



[2024] JMSC Civ 91

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

**IN CIVIL DIVISION**

**CLAIM NO. 2017 HCV 02200**

**BETWEEN                      CLAUDETTE ELLIS    CLAIMANT**

**AND                              CONSTABLE BANBURY    1<sup>ST</sup> DEFENDANT**

**AND                              THE ATTORNEY GENERAL OF JAMAICA                      2<sup>ND</sup> DEFENDANT**

**IN OPEN COURT**

**Dr Garth Lyttle instructed by Ms Renee Robertson for the Claimant**

**Ms Jevaughnia Clarke instructed by the Director of State Proceedings for the 1<sup>st</sup>  
and 2<sup>nd</sup> Defendants**

**Heard: June 21, 2023 and July 19, 2024**

**Tort – Wrongful interference with goods – Detinue – Conversion – Whether there  
was a wrongful taking, detaining and disposal of the claimant’s property**

**A. NEMBHARD J**

**INTRODUCTION**

**[1]** By way of a Claim Form, which was filed on 10 July 2017, the Claimant, Claudette Ellis, seeks the following Orders of the Court against the 1<sup>st</sup> Defendant, Constable Paul Banbury as well as the 2<sup>nd</sup> Defendant, the Attorney General of Jamaica, respectively: -

1. Damages for loss of earnings for One Hundred and Twenty-Two (122) days at Eight Thousand Dollars (\$8,000.00) per day and continuing.
2. Damages for the cost of her vehicle in the sum of Four Hundred and Twenty Thousand Dollars (\$420,000.00).
3. Damages insurance money paid on said vehicle in the sum of Thirty-Four Thousand Six Hundred and Sixty-Seven Dollars (\$34,667.00).
4. Damages in Detinue and Conversion.
5. Costs and Attorney's Costs.
6. Interest on any sum this Court finds due and payable to the Claimant.

## **THE ISSUES**

**[2]** The following issues are determinative of the Claim: -

- i. Whether the Claimant has established the tort of Detinue on a balance of probabilities; and
- ii. Whether the Claimant has established the tort of Conversion on a balance of probabilities.

## **BACKGROUND**

### **The Claimant's Case**

**[3]** The Claimant, Claudette Ellis, is the owner of a 1997 Toyota Corolla motor vehicle registered PC 3728 ("the subject motor vehicle").<sup>1</sup> Ms Ellis alleges that she employed Mr Wayne Stewart to operate the subject motor vehicle as a public

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<sup>1</sup> See – Exhibit 1, which contains Motor Vehicle Certificate of Title issued by the Licensing Authority station located in Old Harbour and which is dated 2006-05-08.

passenger vehicle within the parishes of Kingston, St. Andrew and St. Catherine. As part of the terms of his employment, there was an agreement between herself and Mr Stewart that at the end of each work week he would take a portion of his weekly earnings to her home.<sup>2</sup>

- [4] Ms Ellis also alleges that, on or about 25 February 2017, Mr Stewart, while operating the subject motor vehicle, parked same in the parking lot of Pathfinder Auto Parts in Spanish Town, in the parish of St. Catherine.<sup>3</sup> It is further alleged that, on exiting the subject motor vehicle, Mr Stewart was approached by Constable Paul Banbury, who asked for his [Mr Stewart's] Driver's Licence. After examining same, Mr Stewart was allegedly directed to go into the police service vehicle, which was on the scene, without providing Mr Stewart with a reason for this instruction.<sup>4</sup> Mr Stewart was arrested by Constable Banbury.
- [5] Ms Ellis further alleges that Mr Stewart pleaded with Constable Banbury to be allowed to purchase a phone card to contact her to facilitate the collection of the subject motor vehicle. Mr Stewart was allowed to purchase the phone card but was refused the opportunity to place the credit on his mobile device. Instead, Mr Stewart was made to sit in the police service vehicle whilst other persons were arrested and detained.<sup>5</sup>
- [6] Mr Stewart was eventually informed that he had an outstanding warrant for his arrest and was detained that same day to appear in court the following Tuesday to answer to charges which were laid against him. Mr Stewart asserts that those charges related to an offence which was allegedly committed a year prior to his arrest and detention by Constable Banbury. Mr Stewart pleaded guilty to that offence, paid the fine imposed and was released on the same day of his appearance in court. On his release, Mr Stewart and Ms Ellis proceeded to the

