period of about seven or eight years. In principle, SPE must be entitled to compensation for that, and I can see no reason why I cannot and should not assess it by reference to a notional royalty payable under a notional licence agreement. **The evidence leaves me short of information enabling me to make a precise calculation, and I can inevitably only adopt a somewhat rough and ready one. That may work to SPE's disadvantage, since I also consider that I should err on the side of under-compensation. But inadequate compensation is better than none.** In the circumstances of this case, I propose to take a broad axe and assess a sum of damages by reference to a notional royalty which will (a) reflect the uncertainty of the extent of the use of the infringing machines made by PPC, and (b) will also give PPC the benefit of any doubts in the calculation. I assess the damages payable to SPE by PPC and Mr Glew at £40,000. (Emphasis mine)*

**[28]** This case is one of numerous authorities which symbolizes the Court's determination and continuous efforts to provide a remedy in cases where a party has suffered an injury or loss. Again, as enunciated by the Court in the cases of **Murray** and **AIB Group**, the general rule is to put the injured party, as far as possible, in the same position he would have been had he not sustained the wrong.

[29] This was the position of the Court of Appeal in **Dion Moss**, as relied on by the Company, where McDonald Bishop JA said:<sup>8</sup>

*I conclude, in all the circumstances, that there would have been several vagaries, imponderables and vicissitudes that could have affected the aircraft's continued operation, earnings and profitability. As such, there can be no precision in this award, especially when one bears in mind that a large part of the appellant's evidence, and the calculations proposed by counsel on his behalf, were based on guesstimates. This court will have to do its best to arrive at a fair and reasonable award for the loss of use during the period of detention. Therefore, taking into account all the evidence and the circumstances of the case, I do believe that allowing a discount of four years from the 18 years would be reasonable in making some allowance for the vagaries, imponderables, vicissitudes and imprecision in the evidence. This would translate into a discount from the damages of roughly 22%.*

[30] In light of the foregoing authorities, it is not lost on the Court that the value of the presence of motor vehicles were essential for the profitability of the Company, however, I could not imagine that in the almost two years in which the four **(4)** motor vehicles were detained, they would not have been rented. The GeoPaul rental receipts exhibited were useful in evincing the Company's active business of rentals.

[31] For the reasons outlined above, the Company must be entitled to compensation. Owing to the lack of evidence to determine the precise calculation of the award, I will, as the Court did in **SPE International Ltd**, apply a broad axe in quantifying the award. Consequently, the Court sought to award damages, based on the Geo Paul Contract, using the average days of the rental of motor vehicles per month. This calculation was arrived using the following formula:

*Individual Motor Vehicle average by type*

$$\frac{\text{Days rented}}{\text{Number of Months rented}}$$

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<sup>8</sup> [2017] JMCA Civ 13, para 74

*Average Days of the Rental*

$$\frac{\text{Sum of Individual Motor Vehicle average}}{\text{Number of Car Types}}$$

**[32]** The attached appendix reflects the above formula. The average days of rental of motor vehicles per month is eight **(8)** days. Therefore, the Company will be awarded damages for eight **(8)** days out of the month for each motor vehicle, at its rate of rental for the twenty-two **(22)** months detention period.

**[33]** The Company also exhibited an invoice, dated 3<sup>rd</sup> November 2022, for the sum of Sixty Thousand Dollars **(JMD\$60,000.00)** for wrecker fees paid for the recovery of three **(3)** of the four **(4)** motor vehicles which were detained.<sup>9</sup> I accept that these financial losses were sustained by the Company as a result of the detention of the vehicles by Mr Dunn.

**[34]** Damages is hereby awarded as follows:

- (i) Nissan Latio licensed 7520HR - USD\$7,040.00
- (ii) Toyota Hiace licensed 9219HT - USD\$14,960.00
- (iii) Toyota Vitz licensed 5409HQ – USD\$6,160.00
- (iv) Nissan Sylphy licensed 3653HS – USD\$8,800.00
- (v) The sum of JMD\$60,000.00 for Wrecker fees

*OTHER DAMAGES*

**[35]** In **First Financial Caribbean Trust Company Limited v Delroy Howell and others** (unreported), Supreme Court, Jamaica, Claim No. 2010 CD 00086, judgment

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<sup>9</sup> Exhibit 2

delivered 5 May 2011, Brooks J (as he then was) dealt with the question of equitable damages. Referring to the case of **Extrasure Travel Insurances Ltd and another v Scattergood and another** [2002] All ER (D) 307, he said:<sup>10</sup>

*The trial judge, in considering that, in light of Extrasure's debt, it would be wrong to award judgment in the amount of the sum transferred, gave judgment for Extrasure "for equitable compensation to be assessed, on the basis that the compensation should be quantified by reference to the amount by which the assets of Extrasure have in fact been diminished".*

*Equitable compensation was first introduced by the decision of the House of Lords in Nocton v Lord Ashburton [1914] A.C. 932. This mode of relief is available where there has been failure to disclose a conflict of interest; where there has been a breach of the equitable obligation of confidence or, thirdly, where there has been a disposal of trust property in breach of trust. "Equitable compensation for breach of trust is designed to achieve exactly what the word compensation suggests: to make good a loss in fact suffered by the beneficiaries and which, using hindsight and common sense, can be seen to have been caused by the breach" (per Lord Browne Wilkinson in Target Holdings Ltd v Redferns [1995] UKHL 10 at page 12; [1996] A.C. 421 at page 439 A). (Emphasis mine)*

The grant of Summary Judgment was reversed on appeal but the principle stated was not disturbed.

