[2018] JMSC Civ. 74

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2012 HCV 04971

BETWEEN	**RAQUEL FRAY**	**CLAIMANT**
AND	**SERGEANT JEFFERY AMOS**	**1ST DEFENDANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**2ND DEFENDANT**
AND	**THE TRANSPORT AUTHORITY**	**3rd DEFENDANT**

OPEN COURT

Dr Garth E. Lyttle and Ms Renee Malcolm instructed by Garth E. Lyttle & Co. for the Claimant.

Ms Shaniel Hunter, Ms Kimberley Morris and Ms Tamara Dickens instructed by the Director of State Proceedings for the 2nd Defendant.

Mr Harrington McDermott and Mrs Kimberly Reynolds-McDermott instructed by Campbell McDermott for the 3rd Defendant.

Heard: 1st, 2nd and 13th November 2017 and 4th May 2018

Trespass to property - Seizure of motor vehicle - Detinue - Conversion - The Road Traffic Act

MCDONALD, J.

Procedural Background

[1] The claim was filed on the 11th of September 2012 and served on the Attorney General's Chambers on the 14th of September 2012. By way of background it

should be noted that the representation of the Defendants in this matter was somewhat typical. It is therefore useful to set out a brief chronology:

1. On the 25th of September 2012, an Acknowledgment of Service was filed by counsel, Ms Dickens. This was done on behalf of the 3rd Defendant.

2. On the 22nd of October 2012, a Notice of Application was filed by Ms Dickens seeking an extension of time to file the Defence. This was also done on behalf of the 3rd Defendant. An insertion was made by hand on what appears to be the 4th of April 2013, to include the 2nd Defendant.

3. On the 22nd of November 2012, an Acknowledgment of Service was filed by Ms Dickens on behalf of the 2nd Defendant. Unlike the first Acknowledgment of Service which stated that the Attorney General's Chambers received the Claim Form and Particulars of Claim on the 14th of September 2012, this Acknowledgment of Service stated that both documents were received on the 21st of November 2012.

4. On the 4th of January 2013, a Defence was filed on behalf of the 2nd and 3rd Defendants. This Defence was permitted to stand by the order of Master Lindo (as she then was) granted on the 4th of April 2013.

5. On the 13th of February 2015, the Claimant's Attorneys-at-Law, made an application for the Defence to be struck out and for Default Judgment to be entered against the 2nd and 3rd Defendants. No mention was made of the 1st Defendant. This application was subsequently withdrawn at the Claimant's request.

6. On the 2nd of May 2016, a Notice of Change of Attorney was filed by Messers Campbell & Campbell (now, Campbell McDermott) on behalf of the 3rd Defendant.

7. On the 25th of October 2016, an amended Defence was filed on behalf of the 3rd Defendant. At the Pre-trial Review on the 9th of October 2017, an order was granted by Pettigrew-Collins J(Ag) permitting this amended Defence to stand.

8. On the 20th of September 2017, a Witness Statement of the 1st Defendant (Sgt Jeffery Amos) was filed and in the filing footnote it was stated that same was done on behalf of the 1st and 2nd Defendants. On the same day, a Listing Questionnaire was filed by Ms Dickens on behalf of the 1st and 2nd Defendant.

9. On the 24th of October 2017, Skeletal Submissions were filed by Ms Dicken on behalf of the 1st and 2nd Defendants.

[2] Based on a perusal of the file, the court recognised that the first mention of the 1st Defendant was on the 20th of September 2017 when his Witness Statement was filed. Thereafter the documents filed by Ms Dickens stated that they were being filed on behalf of the 1st and 2nd Defendants. This appeared quite strange considering that no Acknowledgment of Service and/or Defence was ever filed on behalf of the 1st Defendant. No application was made by Ms Dickens or anyone from the Attorney General's Chambers to either amend the Defence to include the 1st Defendant or for an extension of time to file a Defence on his behalf.

