



[2020] JMSC Civ 112

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2009 HCV 06369

BETWEEN	ROWENA JOHNSON-DENNIE	CLAIMANT
AND	TRANSPORT INSPECTOR W. EMMANUEL	1ST DEFENDANT
AND	DIANA PATTERSON	2ND DEFENDANT
AND	TRANSPORT AUTHORITY	3RD DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	4TH DEFENDANT

IN OPEN COURT

Dr Garth Lyttle instructed by Garth E. Lyttle & Company for the Claimant

Mr Harrington McDermott instructed by Campbell McDermott for the 1st, 2nd and 3rd Defendants

Miss Deidre Pinnock instructed by the Director of State Proceedings for the 4th Defendant

Heard: December 9 and 10, 2019 and June 10, 2020

Tort – Wrongful interference with goods – Detinue – Conversion –The Transport Authority Act, sections, 13, 13A, 15, 16A, The Road Traffic Act, section 61(4A) and 61(4B)

A. NEMBHARD J**INTRODUCTION**

- [1] By way of an Amended Claim Form, filed on 19 October 2012, the Claimant, Mrs Rowena Johnson-Dennie, seeks to recover from the Defendants, the following: -
- (1) Damages in Detinue and Conversion;
 - (2) Damages for loss of use of her public passenger vehicle in the sum of \$1,575,000.00, and continuing;
 - (3) Damages for the value of this vehicle in the sum of \$1,200,000.00;
 - (4) Wrecker and storage fees in the sum of \$12,500.00; and
 - (5) Costs and Attorney's costs.

BACKGROUND**The Claimant's Case**

- [2] The Claimant, Mrs Rowena Johnson-Dennie, contends that on 12 August 2009, her Toyota Hiace motor vehicle, registered PA 6513, ("the Toyota Hiace") was being driven along Spanish Town Road, in the parish of Kingston, by her duly authorized driver, Mr Norman Cunningham, when the 1st Defendant, Transport Authority Inspector Wayne Emmanuel, unlawfully and without reasonable and probable cause seized and detained the Toyota Hiace for the offence of Operating a Public Passenger Vehicle without a Road Licence. Mr Cunningham produced a photocopy of the Road Licence for the Toyota Hiace but was unable to produce the original.
- [3] Later that same day, Mrs Johnson-Dennie attended the office of the 3rd Defendant, the Transport Authority, located at 119 Maxfield Avenue, Kingston 10 and produced the original Road Licence. Mrs Johnson-Dennie contends that she

was advised to pay the applicable wrecker and storage fees, which she did. Thereafter, she was handed a form entitled "Release and Discharge" and was required to sign same. She refused to sign this document and contends that the Transport Authority refused to return the Toyota Hiace to her.

- [4] Mrs Johnson-Dennie further contends that she subsequently returned to the office of the Transport Authority, on several occasions, where she made several demands for the release of the Toyota Hiace to her. These requests were refused by the Transport Authority.

The Defendant's Case

- [5] Conversely, the 1st Defendant, Transport Authority Inspector Wayne Emmanuel, the 2nd Defendant, Miss Diana Patterson and the 3rd Defendant, the Transport Authority, maintain that, at the time of the seizure of the Toyota Hiace, Mr Cunningham was unable to produce a valid Road Licence. They assert that it is on that basis that the Toyota Hiace was seized.
- [6] It is not disputed that Mrs Johnson-Dennie produced the original Road Licence on the same day of the incident. The 1st, 2nd and 3rd Defendants contend that, having done that, the Toyota Hiace was released to her.
- [7] The 1st, 2nd and 3rd Defendants contend that the request that Mrs Johnson-Dennie signs the Release and Discharge Form was never a prerequisite for the Toyota Hiace being released to her. They deny that Miss Patterson refused to release the Toyota Hiace to Mrs Johnson-Dennie. They also deny Mrs Johnson-Dennie's assertion that the Transport Authority refused to release the Toyota Hiace to her.
- [8] At the close of the case for Mrs Johnson-Dennie, the Claim against the 4th Defendant, the Attorney General of Jamaica, was dismissed, with costs being awarded to the Attorney General.

