AMAS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2005 HCV 1642

BETWEEN	**HOPETON WILLIS**	**CLAIMANT**
AND	**THE TRANSPORT AUTHORITY**	**1ST DEFENDANT**
AND	**ANDREA BRYAN**	**2ND DEFENDANT**

Mrs. Janet Taylor, instructed by Taylor, Deacon & James for the claimant.

Ms. Carole Barnaby, instructed by the Director of State Proceedings for the defendant.

Claim for Wrongful Seizure of Motor Vehicle – Claim for Damages for Malicious Prosecution – Whether Need to Prove Malice- Claim for Exemplary Damages.

Heard February 11 and June 2 2010.

Coram: F. Williams, J (ag).

Background

On the 21st May, 2004, a motor car being driven by the claimant was seized by the 1st defendant, at the instance of the 2nd defendant. He was prosecuted for operating the said motor vehicle as a public passenger vehicle (p.p.v), without the requisite road licence. He was also charged with having no p.p.v. insurance. The claimant contends that this seizure was wrongful. He also contends that his being put before the Traffic Court on these charges by the defendants was a malicious prosecution. He further contends that the conduct of the defendants in the case warrants an award of exemplary damages. That, in a nutshell, is what this case is about.

Summary of the Evidence

The Claimant

The claimant's case is that on the day in question, whilst about to drive from the Point Hill community in St. Catherine where he resides to go into Kingston on business, he was asked for a ride by a neighbour. That neighbour, Mr. Arthur Lewin, who worked in Kingston, wished the claimant to transport him, his elderly grand-uncle, Mr. Wynter, and two other members of their family to Kingston. The main purpose of the journey of that group was for Mr. Wynter to attend at the Kingston Public Hospital for treatment.

When the vehicle in which the group was travelling, being driven by the claimant, was on the Spanish Town Road and so almost at the end of the journey, it was pulled over by a joint team of police and Transport Authority Inspectors. The claimant says that the signal to stop was given by a Transport Authority Inspector. His attempts to explain the circumstances of the party's journey were met with a refusal by the Transport Authority Inspectors to listen. The outcome of his interaction with them was that he was summoned to appear before the Corporate Area Traffic Court on two charges: (i) operating his motor car as a public passenger vehicle (p.p.v) without a road licence; and (ii) operating the said vehicle as a p.p.v. without p.p.v. insurance. After about three court appearances, he was acquitted of both charges. He incurred expenses and losses as a result of the action of the defendants.

His evidence was supported in most, if not all, material particulars by the evidence of Mr. Lewin.

The Defendants

The second defendant testified that on the day in question the claimant's vehicle was stopped by a member of the constabulary, not a Transport Authority Inspector. It was perhaps the claimant's driving (switching from the left lane to the right lane) that gave rise to suspicion, resulting in the vehicle being stopped.

The claimant did not explain the circumstances that led to his journey that day. Instead, he admitted that he was engaged in a charter service, and was in fact operating for hire or reward, in breach of his licence.

Prior to the claimant being charged, the passengers in the vehicle were questioned by Transport Authority Inspector Jones. The answers given to these questions were the main basis for the charges brought against the claimant. He was acquitted of the charges as the court was not satisfied that there was proof of a transaction between the claimant and the passengers.

The evidence of the second defendant was largely supported by her colleague Inspector Donald Jones.

Summary of Submissions

For the Claimant

It was submitted that the action of the defendants in seizing the claimant's vehicle and bringing charges against him when there was no evidence against him was unreasonable and unfounded. This conduct was also oppressive and amounted to an abuse of power. It warrants an award of exemplary damages. The court was also asked to reject the suggestion that the claimant was switching lanes and that was what aroused the suspicion of the party of Transport Authority Inspectors and the police. Also, the court is being asked to reject the second defendant's contention that she was told by the claimant that he was chartered to take Mr. Wynter to the doctor every Friday and that he was paid on weekends; also that she was told that the claimant was operating for "hire or reward".

For the Defendants

The claimant has not specifically pleaded a cause of action and so no damages should be awarded to him. The second defendant's seizure of the vehicle was based on reasonable suspicion. The second defendant's actions were not

characterized by an absence of reasonable and probable cause and/or malice and so the prosecution of the claimant was not a malicious prosecution.

