

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

SUIT NO. C. L. R.-019/1996

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| <i>BETWEEN</i> | <i>WALTON RICHARDS</i> | <i>CLAIMANT</i> |
| <i>A N D</i> | <i>WOMAN DETECTIVE CORPORAL CAMPBELL</i> | <i>ST DEFENDANT</i> |
| <i>A N D</i> | <i>THE ATTORNEY GENERAL</i> | <i>2ND DEFENDANT</i> |

Appearances

Mr. M. Frankson instructed by Gaynair & Fraser for the Claimant

Ms. S. Orr instructed by Director of State Proceedings for the defendants.

Heard: March 10, September 22, 2008 & February 19, 2009

Trespass to property-Conversion and/or Detinue – False Imprisonment – Whether claimant entitled to aggravated and exemplary damages

Williams, J.

Background

On the 17th of January 1996 a police party went to premises at No 24 East Avenue, Greenwich Farm, Kingston occupied and owned by Walton Richards the claimant. The party was led by Detective Corporal M. Campbell (as she then was having since been promoted to sergeant).

When the party left they removed a white Dodge Caravan motor vehicle.

The claimant was told to attend the Central Police Station where the vehicle was being taken and he did so.

It is arising from this incident that the claimant brought proceedings in January 1996. He claims this vehicle and an engine was unlawfully seized and/or detained and/or converted and has still not been returned despite requests. He also asserts he was falsely imprisoned for six (6) hours.

He now seeks the return of the motor vehicle and engine or alternatively the sum to replace it.

He seeks damages for loss of use of his vehicle. He seeks aggravated and exemplary damages also.

The Evidence

For the claimant

In his witness statement/ evidence-in-chief, the claimant described himself simply as a businessman with premises at 24 East Avenue, Greenwich Farm, Kingston. He stated that the police personnel unlawfully and maliciously and without reasonable and/or probable cause trespassed onto his premises and carried away his motor vehicle and engine. He exhibited a copy of an import entry clearly naming him as the importer of the van. This vehicle was not returned to him despite repeated requests orally and in writing for its return. He exhibited one letter dated January 29, 1996 addressed to Detective Corporal Campbell from attorneys acting on his behalf requesting an immediate return of the van.

He stated that he was taken into custody and released after six (6) hours without being charged.

He maintained that he has been greatly injured in his reputation and business. He was deprived of his liberty and the use and enjoyment of his motor vehicle. He suffered great embarrassment and humiliation. The police action was arbitrary and high handed and in total disregard of his rights.

In his viva-voce evidence he explained that he is a custom broker/clerk as well as a freight forwarding agent.

He was permitted to amplify his witness statement and explained that when the police visited his premises and removed the van, he was instructed to drive himself to Central Police Station behind the police party. It was his impression that he was to be locked up "and not get out 'till he went to court". He explained further that the premises he owns, housed a garage as well where vehicles came to be fixed. The van was being worked on along with a BMW and licence plates found in the van were for the BMW- they were not affixed to the van.

He was able to describe the process necessary to clear the van off the wharf. He explained the value of the van was one hundred and seventy thousand dollars (\$170,000.00) and when duty is added the value increased to three hundred and fifty thousand dollars (\$350,000.00), the cost for storage would be a further increase to four hundred and twenty thousand dollars (\$420,000.00). There was no documentation to support these figures.

His cross-examination began with him explaining the steps necessary to apply for an import licence. He later went on to speak of the documents needed to clear a vehicle and how each could be procured.

He said he had been working as a custom broker for twenty-two (22) years before obtaining his own licence in 1992.

His focus has turned to freight forwarding and his custom broker's licence has been turned in.

He agreed that he knew a Enid Miller for whom he had worked for a number of years. He also agreed that she shipped the dodge caravan, and it was sent to him; from the United States. He said it was as payment for work he had done for her for a period of over a year without charge.

The invoice related to the van was in his name, however the title for the van was in her name.

No money was exchanged for the vehicle. It was a verbal agreement he had made with Mrs. Miller.

His recollection of the 1st defendant's visit to the premises is that she just came and seized the vehicle without showing him anything or affording him an opportunity to show her anything.

He however was able to call his attorney before proceeding to the station with the documents he deemed necessary. He showed them to a senior officer at the station as the 1st defendant did not arrive until later.

He said he found her discourteous and felt afraid of her because of her attitude.

He claimed he was at the station for hours till eventually he left. He got back his documents before leaving but not the vehicle. He went back to the station on three (3) occasions about it, but to no avail.