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<sup>2</sup> See – Paragraphs 1-3 of the Witness Statement of Claudette Ellis, which was filed on 17 May 2022

<sup>3</sup> See – Paragraph 3 of the Witness Statement of Wayne Stewart, which was filed on 9 June 2022

<sup>4</sup> See – Paragraph 4 of the Witness Statement of Wayne Stewart, which was filed on 9 June 2022

<sup>5</sup> See – Paragraph 5 of the Witness Statement of Wayne Stewart, which was filed on 9 June 2022

Spanish Town Police Station to obtain information regarding the location of the subject motor vehicle.<sup>6</sup>

- [7] The subject motor vehicle was subsequently located on the compound of M&M Garage. To retrieve the subject motor vehicle, Ms Ellis and Mr Stewart visited the garage but were told that the subject motor vehicle would only be released once the wrecker fee of Twelve Thousand Dollars (\$12,000.00) and storage fees of Four Thousand Dollars (\$4,000.00), and continuing, were paid.<sup>7</sup>
- [8] A formal demand letter, dated 15 March 2017, was sent to Constable Banbury for the return of the subject motor vehicle.<sup>8</sup> Ms Ellis contends that the subject motor vehicle was never returned to her. Consequently, she suffered the loss of the value of the subject motor vehicle, loss of earnings for One Hundred and Twenty-Two (122) days and continuing and suffered grave inconvenience and hardship as the subject motor vehicle still has not been returned to her.<sup>9</sup>
- [9] It is Ms Ellis' contention that Constable Banbury seized the subject motor vehicle unlawfully and without reasonable and or probable cause.<sup>10</sup>

### **The Defendants' Case**

- [10] For their part, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants contend that on or about 25 February 2017, Constables Banbury and Ronald Cunningham were on warrant patrol duty and were tasked with conducting stop and search procedures along strategic streets within the Spanish Town area, in the parish of St. Catherine. Constable Banbury asserts that, at approximately 1:00 p.m., he was along a section of Hanover Street, in the parish of St. Catherine, when he observed the subject

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<sup>6</sup> See – Paragraphs 6-8 of the Witness Statement of Wayne Stewart, which was filed on 9 June 2022

<sup>7</sup> See – Paragraphs 7 and 8 of the Particulars of Claim, which was filed on 10 July 2017. See also – Paragraph 9 of the Witness Statement of Wayne Stewart, which was filed on 9 June 2022 and paragraph 9 of the Witness Statement of Claudette Ellis, which was filed on 17 May 2022, respectively.

<sup>8</sup> See – Exhibit 2, which contains Demand Letter dated 15 March 2017, addressed to the Senior Superintendent of Police of the Constabulary Station Spanish Town, St. Catherine, under the hand of Garth E. Lyttle.

<sup>9</sup> See – Paragraphs 9 and 10 of the Particulars of Claim, which was filed on 10 July 2017

<sup>10</sup> See – Paragraphs 4 and 5 of the Particulars of Claim, which was filed on 10 July 2017

motor vehicle travelling down Hanover Street. He signalled the driver of the subject motor vehicle to stop and observed that there were no passengers in the subject motor vehicle. Constable Banbury further contends that he informed Mr Stewart of the nature of the 'stop-and-check' and requested the documents for the subject motor vehicle and the Driver's Licence of the driver, which the driver presented.<sup>11</sup>

