



[2017] JMSC Civ. 133

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012HCV01035

BETWEEN	GARY BALDWIN	CLAIMANT
AND	DAVE QUEST	DEFENDANT

IN OPEN COURT

Mr. Glenroy Mellish instructed by Glenroy Mellish & Co. for the Claimant

Mr. George Clue for the Defendant

Heard: July 6 & 7, 2017, September 29, 2017

CONVERSION AND DETINUE – BOATS SEIZED BY BAILIFF – WARRANT OF LEVY – REGISTRATION OF BOATS – FISHERIES INDUSTRY ACT – PERSON ENTITLED TO POSSESSION – SPECIFIC AND UNCONDITIONAL DEMAND – WHETHER DEFENDANT JUSTIFIED IN RETAINING THE BOATS

STEPHANE JACKSON-HAISLEY, J (AG.)

BACKGROUND

[1] The Claimant, Gary Baldwin is a commercial fisherman of Rocky Point in the parish of Clarendon. The Defendant, Dave Quest is the bailiff for the Clarendon Parish Court. The Claimant alleges that he is the owner of two commercial fishing vessels that were seized by the Defendant on June 9, 2010, and that the Defendant has refused to deliver them to him. On February 21, 2012, he filed a Claim Form and Particulars of Claim against two Defendants, the 1st being Cyril Ramdani and the 2nd Dave Quest. He claims Damages, including Exemplary

Damages for Conversion and Detinue arising from the unlawful seizure and retention of the commercial fishing vessels RONA AND FAYE which were wrongfully seized by the then 1st Defendant on June 9, 2010 and which the Defendants have refused to deliver to the Claimant. On the 25th June 2013, the case against the 1st Defendant was struck out and so the 2nd Defendant remains as the sole Defendant.

THE CLAIMANT'S CASE

- [2] In his Particulars of Claim the Claimant asserted that on the 10th day of June 2010 he was the registered owner of the Vessels RONA and FAYE having purchased the vessels formerly named ROSE and SANDI, from a Mr. Levi Harrisingh. He indicated that title to the vessels was transferred to him on or about January 9, 2008.
- [3] He alleged that on June 9, 2010 the Defendant wrongfully seized the vessels in purported execution of a warrant on the property of Levi Harrisingh to satisfy a debt due from Mr. Harrisingh to Mr. Ramdani. Further, that on or about June 10, 2010 the Claimant provided proof to the Defendant of his purchase of the boats and asked for their return and the Defendant has refused to deliver the boats to the Claimant. Further, that on or about May 24, 2011 his attorney-at-law wrote to the Defendant providing proof of ownership and the Defendant has still refused to hand over the vessels.
- [4] As a result, the Claimant indicated that he has suffered loss and claims Special Damages to the tune of \$1,315,000.00, General Damages and Exemplary Damages. He also seeks an Order that the Defendant forthwith deliver to him the vessel RONA with registration number BM 121 and serial number 01780552 and the vessel FAYE with registration number BM 119 and serial number 0T541204 as well as Interest, Cost and such other or further relief as this Court may consider fit.

- [5] At trial, the Claimant's witness statement was allowed to stand as his evidence in chief and thereafter he was subject to cross-examination. He alleged that on or about November 26, 2008 he applied for the boats which were previously known as ROSE and SANDI to be registered in his name and the registration was approved and the boats licenced. Further, that on June 9, 2010 the Defendant, then a bailiff for the parish of Clarendon seized his boats. According to him, the following day he visited the Defendant and gave him the information he had to prove that he was the owner of the boats and asked that the boats be returned to him, however the Defendant has refused to return the boats.
- [6] He claimed that he has suffered loss as he has lost the use of his boats and items which were on them. He has lost equipment and his fishing nets have been destroyed and at the time they were seized he estimates the cost to replace them to be \$1,558,410.00. He seeks Special Damages in the sum of \$1,315,000.00. In addition, the boats allowed him to supply at least 380 pounds of fish per day which in 2010 was being sold at \$330.00 per pound.
- [7] He gave further evidence that he had applied to the Fisheries Division and had filled out the forms and signed them. During cross-examination he was asked whether he was related to Mr. Harrisingh and he said he was his "onetime" brother-in-law. He was asked about the first time he saw the Defendant and he said it was the day after the boats were seized. It was suggested to him that the boats belonged to Mr. Harrisingh and he denied this. Through him, a letter dated June 21, 2012 was tendered and admitted into evidence as Exhibit 1. This letter was written by a Claudette Milford-Allen, Director of Documentation, Information and Access Services who signed for the Permanent Secretary of the Ministry of Agriculture and Fisheries and was addressed to the Registrar of the Supreme Court. In the letter reference was made to a request for information to be granted pursuant to the Access to Information Act. In the second paragraph of the letter the following was indicated:

"Please note that the vessel Sandi was sold to Mr. Gary Baldwin and renamed "Beth". The registration application forms for both vessels the "Rose" and the "Sandi" ad the "Beth" (renamed from Sandi) are provided.

- [8] A Fisheries Division Registration and Licensing of Commercial Fishing Boat Application Form was the subject of Exhibit 2. It is dated November 26, 2008, and the name of the applicant and principal owner on the first page is recorded as Gary Baldwin. This application form related to the boat "BETH" and on the second page the principal owner is also named as Gary Baldwin of a Rocky Point P.A. Clarendon address. Although this application form is not proof of registration, it shows that on November 26, 2008 the Claimant had made an application for registration of the boat "BETH". He also tendered into evidence a document titled "Fisheries Division Fishing Inspection Report" which is also dated November 26, 2008 which is signed by a Fisheries Inspector who makes the following recommendations:

"I have inspected the Fishing Boat BETH and have found it suitable for fishing. I am therefore recommending for this boat to be licenced and registered."

- [9] There is nothing further to show whether or not the boat was actually registered in the Claimant's name except for the evidence of the Claimant as contained in his witness statement.

THE DEFENDANT'S CASE

- [10] The Defendant filed his Defence on February 25, 2013. He expressed that as far as he is aware the owner, at the time of seizure, was Mr. Levi Harrisingh. Further, that he was instructed by Mr. Ramdani, a judgment creditor of Mr. Harrisingh to seize goods and chattel belonging to Mr. Harrisingh and that Mr. Harrisingh had executed a document dated December 12, 2008, indicating that he was the owner of the boats and would not take any steps to dispose of them.
- [11] He also indicated that no document supporting the Claimant's purported ownership of the boats was presented to him and that he has properly retained possession of the boats as they do not belong to the Claimant.

- [12] The Defendant in his witness statement indicated that in October 2008 he received an order for seizure and sale in the matter of **Cyril Ramdani v Desmond Duhorty and Levi Harrisingh**. Further, that armed with information regarding the location of Mr. Harrisingh he went in search of him and after failing to find him at his home he found him at the Rocky Point beach. He said that Mr. Harrisingh showed him a boat with the name "SANDI" written on it and told him that the other boat "ROSE" was at sea and he then told Mr. Harrisingh about the money on the Order and he asked him to give him three days to make arrangements to pay his debts.
- [13] He asserted that since that time Mr. Harrisingh started to evade him and even moved the boats to Portland Cottage. However, he indicated that when he found the boats he advised Mr. Harrisingh that he was going to seize them but he marked them as it was difficult to move and store them at that time. Further, that Mr. Harrisingh even signed the Form 4704 to say he would not sell or cause any damage to come to the items seized. Subsequent to that time he indicated that Mr. Harrisingh continued to evade him and to hide the boats. He was informed that Mr. Harrisingh had repainted the boats and changed their names to BETH and RONA.
- [14] He stated further that it was on the 9th of June 2010 that he located the boats in Rocky Point and seized them and took them to a location to be sold. He said that he did not see Mr. Baldwin however his workmen informed him that he had recently bought the boats from Mr. Harrisingh and that they were employed to work on the boats. He gave further evidence by way of amplification that he executed the "warrant of seizure and sale" by seizing two boats namely "ROSE" and "SANDY" and the Warrant of Levy was tendered into evidence as Exhibit 4. The Warrant of Levy bears the signature of a Levi Harrisingh who indicates that he agrees to keep the items listed in his possession and agrees not to sell or cause any damage to them until the matter is settled

[15] During cross-examination the Defendant explained that the process of marking and the process of seizing are two distinct processes. He admitted that he saw Mr. Baldwin the day after he seized the boats. When it was suggested to him that Mr. Baldwin showed him the papers for the boat he denied this, however he admitted that Mr. Baldwin claimed he owned the boats. He was asked if he was familiar with the Interpleader process and he said he was, however he did not utilize this process.