THE ISSUES

- [9] The following issues arise for the Court's determination: -
- (1) Whether the 3rd Defendant, through its servants, the 1st and 2nd Defendants, had reasonable and probable cause to seize the Claimant's motor vehicle;
 - (2) Whether the Claimant has proven trespass to property;
 - (3) Whether the Claimant has proven Detinue; and
 - (4) Whether the Claimant has proven Conversion.

THE LAW

Trespass to property

- [10] There are three ways in which one might deprive another of his property: (i) by wrongfully taking it; (ii) detaining it; or (iii) disposing of it. In the first, the defendant gains possession by wrongful appropriation, in the second, he might acquire possession rightfully but retains it wrongfully, and, in the third, he neither takes nor retains it wrongfully but so disposes of the chattel that it is lost to the owner, for example, by destruction or sale.
- [11] Corresponding to these modes of dispossession, the common law has provided three actions: (i) trespass for the first; detinue for the second; and trover or conversion for the third.
- [12] The position in law has changed in England as the tort of detinue has been abolished by statute. Until 1978, two (2) main causes of action lay for the protection of proprietary interests in goods. These were trover (now more commonly called "conversion") and detinue. The **Torts (Interference with Goods) Act, 1977** abolished the former tort of detinue and expanded the scope of conversion, which now lies in every case in which detinue formerly lay, before

it was abolished. Today, the law on wrongful interference encompasses the specific torts of conversion, trespass to goods and negligence, so far as it results in damage to goods or to an interest in goods.¹

- [13] There does not appear to be any statute in Jamaica akin to the **Torts (Interference with Goods) Act, 1977**. As such, the common law actions of trespass to goods, detinue and trover or conversion remain available to persons aggrieved.

Detinue

- [14] The action of detinue lay, at the suit of a claimant having a right to immediate possession, for the wrongful detention of his chattel by the defendant, evidenced by the defendant's refusal to deliver it up on demand.

- [15] The cause of action of detinue concerns the wrongful interference with the goods of another and "...accrues from the date of wrongful refusal to deliver up the goods of another on demand."²

- [16] Waddington J.A., in **George and Branday, Ltd. v Lee**³ summarized the gist of the cause of action as follows: -

"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 refusal, after a reasonable time, to comply with such demand."

- [17] Detinue is defined as follows: -

¹Halsbury's Laws of England, Volume 97 (2015) at paragraph 602

² **Avinel Moore v Bertram Henry**, Suit No. M373 of 1991, judgment delivered on 19 April 2001, per Harris J

³ (1964), 7 W.I.R. 275 at page 278 D-E

“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...”⁴

[18] The elements required to establish the tort of detinue were stated by McDonald J in **Carol Campbell v Transport Authority**,⁵ as follows: -

*‘...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 Branday, Ltd.**); and (ii) the Defendant refused to comply after a reasonable time.’*

[19] A defendant’s refusal to comply with a claimant’s request must be categorical or unequivocal; if qualified by 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.

Conversion

[20] The distinction between a cause of action in conversion and a cause of action in detinue is that the former is a single wrongful act and the cause of action accrues at the date of the conversion. The latter is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until delivery up of the goods or judgment in the action for detinue.⁶

[21] In order to maintain an action in conversion or detinue, a person must have the right of possession and a right of property in the goods at the time of the conversion or detinue.

⁴ **Halsbury’s Laws of England**, 3rd edition, Volume 38, page 64

⁵ [2016] JMSC Civ 148

⁶ Per Diplock, L.J., in **General and Finance Facilities, Ltd. v Cooks Cars (Romford), Ltd.**, [1963] 2 All E.R. 314 at page 317

- [22] Trover or conversion was originally a form of trespass on the case and derived its name from, and was based on, a fiction that the defendant had come lawfully into possession of the goods of another and converted them to his own use. It is a remedy to recover the value of specific personal chattels which have been wrongfully converted by another to his own use. The act to constitute a conversion “must be an unequivocal act of ownership, i.e., an act such as acquiring, dealing with or disposing of the goods, which is consistent only with the rights of an owner as distinct from the equivocal acts of one who is entrusted with the custody or handling or carriage of the goods. A demand and refusal is not, therefore, itself a conversion...”⁷
- [23] Originally, conversion was concerned with the defendant’s wrongful dealing with the plaintiff’s chattel so as to deprive the plaintiff of its value. Wrongful taking was trespass; wrongful detention was detinue; trover (an action on the case, for conversion) emerged to supply and exploit gaps in the existing scheme of remedies.
- [24] A conversion is an act or a complex series of acts of which, wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it.
- [25] The law in relation to conversion has been comprehensively set out by McIntosh JA in **The Commissioner of Police and the Attorney General v Vassell Lowe**⁸. For ease of reference, the relevant portions are set out below: -