- [11] Using the Driver's Licence which Mr Stewart presented, Constable Cunningham searched the Jamaica Constabulary Force's Warrant Database, which yielded a match on the database for Warrant Number STC20134-5/16. This, Constable Cunningham brought to the attention of Constable Banbury. Constable Banbury interviewed Mr Stewart and informed him that he [Mr Stewart] would be placed in custody on warrant and informed the ground commander that he had a man in custody.<sup>12</sup>
- [12] Constable Banbury contends that he informed Mr Stewart that he would not be allowed to drive the subject motor vehicle to the police station and that he enquired of Mr Stewart whether he had someone who could retrieve the subject motor vehicle. Constable Banbury asserts that Mr Stewart indicated that he had no credit on his cellular phone and was unable to telephone anyone. Constable Banbury escorted Mr Stewart to the B & D Pharmacy to purchase a phone card. Constable Banbury further asserts that he observed Mr Stewart place the credit on his mobile device and that he [Mr Stewart] indicated that he [Mr Stewart] would place a call to his 'boss'.<sup>13</sup>
- [13] Constable Banbury further contends that there was some delay in the arrangements which Mr Stewart made to have someone retrieve the subject motor vehicle and that he [Constable Banbury] contacted one of the approved wreckers, M&M Garage, to have the subject motor vehicle removed to the Lakes Pen Municipal Vehicle Impound for safekeeping. Constable Banbury maintains

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<sup>11</sup> See – Paragraphs 2-5 of the Witness Statement of Paul Banbury, which was filed on 29 May 2023

<sup>12</sup> See – Paragraph 5 of the Witness Statement of Paul Banbury, which was filed on 29 May 2023. See also – Paragraphs 3 and 4 of the Witness Statement of Ronald Cunningham, which was filed on 29 May 2023

<sup>13</sup> See – Paragraph 5 of the Witness Statement of Ronald Cunningham, which was filed on 29 May 2023

that he informed Mr Stewart of this and further that the subject motor vehicle was not going to be taken to the pound in relation to an offence which had been committed but for security and safekeeping.<sup>14</sup>

- [14] It is Constable Banbury's contention that Mr Stewart opted for the subject motor vehicle to be taken to the wrecker facility and that, consequently, he [Constable Banbury] instructed the operator of the wrecker to comply with Mr Stewart's request.<sup>15 16</sup>

## **THE LAW**

### **Trespass to property**

- [15] There are three ways in which one might deprive another of his property: (i) by wrongfully taking it; (ii) detaining it; or (iii) disposing of it. In the first, the defendant gains possession by wrongful appropriation, in the second, he might acquire possession rightfully but retains it wrongfully, and, in the third, he neither takes nor retains it wrongfully but so disposes of the chattel that it is lost to the owner, for example, by destruction or sale.
- [16] Corresponding to these modes of dispossession, the common law has provided three actions: (i) trespass for the first; detinue for the second; and trover or conversion for the third.
- [17] The position in law has changed in England as the tort of detinue has been abolished by statute. Until 1978, two (2) main causes of action lay for the protection of proprietary interests in goods. These were trover (now more commonly called "conversion") and detinue. The Torts (Interference with Goods) Act, 1977 abolished the former tort of detinue and expanded the scope of conversion, which now lies in every case in which detinue formerly lay, before it was abolished. Today, the law on wrongful interference encompasses the

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<sup>14</sup> See – Paragraphs 6-8 of the Witness Statement of Paul Banbury, which was filed on 29 May 2023

<sup>15</sup> See – Paragraph 9 of the Witness Statement of Paul Banbury, which was filed on 29 May 2023

<sup>16</sup> See – Paragraph 6 of the Witness Statement of Ronald Cunningham, which was filed on 29 May 2023

specific torts of conversion, trespass to goods and negligence, so far as it results in damage to goods or to an interest in goods.<sup>17</sup>

- [18] There does not appear to be any statute in Jamaica akin to the Torts (Interference with Goods) Act, 1977. As such, the common law actions of trespass to goods, detinue and trover or conversion remain available to persons aggrieved.

### Detinue

- [19] The action of detinue lay at the suit of a claimant having a right to immediate possession, for the wrongful detention of his chattel by the defendant, evidenced by the defendant's refusal to deliver it up on demand.