He acknowledged that on that visit to the station on the 17th of January, he was not told he was going to be charged. He was not locked in a holding area – he sat in an office. He was asked if he was told he would be placed in custody to which he responded, “not really”.

When asked if he was ever told he would not be allowed to leave, he indicated he was told she didn't think he was going to leave that day. He did not ask to leave, he was not prevented from leaving and he did not ask if he was being held in custody.

He admitted that when he went to the station he was told that Mrs. Miller had made a report that he hadn't paid for the vehicle or, in his words, “something like that”. He made no attempt to contact her after learning of the complaint. He however refuted suggestions that no arrangements existed between himself and Mrs. Miller. He also disagreed that the 1st defendant did anything more than take the motor vehicle from the premises. Further, Mrs. Miller he asserted did not accompany the police to his premises.

When re-examined he claimed a senior officer had told the 1st defendant she was on her own as that officer didn't see any reason why the motor vehicle had been taken from the premises.

For the defendants

In her witness statement/evidence-in-chief, the 1st defendant, explained that while on duty on that Wednesday 17th of January, 1996 a Mrs. Enid Miller-Cushnie attended and made a report. This lady was not called as a witness but her allegations made became admissible in seeking to establish the 1st defendant's state of mind and reason for believing she had to act the way she did.

The report was to the effect that Mrs. Miller-Cushnie had shipped a vehicle to the claimant with the understanding that it would be cleared upon her return to Jamaica and transferred to the claimant upon his paying for it. The 1st defendant asserted that after recording the statement of Mrs. Miller-Cushnie she commenced her enquiries which led her to the premises of the claimant. She said that Mrs. Miller-Cushnie accompanied her and identified the vehicle.

The claimant is reported to have said, "the vehicle is mine cause it was sent to me and I used my money to clear it".

The 1st defendant insisted that she was shown documents by the claimant however in the circumstances she felt she should take possession of the van pending proof of ownership. The vehicle was placed in safe custody at the Central Police Station while enquiries into the matter commenced.

She found licence plates on the van which belonged to another vehicle. The title for the van was still in the name of Mrs. Miller Cushnie.

With the information she obtained the 1st defendant felt it necessary to seek guidance – she wrote to the Detective Inspector in charge of her division requesting a ruling on the matter from the Director of Public Prosecution. She then sent the file in the matter and all the original documents she had received to the Director of Public Prosecutions.

She said the claimant never made any requests of her either orally or in writing for the return of the van neither is she aware of any such being received by the Fraud Squad.

She agreed that the claimant was questioned and a statement recorded from him which accounted for his being at the station for no more than two (2) hours.

She exhibited statements allegedly recorded from Mrs. Miller Cushnic along with one Alfred Clayton a custom officer. The defendants served notice of their intention to tender these statements into evidence along with the letter written to the Detective Inspector in charge of the Fraud Squad requesting the matter be referred to the Director of Public Prosecutions. This letter is dated 31st of March 1996 – a little over two (2) months after the vehicle was seized.

Under cross-examination she admitted the vehicle was parked on the compound of the C.I.B. Headquarters and is unable to say if it is still there.

She considered that she had relinquished her possession of it when it was left in safe custody at the station.

She admitted the vehicle was properly and lawfully imported into Jamaica in the claimant's name.

She however asserted her suspicion that the claimant had committed offences of forgery and uttering forged documents relating to the import entry form and this formed a basis for her investigations. The fact that plates for another vehicle was on the van also was the subject of investigations.

She acknowledged that to date no instructions had been received from the Director of Public Prosecutions and indeed attribute fault to that office for the failure to arrest the claimant.

She also accepted that she never saw documents related to the registration of the vehicle issued by the Jamaican authority.

She denied that she acted in any way arbitrarily and was only doing her duty. She did not know the claimant and was not acting with any malice towards him.

She agreed that the claimant had been instructed to go to the police station and insists he went there voluntarily. He had been told that this was due to the investigations being carried out.

It is her belief that she was not in anyway irresponsible nor oppressive; she did not breach his constitutional rights and there existed reasonable and probable cause for seizing the car.

The Submissions

For the claimant

The main thrust of Mr. Frankson's submission is to attack the credibility of the 1st defendant.

He points to undisputed facts including issues which are in dispute. However it is accepted that the vehicle was shipped by Mrs. Miller to the claimant who then cleared it off the wharf. Also accepted is that months later it was seized by the police in whose possession it has remained.

