[2022] JMSC Civ 160

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013 HCV 01907

BETWEEN	**MARLON PARKER**	**CLAIMANT**
AND	**INSPECTOR R. M. HEPBURN**	**1ST DEFENDANT**
AND	**THE TRANSPORT AUTHORITY**	**2ND DEFENDANT**

IN OPEN COURT

Dr. Garth Lyttle instructed by Garth Lyttle and Co. Attorneys-at-law for the Claimant

Mr. Robert Clarke instructed by the Director of State Proceedings for the 1st and 2nd Defendants

Ms. Taj-Maria Osbourne, Legal officer for the 2nd Defendant

Heard: April 6, 2022 and September 30, 2022

Detinue and Conversion – Vehicle destroyed while in lawful custody – Definition of demand – Definition of refusal – Definition of wilful interference – Neglecting to release vehicle same as refusal - Value of vehicle not released different than damages - Time runs from the date of the refusal of demand - Replacement value

and damages allowable - Interest on replacement value – Interest on loss of use impermissible

WINT-BLAIR, J

INTRODUCTION

[1] The claimant was at all material times the owner of a Toyota Town Ace motor vehicle registered PE 2853 ("the vehicle".) He brings this action in detinue and conversion against the defendants to recover damages in the sum of Nine Million Three Hundred Ten Thousand Five Hundred Dollars ($9,310,500.00) and continuing.

BACKGROUND

[2] The claimant avers that on or about November 30, 2009, Mr. Nkrumah Taffe, his driver, was driving along Hope Road in the parish of St. Andrew when the first defendant without reasonable and or probable cause seized the vehicle and charged the aforesaid driver with the offences of operating a vehicle without a road licence and operating a motor vehicle without insurance. Despite this averment, it is also averred that the claimant pleaded guilty in court to these charges, was fined and the fines paid on December 14[1], 2009.

[3] On December 16, 2009, the claimant attended the office of the second defendant and advised that the court fines had been paid. He was told to go to the

[1] The evidence of the defendant's witness is December 16, 2009.

Lyndhurst Road Pound to collect his vehicle. He went there with his driver, they searched the compound, however the vehicle was not found.

[4] The claimant went back to the head office of the second defendant at 119 Maxfield Avenue. He was told minibuses are kept at 111 Maxfield Avenue, so he went there and made a demand for the return of his vehicle. A search of that premises yielded no better results, the vehicle was not there.

[5] The claimant said he went back to 119 Maxfield Ave. and advised that the vehicle was not at 111 Maxfield Avenue nor was it at the Lyndhurst Road Pound and made another demand for the return of the vehicle. This time he was told to go the Lakes Pen Pound in St. Catherine.

[6] He avers that he took a taxi in early January 2010 to the Lakes Pen Pound. There, he spoke with the Keeper of the Pound demanding to know whether the vehicle was there. A physical check revealed that it was not. He was told to go the Tivoli Gardens Pound. He took another taxi to the Industrial Terrace Pound and inspected all of the vehicles there, his vehicle was not found.

[7] In April, 2012, the claimant received a call from someone at the Transport Authority who directed him to pay fees to the wrecking company and to collect his vehicle. He paid those fees on April 17, 2014 and went to the Lyndhurst Road Pound but the vehicle was not there.

[8] The claimant retained the services of Dr. Garth Lyttle who wrote a letter to the second defendant demanding the return of the vehicle. The letter indicated that the claimant had, on nine (9) occasions attended the offices of the second defendant and made demands for the return of his vehicle wherein they failed to produce it or to account for its whereabouts.

[9] The claimant learnt that his vehicle had been destroyed by fire at the Lakes Pen Pound on July 23, 2012. This discovery was only made when the Attorney General filed its defence on October 15, 2014. Liability for the value of the vehicle was admitted in the sum of One Million Two Hundred Thousand Dollars ($1,200,000.00).

[10] The claimant claims loss of earnings, and special damages in the sum of Nine Million Three Hundred Ten Thousand Five Hundred Dollars ($9,310,500.00) in addition to costs.

[11] The Defence and Counterclaim filed by the defendants admitted that the vehicle at all times belonged to the claimant and that it was seized by the first defendant. The defendants state in their defence that the driver of the claimant's vehicle was summoned to attend traffic court on December 10, 2009 but failed to do so. A warrant of disobedience was issued for his arrest. Further, that the driver was apprehended on August 30, 2010 and taken before the traffic court where he pleaded guilty and was fined. The fines were paid.

[12] The defendants made the following admissions:

i) That the first defendant seized the claimant's vehicle on November 30, 2009 and charged his driver as aforestated.

ii) That the motor vehicle seized from the driver was a Toyota Townace motor vehicle registered PE 2853.

iii) That the claimant's attorney wrote a letter to the second defendant dated January 30, 2013.

iv) That the claimant paid the wrecking fee of Five Thousand Five Hundred Dollars ($5,500.00).

v) That the vehicle was transferred to the Lakes Pen Pound in the parish of St. Catherine on July 19, 2012.

vi) That on July 23, 2012, a fire at the Lakes Pen Pound damaged the claimant's vehicle. The salvage remains at that location.

[13] The defendants state further that the letter written by Garth Lyttle & Co. was received by them. The second defendant denies failing to respond and states that it did do so requesting further particulars in order to sufficiently identify the claimant's vehicle. The second defendant said that there was no response from counsel for the claimant and further that the letter from that firm could not be treated as a demand letter in the circumstances.

[14] The defendants' said that it was the claimant failed to attend upon the second defendant's offices to pay the required storage fee to obtain the release of the vehicle. The vehicle was being stored at 107 Maxfield Avenue, Kingston 10 which is a location belonging to the second defendants. The vehicle had been transported there by wrecking from MKM Haulage Contractors Limited on November 30, 2009. On July 19, 2012, the vehicle was transferred to the Lakes Pen Pound in the parish of St. Catherine for safe-keeping.

[15] The defendants contend that the vehicle was abandoned between November 30, 2009 and July 23, 2012 when there was a fire at the Lakes Pen Pound. The claimant's vehicle was damaged and the salvage remains at the Lakes Pen Pound.

[16] The second defendant admits liability for the value of the motor vehicle as at July 23, 2012 but denies liability for special damages.

[17] The defendants state that the vehicle was lawfully seized. Therefore, the claimant was not entitled to possession as he had failed to pay the storage fees

to secure its release. He would not be entitled to loss of earnings. In addition, the claimant is not entitled to have wrecking fees refunded. The second defendant denies that the claimant attended its offices on some nine (9) trips and puts the claimant to proof.

