[2015] JMSC CIV 4

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2007 HCV00824

BETWEEN	**ALTON BROWN**	**CLAIMANT**
AND	**ATTORNEY GENERAL**	**FIRST DEFENDANT**
AND	**REVENUE PROTECTION DIVISION FINANCIAL INVESTIGATION DIVISION**	**SECOND DEFENDANT**

Mr. Franklin Halliburton instructed by Halliburton & Associates for the Claimant

Miss Sherry-Lee Bolton instructed by the Director of State Proceedings for the Defendants

Heard: May 6, 7 and 8 and November 17, 2014 and January 16, 2015

DETINUE – DATE OF CAUSE OF ACTION – MEASURE OF DAMAGES

SIMMONS, J

[1] In October 1992 the body of a 1989 BMW, 525i (American model) was imported into the Island by one Norma Outar (the importer) under import licence no. 200924/122847. The terms of that licence prohibited its sale or commercial exchange. The licence also stipulated that the item was to be used exclusively for the purpose of the importer.

[2] The body of the car was subsequently fitted with an engine and the vehicle was registered in the name of the importer. The claimant later purchased the vehicle from her and obtained a Motor Vehicle Certificate of Title. The vehicle was seized in May 1993 by the second defendant for the purposes of an investigation and three years later the claimant was charged with breaches of the ***Customs Act*** (***the Act***). The matter was determined in his favour but the vehicle was never returned.

[3] By way of a Fixed Date Claim Form filed on the 14th February 2007 the claimant seeks an order for the return of the said BMW motor car. In the alternative, he has claimed compensation for its wrongful seizure and detention. In other words, damages for detinue.

[4] On the 23rd March 2009 a judgment on admission was entered against the defendants before Thompson-James, J and a date fixed for the assessment of damages. The learned Judge also ordered that the Fixed Date Claim Form be treated as a Claim Form.

[5] Damages were assessed on the 11th December 2009 in the sum of two hundred and seventy one thousand six hundred and thirty dollars and twenty cents ($271,630.20). The claimant appealed, and on the 23rd April 2013, the matter was remitted to this Court to determine whether the defendants were liable for the period prior to the 19th February 2001 and for damages to be assessed. The Court of Appeal also ordered that on an assessment of damages the court is to consider the period from the 19th February 2001 to the date of assessment as well as any period before that date if the defendants are found to be liable for that period.

The claimant's evidence

[6] Mr. Alton Brown gave evidence that he is the owner of a 1989 BMW 525i motor car registration number 2484 AX which was seized on the 11th of May 1993 as part of an investigation by the second defendant. On the 8th November 1993 he filed a Notice of Motion in this Court to determine whether the seizure was lawful. The Court found that the Claimant was an offender under section 215 C of ***the Act*** and that the body of the vehicle was used in contravention of the terms of the licence granted to the importer. The Court also ruled that its seizure was lawful.

[7] On the 22nd of July 1996 he was charged with breaches of ***the Act.*** The matter was resolved in his favour on the 24th of May 2000. He also stated that none of the charges concerned the said vehicle. On the 29th May 2000 his Attorneys wrote to the second defendant requesting its return of the vehicle. On the 2nd of June 2000 he was given the keys for the vehicle by an officer attached to the second defendant, but was unable to remove it from the premises due to mechanical difficulties.

[8] On 4th June 2000 he returned to the second defendant's offices to remove the

vehicle but was prevented from doing so. Letters were sent to his Attorneys-at-law dated the 7th and 13th June 2000 by the second defendant indicating that they were no longer willing to release the vehicle. Demand was made for the return of the vehicle by letters addressed to the second defendant as well as the Director of State Proceedings. They are dated the 19th February 2001, 14th October 2004, 7th April and 5th June 2006. The vehicle was not returned.

[9] The claimant stated that the condition of the vehicle has deteriorated as it has been left in the open and totally exposed to the elements. The vehicle was three (3) years old at the time of seizure and that particular model has been discontinued. The equivalent model to the BMW 525i series is the BMW 528i (American Model).

[10] Mr. Brown also gave evidence that the vehicle was his sole means of transportation and that for approximately 6 or 7 years after its seizure he had to use other means of transportation and incurred costs of over five million dollars ($5,000,000.00). He also stated that he did not buy another vehicle as he had to pay expenses associated with the litigation. He subsequently bought a 1979 Toyota Corolla as he could not afford to buy the equivalent of a BMW.

