



**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN THE COMMERCIAL DIVISION  
CLAIM NO. 2017 CD 00062**

<b>BETWEEN</b>	<b>BUCMARS INCORPORATED LIMITED</b>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>AND</b>	<b>DWIGHT MORGAN</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>AND</b>	<b>COMMISSIONER OF CUSTOMS</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>TRADE ADMINISTRATOR</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL OF JAMAICA</b>	<b>3<sup>RD</sup> DEFENDANT</b>

**IN OPEN COURT**

Damion Heslop Attorneys-at-Law for the Claimants.

Kamau Ruddock and Matthew Gabbadon instructed by the Director of State Proceedings, Attorney-at-Law for the Defendants.

Heard: 26<sup>th</sup> September and 11<sup>th</sup> November 2022

**Trade - Sections 2, 8, 11 and 12 of the Trade Act - Whether import licence issued by the Trade Administrator which remains unrevoked, has not been ordered invalid and is not challenged in current proceedings a valid import licence.**

**Customs - Sections 2 and 210 (1) of the Customs Act - Whether stolen motor vehicle imported into the island for which no import licence was granted is uncustomed goods.**

**COR: C. BARNABY, J**

**BACKGROUND**

- [1] The 1<sup>st</sup> Claimant is a limited liability company engaged in the sale of used cars in Jamaica and the 2<sup>nd</sup> Claimant is its Managing Director, who has been involved in that industry in

excess of ten (10) years. By their Further Amended Fixed Date Claim Form filed on 12<sup>th</sup> November 2019 they seek the following relief.

1. *A declaration that prior to the date of report, being December 13, 2012, the BMW X6 Motor Car with Chassis number 5UXFG2C5XCL783258 had been issued a valid import permit by the Trade Administrator and was in compliance with section 210 (sic) of the Customs Act as it relates to the importation of restricted goods;*
2. *A declaration that by virtue of the vehicle having a valid Import Permit, neither Dwight Morgan nor Bucmars Incorporation (sic) Limited is in breach of section 210 of the Customs Act;*
3. *A declaration that the 2012 BMW X6 Motor Car with Chassis number 5UXFG2C5XCL783258 is not uncustomed goods;*
4. *A declaration that the Court regularized any prohibition which may have existed concerning the said vehicle in Claim No. 2013 HCV 05149;*
5. *Costs and Attorney-at-Law costs;*
6. *Such further and/or other relief as [the] Honourable Court deems fit.*

**[2]** The action follows investigations by the Revenue Protection Department (hereinafter called “the RPD”) into the importation into the island of a BMW X6 motor car which was suspected to bear an invalid Vehicle Identification Number or Chassis number of 5UXFG2C5XCL783258; and the arrest and charge of the Claimants on the 23<sup>rd</sup> April 2014 for breaches of section 210 of the **Customs Act**. No evidence of the outcome of those proceedings has been supplied.

**[3]** The RPD is a Department of Government established by the **Revenue Administration Act**, which has among its functions the investigation of cases involving fraud against the revenue. The Vehicle Identification Number abbreviated VIN, is a unique serial number used by the automotive industry globally to identify individual motor vehicles and the said number is commonly known as the chassis number.

[4] There is now no dispute that a motor vehicle the subject of this claim was brought into the island and reported on 13<sup>th</sup> December 2012; that the vehicle was stolen from the United States of America ahead of being so brought and reported; that the VIN/Chassis number had in fact been tampered with; and that the true identity of the motor vehicle is a 2013 BMW X6 with a VIN of **5UXFG2C5XDL783257**.

[5] In fact, on the 28<sup>th</sup> May 2014 in Claim No. 2013 HCV 05149 between **Motors Insurance Corporation (By way of its Attorney Phalanx Risk Solutions Limited) v Bucmars Incorporated Limited, the Attorney General of Jamaica and the Revenue Protection Division**, E. Brown J (as he then was) made the following orders in respect of the said motor vehicle.