Whether a senior police officer told the 1st defendant she was on her own because he did not see why she seized the motor vehicle is not undisputed. Neither is the assertion that the claimant made several demands for the vehicle both orally and in writing accepted as fact by the defence.

Mr. Frankson in reviewing the evidence points to discrepancies in the cases presented and urges the court to accept the claimants. He points to much of the evidence of the claimant as uncontested and therefore to be accepted.

On the issue of whether Mrs. Miller visited the premises with the police, Mr. Frankson points to the fact that her statements were recorded on the 17th and 22nd of January indicating she was not with the police on the 19th.

In regards to the time the claimant spent at the station, the fact that the defence has two times – in the defence it was approximately fifteen (15) minutes while in the 1st defendant's witness statement it was no more than two (2) hours – is highlighted

It is also submitted that there was no evidence or no sufficient evidence to establish that any file was sent to the Director of Public Prosecutions for any ruling. If it had, a ruling would have been made a long time ago. In any event, an onus was on the 1st defendant to follow up in her investigations and she therefore failed in her duty.

It is opined that there had been no cogent evidence to challenge the claimant's assertion that he is the owner of the dodge caravan.

The case of **Alicia Hosier v. Brown [1970] 1 Q B 195** is relied on for this 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”

Mr. Frankson has urged therefore that there being no evidence that Mrs. Miller made any further claim following the seizure of the van it ought to have been returned to the one from whose possession it was taken – the claimant.

In conclusion the court is urged to accept the following:-

- (1) The 1st defendant unlawfully and maliciously and without reasonable and probable cause carried away the claimant's motor vehicle and an engine and placed the same in her custody where it still remains.
- (2) The claimant's evidence that he made several demands, orally and in writing, for the return of the items amounted to an unconditional and specific demand which was refused and/or failed to be complied with. The case of **George and Branday Ltd. v. Lee [1964] 7 WIR 275** per Justice Waddington at page 277 is referred to.
- (3) As to the issue of false imprisonment, the claimant was detained against his will without legal justification for approximately six (6) hours before being released without charge. He had no choice but to comply with directions that he go to the station and having gone he had been questioned and his statement recorded – until that was done, he was not free to leave

Mr. Frankson ask for damages to be assessed as follows:-

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| 1. | Value of motor vehicle and engine | \$ 500,000.00 |
| 2. | Loss of use @ \$3000 per day for 4,611 days to the 18/8/08 | \$13,833,000.00 |
| 3. | Aggravated damages | \$ 500,000.00 |
| 4. | Exemplary damages | <u>\$ 500,000.00</u> |
| | Total | \$15,333,000.00 |

For the defendant

Miss Orr in her review of the evidence noted that the 1st defendant's taking the car in custody was to safeguard the vehicle pending proof of ownership of it. In effect it was taken to the police station for safekeeping.

She referred to Halsbury's Laws of England for the definition of trespass – Vol 42 (a) paragraph 659 states:

trespass to goods is an unlawful disturbance of the possession of goods by seizure or removal or by a direct act causing damages to the goods.

It is opined that for the claimant to sue for trespass to goods, he must prove that at the time when the act was committed he had actual possession (lawful) or a right to immediate possession of the chattel in question - as per **Wilson v. Lombank Ltd. [1963] 1 All ER 740.**

It is submitted that the claimant relies on the fact that he presented the import/export document in proof of his right to possession of the vehicle. It is noted that in his evidence the claimant explained the import entry form is completed by a licensed custom broker – it is not signed by the consigner.

The custom broker does not have to establish his right to lawful possession or ownership of the vehicle. It is further posited that a receipt from the wharf showing storages fees paid and the form showing the relevant duties were paid and the certificate of fitness do not establish a right to possession.

It is noted that the claimant knew of the report made by Enid Miller yet he had not spoken to her about it or about securing payment owed for the work he had done in lieu of the vehicle.

The claim for trespass it is therefore urged should fail as the claimant has failed to satisfy the court that he had a right to possession. Equally the claim for conversion should also fail as he also failed to establish a right to the use or ownership.

Salmon on Torts is referred to for its definition of conversion as follows:

“an act of willful 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 the chattel.”

It is further submitted that the 1st defendant's actions were not unjustified as she was presented with conflicting claims for the vehicle which she then took into custody. She was acting on a complaint she had received, she carried out investigations and she suspected the claimant had forged the import/export form.

