[2011] JMCA Civ 6

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 109/2010

BEFORE: **THE HON MRS JUSTICE HARRIS, JA**
THE HON MR JUSTICE DUKHARAN, JA
THE HON MR JUSTICE HIBBERT, JA (Ag)

BETWEEN	**THE ATTORNEY GENERAL**	**1ST APPELLANT**
AND	**THE TRANSPORT AUTHORITY**	**2ND APPELLANT**
AND	**ASTON BUREY**	**RESPONDENT**

Curtis Cochrane Director of State Proceedings for the appellants

Sean Kinghorn instructed by Kinghorn & Kinghorn for the respondent

1 and 11 March 2011

HARRIS JA

[1] The respondent was the owner of a public passenger vehicle, namely, a 1994 Toyota Hiace motor bus. On 30 June 2006, it was unlawfully seized by a police officer. Several requests for the return of the vehicle commencing on 10 November 2008, went unheeded. The vehicle was eventually delivered to the 2nd appellant which sold it. The respondent being aggrieved by the conduct of the appellants, instituted proceedings against them claiming damages, for detinue or alternatively in conversion, for aggravated damages, exemplary damages and vindicatory damages. In his particulars

of special damages, among other things, the sum of $4,000,000.00 was claimed for the loss of the vehicle.

[2] A judgment on admission was entered on 18 September 2009 and on 24 September 2010, the matter proceeded to an assessment of damages. Jones J made the following orders:

> "1. The Claimant should be awarded loss of earnings at One Hundred and Forty Thousand Dollars ($140,000.00) per month for two (2) years – Three Million, Three Hundred and Sixty Thousand Dollars ($3,360,000.00).
>
> 2. Loss of vehicle – Three Million Nine Hundred and Fifty Thousand Dollars ($3,950,000.00).
>
> 3. Wrecker Fee agreed in the sum of Ten Thousand Dollar ($10,000.00).
>
> 4. Exemplary Damages – Three Hundred Thousand Dollars ($300,000.00).
>
> 5. Interest on special damages at the rate of three percent (3%) per annum from June 30, 2006 to September 24, 2010.
>
> 6. Costs to the Claimant to be agreed or taxed."

[3] The appellants now challenge the award of $3,950,000.00 for the loss of the vehicle. Two grounds of appeal were filed by the appellants but one was abandoned. The sole ground of appeal is as follows:

> "The learned judged (sic) erred by making an award of Three Million, Nine Hundred and Fifty Thousand Dollars ($3,950,000.00) for the loss of the Respondent's/Claimant's motor vehicle, which is the

value of a 2005 Toyota Hiace motor vehicle including import duties and other charges, instead of Three Hundred and Eighty Thousand Dollars ($380,000.00) the value of a 1994 Toyota Hiace motor vehicle at the date of the conversion."

[4] Mr Cochrane submitted that the appellants, in their defence, admitted selling the vehicle and any award made ought to be the value of the chattel at the time of the conversion. Therefore, the proper award for the loss of the vehicle ought to be the value which prevailed at the date of conversion, and which ought to have been made in keeping with the tort of conversion, he argued.

[5] It was Mr Kinghorn's submission that the relevant cause of action is in detinue and where the tort has been proven, the measure of damages is the market value of the chattel at the date of judgment. The respondent, he argued, would not have been restored to his original position on an award being made for conversion. Further, he submitted that there is evidence from Mr Sean Green, the managing director of P & S Used Car Traders, that in 2006, the value of a 1994 Toyota Hiace motor vehicle would have been between $580,000.00 and $600,000.00 and in 2006 the oldest type of that kind of vehicle which could be imported in the island would have been a 2001 model. At the date of judgment it would have been impossible to obtain a similar vehicle because of the restrictions imposed by the government on the importation of vehicles over five years old, he argued. There was unchallenged evidence, he contended, that a similar vehicle in 2010, the oldest type of which would be a 2005 model was valued at $3,950,000.00 and this was an appropriate sum which could be properly recovered in detinue.

[6] The sole issue in this appeal is whether the award for the vehicle should have been grounded upon detinue or conversion. Both torts relate to the wrongful retention and the dealing with a chattel inconsistent with the possession or right of possession of another. As these torts amount to wrongful interference with a chattel, a person who is deprived of his chattel is entitled to bring an action in either or both. There are however, two important distinguishing features in relation to these torts. Firstly, in a claim for detinue, it is no defence that the defendant parted with the chattel before demand - see ***Ballett v Mingay*** [1943] 1 K.B. 281; [1943] 1 All ER 143. Secondly, where a claimant seeks only the return of the chattel he is limited to bring his action only in detinue. I hasten to add that in the instant case the claim is for the loss and damage sustained by the seizure and sale of the bus and not for its return, therefore, the return of the bus would not be a relevant consideration in these proceedings.