1. *That the Claimant [Motors Insurance Corporation (By way of its Attorney Phalanx Risk Solutions Limited)] is the owner of motor vehicle, a 2013 BMW X6 with Vehicle Identification Number **5UXFG2C5XDL783257** which now bears Vehicle Identification Number **5UXFG2C5XCL783258** and is referred to as 2012 BMW X6.*
2. *That the motor vehicle, a 2013 BMW X6 with Vehicle Identification Number **5UXFG2C5XDL783257** which now bears Vehicle Identification Number **5UXFG2C5XCL783258** be placed in the custody of the Claimant's duly appointed Attorney, Phalanx Risk Solutions Limited, pursuant to Power of Attorney Instrument number 978566 upon payment of the assessed Customs Duties.*
3. *That Phalanx Risks Solutions Limited be authorized to effect a Denova (sic) Entry to reflect the Claimant as the owner of the subject motor vehicle.*

[6] Evidence and submission were heard on the 26<sup>th</sup> September 2022 and judgment reserved to today's date. On the occasion a copy of the **Trade (Imports Licensing) Order, 1984** was requested which Counsel for the Defendants undertook to provide by 27<sup>th</sup> September 2022. The court has since been advised

that efforts have been made to locate the Order with a view to discharging the undertaking given, but that it could not be located. I express gratitude to Mrs. Lorna Green, Registrar of the Revenue Court and Mrs. Jamie Brown-Bailey, Judicial Clerk who have made tremendous effort to obtain a copy of the said Order, albeit unsuccessful. I proceed without it as the Claimants do not challenged that the law requires an import licence for importation of vehicles of the kind which is the subject of the claim. It is the Claimants' primary contention that a valid import licence had been issued by the Trade Administrator in respect of 2012 BMW X6 bearing Vehicle Identification Number **5UXFG2C5XCL783258**, prior to the date of report being 13<sup>th</sup> December 2012.

## **ISSUES AND SUMMARY DETERMINATION**

**[7]** The following issues, the first of which is determined in favour of the Claimants and all others in favour of the Defendant, are regarded as dispositive of the claim.

1. Whether a valid import permit was issued by the Trade Board in respect of BMW X6 Motor Car with Chassis number 5UXFG2C5XCL783258 prior to 13<sup>th</sup> December 2012.
2. Whether the motor vehicle represented to the Trade Administrator and the Customs as being 2012 BMW X6 and which bore the VIN 5UXFG2C5XCL783258 but which was in fact 2013 BMW X6 with VIN 5UXFG2C5XDL783257 is an uncustomed good within the meaning of the Customs Act.
3. Whether the orders of the court on 28<sup>th</sup> May 2014 as to the true identity and ownership of the 2013 BMW X6 with VIN 5UXFG2C5XDL783257 which was represented to the Trade Board and the Customs as being 2012 BMW X6 bearing VIN 5UXFG2C5XCL783258 regularises non-compliance with import restrictions.

## ANALYSIS AND CONCLUSIONS

### Issue 1

**Whether a valid import permit was issued by the Trade Board in respect of BMW X6 Motor Car with Chassis number 5UXFG2C5XCL783258 prior to 13<sup>th</sup> December 2012.**

[8] It is the submission of the Claimants that a valid import permit was issued by the Trade Administrator in respect of 2012 BMW X6 motor car bearing chassis number **5UXFG2C5XCL783258** prior to 13<sup>th</sup> December 2012. The evidence before me leads me to find that an “*Import Licence*” was so issued on 16<sup>th</sup> November 2012 to one Courtney Jones vide Permit Number 2012115107, the grant of which remains unchallenged and there being no evidence of it having been revoked. It is in the absence of such a challenge or revocation that I accept the Claimants’ submission.

