

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 008824 HCV 2007

BETWEEN	ALTON BROWN	CLAIMANT
AND	THE ATTORNEY GENERAL	1 <sup>ST</sup> DEFENDANT
AND	REVENUE PROTECTION DIVISION FINANCIAL INVESTIGATION DIVISION	2 <sup>ND</sup> DEFENDANT

Messers Oswald James and Terrence Ballentyne for Claimant.

Ms. Tamara Dickens instructed by The Director of State Proceedings for Defendants.

### **ASSESSMENT OF DAMAGES**

**Heard: 13<sup>th</sup> November, 2009 and 11<sup>th</sup> December, 2009**

**Coram: D. O. McIntosh, J.**

This matter came up for assessment of damages pursuant to the order of Mrs. Justice Thompson-James, made on March 23, 2009.

The claimant's 1989 BMW motor car was seized by the second defendant on May 11, 1993 for investigations. On November 8, claimant filed an action in the Supreme Court seeking the return of his vehicle. The Honourable Mr. Justice Malcolm, ruled that the seizure was legal and the vehicle was not returned to him.

Subsequently, the claimant was charged for several breaches of the Customs Act. On May 24, 2000, all charges against the claimant were dismissed by his Honour Mr. Parkin in the Sutton Street Resident Magistrate's Court. Those charges which were not dismissed by the Court were discontinued by the prosecution.

The vehicle was not returned and has now deteriorated to the extent that the value is estimated to be Sixty Thousand Dollars (\$60,000). The claimant seeks damages in lieu.

In:

**Rosenthal vs. Alderton and Sons Ltd - 1946 K B 374;**

It was decided that the appropriate measure of damages must be an assessment of the value of the goods detained and not returned.

It is for the claimant to adduce before the court, credible evidence of his loss and/or damages, so that the court can properly make its assessment. The claimant cannot merely conjure up a figure and throw it at the court. The same rule applies as in an assessment of Special Damages.

To arrive at this assessment, this court accepted May 24, 2000 as the date when the goods were detained by the second defendant or the date when the vehicle should have been returned to claimant. The detention of the vehicle before that date must be deemed lawful as per order, of the court [Malcolm, J].

When the charges against the claimant were dismissed, in the Resident Magistrate's Court, the vehicle should have been returned to the claimant forthwith, and the court should have so ordered.

This Court is of the view that the measure of damages should be the value of the motor vehicle in May, 2000.

While claimant seeks to recover sums in excess of 4 million dollars, claimant has adduced no evidence before this Court relevant to the value of the vehicle at May, 2000 or any evidence of loss which could go towards proof of the sums claimed.

The court is left with the fact that claimant's 1989 vehicle was imported into this country in 1993 at a CIF value of \$339,549.00

It is a given, that motor vehicles depreciate in value each year, generally by 10 to 15 percent [as per the Blue Book, a guide for Customs or as indicated in any motor vehicle magazine on used car prices].

The claimant adduced no evidence to prove the value of the motor vehicle in 2000.

In trying to arrive at a valuation this Court used a depreciation rate of 5 percent [bearing in mind the fact that that vehicle was not in claimant's possession] to arrive at a value of the vehicle in May, 2000. The Court arrived at a value of \$271,630.20, at May, 2000.

The Court assessed claimant's damages at \$271,630.20 with interest at 3 percent from 14<sup>th</sup> February, 2007 to the 11<sup>th</sup> December, 2009.

Costs to the claimant to be taxed if not agreed.