[16] He further told the Court that he made checks with the Fisheries Division to find out who was the owner of the boats and he was told that it was Mr. Harrisingh who was the primary owner. However, he could not say when it was that he made these checks with the Fisheries Division.

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[17] Counsel for the Claimant urged the Court to accept the Claimant as a witness of truth and to find that he bought the two boats in January 2008. He asked the Court to consider the provisions of the Sale of Goods Act which permit property to pass when the parties intend for this to happen and to find that the property passed in November 2008.

[18] He submitted that consideration should be given to the conduct of the Defendant in his capacity as bailiff who although admitting that the Claimant came to him in 2010 and requested the return of the boats did nothing further, moreover, although he was aware of the Interpleader process, he took no steps utilize this process.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

Counsel for the Defendant submitted that the main issue for the Court to determine was who was the owner of the boats at the time of seizure. In considering that issue he contended that the Court should question whether or not the boats were transferred to the Claimant and if so what is the date of this transfer. He argued that there is no evidence on which the Court can make a finding that there was any transfer of the boats. He pointed out that the Claimant

has failed to produce any receipts for this alleged purchase of the boats and that even if he bought the boats, that would not be sufficient to pass ownership because, if there was a lien on the boats then payment of the purchase price would not be sufficient to pass ownership. He asked the Court to examine the provisions of section 12 of the Fishing Industry Act as this provides for how ownership is to be transferred and submitted further that ownership involves registration.

[19] Counsel argued that it is the Claimant who must demonstrate what is involved in the purchase and transfer of the boats and that he has failed to do so and has not even led any evidence as to the procedure involved in registration. He also argued that there is no evidence that any documents were shown to the Defendant.

[20] Counsel also submitted that the Claimant has failed to prove the case that he has pleaded as although the boats referred to in the pleadings were “RONA” and “FAYE” he has not tendered into evidence anything to support ownership of the boats so named. Further, that the Claimant has tendered into evidence a document which refers to a boat which is not mentioned in his pleadings. In all the circumstances he asked the Court to find on a balance of probabilities that the Claimant has not proven his case.

THE LAW

[21] In the 8th Edition of Winfield on Tort (page 488), the learned author defines Detinue as the wrongful retention of the possession of a chattel. He goes on to say that the plaintiff must prove, first, that he is entitled to immediate possession of the chattel, and if there is any defect in his right to immediate possession he must fail and secondly he must prove that the defendant detained it after a proper demand has been made for its restoration. The author further points out that it is no defence that the defendant has not got possession if he once had it and improperly parted with it, however he highlights that a good defence is that the refusal to deliver was not an unqualified one but was subject to a reasonable

condition that the plaintiff's claim should be verified. Where there is a bona fide doubt as to the plaintiff's title, the defendant is entitled to a reasonable time for inspection.

[22] Further, in Winfield on Tort (page 493) the author discusses Conversion and defines it as any act in relation to the goods of a person which constitutes an unjustifiable denial of his title to them. Conversion, he says involves two concurrent elements: (a) a dealing with goods in a manner inconsistent with the right of a person entitled to them, and (b) an intention in so doing to deny that person's right or to assert a right which is inconsistent with such right.

[23] There are several Jamaican cases in which the torts of Conversion and Detinue have been examined. In the Court of Appeal decision of **Attorney General of Jamaica and the Transport Authority v Aston Burey** [2011] JMCA Civ.6, Harris JA provides some useful guidance on the distinction between the two torts at paragraph 6 of the judgment:

*"Both torts relate to the wrongful detention and dealing with a chattel inconsistent with possession or a right of possession of another. As these torts amount to the 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"*

[24] Campbell J in the case **Trevor Wright v Det. Sgt. Yates et. al.** [2012] JMSC Civ. 52, at paragraph 18 adopted this formulation of Harris JA as well as Waddington JA's definition of Detinue in the Court of Appeal decision in **George and Brandy Ltd. v Lee** (1964) 7 WIR 275 and at page he expressed the following:

"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 demand. The authorities establish that a demand must be unconditional and specific."