[11] His evidence is that when he last saw the vehicle before seizure there was no damage to the body of the vehicle. He also indicated that when he left it with his mechanic, it was for the purpose of servicing. He stated that when he saw the vehicle at the premises of the second defendant he observed rust and other damage, the back tail light was missing and the paint had started to deteriorate.

[12] In cross examination he stated that it was a used BMW motor car that was imported. He also stated that he bought the Toyota in the year 2000. With respect to the five million dollars ($5,000,000.00) that he allegedly spent on transportation, he indicated that no documents were available due to the passage of time.

[13] Mr. David McKay Managing Director of MSC McKay (Jamaica) Limited, Motor Collision and Appraisal Consultants also gave evidence on the complainant's behalf.

[14] He stated that the vehicle was examined by Mr. Desmond Ellis who presented a report to him which he approved. He indicated that the BMW 525i was replaced by the 528i in 2008 and the 2011 model was the closest to the 1989 model which was appraised by his company.

[15] The report stated that the market value of the vehicle in top condition in April 1993 was nine hundred thousand dollars ($900,000.00) and the current value of a 2011 BMW 528i in top condition is six million seven hundred thousand dollars ($6,700,000.00).

[16] The report also stated that there was extensive fading of the paintwork and evidence of partial body restoration repairs on most panels. It also states as follows:

> *"Rust to body panels and flooring. Right rear door outer handle not fitted. Leather seats upholstery torn and cracked. Both rear door inner trim panels, right rear door lock striker, both rear lamps and trunk lid garnish not fitted. Interior and exterior plastic and rubber fittings show signs of deterioration. Left front rim damaged. Upper section of rear seat damaged. Dashboard cracked and damaged. Left rear door moulding not fitted. All tyres deflated and damaged (dry rot). Vegetation growing in engine bay and over sections of unit. Interior roof lamp assembly not fitted. Damage to plastic fittings, rubbers and wire lumes in the engine bay.*
>
> *This vehicle appears to have been parked out in the open for an extended period and is in very poor condition. In our opinion, any attempt at restoration will far exceed the current market value of this unit in top condition. The current market value of this vehicle in top condition is two hundred thousand Jamaican dollars ($280,000.00). The market value shown below is conservative based on the nature of our inspection".*

[17] In cross examination he stated that the current value of a 2010 Left Hand Drive BMW 525i is five million one hundred and fifty thousand dollars ($5,150,000.00) and four million five hundred thousand dollars ($4,500,000.00) for a 2009 model. Mr. McKay stated further that the body of the motor vehicle he inspected needed a paint job which would cost approximately one hundred and fifty thousand dollars ($150,000.00) and was a factor which was taken into account in its valuation. The witness also indicated that he could not say when the damage to the panels was sustained and that the repairs would exceed the current market value of the unit. That value was stated to be two

hundred and eighty thousand dollars ($280,000.00).

[18] There was no evidence offered on behalf of the defendants.

Claimant's submissions

[19] Mr. Halliburton submitted that the case of ***The Attorney General of Jamaica & Anor. v. Aston Burey*** (unreported), Court of Appeal, Jamaica [2011] JMCA Civ. 6, judgment delivered 11 March 2011, is instructive on how the court should treat the issue of damages in a case of detinue. Specific reference was made to paragraphs 7- 10 which state, in part:-

> *"[7] …In conversion, the measure of damages is the value of the goods or chattels at the time of conversion- see* ***Mercer v Jones*** *(1813) 3 Camp 477;* ***Hall v Barclay*** *[1937] 3 All ER 620. In detinue the measure of damages is the value of the goods as at the date of trial – see* ***Rosenthal v Alderton & Sons*** *[1946] K.B. 374; [1946] All ER 583…*
>
> *[10] In detinue where the chattel or the goods are not ordered to be returned or cannot be returned, the return of goods or 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 to be 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. In conversion, the damages can only be recovered by way of consequential loss."*

[20] He also referred to the case of ***General and Finance Facilities Limited v Cooks Cars (Romford) Limited,*** (1963) 2 All ER, 314 at 319, where Lord Diplock said:

> *"…an action for detinue today may result in a judgment for…the value of the chattel as assessed and damages for its detention….*
>
> *This is an important right and it is essential to its exercise that the judgment should specify separate amounts for the assessed value of the chattel and for the damages for its detention…"*

[21] Counsel submitted that based on the approach taken by the court in the above cases, the measure of damages in detinue is the loss emanating from the detention, as well as the assessed value of the good(s) unreturned.