- [20] The cause of action of detinue concerns the wrongful interference with the goods of another and "... accrues from the date of wrongful refusal to deliver up the goods of another on demand."<sup>18</sup>

- [21] Waddington J.A., in **George and Branday, Ltd. v Lee**<sup>19</sup> summarized the gist of the cause of action as follows: -

*"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 refusal, after a reasonable time, to comply with such demand."*

- [22] Detinue is defined as follows: -

*"Where a person has possession of goods of another and a valid demand is made for them by the owner, and an unqualified, unjustifiable refusal to deliver them up entitles the owner to sue in detinue..."*<sup>20</sup>

- [23] The elements required to establish the tort of detinue were stated by McDonald J in **Carol Campbell v Transport Authority**,<sup>21</sup> as follows: -

<sup>17</sup> Halsbury's Laws of England, Volume 97 (2015), at paragraph 602

<sup>18</sup> **Avinel Moore v Bertram Henry**, Suit No. M373 of 1991, judgment delivered on 19 April 2001, per Harris J

<sup>19</sup> (1964), 7 W.I.R 275 at page 278 D-E

<sup>20</sup> Halsbury's Laws of England

*“... to establish that the detention has become adverse and in defiance of her rights, the Claimant must prove that – (i) she “unconditionally and specifically” demanded return of the motor vehicle (per **George and Branday, Ltd.**); and (ii) the Defendant refused to comply after a reasonable time.”*

- [24] A defendant’s refusal to comply with a claimant’s request must be categorical or unequivocal; if qualified by a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the claimant’s rights, it amounts to neither detinue nor conversion.

### **Conversion**

- [25] The distinction between a cause of action in conversion and a cause of action in detinue is that the former is a single wrongful act, and the cause of action accrues at the date of the conversion. The latter is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until delivery up of the goods or judgment in the action for detinue.<sup>22</sup>
- [26] In order to maintain an action in conversion or detinue, a person must have the right of possession and a right of property in the goods at the time of the conversion or detinue.
- [27] Trover or conversion was originally a form of trespass on the case and derived its name from, and was based on, a fiction that the defendant had come lawfully into possession of the goods of another and converted them to his own use. It is a remedy to recover the value of specific personal chattels which have been wrongfully converted by another to his own use. The act to constitute a conversion “must be an unequivocal act of ownership, i.e., an act such as acquiring, dealing with or disposing of the goods, which is consistent only with the rights of an owner as distinct from the equivocal acts of one who is entrusted

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<sup>21</sup> [2016] JMSC Civ 148

<sup>22</sup> Per Diplock, L.J., in **General and Finance Facilities, Ltd. v Cooks Cars (Romford), Ltd.**, [1963] 2 All E.R. 314 at page 317



with the custody or handling or carriage of the goods. A demand and refusal is not, therefore, itself a conversion...”.<sup>23</sup>

- [28] Originally, conversion was concerned with the defendant’s wrongful dealing with the plaintiff’s chattel to deprive the plaintiff of its value. Wrongful taking was trespass; wrongful detention was detinue; trover (an action on the case, for conversion) emerged to supply and exploit gaps in the existing scheme of remedies.
- [29] A conversion is an act or a complex series of acts of which, wilful interference, without lawful justification, with a chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it.
- [30] The law in relation to conversion has been comprehensively set out by McIntosh JA in **The Commissioner of Police and the Attorney General v Vassell Lowe**.<sup>24</sup> The relevant portions are set out below: -

*“[35] ...The learned trial judge had placed reliance on the definition of conversion in the 21<sup>st</sup> edition of Salmon & Heuston’s Law of Torts...*

*‘A conversion is an act or complex series of acts of which wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it.’*

*[36] In addressing the elements required to constitute conversion, the learned authors provide a brief and useful history of the tort, stating, inter alia, that there are three distinct ways by which one man may deprive another of his property and so be guilty of a conversion, namely: ‘(1) by wrongly taking it; (2) by wrongly detaining it; and (3) by wrongly disposing of it’. Historically, the authors state the term conversion was originally limited to the third mode as merely to take another’s goods, however wrongful, was not to convert them. However, in its modern sense, the tort includes instances of all three modes and not of one mode only. The authors point out that two elements combine to constitute wilful*

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<sup>23</sup> **Beaman v A.R.T.S., Ltd.**, [1948] 2 All E.R. 89 at page 92, per Denning J.; on appeal, [1949] 1 K.B. 550

<sup>24</sup> [2012] JMCA Civ 55

*interference: (1) dealing with the chattel in a manner inconsistent with the right of the person entitled to it; and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such right (see **Caxton Publishing Company, Limited v Sutherland Publishing Company** [1939] AC 178, 189 and **Penfolds Wines Proprietary Limited v James Peter Elliott** (1946) 74 CLR 204, 229)...*