[25] In the 2016 case of **Carol Campbell v The Transport Authority of Jamaica [2016] JMSC** Civ. 148 McDonald J. examines in details the torts of Conversion, Detinue and also Trespass. In doing so she took into account the **George and Brandy Ltd.** case and the **Trevor Wright** case as well as the words of the learned author Fleming in the 8th Edition of The Law of Torts in arriving at a position in respect of Detinue which is set out in paragraphs 24, 25 and 26 of the judgment:

“In other words, if the Claimant’s motor vehicle was lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep it adversely or in defiance of the Claimant’s rights.

*It seems to me that to establish that the detention has become adverse and in defiance of her rights, the Claimant must prove that – (i) she “unconditionally and specifically” demanded return of the motor vehicle (per **George and Brandy Ltd**); and (ii) the Defendant refused to comply after a reasonable time.*

With regards to (ii) the Defendant’s refusal to comply with the Claimant’s request, there is authority to suggest that such a refusal must be categorical or unequivocal; if qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the Claimant’s rights, it amounts to neither detinue nor conversion.”

McDonald J indicated further that even where a seizure is found to be lawful there could still Detinue.

[26] In the Trinidadian case of **Gerald Mootoo v The Attorney General HCA** 431 of 1997 the distinction between both torts was stated as follows:

“Conversion is a purely personal action for pecuniary damages resulting in judgment for a single sum, generally measured by the value of the chattel at the date of judgment together with any consequential damage flowing from the conversion which is not too remote. Where conversion cannot be directly proved, it may be inferred from proof of a demand for the item and the refusal to hand it over. Detinue is more in the nature of an action in rem because the Plaintiff seeks the return of the item or payment of its value assessed at the date of judgment, together with damages for its detention. This effectively gives the defendant a choice of whether to return or pay for the item. It is immaterial whether a defendant obtained the item by lawful means because the injurious act is the

wrongful detention, not the original taking or obtaining of possession. Detinue is usually evidenced by a failure to deliver an item when demanded. Damages for detinue are intended to compensate a plaintiff for a loss, not to punish a defendant. Consequently, the fall in value of an item subsequently recovered can be recovered only if the loss is proved. Otherwise, only nominal damages are recoverable.”

[27] The Claimant herein has sought the return of the boats as one of his remedies. Hence this gives rise primarily to the tort of Detinue and so I will consider the issues raised in relation to Detinue.

ISSUES

[28] The substantial issue that arises for my determination is whether or not the Defendant is liable to the Claimant in Detinue. In order to determine this issue several other issues require resolution. They are as follows:

1. Is the Claimant the person entitled to possession of the boats?
2. Did the Claimant make a specific and unconditional demand for the return of the boats?
3. Was the Defendant justified in retaining the boats?

DISCUSSION

Is the Claimant the person entitled to possession of the boats?

[29] The Claimant has alleged that the boats seized by the Defendant belong to him. He claimed that he bought them from Mr. Harrisingh in January 2008 for the sum of one million dollars. He has not produced any receipt to support this assertion. Throughout the trial of this matter the main issues centred around whether or not the Claimant can prove that at the time the boats were seized he was the registered owner of them. In fact, counsel for the Defendant has submitted that ownership is critical to the Claimant's case and he has failed to prove that he was and is the owner of the boats.

[30] I make the point here that ownership ought to be distinguished from registration. Registration does not confer ownership however it provides proof to the world of

ownership. Section 18(1) of the Sale of Goods Act sheds some light on how property subject to a contract for sale is passed. It provides as follows:

“Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.”

What seems to be important in passing title is the intention of the parties at the time of the contract and not so much registration.

- [31]** Registration, however is compulsory for anyone who wishes to use a boat for fishing, recreation or sport. Provision is made for this in section 8 of the Fishing Industry Act. Section 9 of the said Act outlines the process involved in the registration of a fishing boat and provides that an application for the registration of a fishing boat shall be made in the prescribed form, upon receipt of which, the Licensing Authority shall cause a Fisheries Inspector to inspect such boat and, if on such inspection the boat is found to be fit for the purpose of fishing, shall assign the boat a number and upon payment of the prescribed fee, issue to the owner a certificate of registration. Section 12(2) provides inter alia that upon receipt of application the Licensing Authority shall revoke the previous certificate of registration and issue a new certificate in the name of the new owner.
- [32]** I have examined exhibits 1, 2, 3 and 4 and I accept that on November 26, 2008 the Claimant had in fact applied to the Fisheries Division for the boat “BETH” to be registered in his name. I also accept that the boat “BETH” was previously named “SANDI” and that this boat was one of the boats seized by the Defendant. The fact that this application form had a section for the name of the principal owner to be stated supports the point that ownership is distinct from registration. I also accept that as part of the process of registration the boat was inspected and found to be suitable for registration. There is nothing further to show whether or not the registration process was completed, however these documents bolster the Claimant’s case. They have led me to believe the Claimant’s account as a whole. I have also assessed him independently of that and the way he gave his

