



[2012] JMSC Civ. No. 22

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2009 HCV 5833

BETWEEN **COLUMBUS COMMUNICATIONS** **CLAIMANT**
 JAMAICA LIMITED (FORMERLY
 MERIT COMMUNICATIONS LIMITED)

AND **MARS CABLE VISION LIMITED** **DEFENDANT**

Mr. Garth McBean instructed by Garth McBean & Co.
for the Claimant
Mr. M. Howell and Ms. J. Wilcott instructed by Knight
Junor and Samuels for the Defendant

Heard: 9th, 10th and 28th February, 2012

Detinue – Conversion – Damages

Coram: Morrison, J

[1] The matter to be determined is grounded in the claim for damages for conversion: whether cables belonging to the Claimant was assumed possession of by the Defendant without the Claimant's authority. If the posed question is answered in the affirmative, what, if any, is the measure of damages, to be awarded to the Claimant? Rightly so, the claim for detinue was abandoned.

[2] The facts are glaringly simple. The Claimant is a company duly incorporated under the Laws of Jamaica with its registered office at 6-8 St. Lucia Avenue, St. Andrew. It is a telecommunications provider.

[3] The Defendant is a limited liability company duly incorporated under the Laws of Jamaica with its registered office at 2 Upper Mount Nelson Boulevard, Mandeville, Manchester. It is a provider of telecommunication services. The Defendant is also the owner and operator of Shop 19 at Appleton Plaza, Main Street, Christiana, Manchester.

[4] CommScope is a company in North Carolina, United States of America. It engages in the manufacture and sale of cables designated disparately as QR 540 and QR 860. According to its Director of Sales "Columbus Communications Jamaica Limited is the only direct customer in Jamaica for CommScope as it relates to QR 860 and QR 540 cables."

[5] It is undoubtedly the case that cables so ordered and delivered are uniquely identifiable with the purchaser by what is referred to as Lot Number. This number is placed on the outer jacket of the cable by its manufacturer. Also, on the outer jacket in arithmetical progression are numbers placed at intervals of every two feet which serves as the measure by which the length of the cable is denoted. In this case the Lot Number for the QR 860 cable was JT 2641271 on which was juxtaposed the constant of the arithmetical progression being 2.

[6] It appears that pursuant to theft of its cables on 6th May 2009 the Claimant caused its workers, namely, Fitzroy Mattis and Jeroy Lasecki to undertake the less than clandestine task of ascertaining the ownership of certain QR 860 cables that they espied in the Christiana area of Manchester along utility poles along the roadway. At first the cables were observed from the ground but were latterly more closely viewed by the aid of a "bucket" truck. This truck is equipped with an apparatus called a lift to which is affixed a bucket into which someone is being hoisted to a particular desired height. From this height the viewer is enabled to make a closer inspection of the object in question. In this case it was the QR 860 cable. From the observations made not only was the cable confirmed to be QR 860 cable but critically also it bore the identification

number of the Claimant company. According to Mr. Lasecki, he followed by using the vehicle and its odometer, the length of the cable in one direction for four kilometers where it entered the Defendant's business place and where it re-emerged therefrom for a further distance of three kilometers.

[7] The Defendant's owner and operator was content to say, in response and in repose, that QR 860 cables are not the peculiar exclusive property of the Claimant as he had made a number of purchases of QR 860 cables evidenced by invoices that were presented and received into evidence as Exhibits. However, the singular and critical deficiency from which the Defendant's case suffered was its inability, if not, its passive inertia to refute the presence of the Claimant's identification number on the said cables.

[8] It seems to me that while QR 860 cables are generic high end cables in use in the telecommunication business it does not follow, neither was it refuted, that such cables as are supplied by CommScope are uniquely identifiable by its customer identification number. I therefore accept the witnesses for the Claimant over and above those of the Defendants. On a balance of probabilities I find that the questioned cable belongs to the Claimant.

[9] It was conceded by the Claimant's attorney-at-law, and, the Court accepted, that the claim for damages for detinue for QR 540 was less than sustainable and was not proceeded with. The only remaining issue is the quantum of damages for damages for conversion. The Defendants contends that the lack of specificity on the claim for conversion debars the Claimant from its recovery, I do not agree.

Special Damages

[10] If Claimant has suffered damage of a kind which is not the necessary and immediate consequence of the wrongful act, he must warn the Defendant in the pleadings that the compensation claimed will extend to this damage, thus

showing the Defendant the case he has to meet and assisting him in computing a payment into court, per Lord Donovan, **Perestrelle v United Paint Co. Ltd.** [1969] 3 All.E.R. 413. Of course special damages must be specifically pleaded: **Radcliffe v Evans** [1891-2] All.E.R. 699.

[11] Again, as much particularity of which the case allows, must be insisted on. "It is not enough to write down the particulars, and, so to speak, throw them at the head of the Court." In this case Ms. Janice Pisko gave particulars as to the cost of the cable. It cost US\$1.16 per foot. The Defendant did not demur from that figure.

[12] According to the combined evidence of Messers Mattis and Lasecki the footage of the cable, which when translated from the metric unit into the imperial unit is 22960 feet. But this figure is an approximation which I round off at 22,000 feet again there was no demur or challenge moving from the Defendant with respect to that figure. In point of fact the Defendant did not even attempt to confirm or refute the QR cable identification number nor did he attempt to confirm or refute the cable's footage.

[13] Proof of Special Damages, I find, was ample and satisfactory. I therefore accepted the unchallenged evidence of the Claimant's witnesses and thus award the sum of US\$25,520.00 with interest thereon at 6% per annum from 6th May, 2009 to 28th February, 2012 being 22,000 feet multiplied by the unit price of US\$1.16 per foot.

[14] The Claimant is to have its costs agreed, if not, it is to be taxed.