[9] Pursuant to section 8 (1) (a) and (b) of the **Trade Act**, subject to the provisions of section 2 - which is not immediately relevant - the Minister may by order provide for

(a) ***prohibiting absolutely*** the importation or exportation of goods or any class or description of goods from or to any country;

(b) ***prohibiting*** the importation or exportation of goods or any class or description of goods from or to any country ***except under the authority of a licence granted by the Minister***;

[Emphasis added]

[10] “Import”, pursuant to section 2 of the **Trade Act** “*means to bring, or be concerned in bringing, into Jamaica or the territorial waters thereof, and “importation” shall be construed accordingly.*”

[11] Section 11 of the Act makes provision for the grant of import and export licences by the Minister and provides, among other things, that they may be general or limited to a specified person, be absolute or conditional or be limited so as to expire by a specified date unless renewed. Pursuant to section 12, the functions given

to the Minister under the Act are delegable to, among other persons, the Trade Administrator.

[12] The Defendants have supplied the **Trade (Imports Licensing) (Amendment) Order, 1987** (hereinafter called the “Amendment Order”) made in exercise of the power conferred to the Minister under section 8 of the Act and delegated by the said Minister to the Trade Administrator under section 12 thereunder. It is expressly stated that it “...*shall be read and construed as one with the Trade (Imports Licensing) Order, 1984...*” which is there and hereafter referred to as “*the principal Order.*” Among other things, Ord, 2(c) of the Amendment Order provides that “[t]he principal Order is hereby amended - ... by deleting Schedule I thereto and substituting therefor Schedule I to this Order...” Schedule I of the Amending Order is titled “Goods Requiring Licence”. Included in the list of goods requiring licences are “Chapter 87- Vehicles other than railway or tramway rolling stock, and parts thereof - only those tariff headings and numbers listed ...”

[13] Chapter 87 is the Chapter of the **Customs Tariff Resolution** made pursuant to the **Customs Act** which applies to “Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof” and sets out the rate of duty payable in respect of the goods described at each tariff heading. There is no dispute that it is applicable.

Import Licence Permit Number 2012115107

[14] It is the evidence of the Claimants that on 6<sup>th</sup> November 2012 one Courtney Jones, now deceased, finalised the purchase of a motor vehicle from a Jacques McIntosh of a Miami Florida address in the United States of America in respect of which a Bill of Sale was issued. In that instrument the vehicle the subject of the sale is described as a 2012 BMW X6 VIN **5UXFG2C5XCL783258** and is stated as having been sold to “Courtney Rickardo Jones” “on the 6<sup>th</sup> day of November Yr 2012.”

[15] It is their further evidence that the said Courtney Jones in reliance on the Bill Sale applied for *Import Permit Number 2012115107* from the Trade Board on 13<sup>th</sup>

November 2012, which is contained in the “*Order & Clearance Permit: Individual Application Form*” (hereinafter called “the Application”) which is exhibited by the Claimants. The application was processed on 15<sup>th</sup> November 2012 and on 16<sup>th</sup> November 2012, “*Permission [was] granted to import the goods described [in the Application] subject to conditions.*” Also endorsed on the “*Import Permit*” subsection of the Application and dated 15<sup>th</sup> November 2012 are the following words, “*please add 1 years clause to licence.*”

[16] In addition to the foregoing, “Courtney Jones” is named as the “Importer” and “Jacques McIntosh” as “Consignor” on the Application. The description of the goods to be imported is described as a 2012 BMW X6 Chassis number **5UXFG2C5XCL783258**. Its unit price and corresponding C.I.F. Value in Foreign Currency are stated as “31 000 00”.

[17] The following appears on the said Application just ahead of the “*Import Permit*” subsection.