“[35] ...*The learned trial judge had placed reliance on the definition of conversion in the 21st edition of Salmon & Heuston’s Law of Torts...*

‘A conversion is an act or complex series of acts of which wilful interference, without lawful justification, with any chattel in a manner

⁷ **Beaman v A.R.T.S., Ltd.**, [1948] 2 All E.R. 89 at page 92, per Denning, J.; on appeal, [1949] 1 K.B. 550

⁸ [2012] JMCA Civ 55

inconsistent with the right of another, whereby that other is deprived of the use and possession of it.'

[36] *In addressing the elements required to constitute conversion, the learned authors provide a brief and useful history of the tort, stating, inter alia, that there are three distinct ways by which one man may deprive another of his property and so be guilty of a conversion, namely: '(1) by wrongly taking it; (2) by wrongly detaining it; and (3) by wrongly disposing of it.'* Historically, the authors state the term conversion was originally limited to the third mode as merely to take another's goods, however wrongful, was not to convert them. However, in its modern sense, the tort includes instances of all three modes and not of one mode only. The authors point out that two elements combine to constitute wilful interference: (1) dealing with the chattel in a manner inconsistent with the right of the person entitled to it; and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such right (see **Caxton Publishing Company, Limited v Sutherland Publishing Company** [1939] AC 178, 189 and **Penfolds Wines Proprietary Limited v James Peter Elliott** (1946) 74 CLR 204, 229) ...

[37] *The courts have determined that, in the absence of wilful and wrongful interference, there is no conversion, even if, by the negligence of the defendant, the chattel is lost or destroyed (see **Ashby v Tolhurst** [1937] 2 K.B. 242). Further, the authorities show that every person is guilty of a conversion who without lawful justification takes a chattel out of the possession of anyone else with the intention of exercising a permanent or temporary dominion over it because the owner is entitled to it at all time[s] (see **Fouldes v Willoughby**) ... But, a mere taking, unaccompanied by an intention to exercise dominion, is no conversion. Further, the detention of a chattel amounts to conversion only when it is adverse to the owner or other person entitled to possession - that is, the defendant must have shown an intention to keep the thing, in defiance of the owner or person entitled to possession. The usual way of proving that a detention is adverse within the meaning of this rule is to show that the party entitled demanded the delivery of the chattel and the defendant refused or neglected to comply with the demand...*

[39] ...it is evident that the key to the establishment of the tort is wrongful interference or unjustifiable interference with the chattel so as to question or deny the owner's title to it (see **Kuwait Airways Corp v Iraqi Airways Co (No 3)** [2002] 2 AC 883) ...”

[26] In **Kuwait Airways Corp v Iraqi Airways Co (No 3)**⁹, the court undertook a review of the tort of conversion and commented¹⁰that the tort existed to provide a remedy in a wide variety of situations in which a third party exercises dominion over a claimant's goods and treats with them as his own. The court also commented¹¹that a lot of difficulties have occurred because the acts of conversion may take so many different forms. The essence of the tort was however reiterated as being an intention on the part of a defendant to deny the owner's right or to assert a right which is inconsistent with the owner's right.

[27] The court also referred to **Caxton Publishing Company, Limited v Sutherland Publishing Company**¹²and, in particular, to Lord Porter's adoption of Atkin J's definition of conversion which had been approved by Scrutton LJ in **Oakley v Lyster**¹³:

“Atkin J goes on to point out that, where the act done is necessarily a denial of the owner's right or an assertion of a right inconsistent therewith, intention does not matter. Another way of reaching the same conclusion would be to say that conversion consists in an act intentionally done inconsistent with the owner's right, though the doer may not know of or intended to challenge the property or possession of the true owner.”