[3] Adding to this peculiar situation was the position taken by counsel Ms Hunter who indicated to this court prior to the commencement of the trial that the Director of State Proceedings only appeared on behalf of the 2nd Defendant. The 1st Defendant, Sgt Amos, was present at the trial. Counsel for the Claimant, Dr Lyttle, indicated a concern as to whether Sgt Amos should remain in court or wait on the outside until he was called to give his evidence on behalf of the 2nd Defendant. Ms

Hunter strenuously submitted that Sgt Amos ought to be permitted to remain in court as he was a named defendant, he was conducting his duties at all times as a Crown servant and further, he was the person who she got her instructions from. Sgt Amos was permitted to remain.

[4] On the third and final trial date, Ms Dickens appeared for the first time and when announcing the representations, she first stated that she appeared on behalf of the 1st and 2nd Defendants. When asked by the court to clarify the representation of the 1st Defendant, she replied that she only represented the 2nd Defendant. No further explanation was provided as to why documents were filed indicting otherwise.

[5] Dr Lyttle subsequently submitted that no appearance was entered for the 1st Defendant and as such he was not properly represented before the court. I am inclined to agree. Since there was no contention by the 2nd Defendant that the 1st Defendant was acting unlawfully when executing his duties as a servant or agent of the Crown, it is presumed that the 2nd Defendant accepts that it was properly made a party to the claim by virtue of the **Crown Proceedings Act**.

The Claim

[6] The Claimant is seeking to recover damages for detinue and conversion arising out of the seizure and detention of her Toyota Hiace motor vehicle (registered CG 6093). She alleges that on the 3rd of February 2010 while her motor vehicle was being driven by Opuku Fray along Washington Boulevard, Kingston 10 in the parish of St Andrew, where the 1st Defendant without reasonable or probable cause, seized and detained her vehicle (or caused same to be done) and kept it for 940 days (and continuing). She alleges that her motor vehicle was transported to the 3rd Defendant's pound at Lakes Pen in the parish of St. Catherine.

[7] The Claimant further alleges that the 1st Defendant advised her that her motor vehicle could only be released by an order of a Judge of the Traffic Court. She

asserts that neither the driver, Opuku Fray, or herself were ever charged or served with any summons for breaches of the **Road Traffic Act**.

[8] On the 4th of September 2012, the Claimant states that her Attorney-at-Law sent a demand letter to the each of the Defendants named in this claim.

[9] Prior to this on the 30th of May 2012, the Claimant states that she was advised by the 3rd Defendant to take advantage of an amnesty in which motorists could pay a reduced rate to collect their motor vehicles. On the same day, the Claimant states that she paid $28,000.00 for wrecker and storage fees and proceeded to the 3rd Defendant's pound at Lakes Pen. Upon inspecting the motor vehicle, she observed that some of the parts appeared to be missing.

[10] The Claimant further alleges that that the 1st Defendant caused or permitted her motor vehicle to be stripped of its engine and vital parts which resulted in her suffering damage and being put to expense.

[11] The Claimant, by way of her Amended Claim Form filed on the 14th of July 2017, is claiming the following relief:

1. *A Declaration that when the Firstnamed [sic] Defendant seized and detained the Claimant's vehicle, it was done without reasonable and or probable cause.*
2. *Damage for loss of use and the value of her vehicle is $10,618,000.00*
3. *Interest from 3rd February, 2010 at such amount as this Court deems just.*
4. *Costs and Attorney's costs.*
5. *Any other relief this Court deems just and equitable.*

[12] The Particulars of Loss are pleaded as follows:

(a) *Loss of use of motor vehicle as commercial carrier from 3rd February, 2010 to 4th September 2012 (and is continuing) 365 weeks at $24,000.00 per week - $8,760,000.00*

(b) *Loss of value of vehicle - $1,800,000.00*

(c) *Attorneys cost todate [sic] - $30,000.00*

Total Claim - $10,590,000.00

Additionally, the Claimant seeks to recover $28,000.00 which was paid to the 3rd Defendant for storage and wrecker fees. This amounts to $10,618,000.00, which is the sum the Claimant pleaded.

2nd Defendant's Defence

[13] The 2nd Defendant contends that on the 3rd of February 2010 at about 7:00 p.m. the Claimant's motor vehicle was being driven along the Washington Boulevard without a front bumper or front registration on the said motor vehicle. The 1st Defendant stopped the driver of the motor vehicle and upon inspection it was discovered that the motor vehicle was unlicensed since 2009. Consequently, the motor vehicle was seized upon reasonable and probable cause of being in breach of the **Road Traffic Act**, namely being driven along a public road without being licenced, and the driver was ticketed accordingly.