1. **WARNING ANYONE WHO IMPORTS ANY MOTOR VEHICLE WITHOUT FIRST OBTAINING A VALID IMPORT PERMIT WILL BE LIABLE TO A FINE OF THREE (3) TIMES THE VALUE OF THE MOTOR VEHICLE PLUS SEIZURE OF THE MOTOR VEHICLE.**
2. ***The Importer shall at the time of placing his order, advise the Consignor: -***
  - (a) ***That the quantity and the C.I.F. value of goods shipped should not exceed the amounts authorised by this permit.***
  - (b) ***Of the date of expiry of this Permit.***

[18] The same warning also appears in the “*Import Licence*” issued on 16<sup>th</sup> November 2012 and expiring on 12<sup>th</sup> November 2013 in respect of 2012 BMW X6 Chassis number **5UXFG2C5XCL783258**, which is exhibited as part of the Claimants’ case. Consistent with the Application, “Courtney Jones” is named as the “Importer” and “Jacques McIntosh” as “Consignor”. The following are expressly stated as “CONDITIONS OF PERMIT”.

*That the motor vehicle mentioned in this license shall meet with the requirements of the Road Traffic Law.*

*This licence is not transferable.*

*The Motor Vehicle Policy Does not allow the Importation Of Damaged Vehicles By Motor Vehicle Dealers, Companies or Individuals.*

It is again separately stated in capital letters, “*THIS LICENCE IS NOT TRANSFERABLE*”.

- [19] It is the Claimants’ further evidence that a motor vehicle referred to as 2012 BMW X6 with chassis number **5UXFG2C5XCL783258** arrived at the Kingston Wharves on 13<sup>th</sup> December 2012; and that sometime thereafter the 2<sup>nd</sup> Claimant had a meeting with Courtney Jones. Mr. Jones was not known to him previously but had been referred by a mutual friend whose name, conveniently or otherwise, the 2<sup>nd</sup> Claimant was unable to recall during cross-examination at trial. In his affidavit, the “mutual friend” was only identified as “... *a certified Used Car Dealer...*” who “...*requested that [the 2<sup>nd</sup> Claimant] take custody of and effect clearance of the vehicle as Mr. Courtney Jones, the original importer no longer wished to go through with the importation as he had run into significant financial difficulties.*” The 2<sup>nd</sup> Claimant goes further to aver that “*Mr. Jones’ intention was that the vehicle would remain in [his] Customs bonded warehouse until he could resolve his financial affairs.*”

*Order & Clearance Permit General Application Form (hereinafter called “Permit Number 2013100072”)*

- [20] The 2<sup>nd</sup> Claimant’s further evidence is that after he met with Mr. Jones, by letter dated 13<sup>th</sup> December 2012 - the same date on which the motor vehicle was received at Kingston Wharves - Mr. Jones wrote to the Trade Administrator authorising the cancellation of *Import Licence Number 2012115107* which was issued to him. This was on the basis that “*[he had] no further interest, and as such there is not restriction (sic) on Bucmars Inc Ltd obtaining a permit for the said vehicle.*”

[21] In reliance on what was told to him by Mr. Jones, the 2<sup>nd</sup> Claimant said he contacted Mr. Jacques McIntosh by telephone to confirm that he had dealt with Courtney Jones. It is his further evidence that at his request, Mr. McIntosh supplied him with a copy of a certificate of title in respect of the motor vehicle which caused him to be satisfied that Mr. McIntosh was its owner and therefore duly authorised to sell and prepare the vehicle for export. A copy of a “*Certificate of Title*” is exhibited by the Claimants in the affidavit sworn to by the 2<sup>nd</sup> Claimant which shows “*Jacques Leonard McIntosh*” as the owner of 2012 BMW having the identification or chassis number **5UXFG2C5XCL783258**.