[22] Mr. Halliburton also submitted that damages for loss of use could be awarded even though the claimant did not specifically plead special damages. He argued that the fact that there is a general claim for damages in detinue is sufficient and the claimant should not be penalized for his failure to particularize his loss. It was also submitted that a general claim for damages in a case of detinue should not be interpreted as referring to general damages only, but is wide enough to encapsulate all loss emanating from the detention of the vehicle including those which fall within the ambit of special damages.

[23] Counsel also submitted that the Court has the inherent jurisdiction to make an award for damages of its own volition, where the circumstances of the case allow for such an award.

[24] Where the measure of damages is concerned, Mr. Halliburton argued that the court in making an award for the assessed value of the chattel should be guided by the "market value" of the chattel.

[25] This term he said has not been judicially defined. However reference was made to Dr. L. Sepalki, ***The Attorneys' Dictionary and Handbook of Economics and Statistics***, p. 156 which states that market value is:-

> *"The price at which an item or entity can be sold or bought with equal and complete distribution of information among buyers and sellers. In Accounting, it also means the valuation of inventory or of market securities in accordance with conservative accounting principles of "lower of cost or market". While cost means acquisition cost, market value is estimated net selling price less estimated costs of carrying, selling and delivery".*

[26] It was submitted that based on the above definition, the term "market value" refers to an estimated figure which will change from time to time depending of variables within the marketplace. Reference was made to the evidence of Mr. McKay in which the market values for BMW motor cars similar to that seized from the claimant were stated to be:-

(i) 2009 BMW motor car : J$4.5 million

(ii) 2010 BMW motor car : J$5.15 million

(iii) 2011 BMW motor car : J$6.7 million

[27] He reminded the court that at the time of its seizure the claimant's BMW motorcar was three (3) years old and submitted that the value of a 2011 BMW should be used as the starting point in its assessment of the claimant's loss. He asked the court to accept Mr. McKay's evidence that the market value of a 2011 BMW similar to that belonging to the claimant is six million seven hundred thousand Jamaican Dollars ($6,700,000.00).

[28] With respect to loss of use, Counsel submitted that one crucial head of damages in a claim for detinue is the "loss emanating from the detention", and even though that item has not been specifically pleaded, any award given by the Court should include compensation for such loss.

[29] Mr. Halliburton also argued that loss emanating from the detention is not limited in scope and may extend to include loss of use as well as economic loss flowing from the detention of the chattel.

[30] He further submitted that the claimant's evidence that he suffered "loss of use" as well as other significant monetary and/or "incidental losses", as a result of the detention of the vehicle remains unchallenged. An award of damages in this case should include the amounts under each category of loss.

Defendant's submissions

[31] Counsel for the defendant submitted that the issues to be determined are as follows:

(i) When did the Claim in detinue arise?

(ii) What is the appropriate measure of damages to be awarded to the claimant?

[32] Reference was made to the case of ***Alicia Hosiery v Brown*** [1970] 1 QB 195 to emphasize the position of the law relating to detinue, where Donaldson J, stated:

> *"A claim in detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in possession of the goods and who, upon proper demand,*

> *fails or refuses to deliver them up without lawful excuse".*

[33] Counsel directed the Court's attention to the fact the seizure of the vehicle by the second defendant was found to be lawful by the Full Court on November 8, 1993.

[34] She stated that the issued Notice of Seizure indicated that the vehicle was being seized for the purposes of an investigation. These investigations led to the claimant being charged in 1998 with five (5) counts of being knowingly concerned in the fraudulent evasion of import duties payable on five (5) different motor vehicles under ***the Act***. Those charges were dismissed on May 24, 2000.

[35] It was submitted that the initial seizure of the vehicle on May 4, 1993 and detention was lawful and as such no action can lie for detinue for the period of May to November 1993. Reference was made to section 3(5) of the ***Crown Proceedings Act***, which states :

> *"No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process".*

[36] Counsel also submitted that the principle enunciated in ***Ghani and others v. Jones*** [1969] 3 All ER 1700 is instructive in determining whether an action in detinue can lie against the defendants prior to November 1993. The principle states :

> *"In order to justify the taking of the police of an article when no one has been arrested or charged, the following requisites must be satisfied: (a) the police must have reasonable grounds for believing that a serious offence has been committed; (b) the police must have reasonable grounds for believing the article in question is either the fruit of the crime, or the instrument by which the crime was committed or is material evidence to prove commission of the crime; (c) the police must have reasonable grounds to believe that the person in possession of the article committed the crime, or is implicated in it, or is accessory to it, or at any rate his refusal must*

be quite unreasonable; (d) the police must not keep the article, nor prevent its removal for any longer than is reasonably necessary to complete their investigations or preserve it for evidence; and (e) the lawfulness of the conduct of the police must be judged at the time, and not by what happens afterwards".