The Law

The Transport Authority Act, at section 13, empowers Inspectors employed by the Authority to stop and seize vehicles in certain circumstances. Section 13 (1) (b) reads as follows:-

> "13. - (1) An Inspector or a Constable may at any time-
>
> (b) stop and inspect any vehicle which he reasonably suspects is operating as a public passenger vehicle contrary to relevant road traffic enactments;"

Section 13 (2) (a) (v) is also of relevance as regards an Inspector's powers of seizure. It states:-

> 13. - (2) An Inspector or a Constable shall have power-
>
> (a) to seize any vehicle which-
>
> (v) is being operated or used as a public passenger vehicle without a licence issued for such operation or use;"

Section 15 of the Act stipulates that a plaintiff, in an action against an Inspector, shall not recover unless he alleges and proves malice or absence of reasonable and probable cause.

The Road Traffic Act is also of relevance to this matter. Section 60 of that Act divides public passenger vehicles into several classes, including the class of stage carriages which are, so far as is relevant:

> "... motor vehicles carrying passengers for hire or reward at separate fares...".

The common feature of the definitions of all the five classes is that they all contain the phrase "carrying passengers for hire or reward".

Section 61 of that Act is also of significance in that it prohibits the use of a motor vehicle as a public passenger vehicle without a "road licence".

Section 13 (2) (a) and (b) of the Transport Authority Act have received judicial consideration at this level as can be seen in the judgment of Anderson, J in **Garrick v The Transport Authority**, suit number C.L. 2001/ G 032, delivered on June 20, 2001. The defendants have drawn attention to the following part of the judgment:

> "... implicit in the language of the section... the seizure... may take place where there is "reasonable suspicion" that the vehicle is being operated contrary to the relevant legislation".

The claimant, on the other hand, has sought to emphasize the following parts of the judgment:

> "The section does not in terms authorize or exonerate seizure which is based on "reasonable belief" that this is the case...
>
> The events pursuant to which the seizure would have generated a right to storage fees are "the use or operation, or causing or permitting the use or operation" of the said vehicle in contravention of either of the statutes. It seems that an acquittal is *ex hypothesi* a recognition that the vehicle has not been so

operated and the offence has not been committed. If no offence has been committed, then the right to storage fees does not, in my view, arise".

The Issues

Three narrow issues seem to arise from the facts of the case and the submissions: (i); whether the pleadings are in order; and whether the seizure of the claimant's vehicle was reasonable and permitted by the relevant legislation; (ii) whether on the facts and in the circumstances of this case and the relevant law, a claim for malicious prosecution is sustainable; (iii) whether the actions of the defendants were oppressive and high-handed and so warrant an award of exemplary damages.

The Seizure of the Vehicle & the State of the Claimant's Pleadings

To be certain, the claimant's pleadings do not specifically state a cause of action. However, a perusal of the matters pleaded show that the claim is grounded in trespass to goods. That tort is a tort against possession of goods. It has been said that "The essential feature of the tort is a taking of the goods or a direct interference with them. A mere taking is enough..." (see **Bullen & Leake & Jacob's Precedents of Pleadings**, 13th edition).

Since a claim for trespass to goods is grounded in a wrongful seizure of the goods, then it seems to me that an acquittal of the particular charges in respect of which the vehicle was seized is sufficient to ground the claim (all the other required elements being present). No examination of the concept of "reasonable suspicion" is necessary, an acquittal being, in the words of Anderson, J in the **Vincent Garrick** case, "... ex hypothesi, a recognition that the vehicle has not been so operated and the offence has not been committed".

I therefore find that the claim has been properly brought and that the claimant is entitled to succeed in a claim in trespass to goods against the defendants.

What would an appropriate award (in the circumstances of this case) be? In the case of **Owen Grant v Supt. Gladstone Grant and the Attorney-General** (Suit # C.L. G 096 of 1990, delivered November 24, 2003) a nominal award of $10,000 was made. Having regard to the passage of time since that award was made, and using that award just as a general guide, in the court's view an award of $75,000 would be apposite.

The Claim for Malicious Prosecution

I accept as a correct statement of the law, the following discussion of the tort of malicious prosecution in **Clerk and Lindsell on Torts** (16th edition, 1989), page 1042:-

> "In an action of malicious prosecution the Plaintiff must show first that he was prosecuted by the defendant, that is to say, that the law was set in motion against him on a criminal charge; secondly, that the prosecution was determined in his favour; thirdly, that it was without reasonable and probable cause; fourthly, that it was malicious. The onus of proving every one of these is on the Plaintiff".