⁹ [2002] 2 AC 883

¹⁰ At paragraph 414

¹¹ At paragraph 415

¹² [1939] A.C. 178

¹³ [1931] 1 K.B. 148, 153

The statutory framework

- [28]** The Transport Authority's power to seize motor vehicles is created by statute. These powers are contained in the Transport Authority Act ("the TAA") and the Road Traffic Act ("the RTA").
- [29]** Section 13(1) of the TAA gives an Inspector or a Constable the authority to stop and inspect any public passenger vehicle to ensure compliance with the terms of the Road Licence and any relevant road traffic enactments; to stop and inspect any vehicle which he reasonably suspects is operating as a public passenger vehicle contrary to relevant road traffic enactments; to monitor the frequency of public passenger vehicles on any route; to inspect conductors and drivers of public passenger vehicles and the licences held by them; and to carry out such powers or duties in relation to relevant road traffic enactments as may be prescribed.
- [30]** Section 13(2)(a)(v) of the TAA allows an Inspector or a Constable to seize any vehicle which is being operated or used as a public passenger vehicle without a licence issued for such operation or use.
- [31]** Section 13(2)(b) of the TAA gives an Inspector or a Constable the power to take or cause to be taken to the nearest police station or to the nearest convenient place authorized by the police pursuant to subsection (3)(a) any vehicle which is seized pursuant to section 13(2).
- [32]** Section 13(3) of the TAA reads as follows: -
- "(3) Where under this section a vehicle is seized –*
- (a) the vehicle may be stored by the police or the Authority in such place and in such circumstances as the police or the Authority consider appropriate;*
- (b) storage fees shall become payable to such persons at such rates and in accordance with such conditions as may be prescribed under the Road Traffic Act; and*

(c) *if the vehicle remains in the possession of the police or the Authority for more than six months the vehicle may, subject to such conditions as may be prescribed under the Road Traffic Act, be sold by the police or the Authority to recover the cost of storage.”*

[33] Section 16A of the TAA provides for the release of seized motor vehicles.

[34] Sections 13(3)(c) and 13A of the TAA allow for vehicles that have been seized to be sold by public auction, private treaty or to be destroyed or otherwise disposed of as the Authority deems fit.

[35] Section 61(4A) of the RTA provides as follows: -

“Where a constable or an Inspector designated under section 12(1) of the Transport Authority Act has reasonable cause to believe that a person has used or caused or permitted a vehicle to be used in contravention of this section, the constable or Inspector may seize the vehicle.”

[36] Section 61(4B) of the RTA reads as follows: -

“Subject to subsection (7)(b), a vehicle shall be kept in the possession of the Police or the Transport Authority, as the case may be, until the licence required under this Part is obtained and produced to the Police or the Transport Authority.”

ANALYSIS

[37] Section 61(4A) of the RTA and section 13(2)(a)(v) of the TAA clearly establish that a Transport Authority Inspector or a Constable may lawfully seize a motor vehicle which is being operated as a public passenger vehicle without the requisite Road Licence. The RTA specifies however that a Constable or the Transport Authority, through its Inspectors, should have reasonable cause to believe that a claimant used or caused or permitted the motor vehicle to be operated without a valid Road Licence.

[38] Section 13(2)(a)(v) of the TAA empowers the servants of the Transport Authority to seize any vehicle that is being operated as a public passenger vehicle without the requisite Road Licence. If a claimant’s vehicle was seized with reasonable cause for such a breach, there would be no unlawful taking. If a claimant proves however that there was no reasonable cause to take the vehicle, then an unlawful seizure would have occurred. This is to be distinguished from cases where the seizure could be considered lawful and amounted to no more than a suspension of the claimant’s rights. (See – **Webb v Chief Constable of Merseyside Police**¹⁴; **Costello v Chief Constable of Derbyshire Constabulary**¹⁵; referred to in **The Commissioner of Police and the Attorney General v Vassell Lowe**¹⁶.)

The burden and standard of proof

[39] The legal burden of proof is the obligation of a party to meet the requirement of a rule of law that a fact in issue be proved (or disproved) by a preponderance of the evidence. In the words of McIntosh JA in **The Commissioner of Police and the Attorney General v Vassell Lowe**¹⁷, it is a “time-honoured and fundamental principle relating to the conduct of civil proceedings that ‘he who alleges must prove’...”