[37] It was further submitted that the conditions set out in grounds [a] – [c] as stated in the preceding paragraph have been satisfied in this case. However it was agreed that investigations continued which resulted in the claimant being charged in 1998. That case was determined in his favour in May 2000 and that after that date there was no basis for the defendants to have continued to detain the claimant's vehicle.

[38] Miss Bolton argued that the first demand for the return of the vehicle was made by Counsel for the claimant on February 19, 2001 and it is at this point that a claim for detinue would have arisen.

[39] She submitted that the claimant filed his action on February 14, 2007 and as such would only be entitled to claim damages in detinue for the period February 19, 2001, when he first made his demand and when the cause of action accrued to present and not prior to February 19, 2001. Counsel further stated that any award of damages ordered by the Court would be limited to a period of six (6) years and not fourteen years (14) as is being claimed.

[40] With regard to the appropriate measure of damages to be awarded to the claimant Miss Bolton referred to Volume 38 of ***Halsburys Laws of England**,* 3rd edition, which states:-

> *"A plaintiff in an action for detinue asserts and maintains his property in the goods up to the date of the verdict. For this reason the damages awarded, where the goods are not returned are the market value or the goods are not returned are the market value or the goods at the date of judgment. This is so whether the defendant has converted the goods by selling them or has failed to return them for some other reason. Damages are also awarded in detinue*

> *in respect of the detention of the goods, whether or not they are returned and where the goods have fallen in value between the refusal to return and judgment, the damages for detention will include the amount of that fall in value"*

[41] Counsel submitted that interest may be allowed in an action of detinue or conversion in addition to the value of the goods at the time of judgment or conversion if the court thinks fit. Miss Bolton opined that interest can only be awarded on the current value of the vehicle and not on any damages awarded for its detention.

[42] She also argued that the claimant would be entitled to recover the market value of the vehicle as at February 2001 and would be entitled to interest on that sum from February 2001, when the demand was made to April 1, 2008.

[43] Counsel submitted that in order for an award to be made for loss of use, that sum ought to have been pleaded as an item of special damages. She argued that the claimant has neither specifically pleaded loss of use in the Fixed Date Claim Form nor tendered any documentary proof in support of his "claim".

[44] It was further submitted that a claim for special damages must be specifically pleaded and proven. She relied on the case of ***Owen Thomas v. Attorney General,*** (unreported), Supreme Court, Jamaica, suit no. C.L. 1999/T095, delivered 6 January 2006, where Sykes J said:

> *"In my view justice demands that the claimant in this case strictly proves his claim for loss of use. I do not share the view that judges ought to conjure up some appropriate figure in the name of justice where a claimant has a legal obligation to prove his case and fails to do so without satisfactory explanation. The claimant may have good reason why strict proof is not possible in this case. Where this is so evidence should be forthcoming to explain this. This would discourage claimants from simply selecting a figure and hoping that the judge will do "justice". Defendants expect and rightly so that judges will only depart from well established principle if and only if there is a proper basis in law and fact for such a departure."*

[45] Miss Bolton argued further that even if the claimant had pleaded loss of use, he had a duty to mitigate his loss and had failed to do so. She submitted that the claimant has also failed to claim costs and as such he is not entitled to such an award.

Discussion

[46] The issue which is to be determined is whether the defendants are liable for the period prior to February 2001.

[47] A claim in detinue arises where a person wrongfully detains the goods of another. In order to establish wrongful detention, a claimant is usually required to prove demand and a refusal to comply with that demand within a reasonable time. In ***Alicia Hosiery Ltd. v. Brown Shipley & Co. Ltd. and another*** [1970] 1 QB 195 at 207, Donaldson J said:-

> *"A claim in detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in possession of the goods and who, upon proper demand, fails or refuses to deliver them up without lawful excuse".*

[48] It was agreed by both parties that the claim arose in 2001. It was also agreed that the vehicle was not returned and Mr. McKay's evidence as to the condition of the vehicle was accepted.