evidence and he struck me as credible. The Warrant of Levy is dated December 12, 2008 and the application for registration is dated November 26, 2008. If this evidence is to be accepted the Claimant would have bought the boats and applied for their registration even before they were marked by the Defendant on December 12, 2008.

[33] The Defendant has not brought any concrete evidence to counter the assertions of ownership by the Claimant. When he was asked if he had carried out any checks in relation to the ownership of the boats he claimed that he called the Fisheries Division and they told him that Mr. Harrisingh was the owner. However, he could not recall when he had done this. I found it difficult to believe that the Defendant did make contact with the Fisheries Division as this would have been critical to his defence, yet he did not assert this in his Defence. Even more it was not included in his witness statement nor was it mentioned in his evidence-in-chief. It was only when I enquired of him at the end of his evidence, that he said he made the checks with the Fisheries Division. I reject his evidence that he carried out any checks at the Fisheries Division.

[34] Taking into account the fact of the Claimant's application to the Fisheries Division, despite it only relating to one of the boats, I am of the view that it makes his assertions more credible. This fact added to his evidence that he did purchase the boats provides me with sufficient evidence on which I can find on a balance of probabilities, that he was in fact the owner of the two boats at the time they were marked. I also accept on a balance of probabilities that he continued to be the owner of the boats even up to the time of actual seizure and up to the present. In light of him being the owner of the boats he would be entitled to possession of them. The Claimant also gave evidence, which I accept, that at the time of seizure he was in possession of the boats. Although at the time of seizure the Claimant was not present, I accept that he was in possession of them and is therefore the person entitled to possession of them.

Did the Claimant make a specific and unconditional demand for the return of the boats?

[35] The next question for me is whether or not the Claimant has made the requisite demand to satisfy a case for Detinue. Detinue as a tort is not so much concerned about the manner of appropriation but rather whether it was wrongfully retained. In this case the Claimant has alleged that on the day following the seizure he went to the Defendant with his papers and showed them to him and asked for his boats. There is no challenge to the evidence that the Claimant demanded his boats although the Defendant disputes that the Claimant showed him the papers. In cross-examination of the Defendant when asked he said the Claimant never brought these papers to him. This is a question of fact.

[36] I accept the evidence of the Claimant that he went to the Defendant and brought the papers for the boats to him and made a formal demand and in so doing provided verification of his claim. I accept that the Claimant did make a request of the Defendant to release his boats and that not only did he do this but he also caused his attorney-at-law to write to him making a formal demand. I note the absence of the letter as part of the evidence in this case as this would no doubt have strengthened the case for the Claimant however the failure to produce it is not fatal as there was not a single challenge to this evidence. Moreover, there is the evidence of the demand by the Claimant himself. I accept that this demand was specific as it related to the two boats that had been seized by the Defendant and it was also unconditional as there is no evidence of any condition stipulated by the Claimant with respect to the return of the boats.

Whether the Defendant was justified in keeping the boats after the demand was made to him

[37] Despite this demand and verification by the Claimant, the Defendant has not returned the boats to him. The Defendant indicated that he seized these boats based on an order for seizure and sale that he received in his capacity as bailiff. He said he received this order for seizure and sale in October 2008 and it was on

December 12, 2008, that he went to Rocky Point and located the two boats and marked them. However, it was not until June 9, 2010 that he returned and took control of the boats. It is of note that at the time he seized the boats he indicated that he was told that the Claimant had recently bought the boats from Mr. Levi Harrisingh. He gave further evidence that the following day, the Claimant came to him and made a demand for his boats but even then he gives no evidence that he tried to ascertain whether the Claimant was in fact the owner. This would have been even more important because the boats had changed names and were repainted. In his capacity as bailiff he ought to have verified this. Now it seems to be that the Defendant might have suspected some collusion on the part of the Claimant, however there is no evidence of this, in fact there is nothing to suggest that the Claimant has notice of this Warrant of Levy and nothing to suggest that he was anything other than a bona fide purchaser for value without notice.