[22] It is also the 2<sup>nd</sup> Claimant’s evidence that in consequence of the representations made by Mr. McIntosh, he asked that the latter issue new documentation for customs purposes as the 1<sup>st</sup> Claimant was taking over the transaction to become the importer. In that respect another undated bill of sale was said to have been issued by Mr. McIntosh. It is a common exhibit among the parties and which I will refer to hereafter as the “Second Bill of Sale”. It shows that 2012 BMW VIN **5UXFG2C5XCL783258** was sold by Mr. McIntosh to Bucmars Incorporated Limited, the 1<sup>st</sup> Claimant herein on the 19<sup>th</sup> November 2012. This was almost a month before the 2<sup>nd</sup> Claimant avers that he met Courtney Jones for the first time on the recommendation of a mutual friend; and before he said he contacted Mr. McIntosh to verify ownership of the motor vehicle and his authority to prepare it for export.

[23] The date of sale of the motor vehicle to the 1<sup>st</sup> Claimant also preceded the date of report of the importation into the island on 13<sup>th</sup> December 2012. The 1<sup>st</sup> Claimant did not apply for an import permit until on or about 4<sup>th</sup> January 2013 however when Mr. Jones’ letter of 13<sup>th</sup> December 2012 was also delivered to the Trade Administrator. The application was processed and issued on the 7<sup>th</sup> January 2013 via *Permit Number 2013100072*. This was almost a month after the vehicle was already in Jamaica or its territorial waters and therefore “imported” within the meaning of both the **Trade Act** and the **Customs Act**.

- [24] I confess to harbouring serious concerns about the integrity of the process described by the 2<sup>nd</sup> Claimant in explaining how he and the 1<sup>st</sup> Claimant came to be involved in the importation of the motor vehicle which was reported at the Kingston Wharves on 13<sup>th</sup> December 2012, but I do not find it necessary to resolve those concerns in determining the issues arising on this claim.
- [25] It suffices to say that the Trade Administrator is a public officer, who in granting import permits is exercising a discretion delegated by the Minister pursuant to the **Trade Act**. The evidence is that import permits numbered 2012115107 and 2013100072 were issued by the Trade Administrator on the 16<sup>th</sup> November 2012 and 7<sup>th</sup> January 2013 respectively, in relation to a motor vehicle which was represented by Mr. Jones and the 1<sup>st</sup> Claimant to be 2012 BMW X6 identifiable by the chassis number **5UXFG2C5XCL783258**.
- [26] The Claimants do not challenge the validity of the permits by these proceedings and I remain unaware of any challenge being mounted and upheld which invalidates their issue by the public functionary, nor is there evidence of revocation by the latter or the delegator of his power.
- [27] In all the foregoing circumstances, I am constrained to find that an import permit was issued by the Trade Administrator in respect of 2012 BMW X6 motor car bearing chassis number **5UXFG2C5XCL783258** prior to the 13<sup>th</sup> December 2012 vide *Import Permit Number 2012115107* issued on 16<sup>th</sup> November 2012 with an expiration date of 12<sup>th</sup> November 2013, as contended by the Claimants.

## Issue 2

**Whether the motor vehicle represented to the Trade Administrator and the Customs as being 2012 BMW X6 and which bore the VIN 5UXFG2C5XCL783258 but which was in fact 2013 BMW X6 VIN 5UXFG2C5XDL783257 is an uncustomed good within the meaning of the Customs Act.**

- [28] Premised on the issue of a valid import licence by the Trade Administrator, the Claimants also contend that there was compliance with section 210 of the

**Customs Act** as it relates to the importation of restricted or prohibited goods so that neither of them are in breach of the said provision; and that 2012 BMW X6 with chassis number **5UXFG2C5XCL783258** is not “uncustomed goods.”

[29] While it is conceivable that 2012 BMW X6 with chassis number **5UXFG2C5XCL783258** might in fact exist somewhere in the world; and as earlier concluded, that an import was issued by the Trade Administrator in respect of a vehicle which was represented by Mr. Jones and the 1<sup>st</sup> Claimant respectively to bear that unique identifying marker ahead of the reporting date of the import being 13<sup>th</sup> December 2012, there is not a scintilla of evidence that a motor vehicle which is capable of being so described was imported into the island and therefore subject to the jurisdiction of our customs laws. To issue declarations that a motor vehicle with that identity is not “*uncustomed goods*” or that the Claimants were not in breach of section 210 of the **Customs Act** in respect of that vehicle because a permit had been issued by the Trade Administrator in respect of it can serve no useful purpose. Accordingly, I decline to make declarations in those regards.