[36] Counsel for the Claimant rightly conceded that where there was a breach of fiduciary duty or conflict of interest, a claimant would be entitled to equitable damages. As stated above in **AIB Group**, the method arriving at a compensation will substantially be the same as compensation for detinue. One or the other has to be chosen to avoid double compensation. I agree therefore that no separate award should be made for breach of fiduciary duty and/or conflict of interest in so far as the detention of the vehicles is concerned.

[37] The Company asserted that Mr. Dunn withdrew the sum of One Million Six Hundred and Forty Thousand Dollars (**JMD\$1,640,000.00**) from the Company's Bank of Nova Scotia ("**BNS**") account and that said sum was not accounted for as a business

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<sup>10</sup> (unreported), Supreme Court, Jamaica, Claim No. 2010 CD 00086, judgment delivered 5 May 2011, pg 26-27



expense, or otherwise done for/or on behalf of the Company. This withdrawal was supported by the Company's bank statements from the Bank of Nova Scotia for the period 1<sup>st</sup> December 2020 to 31<sup>st</sup> December 2020.<sup>11</sup> There was no contest of these assertions by Counsel for Mr. Dunn in the cross-examination of Mr. Sprague. I accept that these financial losses were sustained by the Company. I therefore award equitable damages to the Company in the sum of One Million Six Hundred and Forty Thousand Dollars **(JMD\$1,640,000.00)**.

## **ORDERS**

Damages are assessed as follows:

1. Damages for detinue for the detention of the Claimant's vehicles in the sum of USD\$36,960.00 with interest at the rate of 3% from December 10, 2020 to the date of Judgment plus the sum of JMD\$60,000.00.
2. Equitable damages in the sum of JMD\$1,640,000.00 with interest at the rate of 3% from December 10, 2020 to the date of Judgment.
3. Costs to the Claimant to be taxed if not sooner agreed.
4. Leave to appeal is refused.
5. Application to Stay Execution of Judgment is refused.
6. Claimant's Attorney-at-Law to prepare, file and serve Formal Order.

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Judge

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<sup>11</sup> Exhibit 1

**APPENDIX**

**1. Nissan Latio 0965HQ - \$40**

Month		Date Rented	Date Returned	Days	Total # of Days
1.	June	17/06/22	23/06/22	6	
					6
2.	July	04/07/22	06/07/22	2	
		06/07/22	09/07/22	3	
		11/07/22	18/07/22	7	
		15/07/22	16/07/22	1	
		22/07/22	24/07/22	2	
		29/07/22	31/07/22	2	
		30/07/22		2	
3.	August		04/08/22	3	
		19/08/22	21/08/22	2	
		27/08/22	29/8/22	2	
					7
4.	December	16/12/22	23/12/22	7	
5.	January	02/01/23	07/01/23	5	
		21/01/23	23/01/23	2	
		30/01/23	31/01/23	1	
					8
					53

**Avg = 53/5 = 10.6**

**Avg = 11**

**2. Honda CRV 7092HR \$75**

Month		Date Rented	Date Returned	Days	Total # of Days
1.	June	09/06/22	26/06/22	7	Sum of receipt = 7 days, days written 7 however days returned equal to 17.
		30/06/22		1	
2.	July		04/07/22	3	

		30/07/22		2	
					5
3.	August		08/08/22	7	
		30/08/22		1	
					8
4.	September		06/09/22	3	
		04/09/22	05/09/22	1	
		23/09/22	30/09/22	7	
					11
5.	October	16/10/22	22/10/22	6	
		28/10/22		4	
					10
6.	November		03/11/22	2	
		10/11/22	14/11/22	4	
		21/11/22	26/11/22	5	
					11
7.	December	01/12/22	12/12/22	11	
		22/12/22	26/12/22	4	
					15
8.	January	24/01/23	30/01/23	6	
					6
9.	February	12/12/23	13/02/23	1	
		22/02/23	24/02/23	2	
					3
10.	March	17/03/23	20/03/23	3	
		26/03/23	31/03/23	5	
		30/03/23		2	
					10
11.	April		11/04/23	10	
					10
					<b>97</b>

**Avg = 97/11 = 8.81**

**Avg = 9**

### 3. Toyota Vitz 5410HQ \$35

Month	Date Rented	Date Returned	Days	Total # of Days
1.	June	19/06/22	21/06/22	2
				2
2.	July	30/07/22	31/07/22	1
				1
3.	August	01/08/22	03/08/22	3