These acts of the defendant point to the existence of reasonable and probable cause. The case of **Glinski v. McIver [1962] 1 All ER 696; Tempest v. Snowden [1952] 1All ER 1; Kenneth Atkinson v. Asst. Supt. Dudley Reynolds and the Attorney General [1990] 27 JLR 463** are referred to for guidance as to what constitutes reasonable and probable cause.

It is submitted that there is no evidence that the defendant acted maliciously. Further her actions ought not to be seen as high handed or arbitrary.

Miss Orr went on however to submit that in the event the claimant gets judgment, the fact that he has not submitted any documentary proof as to the value of the vehicle is to be noted.

Cases referred to which speak to the necessity of a claimant to prove his special damages are **Owen Thomas v. The Attorney General [unreported] delivered January 6, 2006** and **The Attorney General v. Tanya Clarke nee Tyrell [unreported] decided 20/12/04.**

As to the issue of loss of use Miss Orr relied on her submissions relating to the failure of the claimant to prove lawful possession or a right to immediate possession to buttress her argument that he had no right to use of the vehicle and cannot succeed in a claim for loss of use. In any event there is no evidence as to how this alleged loss arose neither was any losses mitigated.

It is finally submitted that as regards repairs to the vehicle the same argument hold true and further no receipts for payments were exhibited.

On the issue of false imprisonment the submission is that there is in fact no evidence he was held against his will or detained in a holding area or cell.

It is urged that a claim for this tort is maintainable where a person is detained without lawful justification. The case of **Flemming v. Myers and the Attorney General [1989] 26 JLR 525** is referred to for the pronouncement of this principle.

The point is made that nothing short of an actual detention and complete loss of freedom can support an action for false imprisonment. In this case, it is submitted the claimant proved neither and had only an impression that he was going to be locked up.

The court is asked to accept that the claimant voluntarily attended the station and left without being detained.

Finally, the court is urged to reject his assertion that his reputation and business were greatly injured as there is no evidence of this. The claim for exemplary and/or aggravated damages, it is submitted, does not arise as the claimant has not established that the defendant's acts were wrongful and he has not sufficiently particularized these heads of damages.

The Law

The claimant's claim to recover damages for trespass seems to be in relation to his premises. There is a further claim for the interference with his goods on the premises specifically the seizure and carrying and/or the detention and/or the conversion of the motor vehicle.

As to the false imprisonment it is asserted the 1st defendant took the claimant in custody.

All these acts complained of were allegedly done without reasonable and probable cause, unlawfully and maliciously.

Finally the claimant in his statement of claim seeks damages – aggravated and exemplary.

Re: Trespass to property

Trespass is regarded generally as an invasion of possession, hence trespass to property seeks to protect a claimant's interest in having his property free from unjustified physical intrusion of another. For the purposes of this case, the claimant has to establish

that the defendant's entry to his property was without justification or not under any authority of law.

Re: Conversion

It is oft argued that it is not possible to properly define this tort as it can occur in varied ways. It is however well established that conversion is any dealing with another's property so as to deny his rights over it.

It is for the claimant to establish the right to anyone of ownership, possession or immediate right to possession. An equitable title or a lien may also be held by a claimant in a suit for conversion.

To constitute conversion there must be an overt act of taking possession with the intention of depriving the claimant of his right of ownership or possession.

Conversion would be established by the wrongful taking possession of goods, the wrongful disposal of them or by the wrongful refusal to return them when demanded.

Lord Kenyon Chief Justice in **Ward v. Maclauley [1791] 4 TR 489 at 490** said:

“the distinction between the actions of trespass and trover is well settled, the former is founded in possession the latter on property.”

One significant aspect to conversion which needs be remembered however is that the claimant's possession need not amount to legal ownership.

The case of **Castello v. Chief Constable of Derbyshire Constabulary [2001] 1 WLR 1437** proves useful in considering this principle. In the case the police had lawfully seized a car from the claimant, they believed to be stolen and retained pursuant to their Criminal Evidence Act. It was acknowledged that the claimant had not stolen the

car and the owner was unknown. The claimant sought the return of the car and damages for its unlawful detention. On appeal from the first instance judge's dismissal, the claimant was held to be entitled to an order for delivery up of the car and damages for its unlawful detention.

