IN THE SUPREME COURT JUDICATURE OF JAMAICA

SUIT NO. CL 1990 G096

BETWEEN	OWEN GRANT	CLAIMANT
AND	SUPT. GLADSTONE GRANT	1St DEFENDANT
AND	THE ATTORNEY GENERAL	2ND DEFENDANT

Mr. Maurice Frankson instructed by Gaynor & Fraser for the Claimant

Mrs. Simone Mayhew instructed by Director of State Proceedings for the Defendants

Heard on November 17 & 24, 2003

Sinclair-Haynes, J. (ag)

On the 30th July, 1989, Superintendent Gladstone Grant went to 1 Sunrise Close, the home of Owen Grant and arrested him for breaches of the Customs Act. He seized his Mazda Pickup on the ground that it was falsely registered as being assembled in the island when in fact it was imported and the requisite duty was not paid.

Owen Grant, however, claimed he purchased the vehicle from Owen Baugh. On the 9th August, 1990 no evidence was offered against Owen Grant and the vehicle was directed to be returned to him by a Resident Magistrate. On the 20th July, 1991 he sued Supt. Grant and the Attorney General for damages.

Evidence of the first Defendant

The first defendant Supt. Gladstone Grant's evidence is that as a consequence of investigations, he discovered that a number of vehicles, including the claimánt's Mazda Pickup was imported into the island without the relevant custom duties being paid and the necessary custom entries submitted. The vehicles were falsely registered as being assembled in Jamaica. The illegal entry of the Mazda, he discovered, was facilitated by Carl Thompson, Dennis Frazer and Owen Baugh.

As a result of his investigations he went to 1 Sunrise Close, the home of Owen Grant where he saw him and the Mazda Pickup. Owen Grant told him that he purchased the Mazda Pickup from one Owen Baugh. He arrested him for breaches of the Customs Act and seized the Mazda pursuant to the said Act. He was given the documents for the car including the document of transfer and the E18 form. The E18 form bore the name Owen Grant.

The E18 form is a licence used when cars are assembled in Jamaica. This is a licence which permits the holder to assemble the vehicle in the island. The holder of the licence is obliged to keep records of the raw materials used to assemble the vehicle, in a book. The premises at which the vehicle was assembled must be certified.

Supt. Gladstone Grant further told the court that Mr. Owen Grant told him that 1 Sunrise Close was not so certified nor was there any book which recorded the said materials used to assemble the vehicle. He arrested Owen Grant and seized the vehicle.

Claimant's case

Owen Grant insisted he purchased the vehicle.

He demanded the return of the Mazda. It was not returned to him and he instituted proceedings against Supt. Gladstone Grant, a member of the Jamaica Constabulary Force and the Attorney General to recover damages for detinue and or conversion.

The vehicle was returned before the trial and so he abandoned the claim for conversion. He claimed the second defendant acted unlawfully, maliciously and without reasonable and probable cause. As a result he suffered loss and damage. He testified that for over one year he was forced to hire a vehicle at $1,800.00 per week to carry out his business. This was not contested by the defendants.

First issue: Existence of reasonable and probable cause

The first issue is whether the second defendant had reasonable and probable cause to seize and detain the vehicle on 30th July, 1989.

Hawkins J. in **Hicks and Faulknor** (1878) 8 QBD 167 defines reasonable and probable cause as follows:

> *".... an honest belief in guilt of an accused based upon a full conviction founded upon reasonable grounds of the existence of a state of circumstances which assuming them to be true, would reasonably lead to an ordinary prudent and cautious man, placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed."*

Lord Devlin further illuminates the meaning when he said the following in **Glinski v McIver:** (1968) AC pp 766-767

> *"... he is concerned only with the question of whether there is a case fit to be tried. As Dixon J, (as he then was) put it ."The prosecutor must believe that the probability of the accused's guilt is such that upon general grounds of justice a charge against him is warranted.* ***Commonwealth Life Assurance Society LB v Bain."***

Section 33 of the Constabulary Force Act puts the burden on the claimant to prove that at the time of the seizure there was an absence of reasonable and probable cause. The question is, Has Mr. Owen Grant discharged that burden?

The evidence is that Mr. Owen Grant provided Supt. Grant with a transfer document purporting that he purchased the vehicle from one Owen Baugh. He

also provided Supt. Grant with an E18 form which revealed that the licence was issued to him. Owen Grant was therefore ostensibly the first owner or manufacturer of the vehicle. This evidence was never challenged. However, Mr. Frankson submitted that I ought to reject it. In the context of this case, however, this is evidence I cannot reject since it was never challenged. Supt. Grant testified that the claimant failed to satisfy him that being the holder of the licence, the requirements of the Act were satisfied.

