



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2009HCV 05446**

<b>BETWEEN</b>	<b>Alromeo Brown</b>	<b>Claimant</b>
<b>AND</b>	<b>Transport Authority</b>	<b>1<sup>st</sup> Defendant</b>
<b>AND</b>	<b>S/Constable K. Gordon</b>	<b>2<sup>nd</sup> Defendant</b>
<b>AND</b>	<b>The Attorney General of Jamaica</b>	<b>3<sup>rd</sup> Defendant</b>

Miss K. Balli for Claimant

Mr. L. Campbell for 1<sup>st</sup> Defendant instructed by Campbell & Campbell

Miss A. Whyte for 2<sup>nd</sup> & 3<sup>rd</sup> Defendant

**Heard: May 30<sup>th</sup> 2011, July 11<sup>th</sup> 2011, October 31<sup>st</sup> 2012, July 22<sup>nd</sup> & 29<sup>th</sup> 2013,  
October 3<sup>rd</sup> 2013 & November 15, 2013**

Detinue – Measure of Damages – Market value at the time of seizure - The Attorney General & Anor v Aston Burey - Loss of use- Loss of trade goods.

**Campbell, J**

[1] The Claimant was on the 7<sup>th</sup> July 2008, arrested in Portmore, for operating his motor vehicle without the requisite road licence. His motor vehicle a 1992 Toyota Camry registered 6469EN was seized and impounded at the Lakes Pen Pound. On The 6<sup>th</sup> April, 2009 the Court dismissed the charges and instructed that the vehicle be released.

[2] The Claimant attended on the 1<sup>st</sup> Defendant and demanded the release of his motor vehicle and was told it was sold. He filed a claim on the 13<sup>th</sup> April 2012, seeking damages for;

(a) Loss of his motor vehicle	\$2,200,000.00
(b) Loss of trade goods	\$100,000.00
(c) Loss of use of the said motor vehicle	\$1,339,000.00
	(and continuing)

[3] The gist of the cause of action in detinue is the wrongful detention of the chattel, and in order to establish that, it is necessary to prove a demand for the return of the property detained and the refusal after a reasonable time to comply with such demand. The demand must be unconditional and specific. The Claimant applied for summary judgment, at a Pre- Trial Review, Mr. Justice King, ordered summary judgment against the 1<sup>st</sup> Defendant for detinue and a date was fixed for the hearing of assessment of damages.

[4] The Claimant submitted that in detinue the measure of damages is the market value at the date of judgment and that the correct measure of damages is by reference to what it would cost at the time of trial to import to the island a similar make and model vehicle which the Claimant lost as a result of 1<sup>st</sup> Defendant actions.

[5] It was submitted that in **The Attorney General & Anor v Aston Burey SCCA No.109/2010**, on which the Claimant relied, a 1994 bus was seized in June 2006, the vehicle was then 12 years old. The claim for return of the bus was made in 2008. The Attorney General had argued that the sum to be recovered is limited to the actual value of the bus, at the time it was sold by the defendant. The Court awarded the value of a five year old vehicle. The Court of Appeal upheld the decision. The Court of Appeal took the view that it was correct to award the Claimant the value of a five year old vehicle. Counsel submitted that the court took the view that the Respondent should not be prejudiced by the wrongful action of the appellant.

[6] Mr. Campbell argued that there was no evidence, to support the claim of \$2. 2 Million in respect of the value of the vehicle, nor the sum claimed for loss of use. He argued that **Aston Burey**, the vehicle was a public passenger vehicle and the court had the evidence of two expert witnesses to demonstrate the difficulty in locating a similar bus because of the then applicable motor vehicle import policy. Counsel complained of the absence of evidence as to the cost incurred in the provision of alternate transportation and insurance cost, which would be required to be set-off against cost of the alternative transport. He said there was no explanation for the escalation in cost of the Claimant's trade tools to \$206,500.00 from the sum of \$100,000.00, which was claimed at the time the claim was filed.

### **Analysis**

[7] In **Aston Burey**, The Claimant had sought "loss and damage sustained by the seizure and sale of his bus." The bus was 12 years old at the date of judgment. The Court of Appeal upheld Jones J orders, which awarded the Claimant the market value of a five year old bus at the date of trial. Harris JA, held that in detinue the measure of damages is the value of the goods at the date of trial. Her Ladyship relied on **Rosenthal v Aldrton & Sons Ltd.** (1946) KB374, and held at paragraph 10 of her judgment, inter alia:

"Where the chattel is not ordered to be returned, the ordinary measure of damages is the value of the goods as well as the loss arising by reason of the detention of the goods."

[8] Harris JA, judgment recognized a clear distinction between the market value of the bus as claimed in default of its release and damages awarded whether or not it is returned. The Court disagreed with Counsel for the Crown, that the value of the bus which was sold ought not to be assessed at a greater value than that as at the date of its sale by the defendant, as the respondents remedy is in conversion, the Court of Appeal upheld the trial judge's award in detinue as the value of the bus as of the date of judgment.

[9] In **Rosenthal v Alderton & Sons Limited** on which the Court of Appeal relied, the plaintiff had carried on the business of a hairdresser, at the Defendants premises under the terms of a tenancy agreement that he surrendered. By agreement certain articles of the trade, were left with the Defendants in 1940. In 1943, on his return from military service, he found the articles missing, some having been sold. The plaintiff demanded their return and on the Defendants refusal he filed a suit claiming the return of the goods, and in the alternative the payment to him of their value and damages for their detention. The court gave judgment for the plaintiff in assessing value of the goods not returned, and took their value as at a date between that of the issuance of the writ and his judgment, and made an award based on that sum. The Defendants appealed.