*[37] The courts have determined that, in the absence of wilful and wrongful interference, there is no conversion, even if, by the negligence of the defendant, the chattel is lost or destroyed (see **Ashby v Tolhurst** [1937] 2 K.B. 242). Further, the authorities show that every person is guilty of a conversion who without lawful justification takes a chattel out of the possession of anyone else with the intention of exercising a permanent or temporary dominion over it because the owner is entitled to it at all time[s] (see **Fouldes v Willoughby**) ... But, a mere taking, unaccompanied by an intention to exercise dominion, is no conversion. Further, the detention of a chattel amounts to conversion only when it is adverse to the owner or other person entitled to possession – that is, the defendant must have shown an intention to keep the thing, in defiance of the owner or person entitled to possession. The usual way of proving that a detention is adverse within the meaning of this rule is to show that the party entitled demanded the delivery of the chattel and the defendant refused or neglected to comply with the demand...*

*[39] ...it is evident that the key to the establishment of the tort is wrongful interference or unjustifiable interference with the chattel so as to question or deny the owner's title to it (see **Kuwait Airways Corp v Iraqi Airways Co (No 3)** [2002] 2 AC 883) ..."*

**[31]** In **Kuwait Airways Corp v Iraqi Airways Co (No 3)**<sup>25</sup>, the court undertook a review of the tort of conversion and commented<sup>26</sup> that the tort existed to provide a remedy in a wide variety of situations in which a third-party exercises dominion over a claimant's goods and treats with them as his own. The court also

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<sup>25</sup> [2002] 2 AC 883

<sup>26</sup> At paragraph 414

commented<sup>27</sup> that a lot of difficulties have occurred because the acts of conversion may take so many different forms. The essence of the tort was however reiterated as being an intention on the part of a defendant to deny the owner's right or to assert a right which is inconsistent with the owner's right.

[32] The court also referred to **Caxton Publishing Company, Limited v Sutherland Publishing Company**<sup>28</sup> and to Lord Porter's adoption of Atkin J's definition of conversion which had been approved by Scrutton LJ in **Oakley v Lyster**:<sup>29</sup>

*"Atkin J goes on to point out that, where the act done is necessarily a denial of the owner's right or an assertion of a right inconsistent therewith, intention does not matter. Another way of reaching the same conclusion would be to say that conversion consists in an act intentionally done inconsistent with the owner's right, though the doer may not know of or intended to challenge the property or possession of the true owner."*

## THE SUBMISSIONS

*The submissions advanced on behalf of the Claimant*

*Whether the tort of Detinue has been established*

[33] Learned Counsel Dr Garth Lyttle submitted that Ms Ellis made demands for the return of the subject motor vehicle, as was the case in the authority of **George and Branday, Ltd v Lee**.<sup>30</sup> A formal demand was made of the Superintendent of Police and of the Manager of the M&M Garage. It was further submitted that, having proven that Ms Ellis made a specific and unconditional demand for the return of the subject motor vehicle, the Defendants' actions in refusing to comply with that demand, after a reasonable time, the tort of detinue has been established.

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<sup>27</sup> At paragraph 415

<sup>28</sup> [1939] A.C. 178

<sup>29</sup> [1931] 1 K.B. 148, 153

<sup>30</sup> (1964) 7 WIR 275

[34] Dr Lyttle also submitted that the usual way of proving that a detention is adverse, is to demonstrate that the party entitled demanded the delivery of the chattel and that the defendant refused or neglected to comply with that demand. Dr Lyttle submitted that the actions of the 1<sup>st</sup> Defendant amounted to a denial of the owner's title to the subject motor vehicle. In this regard, Dr Lyttle relied on the authorities of **Fouldes v Willoughby**<sup>31</sup> and **Workers Savings & Loan Bank Howard Wright, Anthony Magnus, Howard Shields**.<sup>32</sup>

*Assessment of Damages*

[35] With respect to an award of damages, Dr Lyttle maintained that this is a clear case of conversion of the subject motor vehicle. It was submitted that the evidence on the Claimant's case establishes that Ms Ellis earned Eight Thousand Dollars (\$8,000.00), per day, from the operation of the subject motor vehicle as a public passenger vehicle. It was further submitted that the subject motor vehicle was seized for One Hundred and Twenty-Two (122) days, which amounts to a total of Nine Hundred and Seventy-Six Thousand Dollars (\$976,000.00). Additionally, Ms Ellis also seeks to recover the value of the subject motor vehicle, which, on her evidence, amounts to Four Hundred and Twenty Thousand Dollars (\$420,000.00). Ms Ellis therefore claims a total sum of One Million Three Hundred Ninety-Six Thousand Dollars (\$1,396,000.00), in Damages.