[49] Where a claim is made in detinue, it must be proved on a balance of probabilities that the claimant's chattel was wrongfully taken and not returned within a reasonable time of a demand being made by him. In the case of conversion, there must also be an intention to exercise control in a manner that is inconsistent with the claimant's ownership of the chattel.

[50] In ***The Attorney General & the Transport Authority v. Aston Burey*** (supra) Harris JA stated that there are two distinguishing features in relation to these torts. In detinue the fact that the defendant parted with the chattel before demand is not a defence and where the claim is for the return of the chattel, the action must be brought in detinue. In ***Bullen & Leake & Jacob's Precedents of Pleadings,*** 13th edition, page

953 the learned authors said:-

> *"The distinction between detinue and conversion used to be that with the former mere possession adverse to the rights of the person entitled to possession was sufficient and it was unnecessary to show any intention to deal with the goods in a way inconsistent with those rights. In practice, however, a demand by the person with possessory title followed by an unjustified refusal to delivery up was treated as a conversion, thus rendering detinue largely otiose before its abolition in 1977."*

[51] In ***George and Branday Ltd. v. Lee*** (1964) 7 W.I.R.275, Waddington, J.A. said that *"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".*

[52] It is not disputed that the claimant through his Attorneys-at-law made written demands for the return of the vehicle. One such demand was made by letter dated the 29th May 2000 addressed to the second defendant. On the 30th May 2000 a response was sent to the claimant's Attorneys-at-law advising them that the vehicle was available. This was followed by a letter dated the 7th June 2000 from the second defendant to the said Attorneys indicating that the claimant was not the owner of the vehicle. Further written demands were addressed to the Director of State Proceedings.

[53] It is also not disputed that the claimant is the owner of the vehicle and that it has been in the possession of the State. The fact of ownership is evidenced by Motor Vehicle Certificate of Title # 274340 which is dated the 8th April 1994. The Registration Certificate was issued on the 26th April 1993 pursuant to an application by Norma Outar to transfer the vehicle to the claimant.

[54] There is also no dispute that the vehicle was seized for the purpose of an investigation. This is evidenced by the Notice of Seizure dated the 11th May 1993. The vehicle is still in the possession of the State some twenty one (21) years later.

[55] The principle in matters involving the seizure of assets is that the State should not deprive a citizen of his right to the enjoyment of his property without good reason. Such reasons could be that the item was being used or is likely to be used in the commission of an offence. The possession of the item could also be illegal.

[56] The cases in this area recognize this right, and have sought to define the parameters in which property can be detained. In ***Ghani and others v. Jones*** [1970] Q.B. 693, the court held that the police could not keep property for a longer period than is reasonably necessary to complete their investigations or to preserve it for evidence. Lord Denning M.R. stated that such items should be returned as soon as the case is completed or a decision is made not to proceed with the matter. In that case, the police who were investigating the disappearance of a woman seized the plaintiffs' documents including their passports. The plaintiffs wished to travel and requested the return of the passports. Their request was denied and they brought a suit in detinue. The defendants sought to justify the retention of the documents on the basis that they would be of evidential value in the event that charges were laid for murder. No one was arrested or charged. The court held that the documents should be returned as the police had not shown reasonable grounds for believing that they would be material evidence to prove the commission of a murder. Lord Denning M.R. also addressed the situation where the property seized belongs to a person who has been charged with an offence. He stated:-

> *"I take it to be settled law, without citing cases, that the officers are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the crime for which he is arrested or for which they enter. If in the course of their search they come upon any other goods which how him to be implicated in some other crime, they may take them provided they act reasonably and detain them no longer than is necessary".*

[57] When this principle is applied to the present case, the second defendant would be required to complete its investigations within a reasonable time and to return the vehicle to the claimant where there is no basis for its continued detention. In this matter

liability was admitted sixteen years after the seizure. When one considers that up to the year 2000, when the case against the claimant was dismissed, no charges were laid against him in respect of the said vehicle this is an inordinately long time. The seven year period between 1993 and the year 2000 would in my view have been sufficient for all investigations to be concluded.

[58] It would seem therefore that as of the 24th May 2000, the vehicle ought to have been returned to the claimant. Demand was made on the 29th May and on the 2nd June the claimant would have regained possession but for the mechanical difficulties which prevented him from doing so. He stated that on the 4th June 2000 when he returned to the second defendant's premises he was advised that the vehicle could not be released to him. On the 7th and 13th June 2000 he states that the second defendant wrote to his Attorneys indicating that the vehicle was not going to be released to the claimant.