[40] In **Miller v Minister of Pensions**¹⁸ Denning, J, speaking of the degree of cogency which evidence must reach in order that it may discharge the legal burden in a civil case, said: -

“That degree is well settled. It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the

¹⁴ [2000] QB 427

¹⁵ (CA) [2001] 1 WLR 1437

¹⁶ [2012] JMCA Civ 55

¹⁷ [2012] JMCA Civ 55

¹⁸ [1947] 2 All ER 372 at pages 373-374

tribunal can say 'we think it more probable than not', the burden is discharged but if the probabilities are equal it is not."

Whether the 3rd Defendant, through its servants, the 1st and 2nd Defendants, had reasonable and probable cause to seize the Claimant's motor vehicle?

[41] The parties agree that, at the time that Inspector Emmanuel stopped the Toyota Hiace, Mr Norman Cunningham, was unable to produce the original Road Licence. He produced instead a photocopy of the Road Licence. (See – Paragraph 3 of the Witness Statement of Norman Cunningham, sworn to on 23 December 2014 and filed on 26 January 2015.)

[42] Inspector Emmanuel gave the following evidence: -

"The only document he had not produced was a valid Road Licence. He presented a photocopied Road Licence which we don't consider valid because it is open to alteration and can easily be altered. We asked for an original Road Licence... A valid Road Licence would have an orange colour background. At the bottom left hand corner there would be a seal under the word 'original'. It would be plastic laminated."

[43] In cross-examination Inspector Emmanuel testified as follows: -

"He presented me with all documents save and except a Road Licence. He did not present me with a valid Road Licence. What he presented me I considered invalid. The document was not in laminated form."

[44] Mrs Johnson-Dennie gave evidence that it is she who produced the original Road Licence at the office of the Transport Authority. (See – Paragraph 4 of the Amended Witness Statement of Rowena Johnson-Dennie, sworn to on 7 November 2019 and filed on 11 November 2019.)

[45] The Court has had the opportunity to examine the photocopied Road Licence that Mr Cunningham presented to Inspector Emmanuel. It is apparent on the face of that document that the words "NOT VALID" appear across the top of it and that

the seal that should appear beneath the word “ORIGINAL”, at the bottom left hand corner of the document, is conspicuous in its absence. (See – Photocopy Road Licence which was received in evidence as Exhibit 1.)

[46] The Court accepts the evidence of Inspector Emmanuel that Mr Cunningham was unable to produce a valid Road Licence upon request. In those circumstances, the Court finds, on a balance of probabilities, that the 3rd Defendant, through its servants the 1st and 2nd Defendants, had reasonable and probable cause to seize the Toyota Hiace.

[47] The 1st, 2nd and 3rd Defendants having discharged their burden in relation to Mr Cunningham’s failure to produce a valid Road Licence, it is for the Claimant to prove that the 3rd Defendant, through its servants, the 1st and 2nd Defendants, “unlawfully and without reasonable and probable cause, seized and detained the Claimant’s Toyota Hiace motor vehicle registered PA 6513”. (See – Amended Claim Form filed on 19 October 2012.)

[48] Section 15 of the TAA requires that it must be alleged and proved by a claimant that the actions of the servants of the Transport Authority were done without reasonable and probable cause. The section reads as follows: -

“In any action or other legal proceedings brought against any Inspector in respect of any act done in pursuance of this Act or the regulations made thereunder the plaintiff shall not recover unless he alleges in his pleadings and proves at the trial that such act was done either maliciously or without reasonable and probable cause.”

[49] Having regard to the Court’s findings at paragraph 46 above, this Court is of the view that the Claimant has failed to prove that the Toyota Hiace was unlawfully seized, that is, that it was seized without reasonable and probable cause. As such, the 1st, 2nd and 3rd Defendants are entitled to judgment in this regard.

Whether the Claimant has proven Detinue

[50] The fact that the Court has found that the Toyota Hiace was lawfully seized and that trespass to property has not been proved by the Claimant, it does not automatically mean that the Claim for Damages for Detinue must fail. If the Toyota Hiace was lawfully seized, detention alone does not become a wrong in the absence of some manifestation of an intent to keep it adversely or in defiance of the Claimant's rights.