To allege that he purchased the vehicle and at the same time his name appeared on the E18 form could reasonably cause an ordinary, prudent and cautious man in Supt. Grant's position to conclude that the claimant was possibly guilty of evading Customs duty.

Superintendent Grant ought only to believe that the probability of Owen Grant's guilt is such that upon general grounds of justice a charge against him was warranted. If a charge against him was warranted under the Customs Act, he would certainly have reasonable and probable cause to detain the vehicle.

Second issue: Time reasonable and probable cause ceased to exist

The question is, At what time reasonable and probable cause ceased to exist?

On the 13th day of October, 1989, the claimant caused his attorney-at-law to send a letter of demand to the Attorney General demanding the return of the said vehicle.

On the 9th of August, 1990, no evidence was offered by the crown against the defendant and the vehicle was ordered by the Resident Magistrate to be returned to the claimant as the crown indicated it had no further interest in the vehicle.

On the 30th of May, 1991, the vehicle was returned.

The gist of the cause of action in detinue is wrongful detention. In order to establish detinue it is usual to prove demand and refusal after the expiration of a reasonable time to comply with the demand (Halsburys Laws of England, 3rd Edition Volume 38).

> *"Where a person has possession of goods of another and a valid demand is made for them by the owner, and an unqualified, unjustifiable refusal to deliver them up entitles the owner to sue in detinue ..." (Halsburys Laws of England, 3rd Edition Volume 38).*

Mr. Frankson submitted that the cause of action accrued at the time the letter was sent to the Attorney General.

Mrs. Simone Mayhew submitted it ought to be at the time the Resident Magistrate directed the return of the vehicle:

Had reasonable and probable cause to detain the vehicle ceased at the time the letter was sent to the Attorney General?

Can the defendants' refusal to deliver up the Mazda within a reasonable time after the letter of demand was received by the Attorney General be considered an unqualified, and unjustifiable refusal?

At the time of the demand Owen Grant was charged and the court was seised of the matter. The car was an exhibit in the matter. Reasonable and probable cause was therefore still extant. The defendants had no control over the vehicle. It was the court's prerogative to release the car, not the defendants'. It was submitted by Mr. Frankson that the defendants owed the claimant a duty to respond to the letter. Assuming the defendants ought to have responded, the absence of courtesy cannot amount to an unqualified and unjustifiable refusal.

On the 9th of August, 1990, the Resident Magistrate ordered the return of the car. Reasonable and probable cause to detain ceased at that time. The vehicle ought to have been returned within a reasonable time of the order. The car was not returned until the 30th May, 1991.

The claimant's evidence is that Supt. Grant was present upon the making of the order by the Resident Magistrate. Further, he requested Supt. Grant to return the vehicle but he refused. As a result he went to the then Commissioner of Police, Mr. Herman Ricketts. The Commissioner summoned Supt. Grant and

in his, the claimant's presence, Supt. Grant flagrantly refused to deliver up the said vehicle.

Superintendent Grant denied being in court when the order was made. He denied speaking with the claimant. He denied being summoned by the Commissioner and blatantly refusing to return the vehicle. He testified he was never aware of the order of the Resident Magistrate. He was transferred and someone else took over the investigations.

The evidence of the first defendant and the claimant is diametrically opposite. The question is, On a balance of probabilities which of these divergent versions should I accept as being more credible?

Assuming Supt. Grant is being truthful, the fact of his transfer did not remove the responsibility of ensuring the vehicle was returned. He was still a vital witness in the case. Even if he was indeed absent from the court on the day the Resident Magistrate directed the return of the vehicle, he had a duty to enquire about the matter. Certainly within a month he ought reasonably to have acquainted himself with the outcome of his matter which was before the court. For my part, I find this conduct unreasonable to the point of incredibility. In any event there having been an earlier written demand to the Attorney General, the defendants had an obligation to enquire into or monitor the outcome of the

case before the Resident Magistrate. Therefore the defendants failure to return the vehicle after the order of the Court was unjustifiable.

On a balance of probabilities it is more reasonable to believe the claimant would have endeavoured to secure the return of his vehicle considering the inordinate delay in returning it to him.

In the circumstances it is reasonable on a balance of probabilities that the claimant would have sought the assistance of the Commissioner of Police in order to secure its return.