### Issue 3

**Whether the orders of the court on 28<sup>th</sup> May 2014 as to the true identity and ownership of the 2013 BMW X6 with VIN 5UXFG2C5XDL783257 which was represented to the Trade Board and the Customs as being a 2012 BMW X6 bearing VIN 5UXFG2C5XCL783258 regularises non-compliance with import restrictions.**

[30] Though not the subject of submissions, the Claimants’ request for “[a] *declaration that the Court regularized any prohibition which may have existed concerning the said vehicle in Claim No. 2013 HCV 05149*” was not withdrawn. The Claimants appear to contend, as seen at 13 of the Amended Fixed Date Claim Form “[t]hat any material defect with the vehicle’s status and the documentation thereto was cured by the Order of the Supreme Court of Jamaica. The Claimants cannot now therefore be liable for any breaches of the Customs Laws as there was never any intent to do anything nefarious or unlawful to put their Used Car Dealership Licence in jeopardy.” I am unable to agree with the contentions.

[31] It is my view that at the core of the dispute is whether the motor vehicle imported into the island by the Claimants contravened customs laws and was therefore “*uncustomed goods*”. So far as relevant in the circumstances of this case, section 210 (1) provides as follows.

*Every person who shall import or bring, or be concerned in importing or bringing into the Island any prohibited goods, or any goods the importation of which is restricted, contrary to such prohibition or restriction, whether the same be unloaded or not, or shall unload, or assist or be otherwise goods concerned in unloading any goods which are prohibited, or any goods which are restricted and imported contrary to such restriction, or shall knowingly harbour, keep or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept or concealed, any prohibited, restricted or uncustomed goods, or shall knowingly acquire possession of or be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any goods with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods, or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of customs, or of the laws and restrictions of the customs relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of goods, **shall for each such offence incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods; and all goods in respect of which any such offence shall be committed shall be forfeited.***

**[Emphasis added]**

[32] On my reading of the provision, the section creates two (2) main classes of evasion offences and their penalty. Offences for which there is strict liability and those requiring *mens rea*, the latter being denoted and preceded by the word “*knowingly*” which requires an accused to have knowledge of the facts upon which contravention of the offence depends.

[33] It is my view that the offences which appear as emphasised in the reproduction of section 210 (1) of the **Customs Act** above, are strict liability offences which do not require *mens rea* so that the fact of their contravention is sufficient to ground liability. Knowledge or intention as suggested by the Claimants' contention is not required for those offences.

[34] This view accords with the construction given to a similarly worded section 205 (1) of the **Customs Law, Cap 89** in **R v George Barbar** (1973) 21 WIR 343. Although not cited, the case and the dictum of Fox JA in particular at pages 356 to 362 is useful. He stated thus.

*Section 205 is a penal section which makes it an offence to do certain acts in connection with prohibited, restricted or uncustomed goods, including importing them... The first part of the section contemplates four categories of offenders. These are described in four clauses separated from each other by a comma and the word "or" ... Thus, the first clause deals with persons who import, or bring, or are concerned in importing or bringing into the Island any prohibited or restricted goods contrary to such prohibition or restriction, whether the same be unloaded or not. The second clause deals with persons who unload, or assist, or are otherwise concerned in unloading prohibited or restricted goods. The third and the fourth clauses are introduced by the word "knowingly". This is one respect in which they differ from the first two clauses where the word is absent... [B]y the use of the word "knowingly" in clauses three and four, and by its omission in clauses one and two, the legislature intended to impose a strict liability with respect to the activities described in the first part of the section, but that the offences created in clauses three and four required proof of some form of guilty knowledge. The text of the clauses reinforces this conclusion. Clause three contemplates persons who "shall knowingly harbour, keep or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept or concealed any prohibited, restricted or uncustomed goods." Clause four deals with persons who, inter alia, "shall knowingly acquire possession of any goods". The words "permit", "cause", "suffer" and "procure" plainly import a requirement of mens rea...*