[51] The Court is guided by the formulation of Waddington JA that the gist of the cause of action of detinue is the wrongful detention and that in order to establish that, it is necessary to prove (i) a demand for the return of the property detained; and (ii) a refusal, after a reasonable time, to comply with such demand.

[52] The authorities clearly establish that a demand must be unconditional and specific. Where the seizure is lawful the Claimant must prove that the detention has become adverse to and in defiance of her rights. In so doing the Claimant must prove that she demanded the return of the Toyota Hiace and that the 1st, 2nd and 3rd Defendants refused to comply. That 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.

A. Was there a specific and unconditional demand by the Claimant that the Toyota Hiace be returned to her?

[53] Mrs Johnson-Dennie contends that she made several demands for the return of the Toyota Hiace and that those demands were made as early as the very day on which the Toyota Hiace was seized. (See – Paragraphs 6, 7 and 9 of the Amended Witness Statement of Rowena Johnson-Dennie, sworn to on 7 November 2019 and filed on 11 November 2019.)

[54] The following evidence was elicited from Mrs Johnson-Dennie in cross-examination: -

"I went to the Transport Authority with the original Licence. Miss Patterson told me that since I had brought the original Road Licence the vehicle would be released. She didn't tell me that if I signed the Release and Discharge Form my driver would not be charged.

Sugg: She did.

A: No Sir. She did not.

Sugg: She told you that if you did not sign then your driver would be charged.

A: No Sir.

Sugg: She told you though that your vehicle would be released.

A: She told me that if I signed the Release and Discharge Form my vehicle would be released.

Sugg: She did not tell you that.

A: Yes Sir. She did.

I did not agree to sign the Release and Discharge Form.

Sugg: You did not return.

A: I went back to the Transport Authority about six times asking for the bus to be released.

Sugg: That is not true.

A: That is true.

I don't remember the exact dates on which I returned to the Transport Authority. It is a long time now. I went back six times before I got my Attorney. Like every two days me go back.

Q: *The six times that you went back to the Transport Authority was between 12 August and 18 August 2009?*

A: *I don't remember but about six times me go.*

I handed over the matter to my Attorney and he wrote letters on my behalf. My lawyers wrote letters to the Transport Authority and the Attorney General.

Q: *Did your Attorney tell you that the Transport Authority had written to him saying that you never had to sign any Release?*

A: *No."*

[55] The Court finds that there was a specific and unconditional demand by Mrs Johnson-Dennie that the Toyota Hiace be returned to her. The Court was urged to have regard to her evidence that between 12 August and 18 August 2009 she visited the office of the Transport Authority six times, having visited the office every two days. That evidence, it was submitted, is implausible. The Court has noted however that Mrs Johnson-Dennie's evidence is that she does not recall the exact dates on which she returned to the Transport Authority because it has been a long time now. She did not recall whether her six visits were made during the period 12 August and 18 August 2009. What she does indicate is that she visited the office approximately six times.

B. Was there a categorical or unequivocal refusal by the 1st, 2nd and 3rd Defendants to comply with the demand?

[56] The Court finds that Mrs Johnson-Dennie has not proven that there was a categorical or unequivocal refusal on the part of the 1st, 2nd and 3rd Defendants to comply with her demand that the Toyota Hiace be released to her.

[57] It is not in dispute that Mrs Johnson-Dennie was asked to sign a Release and Discharge Form, which she refused to sign. The 1st, 2nd and 3rd Defendants contend however, that, the request that Mrs Johnson-Dennie signs the Release

and Discharge Form was never a prerequisite for the release of the Toyota Hiace to her.

[58] It was submitted on behalf of the 1st, 2nd and 3rd Defendants that Mrs Johnson-Dennie was asked to sign the Release and Discharge Form in order that Mr Cunningham might not be charged with an offence. Regrettably, the Court is unable to accept that submission. The Court notes that there were no charges to be laid against either Mrs Johnson-Dennie or Mr Cunningham, the original Road Licence having been produced by the former and having been found to be valid. The Court accepts Mrs Johnson-Dennie's evidence that she was asked to sign a Release and Discharge Form, by servants of the Transport Authority, in order that the Toyota Hiace might be released to her.