[59] In ***B & D Trawling Ltd. v. Lewis and the Attorney General*** (unreported), Supreme Court, Jamaica, suit no. C.L. 2001/B015, judgment delivered 6 January 2006, the claimant sought to recover damages for malicious prosecution and detinue arising out of his prosecution and the seizure of his boat under the ***Fishing Industry Act***. The matter was adjourned sine die and the court found that this was a determination of the matter in the claimant's favour. Sykes, J. in considering the issue of whether the claimant had established the claim in detinue stated that *"the ability of law enforcement officials to seize and detain items is not unlimited. There is no law that confers on any law enforcement personnel indefinite powers of indefinite detention of property".*

[60] The learned Judge also referred to the cases of ***Francis v. Marston*** (1965) 8 W.I.R. 311, ***Ghani v. Jones*** (supra) and ***Regina v. Commissioner of Police of the Metropolis*** [2002] 2 A.C. 692 which dealt with the power of the police to seize and retain property which they anticipate will be needed as evidence in the matter. In ***Francis v. Marston*** Lewis, J.A. outlined in very clear terms, the circumstances in which property may be seized and the limitations imposed on the police in relation to their retention of such property. He stated as follows:

> *"There is no doubt that at common law the police have in certain circumstances power to seize and retain property which may afford*

> ***evidence*** *of the commission of a crime. The cases show that on the lawful arrest of a person the police are entitled to take and detain property in the possession of the arrested person which may form* ***material evidence*** *on the prosecution of any criminal charge;…****The basis of these powers is the necessity of ensuring that material evidence is available on the prosecution of the person charged and that his trial is not rendered abortive by the inability to produce such evidence as may be in his possession"***
>
> *[Emphasis mine].*

[61] In light of the fact that the initial seizure was adjudged to have been lawful, it must be considered whether the continued detention of the vehicle from that time up until the 23rd March 2009 (the date of the judgment on admission) was justified. I bear in mind that the claimant had been charged with breaches of ***the Act*** albeit not in relation to the said BMW and that that case was only resolved in the year 2000. It is therefore arguable that the second defendant's investigations were continuing up until that time. However, once that matter was determined and the claimant vindicated, it was not reasonable for the second defendant to refuse to return the vehicle to him. In the circumstances it is my view that the defendant's liability in this matter commenced from the 24th May 2000 when the matter under ***the Act*** was resolved in his favour.

Assessment of damages

Loss of use

[62] The claimant in his submissions has urged the Court to accept that an award for loss of use can be properly made in this matter where it has not been specifically pleaded. There is no dispute that he has been deprived of the use of the vehicle for approximately sixteen years and that for seven of those years he was without the use of a motor vehicle. He has also given evidence that his transportation cost during that period was in the region of five million dollars ($5,000,000.00). He has however failed to provide any documentary proof of this expenditure.

[63] Counsel has submitted that the approach of the Court in ***Desmond Walters v. Carlene Mitchell*** (1992) 29 J.L.R. 173 should be adopted in this matter. In that case, the claimant who was a sidewalk vendor was unable to provide documentary proof in support of her claim for loss of earnings. An award was made and on appeal, the court agreed with the general principle in ***Ratcliffe v. Evans*** [1892] 2 Q.B. 524 where Bowen, L.J. stated:

> *" As much certainty and particularity must be insisted on in proof of damage as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which damage is done. To insist upon less would be to relax old and intelligible principles. To insist on more would be the vainest pedantry."*

[64] However Wolfe, J.A. was of the view that *"…to expect a sidewalk or a push cart vendor to prove her loss of earnings with the mathematical precision of a well organized corporation may well be what Bowen, L.J. referred to as 'the vainest pedantry'.*

[65] Mr. Halliburton conceded that whilst the claimant is not in a similar position as the push cart vendor in that case, the court has the discretion to consider his evidence in light of his explanation that due to the passage of time he was not now in possession of the receipts. Counsel also urged the court to take into account that it is not the common practice for taxis and /or buses to issue receipts to their passengers.