*The submissions advanced on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants*

*Whether the tort of Detinue has been established*

[36] Learned Counsel Ms Jevaughnia Clarke began her submissions with a reference to the authority of **Carol Campbell v The Transport Authority of Jamaica**,<sup>33</sup>

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<sup>31</sup> (1841) 1 Dowl NS 86

<sup>32</sup> CA 113/98 per Panton JA

<sup>33</sup> [2016] JMSC Civ 148

and reminded the Court of the definition of McDonald Bishop J, (as she then was) of the tort of Detinue. Ms Clarke submitted that, in the present instance, both witnesses for the Claimant accepted that the police had no interest in the subject motor vehicle and that their interest extended only to the execution of the warrant of arrest on Mr Stewart. It was further submitted that, on a balance of probabilities, the Court must conclude that the subject motor vehicle was never seized by the Crown servant, as there was no reason or no basis for the subject motor vehicle to be seized.

**[37]** Ms Clarke maintained that, for Ms Ellis to succeed on the Claim for Detinue, she must prove, on a balance of probabilities that:

- (i) she unconditionally and specifically demanded the return of the subject motor vehicle; and
- (ii) that the Defendants refused to comply with that demand, after a reasonable time had passed.

**[38]** Ms Clarke maintained that it is trite law that that unconditional and specific demand must be made to the proper party. In the present instance, Ms Ellis spoke with the owner of the M&M Garage, was advised of the fees to be paid, and refused to pay same. Ms Ellis then made a demand of the Spanish Town Police Station. The Defendants acknowledged receipt of the demand letter but did not respond to same because they had no knowledge of or interest in, the subject motor vehicle. Ms Clarke maintained further that the subject motor vehicle was never seized by the 1<sup>st</sup> Defendant, on or about 25 February 2017, or at all. Ms Clarke asserted that Ms Ellis ought to have directed her letter of demand to the owner of the M&M Garage and ought to have paid the relevant fees.

**[39]** Ms Clarke asserted that Ms Ellis failed to adduce any evidence to prove on a balance of probabilities, that any servant and or agent of the 2<sup>nd</sup> Defendant refused to hand over subject motor vehicle to her. Ms Clarke submitted that the authorities stipulate that there must be a categorical or unequivocal refusal to

comply with Ms Ellis' demand for the return of the subject motor vehicle. In the present case, Ms Clarke submitted, there was no demand for the return of the subject motor vehicle and, consequently, there was no refusal to return same. The failure to respond to Ms Ellis' letter of demand does not constitute a refusal to comply nor does it constitute a deliberate act of withholding the subject motor vehicle.

[40] For these reasons, Ms Clarke maintained, the Claim for the tort of Detinue must fail.

*Whether the tort of Conversion has been established*

[41] In this regard, Ms Clarke referred the Court to the authority of **The Commissioner of Police and The Attorney General v Vassell Lowe**,<sup>34</sup> and relied on the pronouncements of McIntosh JA, and submitted that, for Ms Ellis to succeed in the Claim for Damages for Conversion, she must prove, on a balance of probabilities that:

- (i) there was a wilful and wrongful interference, in that the Defendants dealt with the subject motor vehicle in a manner which was inconsistent with the rights of Ms Ellis; and
- (ii) the 1<sup>st</sup> Defendant had an intention in so doing to deny the rights of Ms Ellis or asserted a right which was inconsistent with the rights of Ms Ellis.

[42] It was further submitted that the courts have determined that in the absence of proof of wilful and wrongful interference, there is no conversion, even if by the negligence of the defendant, the chattel is lost or destroyed.