[10] Before the Court of Appeal, it was argued on behalf of the appellants that the value of the goods left by the hairdresser should be awarded, at the time of the wrongful defendant's act that is at the time of the demand for their return and the refusal by the defendants. Further that the Court of Appeal should not follow the authority of **Greenway v Wilkinson** (1825) 1 C&P.625, in which Abbott CJ held that, in claims for conversion, the jury was not limited to find as damages, the mere value of the property at the time of the conversion, but might in their discretion, find as damages the value of the chattel at any subsequent time. He cautioned that the plaintiff might delay the taking of action, in the event of an increase in the value of a chattel.

[11] Counsel for the hairdresser had urged that **Greenway v Wilkinson** had been correctly decided and should be followed, because if the value of the goods fell between the date of refusal, (the date when the cause of action accrues) and the date of judgment, it might leave the innocent party to take a heavy loss. Evershed J read the judgment of the Court of Appeal, opined that under the old practice, a successful party in an action for detinue, was entitled in cases where the goods were not returned to their value together with damages and costs. "And such value was either assessed by

the jury at the trial or by the sheriff upon an inquest.” Evershed J, as he then was, in considering the continuing wrongful actions of the Defendant in retaining the goods after the demand up to the date of judgment, states that the Claimant may recover damages and loss caused by any fall in the value of the goods, between the refusal date and the date of judgment. Their Lordships recognized a clear distinction between damages awarded for the value of the goods detained and damages that accrue as a result of their detention, whether returned or not.

[12] The judgment makes clear that, the innocent owner should not suffer any diminution in the value of the goods between the dates of the cause of action and the date of judgment. The judgment rejects the countervailing argument raised by Counsel for the defendant that the Claimant is likely to benefit from a delay in the institution of an action that leads to an increase in value of the goods. The principle of restitution in integrum is applicable in an award for damages in an action for detainment.

[13] In assessing the value of the vehicle at the date of trial, it is noted that the seized vehicle was a 1992 Toyota Hiace. The bus would have been sixteen years at the time of trial. There is no evidence before this court of its value at the time of seizure. The vehicle was serviceable and operable, the police having seized it for operating without the requisite licence.

[14] Counsel for the Claimant, has submitted that based on *Aston Burey*, the Claimant is entitled to ask the court to make an award of the value of a 2008 Toyota Hiace. It seems to me that the special circumstances that existed in **Aston Burey**, do not exist in this case. In *Aston Burey*, expert witnesses were called and testified to the difficulty in getting a similar model to the bus that was seized, due to the ban on importation of vehicles over five years old. No evidence was adduced as to the market value of the five years old Toyota Hiace that is being claimed. Of the vehicle that was seized, the evidence is, in 2005 it was bought for \$450,000.00 and was valued at

\$350,000.00 in 2009. I would make an award for the market value of a 1997, Toyota Camry as assessed at the date of trial to be awarded to the Claimant.

[15] The loss of trade goods stored in the said motor vehicle was noted in the particulars of claim filed on the 18<sup>th</sup> April 2012, at \$100,000.00. In his final submissions, Counsel for the Claimant's application for damages under this head was increased to \$206, 500.00. The award is meant to restore the Claimant to the same position as if the loss has not taken place. The increase in the claim under this head is unexplained and cannot be accounted for by any movement in the value of the Jamaican dollar in relation to its trading partners. I make an award of \$100,000.00 for loss of tools.

[16] The Claimant is entitled to damages for loss of use of his vehicle up to the time of judgment. This was a private vehicle that served the Claimant and his family, in its absence there is a cost incurred in his transportation. The Defendant contends that the Claimant ought to state his expenses in the use of his vehicle in the provision of transportation, such as insurance and other expenditures so as to be set-off against his claim. It seems to me that similar costs are embedded in the fares he pays for alternative transportation. In the normal course of business in the public transport system, receipts are unusual for fares tendered. Transport is provided for the most part not by registered companies which are obliged to maintain accounting standards, but largely small operators with no proper accounting system.

[17] I find that the Claimant is a witness of truth, in stating that his expenditure is \$1000.00 per day for alternative transportation. Although, we are mindful of the need for strict proof, we use our own experience in these matters to arrive at what is proved on the evidence. See **Desmond Walters v Carlene Mitchell**, SCCA64/91 Wolfe, J.A. (Ag), as he then was relied on the dicta in *Central Soya Jamaica Ltd v Junior Freeman* (unreported) where Rowe P held in a matter dealing with loss of earnings;

"In casual work cases it is always difficult for the legal advisers to obtain and present an exact figure for lost of earnings and although the loss falls to be dealt with under special damages, the court has to use its own experience in these matters to arrive at what is proved on the evidence."

I make the following orders:

Loss of use:

- (i) An award \$2, 296,000.00 from July 2008 to November 15, 2013
- (ii) With interest at 3% from July 2008 to November 15, 2013  
Market value of 1997 Toyota Camry to be submitted within 30 days; on the 10<sup>th</sup> January 2014 valuation of 1997 Toyota Camry in the sum of \$450,000.00 (see valuation of Bruce Zaidie dated 13/12/2013)
- (iii) Stay of execution granted for a period of six weeks, subject to the 1<sup>st</sup> Defendant paying damages to loss of trade goods

Costs to the Claimant to be agreed or taxed.