[14] The 2nd Defendant also contends that the motor vehicle was in a state of disrepair and had certain parts missing when it was impounded at the Lakes Pen Pound.

[15] The 2nd Defendant denies that a demand letter was sent to the 1st or 2nd Defendant and states that in any event the 3rd Defendant was instructed by the Superintendent of the Motorised Patrol Division, Ryland Salmon, by letter dated the 19th of April 2012 to release the motor vehicle to the Claimant.

3rd Defendant's Defence

[16] The 3rd Defendant contends that the Claimant's statement of case disclosed no reasonable ground and that she is not entitled to the relief sought. Based on information in its possession, the 3rd Defendant states that at the time of the seizure the motor vehicle which forms the subject of this claim was being towed by another motor vehicle, it was unlicensed at the material time and it was also left abandoned when the police approached.

[17] The 3rd Defendant further contends that at the time of the seizure, the motor vehicle had no engine, several parts were missing and it had several areas of damage.

[18] It is alleged by the 3rd Defendant that was at the instance of the 1st Defendant that the Claimant's motor vehicle was transported by a wrecker to its Lakes Pen Pound, where it was properly secured. As a result, the 3rd Defendant contends that the said motor vehicle was at all material times under the legal custody and control of the police.

[19] Further, it is the 3rd Defendant's position that the Claimant's motor vehicle was subject to seizure and detention by the police until the Claimant took steps to have it properly licensed.

The Issues

[20] I would conveniently adopt the issues as framed by counsel for the 3rd Defendant. It was submitted that the central issues for the Court's determination are:

1. Whether the 1st Defendant acted maliciously or without reasonable and probably cause in seizing and detaining the Claimant's motor vehicle;

2. Whether the 1st, 2nd and/or 3rd Defendants are liable in detinue;

3. Whether the 1st, 2nd and/or 3rd Defendants are liable in conversion; and

4. What if any damages are to be paid to the Claimant.

Issue 1: Whether the seizure and detention by the 1st Defendant was without reasonable and probable cause

[21] In her pleadings the Claimant did not allege that the 1st Defendant acted maliciously, as such the Court will only consider whether the seizure and detention was without reasonable and probable cause.

[22] Both the 2nd and 3rd Defendants contend that the 1st Defendant had reasonable and probable cause to seize the Claimant's vehicle because it was unlicensed at

the material time. The 1st Defendant's evidence is that when he stopped the driver of the motor vehicle he only produced his licence. He was not able to produce the motor vehicle documents. The driver informed the 1st Defendant that the motor vehicle did not belong to him but that the owner was travelling in the motor vehicle that had stopped in front. A conversation was had between the 1st Defendant and a woman who he describes as elderly and according to him, she produced documentation which showed that the motor vehicle was unlicensed for more than a year. According to the 1st Defendant, this elderly woman identified herself as Raquel Fray (the Claimant) but he later learned that she was actually the Claimant's mother, Elaine Fray.

[23] The 1st Defendant states that he ticketed the driver of the motor vehicle but that he could not pursue the charge because the ticket could not be found.

[24] I found the evidence of the 1st Defendant, who was cross-examined, to be credible. The Claimant herself admitted in cross-examination that the motor vehicle registration was expired at the time of the seizure, albeit that she claims this occurred in January which would have been one month and not a year. The Claimant also agreed that the 1st Defendant had good reason to seize the motor vehicle at that time.