[18] The defendants argue that the claimant has a duty to mitigate his loss. In addition, the defendants counterclaim the sum of Nine Hundred Sixty Nine Thousand ($969,000.00) being storage fees owed to it from the date of seizure on November 30, 2009 to July 23, 2012, the date of the fire.

[19] In reply, the claimant stated that himself and his driver appeared in the traffic court on December 14, 2009, pleaded guilty and paid the fines. The claimant went to pay for and collect his vehicle on December 16, 2009, but alleged that after the searches were conducted, the vehicle was not located. He claims loss of use from December 16, 2009. The claimant discovered the vehicle was missing on that same date from the possession of the bailee as the defendants were similarly aware.

[20] The claimant rejects the counterclaim for storage fees in light of the loss of the vehicle from the custody and control of the second defendants on December 16, 2009 which was fully known and or brought to their attention.

THE LAW

[21] The Transport Authority's power to seize motor vehicles is created by statute. These powers are contained in the Transport Authority Act (“the TAA”) and the Road Traffic Act (“the RTA”).

[22] Section 13(1) of the TAA empowers an Inspector or a Constable to stop and inspect any public passenger vehicle to ensure compliance with the terms of the Road Licence and any relevant road traffic enactments; to stop and inspect any

vehicle which he reasonably suspects is operating as a public passenger vehicle contrary to relevant road traffic enactments; to monitor the frequency of public passenger vehicles on any route; to inspect conductors and drivers of public passenger vehicles and the licences held by them; and to carry out such powers or duties in relation to relevant road traffic enactments as may be prescribed.

[23] Section 13(2)(a)(v) of the TAA authorizes an Inspector or a Constable to seize any vehicle which is being operated or used as a public passenger vehicle without a licence issued for such operation or use.

[24] Section 13(2)(b) of the TAA gives an Inspector or a Constable the power to take or cause to be taken to the nearest police station or to the nearest convenient place authorized by the police pursuant to subsection (3)(a) any vehicle which is seized pursuant to section 13(2).

[25] Section 13(3) of the TAA provides:

> *"(3) Where under this section a vehicle is seized –*
>
> > *(a) the vehicle may be stored by the police or the Authority in such place and in such circumstances as the police or the Authority consider appropriate;*
> >
> > *(b) storage fees shall become payable to such persons at such rates and in accordance with such conditions as may be prescribed under the Road Traffic Act; and*
> >
> > *(c) if the vehicle remains in the possession of the police or the Authority for more than six months the vehicle may, subject to such conditions as may be prescribed under the Road Traffic Act, be sold by the police or the Authority to recover the cost of storage."*

[26] Section 16A of the TAA provides for the release of seized motor vehicles.

[27] Sections 13(3)(c) and 13A of the TAA allow for vehicles that have been seized to be sold by public auction, private treaty or to be destroyed or otherwise disposed of as the Authority deems fit.

[28] Section 61(4A) of the RTA provides as follows:-

> "*Where a constable or an Inspector designated under section 12(1) of the Transport Authority Act has reasonable cause to believe that a person has used or caused or permitted a vehicle to be used in contravention of this section, the constable or Inspector may seize the vehicle."*

[1] Section 61(4B) of the RTA provides:-

> *"Subject to subsection (7)(b), a vehicle shall be kept in the possession of the Police or the Transport Authority, as the case may be, until the licence required under this Part is obtained and produced to the Police or the Transport Authority."*

DISCUSSION

[29] The claimant relied on a receipt from MKM Haulage Contractors[2] of 56 Lyndhurst Road, Kingston 10. This receipt bears the date April 17, 2012 and was issued to the claimant for the sum of Five Thousand Five Hundred Dollars ($5,500.00) paid as wrecking fees.

[30] These wrecking fees were being paid on April 17, 2012, three (3) years after the vehicle had been seized. This is explained by the claimant in his witness

---

[2] Exhibit 4

statement. He said that sometime in April 2012, he received a telephone call from someone at the Transport Authority telling him to pay the wrecking fees and collect his vehicle. He stated that he did so on April 17, 2012 and went to the Lyndhurst Road Pound but the vehicle was not found there. There is no evidence from the defendants on this aspect nor has it been challenged by them.

[31] The claimant in his witness statement stated that both he and his driver went to court to answer to the charges. He does not give the appearance date. There is no indication in this witness statement that the driver failed to attend and a warrant was issued for him. This evidence was not challenged by counsel for the claimant.

[32] The defendant called Banneta Walker, Licensing Manager of the Transport Authority. She gave a witness statement which was filed on March 9, 2022. In cross-examined by Dr. Lyttle the following exchange took place:

Q: At para 5 you say he abandoned his vehicle.

A: When the claimant's driver pleaded guilty at the traffic court, the usual procedure is that they should make representations to have vehicle released to him, he should present documents to the authority to pay the relevant storage vehicle to have vehicle released to him.

Q: Aware of the fact that on December 16, the then driver attended court and pled guilty

A: Yes

[33] The court resolves the issue of the court date by using the evidence adduced by the claimant in the cross-examination of Banneta Walker. It is her evidence that the driver pleaded guilty on December 16, 2009 and paid the fine. Therefore, the

defence as filed contains information which is false and misleading based on the evidence of the defendant's own witness.

[34] It is not in dispute that the claimant refused to pay the storage fees. He took the decision not to pay them until he saw his vehicle. In cross-examination, the following exchange was recorded by the court:

Q: *You didn't pay a storage fee for the release of vehicle from TA*

A: No

Q: From the day the Transport Authority seized the vehicle did they tell you that they will never accept storage fees from you

A: No they never tell me that

Q: They have never told you that, it is in your witness statement at page 51 para 7(b) that the decision to not pay the storage fee was yours entirely

A: No

Q: You said in your witness statement that you decided not to pay it

A: I decided that that is what I said here

Q: You agree that the decision was yours

A: I said I have to see my vehicle before I pay for it and they are not showing me it

Q: Agree that there was nothing stopping you from paying storage fee

A: No there was nothing stopping me

[35] In this exchange, the claimant makes it plain that he wanted to see his vehicle before he would pay the storage fee. In his witness statement he details some nine (9) trips to the various pounds of the Transport Authority looking for his vehicle. This is evidence which the court accepts as it could not have been that the vehicle was always at 107 Maxfield Avenue, for if this were so, there would have been some evidence that the claimant was told this and that it was he who thereafter failed to retrieve it. The inference which can be drawn from the evidence is that neither party knew where his vehicle was. Were it otherwise, the claimant would not have needed to make that many trips and it would not have taken until April 2012 for the Transport Authority to make initial contact with the claimant, some three (3) years after the fines had been paid. This is also evidence of the accrual of storage fees over which the claimant would have had no control but would have nonetheless been expected to pay.