[59] The Court does however accept the submission that the request to sign the Release and Discharge Form does not amount to categorical and unequivocal refusal for the purposes of establishing a claim in Detinue.

[60] The Court finds that the Release and Discharge Form did not adversely affect Mrs Johnson-Dennie as she had committed no offence. A reading of the Release and Discharge Form reveals that the waiver being granted is applicable to a person who has committed an offence.

[61] The Release and Discharge Form reads, in part, as follows; -

"I HEREBY RELEASE AND DISCHARGE the said Transport Authority from all claims and demands whatsoever arising directly or indirectly from the seizure of the said vehicle AND I HEREBY AGREE that I will not at any time hereafter take or bring any action or proceedings or make any claim whatsoever in respect of the seizure of the said vehicle."

[62] Mrs Johnson-Dennie would have had no opportunity to bring a claim or demand arising from the seizure of the Toyota Hiace, in the circumstances of this case, where the seizure was lawfully made. (See - Section 61(4B) of the RTA.)

Whether the Claimant has proven Conversion

[63] In relation to the tort of conversion, the Court must consider firstly, whether Mrs Johnson-Dennie has proved the requisite two elements which constitute wilful or wrongful interference, namely: (i) that the 1st, 2nd and 3rd Defendants dealt with the Toyota Hiace in a manner that was inconsistent with her right; and (ii) that the 1st and 2nd Defendants had an intention in so doing to deny that right or asserted a right which is in fact inconsistent with the right of Mrs Johnson-Dennie.

[64] It is clear from a reading of the authorities that the key to the establishment of the tort is wrongful interference or unjustifiable interference with the chattel such as to question or deny the owner's title to it. To this end, the Court finds that Mrs Johnson-Dennie has failed to prove that the 3rd Defendant, through its servants, the 1st and 2nd Defendants, dealt with the Toyota Hiace in a manner that was inconsistent with her right and that they had an intention to question or deny her title to it.

[65] The dicta of McIntosh JA bears repeating –

“...the detention of a chattel amounts to conversion only when it is adverse to the owner or other person entitled to possession – that is, the defendant must have shown an intention to keep the thing in defiance of the owner or person entitled to possession. The usual way of proving that a detention is adverse within the meaning of this rule is to show that the party entitled demanded the delivery of the chattel and the defendant refused or neglected to comply with the demand...”

[66] In this regard the Claim also fails.

CONCLUSION

[67] In concluding, the Court accepts the evidence of Inspector Emmanuel that Mr Cunningham was unable to produce a valid Road Licence upon request and finds, on a balance of probabilities, that the 3rd Defendant, through its servants

the 1st and 2nd Defendants, had reasonable and probable cause to seize the Toyota Hiace. As such, the Court finds that the Claimant has failed to prove that the Toyota Hiace was unlawfully seized, that is, that it was seized without reasonable and probable cause.

[68] Secondly, the Court finds that there was a specific and unconditional demand by Mrs Johnson-Dennie that the Toyota Hiace be returned to her. However, Mrs Johnson-Dennie has not proven that there was a categorical or unequivocal refusal on the part of the 1st, 2nd and 3rd Defendants to comply with her demand. The Court accepts the submission that the request to sign the Release and Discharge Form does not amount to categorical and unequivocal refusal for the purposes of establishing a claim in Detinue.

[69] Finally, in respect of the claim in Conversion, the Court is of the view that Mrs Johnson-Dennie has failed to prove that the 3rd Defendant, through its servants, the 1st and 2nd Defendants, dealt with the Toyota Hiace in a manner that was inconsistent with her right and that they had an intention to question or deny her title to it.

DISPOSITION

[70] It is hereby ordered as follows: -

- (1) Judgment is entered for the 1st, 2nd and 3rd Defendants against the Claimant;
- (2) Costs are awarded to the 1st, 2nd and 3rd Defendants against the Claimant and are to be taxed if not sooner agreed;
- (3) The Attorneys-at-Law for the 1st, 2nd and 3rd Defendants are to prepare, file and serve the Orders made herein.