[25] Given the Claimant's own admission that the motor vehicle was unlicensed when it was being driven on the road and her concession that the 1st Defendant had good reason to seize her motor vehicle, I find that the 1st Defendant had reasonable and probable cause to seize and detain the said motor vehicle. I further find that it would be lawful for the motor vehicle to be kept in the possession of the Police until it was properly licensed. Section 14(3) of the **Road Traffic Act** provides:

> *(3) If a motor vehicle or trailer is used on a road without being registered or licensed, or in contravention of the terms of the licence or if any registration plate or licence to be affixed and kept affixed in accordance with regulations made under this Act is not so affixed and kept affixed or if being so affixed is in any way obscured or rendered or allowed to become not easily distinguishable, the person driving or using the motor vehicle or trailer shall be guilty of an offence and the*

> *motor vehicle or trailer shall be liable to be seized and kept in the possession of the Police until the requirements of this Act and regulations thereunder have been complied with.*

[26] I do not accept counsel for the Claimant's submission that the 1st Defendant's action was without reasonable and probable cause due to noncompliance with section 116(2) of the **Road Traffic Act**. I am unable to find merit in Dr. Lytte's submission that *"where the officer might have had reasonable and or probable cause to seized [sic] the vehicle in the first instance, where he has not complied with section 116(2) of the* ***Road Traffic Act*** *by failing to follow through by; issuing the ticket, serving it on the offending driver, lodging the case file in court and follow through with the prosecution, then his action would have been without reasonable and probable cause."* I accept the 1st Defendant's evidence that he issued a ticket to the driver but that the ticket could not be found and that the matter was not prosecuted.

[27] I agree with counsel for the 2nd Defendant's submission that section 116(2) (which falls under Part VIII which is titled *'Special Powers of Enforcement and Administration Traffic Tickets'*) speaks to the means of avoiding conviction and is inapplicable to the instant case. Further I accept that this section does not provide that where the police is unable to prosecute an offence before the Court then this serves to vitiate the reasonable and probable cause which exists at the time when the offence was discovered by the police. Whether the 1st Defendant should have done more to advance the prosecution of the driver is not the focus of these proceedings.

[28] I am fortified in the view I have taken by the provisions of section 33 of the **Jamaica Constabulary Force Act**, which states:

> *33. Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict given for the defendant.*

The burden of proof is on the Claimant and she has not proven that the seizure of her motor vehicle was without reasonable or probable cause. She plainly accepted that there was good reason as her motor vehicle was unlicensed. I do not accept that section 14(4) of the **Road Traffic Act** is applicable, there is no evidence to suggest that the motor vehicle was being driven or drawn on the road for the purpose of being registered or licensed. It is the Claimant's evidence, which I accept, that the motor vehicle was being transported to a garage for repairs.

Issue 2: Whether the 1st, 2nd and/or 3rd Defendants are liable in detinue

[29] Waddington JA in ***George and Branday Ltd. v Lee*** (1964) 7 WIR 275, 278 opined:

> *"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…"*

I would adopt this statement of the law in relation to detinue. The Claimant claims that her Attorney-at-Law sent a demand letter to all of the Defendants. The 2nd Defendant denies receipt of such a letter by the 1st and 2nd Defendant. The letter which the Claimant provided to this Court was addressed to the Managing Director of the 3rd Defendant and copied to the 1st and 2nd Defendants as well as the Claimant. The letter which was dated the 4th of September 2012 bears a signature and the date 05/09/2012. The name is unclear and there is no stamp.

[30] It is noted in this letter that there is reference to 'numerous demands' made by the Claimant and the advice that she received, namely that her vehicle could only be released by the Court. There is no information in relation to when or how these demands were made and to whom. It is also unclear, by the letter who gave her this advice.

[31] The letter acknowledges that the 3rd Defendant informed the Claimant that she should attend upon its office and 'pay a reduced fee then **collect her vehicle**.' It is also acknowledged that the Claimant did so on the 30th of May 2012 and upon going to collect her motor vehicle on the same day she found her motor vehicle

stripped of several parts to include the entire engine. When this was reported to the 3rd Defendant's Operations Manager, Mr Cecil Morgan, the letter states that he requested a letter from the Claimant explaining her observations and her demands.

[32] The letter continued by setting out and itemised claim which totalled $5,187,000.00 which was said to represent damages flowing from the alleged unlawful seizure, detention and scrapping of the Claimant's motor vehicle. It was also stated that the payment should be made within seven days or litigation would be commenced against each of the Defendants.

[33] While the letter does contain a clear demand, it appears to me that the demand is not for the return of the motor vehicle but rather for damages. It is more in the nature of a pre-litigation letter. In fact, the letter expressly acknowledges that the 3rd Defendant had previously (and prior to the letter) given the Claimant an opportunity to collect her motor vehicle. It was the Claimant who had declined to collect her motor vehicle, on account of its condition.