[36] Dr. Lyttle wrote to the second defendant demanding the release of the vehicle and provided its particulars in response to a request from the Transport Authority that he do so. This letter was dated January 30, 2013. This letter refers to a 'record' produced by the second defendant to show that the vehicle had been transferred to the Lakes Pen Pound. That record has not been put in evidence before this court by either side.

[37] In the witness statement of Banneta Walker she stated that the motor vehicle was being stored at 107 Maxfield Avenue, Kingston 10 from November 30, 2009 which was the date of seizure. It was transferred to the Lakes Pen Pound on July 19, 2012. The 'record' produced to the claimant has not been referred to in her witness statement.

[38] The defendants presented no evidence to this court regarding the management or storage of the claimant's vehicle while it was in their custody. Therefore, the second defendant could not in the same breath expect that the court would then

rely on its evidence from its records that the vehicle was taken to the Lakes Pen Pound on July 19, 2012 or that it was damaged in a fire on July 23, 2012. For if such records exist, and as I have indicated, they have not been made the subject of evidence at this trial.

[39] It remains rather curious that while the claimant's vehicle was made the subject of records relating to movement and storage, the said vehicle was incapable of being identified by these or any other records in order for it to be released. In other words, how did the second defendant know that it was the claimant's vehicle which had been moved to the Lakes Pen Pound and then subsequently destroyed by fire? Those same means of identification of the vehicle were available to the second defendant, yet it chose not to employ the use of them in order to release the vehicle.

[40] The claimant was simply sent from pound to pound on each occasion with no regard for his time, the expense of going to each location or any respect for his right to possess the vehicle which belonged to him and which the Transport Authority no longer had a right to detain. The claimant cannot be faulted for taking the position that he did in respect of the storage fees, in circumstances where the Transport Authority was unable to locate a vehicle in their custody.

[41] It was not until 2014 that the claimant learnt of the fire at the Lakes Pen pound in which his vehicle was damaged. The defendants have correctly admitted liability for the value of the vehicle. There could be no judgment on admission however, as the defendants counterclaimed for outstanding storage fees.

Detinue

[42] 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…"[3]

[43] In Clerk & Lindsell on Torts[4], the following statement appears:

"The gist of liability in detinue is the wrongful detention of the plaintiff's chattel. The action was available against a defendant … who withheld the plaintiff's chattel after the plaintiff had demanded its return. The principal object of the action was to recover the value of the chattel so detained…" [Ibid – para. 1072]

[44] This statement was employed by Waddington, JA in **George and Branday Ltd v Lee**[5] and relied on by McDonald, J in the case of **Carol Campbell v The Transport Authority of Jamaica[6].**

[45] The elements required to establish the tort of detinue were stated by McDonald J in **Carol Campbell v The Transport Authority of Jamaica**[7] as follows: -

"…to establish that the detention has become adverse and in defiance of her rights, the Claimant must prove that –

---

[3] Halsbury's Laws of England, 3rd edition, Volume 38, page 64

[4] 13th ed. (1969), No. 3

[5] (1964) 7 WIR 275

[6] [2016] JMSC Civ 48

[7] (supra), at paragraph 25

*(i) she "unconditionally and specifically" demanded return of the motor vehicle (per **George and Branday, Ltd**.);*

(ii) and (ii) the Defendant refused to comply after a reasonable time.'

[46] The claimant relies on the case of **Workers Savings & Loan Bank et al v Horace Shields**[8] in which the respondent, took a loan from the first appellant and signed a bill of sale in the presence of the second appellant as security for said loan. The bill of sale created a lien by the first appellant over items of road construction equipment of the respondent who owned a marl quarry. The bill of sale was recorded at the Island Records Office, on August 16, 1984. The third appellant, the bailiff of the first appellant, acting on the instructions of the second appellant, wrongfully seized the respondent's front end-loader and detained it in purported execution of the bill of sale. Objecting to the seizure, the respondent claimed, the said front-end loader from the first appellant, but the second appellant, initially denying any knowledge of the seizure, thereafter maintained that it was seized under the bill of sale dated August 13, 1984. The front-end loader had not been recorded on the bill of sale obtained from the Island Records Office as the respondent had correctly maintained. The respondent made several demands on the second appellant for the return of the front-end loader without success. On May 21, 1985, the second appellant, the employee and agent of the first appellant, sold the front-end loader to one Harry Shields, thereby committing the tort of conversion.

[47] Harrison, JA writing for the court said:

---

[8] SCCA 113/98; December 20, 1999

"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.

Referring to the tort of detinue, the author in Mayne & McGregor on Damages, 12the edition, said at paragraph 715:

> *"The normal measure of damages is made up of two parts. First, it is the market value of the goods where they are not ordered to be returned to the plaintiff. Secondly, whether the goods are or are not returned, it is such sum as represents the normal loss through the detention of the goods, which sum should be the market rate at which the goods could have been hired during the period of the detention."*

…

*The measure of damages in detinue is the market value of the goods or their return, and any normal loss through their detention, that is, the market rate at which the goods could have been hired. In conversion, it is the market value of the goods converted plus any consequential loss incurred by the plaintiff having been deprived of their use, which loss is not too remote (**Mayne & McGregor** (supra) paragraphs 681 and 715)."*

[48] The case of **Alicia Hosiery Ltd. v. Brown Shipley & Co Ltd. and Another**[9] is relied on for the correct pronouncement of the law:-

> *"a claim in detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in possession of the goods and who upon proper demand fails or refuses to deliver them up without lawful excuse."*

[49] The instant claimant claims in detinue and conversion. In detinue, the measure of damages is the value of the goods as at the date of trial – see (**Rosenthal v Alderton & Sons Ltd**.[10]) In **Rosenthal**, the plaintiff brought an action against the defendants in detinue for the return of goods or for their value and damages for their detention. It was the defendants' contention that the value of certain goods, which were detained and not returned, should be assessed as of the date when the defendants refused the plaintiff's claim for those goods and that the value of such goods, as were wrongfully sold, should be assessed as at the date of the sale. It was held that:

> *'(i) the value of the goods detained and not subsequently returned should be assessed as at the date of judgment or verdict.*
>
> *(ii) the same principle applied whether the goods had been converted (provided that the plaintiff was not aware of the conversion at the time) or whether the defendants failed to re-deliver them for some other reason.*

---

[9] [1970] 1 Q B 195

[10] [1946] K.B 374; [1946]1 All ER 583.

The defendants could not improve their position by reason of their own misconduct.'