		04/08/22	08/08/22	4	
		20/08/22		22	
					29
4.	September		11/09/22	10	
		17/09/22	24/09/22	7	
		30/09/22			
					17
5.	October		01/10/22	1	
		05/10/22	06/10/22	1	
		12/10/22	19/10/22	7	
		24/10/22	26/10/22	2	
					11
6.	November	15/11/22	19/11/22	4	
					Days written = 4 however sum of receipt = \$250
					4

Avg = 64/6 = 10.66

Avg = 11

#### 4. Toyota Axio 0642HQ \$40

Month	Date Rented	Date Returned	Days	Total # of Days
1. June	30/06/22		1	
				1
2. July		02/07/22	1	
				1
3. August	12/08/22	19/08/22	7	
	24/08/22	31/08/22	1	
			1 day written there, however, an additional amount was written for an	

				unknown reason.	
					8
4.	September	10/09/22	13/09/22	3	
					3
5.	October	01/10/22	03/10/22	2	
		26/10/22		6	
					8
6.	November		03/11/22	3	
		04/11/22	09/11/22	5	
					8
7.	December	06/12/22	19/12/22	13	
		21/12/22	24/12/22	3	
					16
8.	January	09/01/23	23/01/23	14	
					14
9.	December	24/12/23		8	
			01/01/22		
					8
					<b>67</b>

**Avg = 67/9 = 7.44**

**Avg = 7**

### 5. Toyota Voxy 0045HQ \$70

Month	Date Rented	Date Returned	Days	Total # of Days
1. May	28/05/22		4	
				4
2. June		05/06/22	4	
	23/06/22	25/06/22	2	
				6
3. July	06/07/22	14/07/22	8	
				8
4. August	05/08/22	08/08/22	3	
	11/08/22	16/08/22	5	
				8
5. September	09/09/22	11/09/22	2	
	23/09/22	26/09/22	3	
	30/09/22		1	
				6
6. October		02/10/22	1	
	15/10/22	18/10/22	3	
	31/10/22		1	

					5
7.	November		03/11/22	2	
					2
					<b>39</b>

**Avg = 39/7 = 5.57**

**Avg = 6**

**6. Mitsubishi Galant-Fortis 0966HQ \$50**

Month	Date Rented	Date Returned	Days	Total # of Days
1.	July	22/07/22	25/07/22	3
				3
2.	August	24/08/22		8
				8
3.	September		14/09/22	13
				13
4.	October	29/10/22	30/10/22	1
				1
5.	December	11/12/22	14/12/22	3
		18/12/22	22/12/22	4
		22/12/22	29/12/22	7
				14
6.	January	04/01/23	22/01/23	18
				18
7.	February	11/02/23	18/02/23	4
				Sum of receipt = 12 days, however 4 days written there and days for rental= 15 days.
				4
8.	March	01/03/23	05/03/23	4
		11/03/23	13/03/23	2
				6
9.	April	01/04/23	03/04/23	2
				2
				<b>69</b>

**Avg = 69/9= 7.66**

**Avg = 8**

**7. Toyota Rav4 3651HS \$65**

Month	Date Rented	Date Returned	Days	Total # of Days
1.	July	06/07/22	08/07/22	2
		29/07/22		2
				4
2.	August		06/08/22	6
		19/08/22	26/08/22	7
		30/08/22		2
				15
3.	September		08/09/22	7
				7
4.	October	28/10/22		4
			01/11/22	
				4
5.	December	21/12/22	26/12/22	5
				5
				<b>35</b>

**Avg = 35/5 = 7**

**8. Toyota Vitz 5510HQ \$35**

**Not a part of the sub-rental contract, however,** the Company's vehicle listing (Exhibit 3) indicated that two Toyota Vitz's were a part of its catalogue, I presume this is the other.

Month	Date Rented	Date Returned	Days	Total # of Days
1.	October	19/10/22	22/10/22	3
				3

**Avg = 3/1 = 3**

**Overall Average = 7.75**

**Overall Average rounded to the nearest 10<sup>th</sup> = 8**

**MOTOR VEHICLES NOT FACTORED INTO THE CALCULATION**

**Nissan Tida 3317HM \$35** - This vehicle did not form part of the sub-rental contract and was not on the Company's vehicle listing (Exhibit 3).

Month	Date Rented	Date Returned	Days	Total # of Days
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1.	August	06/08/22	29/08/22	XX	Sum of receipt = 11 days, however 23 days written there.
2.	February	15/02/23	20/02/23	5	

**Presumed Rav4** - This vehicle did not form part of the sub-rental contract and was not on the Company's vehicle listing (Exhibit 3).

Month	Date Rented	Date Returned	Days	Total # of Days
1.	July	15/07/22	21/07/22	6
		27/07/23	4	10
2.	August		02/08/22	2
				2
				12

Receipts did not list the type of vehicle or the respective license plate number. However, the vehicle is presumed to be a Rav4 based on the per day rental fee of \$65. The Rav4 is the only car priced at this sum. These receipts were however not included in the foregoing calculations based on the dates overlapping with dates of receipts for Rav4 bearing license plate number 3651HS. Additionally, based on the evidence before the Court only 1 Rav4 formed a part of the Company's catalogue.