The Court of Appeal applied **Webb v. Chief Constable of Merseyside Police [2000] Q B 427**. From this latter case Lightman J gleaned three (3) propositions, the first of which may be applicable – page 1443

“1) The fact of possession of a chattel of itself gives to the possessor a possessory title and the possessor is entitled to rely on such title without reference to the circumstances in which such possession was obtained: his entitlement to do so is not prejudiced by the fact that he obtained such possession unlawfully or under an illegal transaction. His claim can only be defeated by proof of a title superior to his possessory title.

The dictum of May L.J. in **Webb v Chief Constable** was referred to – by Justice Lightman: at page 1442-

“if goods are in the possession of a person on the face of it he has the right to that possession. His right to possession may be suspended or temporarily divested if the goods are seized by the police under lawful authority. If the police right to retain the goods

comes to an end, the right to possession of the person from whom they were seized revives. In the absence of any evidence that anybody else is the true owner, once the police right of retention comes to an end, the person from whom they were compulsorily taken is entitled to possession.”

Re: Dentinue

The essence of this old common law form of action for recovery of goods is firstly that it must be from a defendant who may have rightfully acquired possession of them, secondly it must be proven that the detention of them is now unlawful in the failure to return them to the claimant.

In Hoisery v. Brown [1970] 1 Q B 195 at 207 Donaldson J stated:

“A claim in dentinue lies at the suit of a person who has an immediate right to the possession of the goods against who is in possession of the goods who upon proper demand fails or refuses to deliver them up without lawful excuse.”

Re: False Imprisonment

To succeed with this claim, it must be established that there was complete restriction of the claimant’s freedom of movement without lawful excuse or justification. The most accepted definition of this tort is the infliction of bodily restraint which is not expressly or impliedly authorized by the law. It is also well established the confinement

must be total although it does not need to be in a prison as implied by the name of this tort.

In **Bird v. Jones [1845] 7 Q B 742** at 744 Coleridge J said inter alia:

“Some confinement seemsto arise from confounding imprisonment of the body with mere loss of freedom.....
Imprisonment includes the notion of restraint within some limits defined by a will or power exterior to our own.”

Observations by the writers of Winfield and Jolowiz on Tort 16th edition are useful – the argument posited is that there is no false imprisonment where claimant consents to the defendant’s order but he is not to be taken as consenting simply because he does not resist by force. The Australian case of **Myers Stores Ltd. v. Soo [1991] 2 VR 597** is cited for the following principle:-

There is no false imprisonment where the claimant complies with a police request to accompany them to the police station but the tort is committed if the request is made in such a manner as to lead the claimant to believe he had no choice in the matter.

Re: Exemplary damages

It is well settled that an award for exemplary damage is appropriate where the behaviour of the defendant is such it requires a punitive award. The categories under which such awards can be made is well espoused in **Rookes v. Bernard 1964 A C 1129** as approved in **Broome v. Cassell and Co. 1972 A C 1027**.

In the instant case the basis for claimant's claim could only fall in the first category to do with what is perceived as the oppressive, arbitrary or unconstitutional action by servants of the government.

In **Kudos [2002] A C 122** Lord Hutton said:

“The power to award exemplary damages in such cases serves to uphold and vindicate the rule of law because it makes clear that the courts will not tolerate such conduct.”

Exemplary damages are always to be awarded in exceptional cases. It has been noted that over the years an award of this nature can be made in cases involving an unlawful arrest without any oppressive behaviour.

Re: Aggravated damages

Where the behaviour of the defendant is such that it is perceived to injure the claimant's feelings of dignity and pride an additional award can be made. In claims for false imprisonment it is this perceived aggravated injury to the claimant's feelings and distress which may be increased by any willful oppressive behaviour or bad motive on the part of the defendant that will be compensated.

Again this type of award is made in exceptional cases.

Application of the law to the facts as found

It is beyond dispute that Enid Miller-Cushnie attended on the 1st defendant and made a complaint. In essence this complaint challenged the right of the claimant to have the dodge caravan he had cleared off the wharf – Mrs. Miller-Cushnie was claiming the van remained hers as no payment had been received for it so as to transfer it to the claimant.

Having accepted the need to investigate her claim it was well within the police officers right to visit the premises where the van was being kept.

Her visit therefore to the claimant's premises was done legitimately in the course of this investigation. There was no trespass to the property.

The van which was identified as the one in dispute was being worked on. The dispute clearly could not be resolved there and then. I am prepared to accept that Mrs. Miller-Cushnie was present and aided in identifying the vehicle. The police officer clearly had before her a matter involving ownership of this vehicle. In the circumstances she was well within her rights to seize the vehicle -- for safe keeping -- while this issue was resolved.