[50] In detinue, where the chattel or the goods are not ordered to be returned by the court or cannot be returned, the measure of damages is the loss flowing from the detention. Where the chattel is not ordered to be returned, the ordinary measure of damages is the value of the goods as well as damages for its detention. In conversion, the damages can only be recovered by way of consequential loss.

[51] In the case of **General & Finance Facilities Ltd. v Cooks Car (Romford) Ltd.**,[11] Diplock LJ said at page 650:

"… 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."

[52] In the instant case, the claimant has been divested of his vehicle by reason of a fire. It cannot be presumed that he had abandoned his right to the vehicle as at the date of the fire. The destruction of the vehicle does not in itself derogate from his right to pursue the claim in detinue, or, to the receipt of an award relating to the value of the vehicle as of the date of judgment in this trial. The salvage remained with the second defendant up to the date of trial.

[53] There is a clear distinction between the value of the vehicle as claimed in default of its release and damages whether or not it is returned. In detinue, time begins

---

[11] [1963] 1 W.L.R. 644

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

[54] This court adopts the law as set out by the court of appeal in the case of **The Commissioner of Police and The Attorney General v Vassell Lowe**,[12] cited by the defendants:

> *[35] …the learned judge had placed reliance on the definition of conversion in the 21st edition of Salmon & Heuston's Law of Torts which was referred to in paragraph [9] above but is repeated here for convenience:*
>
> > *"A conversion is an act or complex series of acts of 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 and merely to detain them in defiance*

[12] [2012] JMCA Civ 55

of the owner's title 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 willful interference: (1) a 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 Co v Sutherland Publishing Co*** *[1939] AC 178, 189 and* ***Penfolds Wines Pty Ltd v Elliott*** *(1946) 74 CLR 204, 229). It seems to me that Mrs Dixon Frith was correct in her submission that the learned trial judge failed to take account of these two elements which she was obliged to do before she could make a finding that the action of the police amounted to conversion.*

[37] The courts have determined that in the absence of willful 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 KB 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 the use of it at all times (see* ***Fouldes v Willoughby****). This, at first glance, would seem to provide some authority for the learned trial judge's finding that in taking the truck and its contents into their custody without the consent of the respondent, the police had deprived him of the use and possession of his "missing" items and had therefore converted them. 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 that the defendant refused or ***neglected to comply with the demand****. In the instant case, the learned trial judge did not make a finding that there was a demand, so that her finding that there was conversion was clearly not based upon this method of establishing the tort (see* ***Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd*** *[1992] 1 WLR 1253). (Emphasis mine.)*

[38] The case of ***Brightside Co-operative Society v Phillips*** *[1964] 1 WLR 185 provides authority for the proposition that if a claimant alleges the conversion of a number of chattels, it is not necessary to particularize them item by item as a general description of their nature and value is sufficient.*

[39} ...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 v Iraqi Airways*** *[2002] 2 AC 883).*

[41] ...it is clear from the authorities that the mere taking without the intention to exercise dominion over them is no conversion (see ***Fouldes v Willoughby*** *and* ***Lancashire and Yorkshire Rail*** *where Atkin J said "it appears to me plain that dealing with goods in a manner inconsistent with the right of the true owner amounts to a conversion providing it is also established that there is an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right")."*

[55] The word "*demand"* is defined by the learned authors of Black's Law Dictionary as follows:

1. To claim as one's due; to require; to seek relief.

2. To summon; to call into court.

[56] There is no dispute that the claimant went to the Transport Authority and made demands for his vehicle. He made many trips in order so make this claim for its release to him. There is also no dispute that his attorney made a formal written demand. The first relevant demand was made by the claimant at the offices of the second defendant on December 16, 2009. It has certainly established that the claimant "unconditionally and specifically" demanded the return of the motor vehicle.

[57] The claimant paid the wrecking fees of Five Thousand Five Hundred Dollars ($5,500.00) which he had to in order to collect the vehicle. He produced a receipt for these fees which stated that cash was paid in the sum of Five Thousand Five Hundred Dollars ($5,500.00). The receipt was dated April 17, 2012. This accords with the evidence of the claimant that sometime in April of 2012, he received a call from an agent of the Transport Authority that he should pay the wrecking fee and come to collect his vehicle.

[58] This is evidence from which the inference may be drawn that the second defendant did not know where the claimant's vehicle was being stored until April, 2012. This is also weighed in the same scale as the evidence from the defendants that the claimant abandoned the vehicle. Had he abandoned it, in my view, he would not have paid the wrecking fees with a view to collecting it, as storage fees for three (3) years would have accrued by that point. Mounting storage fees would not have been beneficial for either side in terms of collection or payment respectively.

[59] Therefore, the first block of time between December 16, 2009, the date of the first demand and April 17, 2012, the date of the payment of the wrecking fee is clearly established as time within which the claimant did not have the use of his vehicle.

[60] The claimant bears the burden of establishing the tort of detinue. Counsel for the claimant cited the case of **George and Branday Ltd v Lee**[13] in which the court of appeal in a judgment delivered by Waddington, JA said that:

> *"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 a demand. The authorities establish that a demand must be unconditional and specific."*

[61] The court of appeal said that the demand was made by way of letter from the respondent's solicitor demanding the immediate return of the van. This was so as it was the only demand which was made of the appellant. In my view, **George and Branday Ltd v Lee** is not authority for the proposition that a formal demand has to be made in writing or by counsel.

[62] In the instant case, the claimant having made his own trips engaged counsel who wrote a letter[14] to the Transport Authority in the following terms:

January 30, 2013

Managing Director

---

[13] (supra)

[14] Exhibit 6

Transport Authority

119 Maxfield Ave.

Kingston 5

Dear Madam.

Re: Unlawful Detention of Toyota Hiace Motor Vehicle

Registered Owner: Marlon Parker

We act for our client Mr. Parker who is the owner of the abovementioned vehicle, who instructs us that on or about November 30, 2009, one of your employees seized our client's vehicle and charged his driver Mr. Nkrumah Taffe with operating his vehicle contrary to the terms of its road license.[sic]

We are further instructed that Mr. Taffe went to Court plead[sic] guilty and paid the fine imposed by the Court, but when our client being the owner, went to Lyndhurst Road Pound to collect his vehicle, he was told that it was transported to Lakes Pen Pound in the parish of St. Catherine. However, when he went to collect his vehicle it was not there. The record produced to our client by your Maxfield Avenue Office staff, shows that the vehicle was infact [sic] transferred to Lakes Pen Pound. Since then our client has made nine trips to your office making formal demands on your office for the return of his vehicle, but todate [sic] with no success.