Similarly, in **Halsbury's Laws of England**, 4th Edition at paragraph 1351, the necessity for a claimant to prove malice in bringing an action for malicious prosecution is discussed as follows:-

> "A plaintiff in an action for damages for malicious prosecution or other abuse of

> legal proceedings has to prove malice in fact indicating that the defendant was actuated either by spite or ill-will against the plaintiff, or by indirect or improper motives. If the defendant had any purpose other than that of bringing a person to justice, that is malice."

"Malice" is defined in **The Dictionary of English Law** by Earl Jowitt as: -

> "A formed design of doing mischief to another..."

Additionally, in the Court of Appeal decision of **Peter Flemming v Myers & The Attorney-General** (26 JLR, 525), it was said (at page 535), that malice is "... not only spite and ill will but also any motive other than a desire to bring a criminal to justice".

After carefully considering the evidence in this case, I find myself unable to say that the 2nd defendant was motivated by spite, ill will or any motive other than to prosecute the claimant for the subject offences. Her actions might, perhaps, be characterized as "overzealous", or perhaps even "misguided"; however, the court is unable to discern any element of malice in her conduct towards the claimant. Further, there cannot be said to have been such a marked absence of reasonable or probable cause that malice can be implied.

That being the case, and in the court's finding, the law requiring that malice be proven in order for a claim of malicious prosecution to succeed, this particular claim is not sustainable.

The Claim for Exemplary Damages

In **Rookes v Barnard** [1964] A.C., 1129, Lord Devlin there set out certain categories into which a claim for exemplary damages must fall in order to succeed. Among them is arbitrary, oppressive or unconstitutional conduct on the part of a representative of the Crown.

In the court's view an award of exemplary damages would not be appropriate in this case. This view is in keeping with the finding that the defendants' actions in this case cannot be said to have been malicious or arbitrary or oppressive or unconstitutional. Although it resulted in inconvenience and perhaps embarrassment to the claimant, it was, at its highest, overzealous conduct.

The Special Damages

There are some eight items under this head. Of the eight, the defendant concedes some four as having been proven. These are: (i) the storage and administration fees of $2,900; (ii) the attorney-at-law's fees to contest the cases in the Traffic Court of $10,000; (iii) the cost of photocopying of $570. The also concede the sum of $1,000 for transportation to court for one day. These sums total $ 13,470.

The other items are : - (a) wrecker fees of $4,500; (b) loss of studio time – 2 sessions at $15,000 per session, amounting to $30,000; (c) transportation costs for himself and his witnesses to attend court and to the pound - $6,000; (d) lunch for witnesses - $1,500; (e) "Proposed attorney's cost of bringing Suit" - $152,000.

In relation to the wrecker fees, the claimant had promised to provide the court with the original receipt. However, this was not forthcoming. Whilst being aware of the desirability of proving special damages strictly, the court considers that all the witnesses testified to the removal of the claimant's motor- vehicle by wrecker. The court finds that a wrecker was employed to remove the vehicle and the sum is not exorbitant but would seem to be within the range of what is reasonable. The court will therefore allow this sum.

The sum claimed for loss of studio time will not be allowed. The court takes the view that since, on the evidence, there was no urgency attending the use of the studio time that was booked; and since the claimant gave evidence of getting to the studio by other means in the past, some other reasonable arrangement could have been made for the time reserved not to have been lost. He has not done enough to mitigate his loss in respect of this item of special damages.

Concerning the transportation costs and the costs for lunch, these also seem to the court to have been reasonably incurred. the sum of $6,500 will therefore be added to the defendants' conceded sum of $1,000, making a total of $7,500.

However, the sum claimed on account of ""Proposed attorney's cost of bringing Suit" - $152,000, will not be allowed. The court is of the view that where, as here, there will be judgment for the claimant with costs awarded in his favour, this item is one that will fall for taxation. To make an award under the head of special damages would open up the possibility of the claimant recovering twice for the same sum.

The total sum being allowed for special damages is therefore $25, 470.

Orders

There will therefore be:-

(i) Judgment for the claimant in the sum of $75,000 with interest thereon at the rate of 6% p.a. from July 15, 2005 to June 21, 2006 and thereafter at the rate of 3% p.a. from June 22, 2006 to June 2, 2010. and

(ii) in the sum of $25, 470, with interest thereon at the rate of 6% p.a. from May 21, 2004 to June 21, 2006 and thereafter at the rate of 3% p.a. from June 22, 2006 to June 2, 2010.

(iii) Costs to the claimant to be agreed or taxed.