I find therefore on a balance of probabilities:

1. the first defendant was aware of the Order of the Resident Magistrate;
2. the claimant requested the return of the car from the defendant but the first defendant wilfully refused to accede to the request;
3. there was a meeting of the Commissioner with the first defendant and the claimant with regards the vehicle and despite, this, he refused to return the vehicle;
4. that as at the 9th August, 1990, the defendants' wilfully detained the Mazda thereby constituting detinue.

Quantum of Damages suffered by Claimant

The vehicle was returned to the claimant. The claimant therefore is not seeking damages for the value of the vehicle since it was restored to him. His basic loss is protanto reduced. See **Williams v Archer** (1847) S C B 318. He is seeking compensation for the temporary deprivation of his chattel. He has satisfied the court that he suffered consequential loss in that he had to hire a vehicle to assist in his business. Lord Denning L J in **Strand Electric Co. v Bresford Entertainment** (1952) 2 Q B 246 at 254 had this to say in this regard:

> *"Suppose a man used a car in his business and owing to its detention he had to hire a substitute at an increased cost, he would clearly be able to recover the cost of the substitute."*

There has been no objection to the fact that the claimant was forced to hire a substitute vehicle, nor has there been any objection to the sum of $18,000.00 per week claimed.

Mrs. Simone Mayhew submitted that apart from loss of use, the claimant is only entitled to nominal damages of $1,000.00 for the detention of the vehicle.

Mr. Frankson submitted he is entitled to aggravated damages for the following reasons:

1. the wilful refusal of the first defendant to return the vehicle;

2. the inordinate period the defendants kept the vehicle after the Resident Magistrate directed its return.

Harvey McGregor in his text McGregor on Damages 13th Edition at page 146 is of the following view.

> *"In certain torts particularly those of defamation, false imprisonment and malicious prosecution the measure of damages maybe affected by the conduct, character and circumstances of both plaintiff and defendants. These factors are said to go in aggravation or in mitigation of damages. Thus the damage is most commonly aggravated, and the damages correspondingly increased by the defendant's bad motives or wilfulness."*

D. B. Carson and I. H. Dennis in the text Odgers Principles of Pleading and Practice in Court Actions in the High Court of Justice 21st Edition at page 95 is helpful.

> *"... but there are many facts which are not material on the main issue whether the plaintiff ought to succeed or not, and which will yet be proved and discussed at the trial because they affect the amount of damages which he will be entitled to recover. Such facts are called "Matters in Aggravation of Damages" or "Matters in Mitigation of Damages."*

The issue now to be determined is whether the claimant is entitled to aggravated damages.

D. B. Carson and I. H. Dennis in the text (supra) are of the view that aggravated damages ought to be pleaded.

McGregor on Damages is of the view that a failure to include items of aggravation will not constitute a defective statement of claim (except in certain circumstances which are not relevant to this case) unless the matters which the plaintiff wishes to introduce in aggravation would likely take the defendant by surprise and would raise new issues of fact.

In the instant case there was no claim for aggravated damages in either the endorsement or the statement of claim, nor were the defendants alerted by way of the claimant's written submissions.

It is true that the action commenced before the first defendant's wilful refusal to return the vehicle. However, he could have amended his claim or at least include it in his written submission.

The claimant's witness statement contains statements which are "matters in aggravation." However, there was no indication from the claimant that he intended to request aggravated damages.

Mrs. Mayhew did not submit on aggravated damages. She was clearly taken by surprise by Mr. Frankson's submission for the award of aggravated damages.

In as much as I am of the view that the first defendant's failure to obey the Court's order and to accede to the request of the claimant for the return of the said vehicle was wilful and contumelious, in light of the foregoing I cannot award aggravated damages. I have no alternative but to award nominal damages to register the fact that the claimant's legal right was infringed. However, the claimant is also entitled to loss of use being the cost of hiring a substitute vehicle during the period 9th of August 1990 to the 31st of May, 1991 at $1,800.00 per week. I make no award with respect of interest and I place reliance on Halsburys Laws of England, 3rd Edition, Volume 38:

> *" Interest maybe allowed in an action of detinue or conversion in addition to the value of the goods at the time of judgment... It is doubtful, however, whether interest could be awarded in addition to damages for detention* or *loss of use."*

Accordingly, judgment is entered for the plaintiff as follows:

1. Special Damages in the sum of $70,200.00;
2. General Damages in the sum of $10,000.00

Cost to claimant to be taxed or agreed.