On behalf of our client we now make a formal demand that within ten days (10) from the receipt of this letter you deliver to our client his said vehicle or its money value and pay to him compensation for the loss of earnings as set out below:

<u>Special Damage</u> [sic]

ii)	*Value of vehicle*	*$1,200,000.00*
iii)	*Loss of income for 1155 days at $7,000.00 and is continuing[sic]*	*$8,085,000.00*
iv)	*Transportation cost for nine trips to your office and back at $1,500.00*	*<u>13,500.00</u>*
	TOTAL	***$9,298,500.00***

If we or our client are not in receipt of the said vehicle and the sum claimed, then we have instructions to commence litigation in the Supreme Court against the Transportation Authority and the inspector who seized our client's vehicle.

Yours faithfully,

GARTH E. LYTTLE & CO.

[63] This letter was met with a response from the second defendant in the person of Ms. Annette Henry, Senior Legal Officer/Company Secretary of 119 Maxfield Avenue, Kingston 10 and dated February 7, 2013.[15] This letter was copied to Mr. Barrington Mills, Managing Director (Actg.) It stated that the claimant's letter was received on February 5, 2013 and that:

> *"It is to be observed that you have not properly identified the motor vehicle that you have alleged is in the possession of the Transport Authority. Consequently, the Transport Authority is not put in a position to investigate your allegations."*

[64] There was no letter in response from the claimant's counsel. The court takes note that the description of the motor vehicle in Exhibit 6 is not a Toyota Townace motor vehicle which is the subject matter with which this trial is concerned.

[65] Exhibit 6 also asserts no reason for commencing the suit against the first defendant. It asserts that the driver Mr. Taffe was charged and pleaded guilty to the charge. The first defendant is before the court even though the seizure cannot be said to be unlawful pursuant to section 13(2)(a)(iii) of the Transport Authority Act. The inspector carried out his/her lawful duty by seizing the vehicle

---

[15] Exhibit 1

and the matter was duly prosecuted pursuant in accordance with section 13(2)(c) of the Transport Authority Act.

[66] Exhibit 6 demonstrates that the vehicle was erroneously as well as insufficiently described. When a request for better particulars was made by the second defendant, there was no response either correcting the error or supplying any further details. There is therefore no evidence upon which to base a finding that there was a written refusal by the second defendant to return the vehicle to this formal written demand. There is no challenge to the evidence of the claimant's many in-person demands which I accept.

[67] In fact, the pleadings before this court are also in error regarding the description of the subject vehicle. The motor vehicle with which this court is concerned is a white 2005 Toyota Townace motorcar registered PE 2853 according to the motor vehicle registration certificate, certificate of insurance. There is no Toyota Coaster motor vehicle before the court in evidence. This may be in error, however, it was not the object of demur by the other side who have correctly identified the vehicle in their pleadings that which was in their custody as a Townace van registered PE2853.

What constitutes a refusal

[68] Black's Law Dictionary 9th edn., defines refusal as:

1. *The denial or rejection of something offered or demanded.*

[69] This means that the claimant was denied the return of the vehicle upon demand. The denial did not take the form of a statement or a document, it took the form of the conduct on the part of the agents of the second defendant in not checking or causing to be checked, records, which clearly exist, and which were in their

possession, in order to locate the vehicle and so inform the claimant where to go to collect it.

[70] In the instant case, the claimant was sent from one place to another as the vehicle was not at any of the ones he was sent to. He was never sent to 107 Maxfield Avenue. This was a woeful dereliction of duty on the part of the agents of the second defendant. I find that this casual handling of the claimant's demand, sending him hither, thither and yon without regard for his time or the expense of doing so is tantamount to a denial of the return of the vehicle upon demand.

[71] There is no evidence of a system at the Transport Authority which was set up for those in the predicament of the claimant. Therefore there can be no evidence of a failure to comply on the part of the claimant. There was no evidence from the second defendant as to what transpired when the claimant first arrived at its office after the disposal of the court matter, the date on which he did so or the accrued storage fees to date. Therefore, it cannot be said that the claimant abandoned his vehicle as there is no system in place to record the presence or absence of an owner interested in the release of a vehicle and how that person is dealt with in the normal course of business. The second defendant in its pleadings puts the claimant to strict proof. The claimant says he made nine (9) trips and the second defendant cannot say whether he made one (1) or one hundred (100).

[72] Furthermore, there is nothing in the authorities I have reviewed to suggest that a demand has to be formal, in writing or by counsel. To so hold would be to deny the right of the ordinary citizen to represent himself at the office of a state entity to do business in his own stead.

[73] In all the circumstances of the case on a balance of probabilities, the tort of detinue is established on the evidence. The claimant is entitled to be awarded damages for loss of use of the vehicle from the date of the wrongful detention which is being assessed as at December 16, 2009 to be the date of refusal of the formal demand for the chattel's return, until the date of judgment. The detention of the vehicle continues to be wrongful by reason of the defendants' failure to return it and that wrong continues until its delivery and/or judgment, whichever is first in time.

Distinction between detinue and conversion

[74] 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.[16]

Conversion

[75] The claimant also claimed in conversion. The law is as set out in the case cited by the defendant's counsel which is the **The Commissioner of Police and The Attorney General v Vassell Lowe**[17] discussed above.

[76] In respect of the tort of conversion, the elements of the tort are:*"(1) by wrongly taking it; (2) by wrongly detaining it and (3) by wrongly disposing of it".*

---

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

[17] (supra)

[77] Clerk & Lindsell on Torts: [13th Edition (1969) No. 3] puts it this way:

> *"Conversion is an act of deliberate dealing with a chattel in a manner inconsistent with another's right to his possession or his right to the possession on it. To be liable the defendant need not intend to question or deny the plaintiff's rights; it is enough that his conduct is inconsistent with those rights. [Ibid – para. 1077]"*

[78] The learned authors of **Winfield on the Law of Torts, 7 th Ed**, define conversion, at p. 518, as follows:

> *"As any act in relation to the goods of a person which constitutes an unjustifiable denial of his title to them. Conversion involves two concurrent elements (a) a dealing with goods in a manner inconsistent with the right of a person entitled to them, and (b) an intention in so doing to deny that person's right or to assert a right which is inconsistent with such a right."*

[79] In **Caxton Publishing Company, Limited v Sutherland Publishing Company**[18] Lord Porter adopted Atkin J's definition of conversion which had been approved by Scrutton LJ in **Oakley v Lyster**[19]:

> *"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*

---

[18] [1939] A.C. 178

[19] [1931] 1 K.B. 148, 153

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."