*To take clauses one and two. The words which define the prohibited conduct in these clauses bear no connotation as to any particular state of mind on the part of the actor. To import, to bring, to be concerned in importing or bringing, to unload, or to assist in unloading, are unconditional descriptions of conduct. The effective control of importation would break down if the provisions in clauses one and two are interpreted in a way which made it necessary to show that an accused had knowledge of the nature of the goods imported, or worse still, that he intended to defraud or evade. The liability imposed by clauses one and two is therefore strict... In clause three the scope of the prohibitions is widened to embrace uncustomed as well as prohibited and restricted goods. At the same time an onus of proving a mental element in the commission of an offence described in that clause is cast upon the prosecution by use of the word "knowingly." The prosecution must show that an accused knew the nature of the goods with which he was dealing. In clause four, all restriction on the type of goods made subject to the prohibitions is removed. The reference is to "any goods". In addition, the mental element necessary for the commission of an offence is intensified. The prosecution must prove not only knowledge in an accused of the nature and the relevancy of the goods with which he is dealing, but also an intent in him to defraud or to evade.*

- [35] The following terms which are relevant to the instant enquiry are defined at section 2 of the **Customs Act** thus.

*"customs laws" shall mean and includes this Act and any regulations or proclamations made thereunder and all other enactments relating to the Customs;*

*"import" means to bring or cause to be brought within the Island or the waters thereof;*

*"importer" includes the owner or any other person for the time being possessed of or beneficially interested in any goods at and from the time of the importation thereof until the same are duly delivered out of the*

*charge of the officers, and also any person who signs any document relating to any imported goods required by the customs laws to be signed by an importer...*

*“[U]ncustomed goods” includes goods liable to duty on which the full duties due have not been paid, and any goods, whether liable to duty or not, which are imported or exported or in any way dealt with contrary to the customs laws;*

[36] To return to circumstances of the instant case, the only evidence of a motor vehicle import relates to 2013 BMW X6 bearing chassis number **5UXFG2C5XDL783257**. There is no dispute that the law required a licence for its importation and it is beyond argument that the Claimants were both concerned in bringing it here. There is absolutely no evidence of a license or permit ever being issued by the Trade Administrator or any other authority to any person, whether natural or juridical in respect of the importation of the said vehicle into the island at the material time or otherwise. The conclusion that 2013 BMW X6 bearing the unique chassis number **5UXFG2C5XDL783257** was imported into the island without a licence contrary to our customs laws is therefore inescapable.

[37] It is that motor vehicle which was present at the Kingston Wharves on the 13<sup>th</sup> December 2021 and released to the 1<sup>st</sup> Claimant in whose Customs-bonded warehouse it was stored until it was seized by the RPD for investigation. It is the evidence of the 2<sup>nd</sup> Claimant that he received the Second Bill of Sale from Mr. Jacques McIntosh which was used to support the application to the Trade Administrator for the licence eventually issued vide Permit Number 2013100072. Those documents, in addition to those relating to Permit Number 2012115107 issued to Courtney Jones were submitted to the Customs Department to effect clearance of the motor vehicle. *“Bucmars Incorporated Limited”* is named as the *“Importer/Consignee”* of the motor vehicle on the Customs Declaration Form C87, lodged on the 9<sup>th</sup> January 2012 and which was used for that purpose, with *“Dwight Morgan/Managing Director”* as the company’s signatory.