[43] Ms Clarke maintained that Ms Ellis failed to Constable Banbury dealt with the subject motor vehicle in a manner which was inconsistent with her rights. Ms Clarke maintained that the evidence demonstrates that Defendants did not deal

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<sup>34</sup> [2012] JMCA Civ 55 per McIntosh JA

with the subject motor vehicle because same was never seized by Constable Banbury. Accordingly, the Claim for the tort of Conversion must also fail.

## **ANALYSIS AND FINDINGS**

*i. Whether the Claimant has established the tort of Detinue on a balance of probabilities*

**[44]** The Court accepts that for Ms Ellis to succeed in her Claim in Detinue against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, she must prove the following on a balance of probabilities: -

- (i) that she has the possessory right to the subject motor vehicle.
- (ii) that either the 1<sup>st</sup> Defendant or the 2<sup>nd</sup> Defendant wrongfully detained the subject motor vehicle, or, alternatively phrased, that the subject motor vehicle has been in and remains in their possession.
- (iii) that she, as the owner of the subject motor vehicle, made a valid demand for the return of the subject motor vehicle of either the 1<sup>st</sup> Defendant or the 2<sup>nd</sup> Defendant.
- (iv) that her demand(s) have been met with an unqualified and unjustifiable refusal to deliver the subject motor vehicle to her.

**[45]** It is clear from a reading of the authorities that these elements are conjunctive and must all be proved for a claimant to be successful in a claim for Detinue. In the present instance, Ms Ellis adduced evidence which remains unchallenged in relation to her possessory right to the subject motor vehicle. It is equally unchallenged that the subject motor vehicle was taken by a wrecker to the premises of the M&M Garage, a private garage facility, and that it remained there in storage there from on or about 25 February 2017.

**[46]** Constable Banbury's evidence is that he stopped Mr Stewart along Hanover Street, in the parish of St. Catherine and that, after checks were made on the Jamaica Constabulary Force's database, Mr Stewart was detained because of an outstanding warrant. Constable Banbury's evidence is that the subject motor vehicle was never seized or otherwise detained because it was not detected in the commission of an offence.

**[47]** A careful examination of the evidence elicited from Ms Ellis in cross-examination is instructive. Ms Ellis had the following to say: -

Q: *You would agree with me that the outstanding warrant had nothing to do with the vehicle?*

A: *I agree with you that it had nothing to do with my vehicle.*

Sugg: *Your motor vehicle was never seized by Officer Banbury?*

A: *Yes, Ma'am. It was seized by him.*

Sugg: *That there was no response to your demand letter because the police, specifically, Officer Banbury, never seized your motor car.*

A: *I would still reply, yes, he did seize the car. He was the officer who seized the car.*

Q: *You would agree with me that the police laid no charges in relation to your motor car?*

A: *Yes Ma'am. I agree with you.*

Q: *You would agree with me that no summons was issued on that day by Constable Banbury while Mr Stewart was driving your car?*

A: *Yes Ma'am. I would agree with you.*

**[48]** In cross-examination, Mr Stewart had the following to say: -



Q: *On 25 February 2017, you were stopped by Officer Banbury and Officer Cunningham, whilst you were travelling along Hanover Street.*

A: *Yes Ma'am.*

Q: *When they stopped you, Officer Banbury signalled you to stop.*

A: *Yes Ma'am.*

Q: *Officer Banbury asked for your car documents.*

A: *Only the Driver's Licence alone him ask me for. Him never ask me fi the car papers.*

Q: *Using your Driver's Licence, Officer Banbury told you that a warrant came up in the system for you.*

A: *Yes Ma'am.*

Q: *The warrant was in respect of failure to wear uniform and failure to wear badge. Do you agree?*

A: *Yes Ma'am*

Q: *Officer Banbury told you that you would be arrested pursuant to the warrant.*

A: *Yes Ma'am.*

Q: *Officer Banbury informed you that the motor vehicle could not remain on the street, that is Hanover Street.*

A: *No Ma'am.*

*Sugg: He did.*

A: *From I give him the licence and him realize say me have warrant in the system, right away him put me in a the truck. Him never tell me nothing like that.*

Q: *Officer Banbury did not give you a ticket in relation to the vehicle on that day.*

A: *The car never commit no crime on that day. Is only me alone dem a focus pon due to the finding the warrant pon the licence so the car could never get no ticket.*

**[49]** On this evidence alone, it is open to the Court to find that subject motor vehicle was never seized by Constable Banbury or by another servant or agent of the 2<sup>nd</sup> Defendant. Ms Ellis and Mr Stewart are agreed that the subject motor vehicle was not detected in the commission of an offence on or about 25 February 2017 nor was it the subject of any charges which were laid against Mr Stewart.