[80] In the instant case, there is no evidence of a wrongful taking, the taking was correct in law. On the second element, the mere possession of the goods of another without his authority, is not a tort. The Transport Authority Act permits the seizure and the lawful acquisition of the chattel of another as set out in section 13.

[81] Regarding the element of wilful interference, this first element suggests a dealing with or handling of the chattel, in the course of business which is at odds with the owner's dealing or handling of it. The owner or person entitled to the vehicle would not have been expected to lose the vehicle or to have handed over his vehicle to an entity which would lose it.

[82] In respect of the second element, the intention in handling the chattel was to deny the owner's right to it. This suggests that the second defendant in failing to account for the whereabouts of the vehicle once the fines had been paid, denied the owner his right to it. Intention can be inferred from the conduct of the second defendant. The vehicle was at the same location for three (3) years on the defendants' own evidence, there were records which showed where it was, yet these records were not checked.

[83] It was not until April 2012 that the second defendant contacted the claimant regarding the payment of the wrecking fees. This did not mean that they had located the vehicle, as they had not. It was not until the written demand was made that any enquiry into the release of the vehicle began. The inference can be drawn that the claimant on his own was not capable of securing the release of the vehicle. The road licence for the vehicle was issued by the second defendant

to the claimant. It is reasonable to presume that the second defendant had to have known who the claimant was.

[84] Lastly, the word "wilful" as defined by the Oxford Dictionary of Law,[20] means:

> *"Deliberate; intended: usually used of wrongful actions in which the conduct is intended and executed by a free agent."*

[85] It is trite that an agent has the authority to act for his principal. Therefore, the acts and omissions of the agents of the second defendant can be described as inexcusable carelessness, there need be no evil or malicious act for their conduct to be described as wilful and I so find. The claimant has proven that the detention was adverse by adducing evidence that demands were made for the vehicle both verbally and in writing and the second defendant **while not refusing to comply, neglected to comply with the demand**.[21] In so doing, the second defendant denied the owner's title to it. The tort of conversion has been established on the evidence.

[86] It is trite law that a claim for special damages must be strictly pleaded and strictly proved. **Bonham-Carter v Hyde Park Hotel Ltd**[22] still stands as good and applicable law within this jurisdiction. It has been recognised, however, that the circumstances of a case may demand some measure of flexibility in the award of special damages in the interests of justice. Therefore, in determining the nature and degree of proof that should be insisted upon before damages may be

---

[20] 9th edn.

[21] Vassell Lowe para [37]

[22] (1948) 64 TLR 177

awarded, regard must be had to the particular circumstances of each case. (See **Desmond Walters v Carlene Mitchell**.)[23]

[87] The learned author of Halsbury's Laws of England[24], expressed the following view on the award of interest in actions for detinue:

"Interest maybe allowed in an action of detinue or conversion in addition to the value of the goods at the time of judgment (b) or conversion (c) if the court thinks fit (d). It is doubtful, however, whether interest could be awarded in addition to damages for detention (e) or for loss of use (f) in an action of detinue without infringing the rule against giving interest upon interest (g).

Loss of earnings

[88] The claimant has pleaded a handwritten note in which he lists earnings from the vehicle on five (5) days of the week at Seven Thousand Dollars ($7,000.00) per day. This is coupled with his evidence of loss of earnings in his witness statement at paragraph 13 where he says that the sum of Seven Thousand Dollars ($7,000.00) was his net earnings per day as handed over by Mr. Taffe. The latter paid for gas and oil used by the vehicle and paid himself. This is some evidence of loss of user profits and showed the inability of the claimant to have his public passenger vehicle being operated as an income earning chattel during the period of its unlawful detention.

[89] There was no evidence as to how long the vehicle had been in operation as a public passenger vehicle so as to say over what period the net profits would have

---

[23] (1992) 29 JLR 173

[24] 3rd ed. Volume 38 at paragraph 1325

accrued. There was no evidence of the fare he charged each passenger for the journey or the route on which the vehicle operated. There was no evidence as to the approximate number of passengers transported on each trip and whether there were regular passengers or standing arrangements with any passengers for particular dates and/or times. In addition, there were no maintenance costs associated with the claimant, such as tyres, servicing or loan payments in respect of the lien on the title produced to the court or whether that lien had been discharged.

[90] When the vehicle was seized it was four (4) years old. It would still have been relatively new. It is unknown what condition it was in, what its mileage was and what wear and tear its operation as a public passenger vehicle had occasioned. There is evidence from the Transport Authority's Vehicle Inspection Checklist that the odometer reading was 70927 km on the date it was seized. It was not given in evidence whether the vehicle was on the road each day without fail, even during holidays or inclement weather.

[91] The court has borne in mind the figures given in the witness statement of the claimant which are rather excessive and not in accord with his own particulars of claim. There was also no evidence of any increases in fares over the years. It is clear that there can be no precision in arriving at this award. In the circumstances, 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 would be reasonable given the imponderables, and lack of detail in the evidence. This would translate into a discount from the damages of roughly one-third.

[92] I bear in mind, the principles set out by the court of appeal in **Desmond Walters v Carlene Mitchell**[25] in which Wolfe, CJ held that "

> "…*in the sidewalk vending trade it is always difficult to obtain and present exact figures for loss of earnings. The court has to use its own experience in these matters to arrive at what is proved in evidence. The respondent stated categorically the weekly profit, the partnership earned. The trial judge accepted this evidence. It was open to him to properly make the award that he made.*
>
> *…Without attempting to lay down any general principle as to what is strict proof, to expect a sidewalk or a push cart vendor to prove her loss of earnings with the mathematical precision of a well organized corporation may well be what Bowen, L.J., referred to as "the vainest pedantry".*
>
> *This Court observed in S.C.C.A. 18/84 Central Soya Jamaica Ltd. v. Junior Freeman (unreported) per Rowe, P., that:*
>
> > *"In casual work cases it is always difficult for the legal advisers to obtain and present an exact figure for loss 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." This principle is no less applicable to a plaintiff involved in the sidewalk vending trade. This is a small scale of trading. Persons so involved do not engage themselves in the keeping of books of accounts. They buy, and replenish their stock from each day's transaction. They pay their domestic bills from the*

[25] (supra)

day's sale. They provide their children with lunch money and bus fares from the day's sales without regard to accounting."