[38] In light of the construction to be placed on section 210 (1), that it creates strict liability offences, the conclusion that the Claimants offended the section in importing 2013 BMW X6 VIN **5UXFG2C5XDL783257** is also inevitable. The activities of the Claimants on their own evidence fall within the scope of the strict liability offences at section 210 (1) of the **Customs Act**, in that they

*... import[ed] or br[ought], or [were] concerned in importing or bringing into the Island ... goods the importation of which is restricted, contrary to such ... restriction, whether the same be unloaded or not, ...*

[39] In these circumstances it appears to me that the “material defect” in the importation the subject of this claim, is that 2013 BMW X6 VIN **5UXFG2C5XDL783257** was “imported” into island within the meaning of our customs laws, including the **Trade Act** and the **Customs Act** without a license for its importation, contrary to those customs laws.

[40] On a reading of the orders of E. Brown J (as he then was) in Claim No. 2013 HCV 05149 on which the Claimants rely for their submission, I can see no pronouncement which regularises that defect. The orders which were earlier reproduced do no more than declare the true identity of the vehicle that was imported into the island and therefore within the jurisdiction of the court, and declared its rightful owner. The cumulative effect of the orders is that the owner’s attorney was permitted to submit “*de nova Entry*” to the Customs which reflected the true identity of 2013 BMW X6 VIN **5UXFG2C5XDL783257** which was already “imported” into the island by the Claimants, to enable the duties payable thereon to be assessed and paid. This enabled its proper release to the attorney for the true owner. The court is not authorised to issue import licences and E. Brown J by his orders did not do so.

[41] It is in fact the unchallenged evidence of the Defendants that 2013 BMW X6 VIN **5UXFG2C5XDL783257** imported into the island without a licence for importation was released by the RPD to Porter Brothers who were acting on the instructions of Phalanx Risk Solutions Limited pursuant to the order of the court. Arising from

the correction of the description of the motor vehicle by the court, Jamaica Customs assessed the full duties payable which exceed the duty assessed as being payable when the vehicle was “imported” into the island by the Claimants. On the evidence, full duties would not have been paid by the Claimants on the motor vehicle which was in fact imported.

[42] “*Uncustomed goods*” under the **Customs Act** undoubtedly includes goods which are liable to duty for which full duties have not been paid. Accordingly, where duties have been properly assessed and are fully paid on goods subsequent to “*importation*”, they can no longer to be characterised as “*uncustomed goods*” in that sense. The definition of the term is not so limited however. It includes goods, whether or not liable to duty, which are imported or in any way dealt with contrary to customs laws.

[43] In the result, I find that 2013 BMW X6 **VIN 5UXFG2C5XDL783257** was “*imported*” without a licence in contravention of the customs laws and therefore an “*uncustomed goods*” as defined in the **Customs Act**. This is the “material defect” in the importation of the 2013 BMW X6 **VIN 5UXFG2C5XDL783257** by the Claimants which is not cured by the orders of the court in Claim No. 2013 HCV 05149, nor by the actions taken in consequence of them, which enabled the payment of the relevant duties to the Customs.

## ORDER

[44] In light of the foregoing, it is ordered as follows.

1. In the absence of revocation of the *Import Permit Number 2012115107* issued on 16<sup>th</sup> November 2012 by the Trade Administrator and which expired on the 12<sup>th</sup> November 2013 or any order of the court invalidating the same, it is hereby declared that an import permit was issued by the Trade Administrator in respect of 2012 BMW VIN/Chassis Number **5UXFG2C5XCL783258** prior to the 13<sup>th</sup> December 2012.

2. Other declaratory relief sought by the Claimants on the Further Amended Fixed Date Claim Form filed on 12<sup>th</sup> November 2019 are refused.
3. Costs to the Defendants to be taxed if not sooner agreed.
4. The Attorneys-at-Law for the Defendants are to prepare, file and serve this order.

**Carole Barnaby**  
**Puisne Judge**