**[50]** The Court also has regard to the evidence of Constable Banbury in this regard. He too maintains that he did not detect the use of the subject motor vehicle in the commission of any offence on or about 25 February 2017. Nor did he seize or detain the subject motor vehicle. Constable Banbury contends that he allowed Mr Stewart to make suitable, adequate arrangements for the subject motor vehicle to be retrieved from Hanover Street, in circumstances where its driver was being detained by the police. Constable Banbury maintains that he insisted that the subject motor vehicle could not be allowed to remain on the public thoroughfare.

**[51]** Constable Banbury's evidence is further that there was a delay in the arrangements which were made by Mr Stewart for the retrieval of the subject motor vehicle and that it was at that time that he [Constable Banbury] called for an approved wrecker to attend at the scene and to remove the subject motor vehicle.

**[52]** Constable Banbury maintains that it was Mr Stewart who asked that the subject motor vehicle be taken to the M&M Garage and that that request was facilitated by the police.

**[53]** In assessing the credibility and reliability of the witnesses in the instant case, as well as that of the evidence that it has heard, the Court will be guided by the

observations of Lord Pearce (dissenting) in the House of Lords decision of **Onassis v Vergottis**.<sup>35</sup>

[54] Lord Pearce is quoted as follows: -

*“Credibility involves wider problems than mere demeanour, which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following...Firstly, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person, telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly, and if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over discussion of it with others? ...Lastly, although the honest witness believes that he heard or saw this or that, is it so improbable that it is on a balance of probabilities that he was mistaken?”*

*On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness.*

*All these...compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process...”*

[55] The Court accepts Constable Banbury as a credible and reliable witness and accepts his evidence to be both credible and reliable. The Court accepts that the exchange between Constable Banbury and Mr Stewart occurred as stated by Constable Banbury. On a preponderance of the evidence, the Court finds that there was no seizure or detention of the subject motor vehicle, neither by Constable Banbury nor by another servant and/or agent of the 2<sup>nd</sup> Defendant and that, in this regard, Ms Ellis has failed to establish her Claim in Detinue.

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<sup>35</sup> [1968] 2 Lloyds Rep 403 at page 431

*Unqualified/Unjustifiable Refusal*

[56] The Court accepts Ms Ellis' evidence that a demand letter, dated 15 March 2017, was sent to the Spanish Town Police Station. It is equally accepted that that demand letter was met with no response. Notwithstanding, the Court also finds that the applicable wrecker and storage fees ought to have been paid, or, that a letter of demand ought to have been directed to the owner or operator of the M&M Garage, for the simple reason that the subject motor vehicle was never seized or detained by Constable Banbury.

*ii. Whether the Claimant has established the tort of Conversion on a balance of probabilities*

[57] It is equally clear from the authorities that the elements required to prove the tort of Conversion are that:

- (i) a person has wrongly taken another's property;
- (ii) has wrongfully detained it; and
- (iii) has wrongfully disposed of it.

[58] In the authority of **Ashby v Tolhust**<sup>36</sup> it was determined that, in the absence of wilful and wrongful interference, there is no conversion, even if, by the negligence of the defendant, the chattel is lost or destroyed.

[59] Regrettably, having found that neither Constable Banbury nor any other servant and/or agent of the 2<sup>nd</sup> Defendant seized or detained the subject motor vehicle or wrongfully disposed of it, the Claim for Conversion must also fail.

**DISPOSITION**

[60] It is hereby ordered as follows: -

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<sup>36</sup> supra

1. Judgment is entered in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants against the Claimant on the issue of liability.
2. Costs are awarded to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants against the Claimant and are to be taxed if not sooner agreed.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Attorneys-at-Law are to prepare, file and serve these Orders.