[93] The claimant in his witness statement advances an entirely different claim from his amended claim. In his witness statement he claims twelve (12) years at three hundred sixty five (365) days per year at Seven Thousand Dollars ($7,000.00) per day and continuing for a total of Thirty Million Six Hundred Sixty Thousand Dollars ($30,660,000.00). This claim suggests that this vehicle was never off the road. It was being continuously driven without fail. This is not the case, the handwritten note lists Mondays to Fridays and not weekends, therefore the claim of 365 days could not include weekends, based on the claimant's own documentary evidence. This also does not accord with amended claim filed on August 27, 2014 which claims loss of use at one thousand one hundred fifty five (1155) days at Seven Thousand Dollars ($7,000.00) per day and continuing.

[94] Therefore, using the amended claim, the court will consider bearing all of this in mind, that the best estimate is a net figure of Two Thousand Dollars ($2,000) per day in 2009 based on judicial experience.[26]

[95] I would award damages for a period of thirteen years discounted by one-third to nine (9) years. The daily net income of Two Thousand Dollars ($2,000.00) at five (5) days a week is a total of Ten Thousand Dollars ($10,000.00) per week per year. ($10,000 x 52 x 9 - $520,000). The court would, therefore, award the sum

---

[26] As a Resident Magistrate with sittings in the traffic court in 2009, recalling the customary evidence of net earnings of Ten Thousand Dollars ($10,000.00) per five (5) days week given to the court by the owners of public passenger vehicles at that time.

of Four Million Six Hundred Eighty Thousand Dollars ($4,679,480.00) for loss of use for the unlawful detention, taking into account a mitigation period of twelve (12) months.

[96] The claimant further claims the value of the vehicle which has been agreed at One Million Two Hundred Thousand Dollars ($1,200,000.00).

[97] In addition, he claims the wrecking fee of $5,500.00, interest at 6% and costs.

[98] The claimant's particulars of special damage filed on August 27, 2014 paragraphs (b) contains errors in terms of the make and model of the vehicle and has a duplicate claim for value of the vehicle.

[99] The law is quite clear that a claimant seeking loss of use of a chattel is entitled to take reasonable steps to mitigate his losses. There is no question that the claimant bore the burden to mitigate his losses. The question is whether he unreasonably failed to do so, such that an award of damages should be reduced on account of that failure. The burden would have been on the defendants to prove that there was a failure to mitigate as they have failed to discharge that burden, it would not be accurate to hold that the claimant had failed to mitigate his loss. There was no evidence from the defendants to prove such a failure on the part of the claimant. The court recognized that the claimant ought to have mitigated his loss, and that a period of one (1) year was sufficient time within which to have done so.

[100] In arriving at the sum payable for loss of use of the vehicle, the court will apply the principle in **Strand Electric and Engineering Co Ltd v Brisford**

Entertainments Ltd[27], which was adopted by the court of appeal in the case of **Workers Savings & Loan Bank and others v Horace Shields**[28] which is that "the owner of the profit-earning chattel which is detained is entitled to a reasonable hire charge for the period of such detention". There was no dispute and the court readily accepted that the vehicle constituted income earning property, therefore, the appellant was entitled to recover loss of use at the normal market rate at which the vehicle could have been hired.

[101] In applying the principle of restitutio in integrum in assessing the measure of damages, to the tort of detinue which is a continuing wrong and bearing in mind that the defendants waited until the matter was filed to admit liability for the value of the vehicle, the defendants cannot now be heard to complain about a claim for loss of use. Detinue is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until the goods are delivered up or judgment is obtained. (see **Rosenthal v Alderton and Sons Limited**[29] and **The Attorney General and The Transport Authority v Aston Burey**[30])

[102] Accordingly, the court on will make an award in damages for loss of use from December 16, 2012 up to the date of judgment.

---

[27] [1952] 2 QB 246

[28] (unreported) Court of Appeal, Jamaica Supreme Court Criminal Appeal No 113/1998, judgment delivered 20 December 1999

[29] (supra)

[30] [2011] JMCA Civ 6

[103] While the claimant is entitled to compensation for the loss of his income-earning chattel from the date of refusal of the vehicle's return to the date of judgment, no interest is awarded for loss of use. This is based on the authority found in Halsbury's Laws of England, Third Edition, Volume 38, paragraph 1325, that: "[i]t is doubtful…whether interest could be awarded in addition to damages…for loss of use in an action of detinue without infringing the rule against giving interest upon interest". The learned editors refer specifically to proviso (a) to section 3(1) of the English Law Reform (Miscellaneous Provisions) Act, which is in identical terms to proviso (a) to section 3 of our Act of the same name.

Transportation expenses

[104] These fall within the principle set out in **Desmond Walters v Carlene Mitchell**[31] and are accepted by the court as reasonable in the circumstances of public transportation from Bull Bay into Kingston and for the return trip. I am satisfied as to the sufficiency, credibility and reliability of the evidence with regards to the expenses claimed. The court will award the sum of Eighteen Thousand Dollars ($18,000.00) for nine return trips.

Wrecking fees

[105] The vehicle was lawfully seized and the claimant was lawfully prosecuted for an offence under the TAA. The cost of seizure has to be borne by him for breaching the provisions of his road licence. The award of wrecking fees is refused.

---

[31] (supra)

Interest

[106] The award of interest for the period between the date the cause of action arose and the date of judgment is discretionary in keeping with section 3 of the Law Reform (Miscellaneous Provisions) Act.

[107] In the case of **The London Chatham and Dover Railway Company v The South Eastern Railway Company**[32] Lord Herschell stated:

"…when money is owing from one party to another and that other is driven to have recourse to legal proceedings in order to recover the amount due to him, the party who is wrongfully withholding the money from the other ought not in justice to benefit by having that money in his possession and enjoying the use of it, when the money ought to be in the possession of the other party who is entitled to its use."

[108] In Halsbury's Laws of England, Third Edition, Volume 38, at paragraph 1325, it is stated that interest may be allowed in an action for detinue in addition to the value of the goods at the time of judgment. It seems, therefore, that there is nothing in law precluding an award of interest on the replacement value of the vehicle.

[109] In McGregor on Damages, at paragraphs 15-037-15-038, it is stated that where damages are awarded in cases at common law, where profit earning or non-profit earning chattels are destroyed as in the instant case where the chattel is not returned, two courses open:

---

[32][1893] AC 429, at page 437

"Either the value of loss of use may be awarded as damages, as of right, on general principles, ***and this would be equivalent to interest****, or the discretion of the court should be exercised in favour of the award of [statutory interest] following principles applied in the admiralty cases".* (Emphasis supplied)

[110] There can be interest on damages for the replacement value but no interest on the damages for loss of use, since damages for loss of use is said to be equivalent to interest. It does seem that such an award of interest would infringe the rule against awarding interest upon interest. If interest were allowed on the sum awarded as damages for loss of use, this would secure a windfall to the claimant at the expense of the defendants, which would not be fair.