[38] The Defendant up to the present time has refused to return the boats. If the refusal is qualified for a reasonable and legitimate purpose it is not Detinue. I therefore have to consider whether the Defendant has a legitimate reason to retain the boats. The Defendant's account is that he did not return the boats because they belonged to the judgment debtor. He would have to prove that he had a legitimate reason for retaining them. It cannot be overemphasized that the burden of proof rest on the Claimant. However, in the **Carol Campbell** case, McDonald J examined the burden of proof and while highlighting that he who avers must prove also suggested that where the issue to be determined in that case was whether the licence issued to the Claimant was invalid, the Defendant bore the burden of proof in relation to that issue.

[39] Similarly, in this case the Defendant is alleging that he had a legitimate reason to refuse the Claimant's request for the return of the boats. In his capacity as a bailiff, he ought to have satisfied himself that the boats were owned by the judgment debtor. In fact, in light of the assertions of ownership being made by the Claimant he should have carried out investigations to ascertain the true

owner. He would have been entitled to a reasonable time within which to carry out investigations as to title. This principle is stated in a 1951 case of **Strand Electric and Engineering Co. Ltd. v Brisford Entertainments Ltd.** [1952] QBD 246 where the principle is synopsised in the headnote as follows:

“Although, where there is a bona fide doubt as to the plaintiff’s title to the chattel, the defendant is entitled to a reasonable time for investigation, that principle does not apply to a defendant who persists in retaining the chattel when there is no doubt as to the ownership, and the wrong relates back to the first taking possession by the defendant.”

- [40] The Defendant had seized the boats for over a year before the Claim was filed. Hence he would have had reasonable time within which to carry out any investigations if he so chose. There is no evidence that he carried out any investigations. I take into account that he had marked the boats almost two years before taking them into his custody. Having waited almost two years, and taking into account the fact that the makeup of the boats had changed when he went and seized them and the fact that he was told that the boats had been sold, he had an added duty to ensure that the goods being seized did in fact belong to the judgment debtor.
- [41] The Law recognises that there will be situations where more than one person will claim ownership in a property and so provides for Interpleader proceedings. In the case **O. Augustus Sherriah v DYC Fishing Limited and the Owners of MN Devin et al.** [2015] JMISC Civ. 27 Mr. Sherriah, bailiff for the Corporate Area had seized property which he thought belonged to one company which was being claimed by another company and so he took out Interpleader proceedings. The Defendant had indicated that he did not do this.
- [42] Counsel for the Defendant has argued that the Claimant’s case as pleaded is inconsistent with the case presented. I note that there is a discrepancy with respect to the names of the boat as pleaded and the evidence as presented, however I do not find it to be fatal to the case as there is no denial that two boats were seized and even the Defendant in his witness statement makes mention

first of the boats “ROSE” and “SANDY” and then in the same witness statement refers to being informed that Mr. Levi Harrisingh had changed the names of the boats to “BETH” and “RONA”. I have accepted that the boat “SANDI” was in fact changed to “BETH” and also find that this discrepancy was sufficiently explained by Exhibit 1.

DISPOSITION

[43] This is a case which turns largely on the question of credibility and I have accepted the Claimant as a credible witness. Taking into account all I have indicated, I therefore find on a balance of probabilities that the Claimant has a better right to possession of the boat than the Defendant and I find that there was in fact a demand made by the Claimant and a refusal to deliver up the boats. I find the Defendant liable in the tort of Detinue. Judgment is for the Claimant.

DAMAGES

[44] The Claimant is seeking Special Damages for a number of items that he claimed were attached to the boats however he has not led any evidence to support his claim for them. Special damages must be strictly proven and so in the circumstances I make no award in respect of those items.

[45] I order firstly that the two boats be returned to the Claimant forthwith. However, in the event the boats cannot be returned I have to consider the nature of the Damages to which the Claimant would be entitled. The case **Rosenthal v Alderton and Sons Limited** [1946] 1 KB 374 (1948) is the locus classicus on how to measure damages in a case of Detinue. It was held in that case that the value of the goods detained and not subsequently returned should be assessed as at the date of judgment. The **Rosenthal** case was approved in the case of **The Attorney General of Jamaica v Aston Burey** (supra) in which Harris JA discussed the measure of Damages for Detinue and at paragraph 10 of the judgment and indicated the following:

“In detinue, where the chattel or 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 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.”