[7] The appellants, acknowledging that there was no defence to the action, did not contest liability but contested quantum of damages. First, it will be necessary to make reference to the measure of damages in both torts. In conversion, the measure of damages is the value of the goods or chattel at the time of conversion - see ***Mercer v Jones*** (1813) 3 Camp 477; **Hall v Barclay** [1937] 3 All ER 620. In detinue the measure of damages is the value of the goods as at the date of trial - see ***Rosenthal v Alderton & Sons Ltd*** [1946] K.B 374; [1946]1 All ER 583.

[8] 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. The defendants could not improve their position by reason of their own misconduct."

[9] The authorities show that an action for detinue lies not only where a person wrongly detains the chattel or goods of another but also where a person who has possession of such goods or chattels improperly parted with possession - see ***Jones v Dowle*** (1841) 9 M & W 19; ***Ballett v Mingay***; ***Rosenthal v Alderson & Sons Ltd.***

[10] In detinue where the chattel or the goods are not ordered to be returned or cannot be returned, the measure of damages is the loss emanating from the detention whether or not the chattel is ordered to be returned. Where the chattel is not ordered to be returned, the ordinary measure of damages is the value of the goods as well as the loss arising by reason of the detention of the goods. In conversion, the damages can only be recovered by way of consequential loss.

[11] The remedy offered in detinue takes a claimant outside of the range of that which is afforded by conversion. It accords him a considerably larger remedy and a minimal larger right. In ***General & Finance Facilities v Cooks Cars (Romford)*** [1963] 1 W.L.R. 644, Diplock LJ speaking to the advantages a claimant enjoys in bringing an action in detinue, 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."

[12] In the instant case, the respondent has been divested of his vehicle by reason of the sale. The fact that the bus was sold does not in itself derogate from his right to pursue the claim in detinue, or, for him to have received an award relating to the value of the bus as of the date of trial. The damages are claimed in default of the return of the bus. Ordinarily, the respondent would be entitled to the return of his bus but the sale rendered this impossible. Surely, it cannot be presumed that the respondent had discarded his right to the bus as of the date of sale. There is a clear distinction between the value of the bus as claimed in default of its release and damages whether or not it is returned. In detinue, time begins to run from the date of the refusal of the demand. Importantly, the act of the detention of the bus continues to be wrongful by reason of the appellant's failure to return it and the wrong continues until judgment - see ***Rosenthal v Alderson & Sons Ltd.***

[13] The respondent had the option of proceeding against the appellants either in detinue or conversion. He elected to make his primary claim in detinue and in conversion, in the alternative. The bus was unlawfully seized in June 2006. There was evidence that in 2006, the prevailing market value of a 1994 Toyota Hiace ranged between $580,000.00 and $600,000.00. Evidence as to the value of the bus in 2010, was given by Mr Claude Hughes and Mr Sean Green. Mr Hughes, a motor vehicle loss adjuster, stated that a 2005 Toyota Hiace motor bus would be valued at $2,000,000.00. Mr Green, the managing director of P & S Used Car Traders Limited, a licenced used car dealer, testified that, in 2006, due to regulations issued by the government with respect to the importation of vehicles in excess of five years old, it would have been impossible to import a 1994 Toyota Hiace motor into the island. He said a 2005 Toyota Hiace motor vehicle valued at $3,950,000.00 would be the oldest type of such vehicle which could have been imported. He provided an invoice in support thereof. This, the learned trial judge obviously accepted and assessed the value of the bus to be $3,950,000.00.

[14] We are not in agreement with Mr Cochrane that the value of the bus which was sold ought not to have been assessed at a greater value than that as at the date of sale, as the respondent's remedy is in conversion. The claim could have been properly pursued in detinue and the learned trial judge could have and had correctly made an award in detinue as to the value of the bus as of the date of judgment.

[15] The appeal is dismissed with costs to the respondent to be taxed if not agreed.

DUKHARAN JA

[16] I have read in draft the judgment of my sister Harris JA. I agree with her reasoning and conclusions and have nothing further to add.

HIBBERT JA

[17] I too agree and have nothing further to add.

HARRIS JA

ORDER

Appeal dismissed. Costs to the respondent to be taxed if not agreed.