[111] Interest on special damages at the rate of three percent (3%) per annum is awarded to the claimant).

[112] The defendants ought to have known, well before 2013 when this claim was filed that they were not in a position to return the vehicle and so should have taken steps to compensate the claimant for the deprivation of his property. They failed to do so however, they raise a reasonable excuse.

[113] I hold that a reasonable period for the award of interest at 3% on the sum of One Million Two Hundred Thousand Dollars ($1,200,000.00) (the replacement value of the vehicle), taking everything into account, should be from the December 6, 2009 the claim to the date of judgment.

Counterclaim

[114] The defendants have filed a counterclaim in which they claim a set off against the value of the vehicle, the sum of Nine Hundred Sixty-Nine Thousand Dollars

($969,000.00) being storage fees owed from the date of seizure on November 30, 2009 to the date of the fire on July 23, 2012.

[115] The sums claimed are based on a failure by the claimant to attend upon the offices of the second defendant and pay the required storage fees to have the vehicle released. In other words, the claimant abandoned his vehicle. The defendants state that the vehicle was stored at 107 Maxfield Avenue, Kingston 10 having been transported there by wrecking from MKM Haulage Contractors on November 30, 2009. The claimant's vehicle was transferred to the Lakes Pen Pound on July 19, 2012 and a fire from an unnamed source at the Lakes Pen Pound destroyed the claimant's vehicle on July 23, 2012.

[116] The second defendant admits it is liable to the claimant for the value of the motor vehicle as at July 23, 2012.

[117] In its particulars of counterclaim, the defendants claim:

Storage fees	
Seizure date 30th November, 2009	$5,000.00
Costs for period 1st December 2009 to July 23, 2012	
($964 days at $1,000 per day	$964,000.00
	$969,000.00

[118] The second defendant's defence and counterclaim says that a letter was received from counsel for the claimant and in its response, further particulars were requested in order to commence an investigation. There was no response to their letter. In the circumstances, the letter from Dr. Lyttle cannot be treated as a demand letter.

[119] The defendants argue that the claimant was not entitled to possession of the vehicle having failed to pay the outstanding storage fees to secure its release

and so would not be entitled to loss of earnings. The seizure was lawful and the wrecking fees were therefore owed and should not be awarded to the claimant.

[120] Additionally, the claimant did not make nine (9) trips from Nine Miles, Bull Bay to its offices. Finally, the defendants aver that the claimant had a duty to mitigate his loss.

[121] In respect of the particulars of the vehicle requested by the second defendant and not received, Dr. Lyttle in cross-examining Bannetta Walker who gave evidence on behalf of the second defendant elicited the following exchange:

Q: In para 6 Witness Statement you say the motor vehicle not adequately identified

A: yes

Q: on March 26, 2013 a suit was issued against the Transport Authority bearing all information about the motor vehicle and its owner

A: not aware, but it says January 30, 2013 in relation to a letter from your office

[122] While the vehicle may have been incorrectly described, its registration plate number was accurately depicted. The Transport Authority does not deny or dispute the fact that this was a public passenger vehicle with a road licence. There must be records of road licences and none of these records were checked against the registration plate number and name of the claimant. The second defendant simply sat on its hands, all the while storage fees were mounting.

[123] The evidence of the claimant was that he decided not to pay the storage fees until he saw his vehicle as he had to know what state it was in before paying for it. His evidence is accepted by the court as to searches and travels looking for

the vehicle. This is bolstered by the date of the wrecking fees which was paid on April 17, 2012. Despite paying these fees, the vehicle still could not be found and it was then that the claimant engaged the services of an attorney.

[124] There is no evidence before this court as to the total amount of the storage fees which were due and payable on the date the wrecking fees were paid. There is no document before this court from the second defendant regarding the outstanding storage fees addressed to the claimant or his attorney even after the claim was filed in a bid to settle the matter.

[125] I do not believe that the claimant can be faulted for proceeding in the manner which he did, given the callous disregard for his right to possession of the vehicle after December 16, 2009. He would have had to pay storage fees up to the date of the vehicle's release. The argument that he should have paid for it to be released is without merit as how would he have known what sum was due and owing if the vehicle could not be found? There is not one scintilla of evidence before the court that the claimant was presented with the sum set out in the counterclaim as storage fees and he refused to pay. It is simply being asserted that the claimant paid the wrecking fees on April 17, 2012, for an abandoned vehicle. Even on that date, there is no evidence that he was given the total sum outstanding for storage and he failed to pay that sum and thus the vehicle had to by law, remain in the custody of the second defendant. The vehicle is liable to be auctioned after six months in the pound. It was not. There was no attempt to carry out the provisions of the statute. Moreover, the second defendant cannot say that the claimant did not attend upon its offices as it has no system in place to say who does and does not attend there. If there is one, it is a mystery to this court. The evidence of the claimant is accepted in respect of his several attempts to secure the release of the vehicle which to date have failed. The counterclaim is doomed.

[126] The remaining question now is the period for which interest should be awarded on the damages for the replacement value of the vehicle. In considering what should be an appropriate period for the award of interest, I have taken into account the fact that the defendants waited until the defence was filed to indicate where the vehicle was and to admit liability.[33] This means it took two (2) further years to admit liability.

[127] The court finds that the claimant has proven on a balance of probabilities both elements of the torts of detinue and conversion.

Disposition

[128] I hold that a reasonable period for the award of interest on the sum of One Million Two Hundred Thousand Dollars ($1,200,000.00) (the replacement value of the vehicle), taking all of the circumstances of the case into account, should be from the date of the first demand on December 16, 2009 to the date of judgment.

[129] Interest at the rate of three percent (3%) per annum is awarded on the replacement value of the vehicle in the sum of One Million Two Hundred Thousand Dollars ($1,200,000.00).

[130] The court will award damages for loss of use from December 16, 2012 up to the date of judgment in the sum of $4,679,480.00.

[131] The court will also award special damages of $18,000.00 for transportation costs with interest at 3% from March 28, 2013 to the date of judgment.

---

[33] July 31, 2014

[132] Orders

1. Judgment for the claimant on the claim.

2. Judgment for the claimant on the counterclaim

General damages

3. The claimant is awarded the sum of $1,200,000.00 with interest at 3% from December 16, 2009 to the date of judgment.

4. The claimant is awarded the sum of $4,679,480.00.

Special Damages

5. The claimant is awarded the sum of $18,000.00 with interest at 3% from December 16, 2009 to the date of judgment.

6. Costs to the claimant to be agreed or taxed.

7. The claim against the first defendant is dismissed.