[46] In the recent decision of **Dion Moss v Superintendent Reginald Grant** [2017] JMCA Civ. 13 the Court of Appeal approved and applied both the **Rosenthal** and the **Aston Burey** case and at paragraph 169 of the judgment the following was said in reference to the Aston Burey case:

“...In dealing with the appellant’s claim for detinue, Harris JA at paragraph 7 of the judgment said: —...In detinue the measure of damages is the value of the goods as at the date of trial... The learned judge of appeal (at paragraph [12] of the judgment) made it quite plain that in detinue, time begins to run from the date of the refusal of the demand and continues until judgment. [171] The appellant was also entitled to a reasonable hire charge of the aircraft for the period of its detention. That is, from the time of the refusal of the demand to the time judgment was entered.”

[47] The Claimant would therefore be entitled to an award reflecting the current value of the goods. He had indicated that he paid one million dollars for both boats however that was over nine years ago. There is really no evidence as to the current value. A more recent value that has been ascribed to the boat is that provided in the Warrant of Levy. Taking into account that value I am prepared to make an award of \$300,000.00 for each boat.

[48] The Claimant would also be entitled to be awarded damages for the loss of use of his boats from the date he demanded their return to the date of judgment. He is a commercial fisherman so this is his main source of income. He has indicated in his evidence that at the time the boats were seized he would fish at least 380 pounds of fish per day and the value at the time was \$330.00 per pound. This would amount to a value of some \$125,400.00 per day. I found this figure to be grossly exaggerated and he has brought nothing to substantiate this. In the light of that I am not prepared to use that as the figure on which to make an award. Without anything further, I am prepared to make an award reflective of the minimum wage at the time. In the **Dion Moss** case the court pointed out that the

law is clear in that a claimant seeking loss of use of a chattel is entitled to take reasonable steps to mitigate his losses and that there was no question that the appellant had a duty cast upon him to mitigate his losses. Taking that into account I would not make an award for the entire period for which he has been out of the use of his boats, but will instead make an award for two and half years which I find to be a reasonable period.

[49] In arriving at a figure I have taken into account the National Minimum Wage (1992-2016) guide available at the Ministry of Labour and Social Security. I am prepared to make an award representing minimum wage from June 10, 2010 to December 9, 2012. The minimum wage rate for the period was \$4070.00 weekly from June 10, 2010 to February 27, 2011 and \$4500.00 weekly from February 28, 2011 to December 9, 2012. The total sum would amount to \$573,160.00.

[50] He has also claimed Exemplary Damages. However, he has not presented any evidence to ground an award for Exemplary Damages. In the **Dion Moss** case the Court of Appeal outlined the circumstances under which such an award should be granted in a case of Detinue:

"It seems clear, following Kuddus v Chief Constable of Leicestershire Constabulary [2002] 2 AC 122, that exemplary damages may be awarded for the tort of detinue, "[p]rovided always that there is unacceptable behaviour on the part of the defendant, behaviour that displays features which merit punishment" such as malice, fraud, cruelty, insolence and the like: McGregor on Damages, Seventeenth Edition (2003), paragraph 11-011 . As Lord Slynn stated in Kuddus v Chief Constable of Leicestershire Constabulary (at page 135), "it is the features of the behaviour rather than the cause of action" which must be looked at in order to decide whether the circumstances warrant an award of exemplary damages.

[51] It is clear to me that there is no unacceptable behaviour on the part of the Defendant that would merit punishment. There is no basis to make such an award.

My orders are as follows:

1. That the Defendant deliver forthwith to the Claimant the two vessels seized on June 9, 2010 in Rocky Point in the parish of Clarendon;

2. In the event the boats cannot be returned, Damages awarded in the sum of \$600,000.00;
3. Damages for loss of use awarded in the sum of \$573,160.00
4. Interest on the said sums at a rate of 3% from June 10, 2010 to today, September 29, 2017;
5. No award is made for Exemplary Damages;
6. No further award is made for Special Damages; and
7. Cost to the Claimant to be agreed or taxed.