The removal of the vehicle from the claimant's property cannot therefore be seen as unlawful.

The 1st defendant needed to investigate and try to come to a determination as to who was the owner of the van because it was to that person she felt she should return it. This could be equated with a determination as to who had the right to lawful possession of the van.

The submission by the defendant's attorneys that the documents presented by the claimant did not address this issue appears to be well founded.

There are some features in the matter which can be best defined as curious. Firstly the apparent failure of Mrs. Miller-Cushnie to pursue this matter after the vehicle was seized is noted. Secondly the failure of the claimant himself to pursue the matter with Mrs. Miller-Cushnie to at least recover his "pay for work done for her for a year without charge" is also duly to be noted.

In any event I am satisfied that the 1st defendant attempting to seek guidance to determine the true owner of the vehicle ought not to be faulted. However she suspected fraud had been committed independent of the issue of ownership. Her failure to follow up on queries to customs compounds her failure to follow up on the ruling sought from the Director of Public Prosecutions.

The fact is the van was clearly in possession of the claimant when the defendant seized it. This initial seizure was lawful. The fact is the claimant was aware of what he needed to do to have the vehicle returned to him. He failed to do so.

It is significant to note that from the evidence it is not clear that the letter requesting the return of the van was actually delivered to the 1st defendant, neither can it be said with any certainty that the visits of the claimant to the station enquiring about the van were to the 1st defendant.

However, the failure of the 1st defendant to follow up on this matter since submitting the file to the Director of Public Prosecutions is inexcusable and unjustifiable. In effect this investigation after these twelve (12) years up to the time of trial has yet to be concluded. This can hardly be seen as just.

The legal owner of this van having not been established, the right to possession of it by the claimant should have been revived at some point.

It is unfortunate that the claimant waited some four (4) to five (5) years before seeking to proceed with this matter and did not actively pursue the matter so as to mitigate his potential losses.

In any event I am satisfied his claim for conversion of the van should succeed.

On his claim for false imprisonment, the evidence given under cross-examination established that whatever were his impressions, this claimant was not placed in custody as averred to in his statement of case. He was never told he could not leave the station – he did not ask to leave. He was not detained in any confined area nor was he told he was going to be charged. A statement was recorded from him and he left. There is no credible evidence that the request for him to attend the station was made in such a manner to lead him to believe he had no choice.

On this issue the claimant has failed to satisfy the court that he was falsely imprisoned.

Finally the claimant asked for exemplary and aggravated damages. He spoke to the attitude of the 1st defendant which he perceived as hostile and discourteous. He said he was put in fear. He said she refused to look at his documents until told to do so. He gave unsupported evidence of comments a senior officer allegedly made to her. Objectively there is no evidence to support the complaints made by the claimant. There can be no award under either of these headings.

Damages

The claimant in conversion who successfully makes out his case is entitled to be compensated for the value to him of the goods of which he has been deprived – usually the market value. I start at this point because it is highly unlikely that this vehicle can now be returned to the claimant.

He has claimed \$500,000.00 for the value of the van and engine.

He also claims for loss of use of the vehicle at \$3000.00 per day.

These being special damages it needs be remembered only those as specifically pleaded and strictly proved will be awarded.

A claim for the motor vehicle and engine is made, yet there is no evidence that an engine was in fact seized from the claimant on the 17th of March 1996. The evidence of the claimant revealed that the van was valued at \$170,000.00 to which was added his cost for duties and for storage with a total of \$420,000.00 being arrived at. These figures fall into the category of being “thrown up” at the judge – there is no documentary evidence nor anything else to suggest where they came from. It is noted that a value of \$147,678.28 was stated on the import/entry custom form.

In the circumstances there seems to be no basis to make an award of \$500,000.00 and an award of \$150,000.00 seems more appropriate.

A similar view is adopted in relation to the claim for loss of use. There is no evidence as to how the amount of \$3000.00 was arrived at and further there is no indication as to what use this vehicle was to be put to so as to assist the court in determining what if any would be an appropriate award. Accordingly there can be no proper assessment of damages under this heading.

There will be judgment for the claimant for the conversion of the motor vehicle.

Damages are assessed as follows:

Special damages - \$150,000.00 with interest at 3% from 17th January, 1996 to June 20th 2006 and at 6% from June 21st 2006 to today's date.

Cost to the claimant to be taxed if not agreed.