[66] I must however bear in mind that damages for loss of use fall within the ambit of special damages. Such damages according to the case of ***Murphy v. Mills*** (1976) 14 J.L.R. 119 must be specifically pleaded and proven. In that case Hercules J.A cited the following passage from ***Bonham-Carter v. Hyde Park Hotel, Ltd*** (3) (1948) 64 T.L.R., at p.178 where Goddard, C.J. said:

> *"On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down particulars, and, so to speak throw them at the head of the Court saying: 'this is what I have lost; I ask you to give me these damages' they have to prove it".*

[67] This matter began by way of a Fixed Date Claim Form which was drafted in very general terms. No Particulars of Claim were filed and the affidavits which were filed in support of the claim make no mention of any expenses incurred as result of the seizure. There is therefore no indication on the face of the pleadings that the claimant is seeking damages for loss of use.

[68] In the circumstances, it is my view that no basis exists for the court to make an award under this head.

General Damages

[69] In ***General and Finance Facilities Limited v Cooks Cars (Romford) Limited,*** (supra) Lord Diplock stated that in an action for detinue judgment may be awarded:-

> *"(i) for the value of the chattel as assessed and damages for its detention; or*
>
> *(i) for return of the chattel or recovery of its value as assessed and damages for its detention; or*
>
> *(ii) for return of the chattel and damages for its detention".*

Damages may therefore be awarded for the detention of the chattel irrespective of whether the item has been returned.

[70] In the instant case, the evidence of Mr. McKay that it would be uneconomical to repair the vehicle is unchallenged. I have particularly noted his evidence that there is vegetation growing in the engine bay and over other sections of the unit. In the circumstances, I am of the view that it would be inappropriate to order its return given its present state.

[71] The ordinary measure of damages in a claim for detinue where the chattel is not ordered to be returned is the market value of the goods as well as any loss arising by reason of their detention. The vehicle that was seized from the claimant by the second defendant was three years old at the time. The appropriate value to be considered would then be the market value of a three (3) year old 528i BMW motorcar at the date of judgment. Based on the evidence given by Mr. McKay that would be six million seven hundred thousand dollars ($6,700,000.00).

[72] The witness did however indicate that when he inspected the vehicle there was evidence that it was undergoing repairs to its body. He estimated that it would cost one hundred and fifty thousand dollars ($150, 000.00) to complete those repairs. That sum would therefore have to be deducted from any award of damages.

Costs

[73] Costs are that sum of money which the court or a judge orders one party to the litigation to pay to the other. It seeks to compensate that party for the expense which he has incurred in the litigation. The general rule is that costs follow the event. In ***Re Elgindata Ltd. (No 2)*** [1992] 1 WLR 1207*,* Nourse J said:-

> *"(i) Costs are in the discretion of the Court. (ii) They should follow the event, except when it appears to the court that in the circumstances of the case some other order should be made..."*

[74] The Fixed Date Claim Form in this matter does not include a claim for costs. Counsel for the defendant has submitted that in the circumstances no order should be made in the claimant's favour. On the other hand, Counsel for the claimant has argued that the Court has the discretion to make such an award and urged the Court to exercise its discretion in favour of Mr. Brown.

[75] In resolving this issue I bear in mind the fact the Supreme Court is a Court of pleadings. It is therefore my view that where as in this case, a claimant fails to claim his costs, the Court has no jurisdiction to award same.

Interest

[76] Section 3 of the ***Law Reform (Miscellaneous Provisions) Act*** provides as follows :

> *"In any proceedings tried in any Court of Record for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damage for the whole or any part of the period between the date when the cause of action arose and the date of the judgment".*

[77] However, rule 8.7 (3) of ***The Civil Procedure Rules 2002*** specifically states:-

"A claimant who is seeking interest must:

(a) Say so in the claim form, and

(b) Include in the claim form or particulars of claim details of –

(i) The basis of entitlement;

(ii) The rate

(iii) The date from which it is claimed…"

[78] The use of the word *"must"* in the above rule makes it mandatory for a claimant to include such a claim if he hopes to invoke the court's discretion to make an award. Where a claimant fails to claim interest the Court is therefore prohibited from awarding same for any period prior to the date of judgment.

[79] However in light of the fact that the award of damages being made in this matter is equivalent to the market value of a vehicle similar to that which was detained by the second defendant, it is my view that no interest would have been payable on that sum prior to the date of judgment.

[80] In light of the foregoing there will be judgment for the claimant in the sum of six million five hundred and fifty thousand dollars ($6,550,000.00) with interest at the rate of 6% per annum from the 16th day of January, 2015 until payment. No order as to costs.