The claim must fail in respect of the cause of action in detinue. The Claimant has failed to prove a demand for the return of her motor vehicle and a refusal, after a reasonable time, to comply with such a demand. Further, it was the Claimant's evidence that after she paid the $28,000.00 to the 3rd Defendant she had access to the motor vehicle and that she could have retrieved it. The Claimant went on to say that the motor vehicle was a shell, it lacked a transmission and that as a result she left the motor vehicle at the 3rd Defendant's pound. The inference then that there was no wrongful detention.

[34] Even if I were to accept the Claimant's evidence that she visited the 1st Defendant at the Police Station who informed her that she had to get a release from the Court, I would still not consider the detention wrongful. Section 14 (3) of the **RTA**, set out above, makes it clear that motor vehicles are liable to be seized and kept in the possession of the Police until the requirements of the Act have been complied with. There is no evidence before this Court that the Claimant got the requisite licence

for the motor vehicle and in spite of this there was a refusal to return the said motor vehicle. In any event there is a letter dated the 19th of April 2012 signed by the Superintendent of Police for the Motorized Patrol Division, addressed to the Manager of the 3rd Defendant indicating that the 1st Defendant has no interest in the matter and that the motor vehicle should be released to the Claimant or her mother. This is clearly prior to the letter from her Attorney-at-Law, dated the 4th of September 2012 and prior to her payment and attempt to collect in May.

Issue 3: Whether the 1st, 2nd and/or 3rd Defendants are liable in conversion

[35] Having found that the Defendants are not liable in detinue, I will go on to consider whether they are liable for conversion.

[36] With regard to the law in relation to the tort of conversion, I am guided by the dicta of McIntosh JA from the **Commissioner of Police and the Attorney General v Vassell Lowe** [2012] JMCA Civ 55. This is a somewhat similar case, insofar that it concerned missing items from a truck that the Police seized. McIntosh JA opined at paragraph [42]: *'… It is clear that the mere taking without the intention to exercise dominion over them* (items in the truck) *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.").'*

[37] While I accept the Claimant's assertion that her motor vehicle had all the parts when it was seized (engine, transmission box and dashboard gadgets), which is inferentially supported by the 1st Defendant who states that the motor vehicle was being driven not towed when he seized it, she has brought no evidence that there was an intention on the part of any of the Defendant's or their agents to deny her right.

[38] In particular, I am guided by paragraphs [36] and [37] of McIntosh JA's dicta:

> *[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 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 added)*

[39] I am of the view that the Claimant's motor vehicle was lawfully detained. The fact that there were parts that went missing from her vehicle while it was impounded is undoubtedly unfortunate. However, the Claimant has not clearly alleged that the parts were stolen, taken or removed by 1st Defendant or the 3rd Defendant or its servants or agents. There was no evidence of wilful and wrongful interference. Consequently, the Claimant has not proved conversion.

[40] Without more, the mere assertion that the 3rd Defendant failed to adequately secure the motor vehicle at its pound is not enough to prove conversion. While this could potentially be viewed as negligence, I must bear in mind that *'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).'* (emphasis added).

Issue 4: What if any damages are to be paid to the Claimant

[41] Having found no liability on the part of the Defendants, it is unnecessary to consider the issue of damages. I would add that even if the Claimant were successful in her claim, this court would only be prepared to award the claimant the loss of the value of her vehicle, $1,800,000.00 and a refund of the wrecker and storage fees, $28,000.00. The court would be unable to award damages for loss of use as a commercial carrier from the 3rd of February 2010. The Claimant gave no credible evidence regarding the existence of valid commercial carrier's licence at the time of the seizure. The motor vehicle was not registered at the time of the seizure and had not been for one year prior. It is therefore doubtful as to how she would have been able to lawfully carry out her contractual obligations. Finally, there was nothing before the court to support the termination of a contract that she allegedly had with Coldfield MFG Ltd, as a result of the seizure.

Disposal

[42] It is hereby ordered:

1. Judgment entered in favour of the Defendants; and

2. Each party to bear their own costs.