

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. M373 OF 1991

BETWEEN AVINEL MOORE PLAINTIFF

A N D BERTRAM HENRY DEFENDANT

*Maurice Frankson instructed by
Gaynair and Fraser for plaintiff.*

*Miss Simone Mayhew instructed by
Patrick Bailey and Company for the defendant.*

Heard: January 15,16,19 & April 19, 2001

HARRIS, J.

On January 19, 2001 the plaintiff's claim was dismissed and judgment was awarded to the Defendant. I made a promise at that time to put my reasons in writing and I now do so.

The plaintiff's claim against the defendant is to recover damages for trespass to goods, and or damages for detinue and or conversion and for the delivery up of the goods or their value.

It was the plaintiff's evidence that property known as Pen Harbour, Sandy Bay in the parish of Clarendon was leased by a Mr. Bryon Mullings, who is now deceased, from Claudius Henry in or about August 1984.

She further stated that Mr. Mullings and herself jointly operated businesses on the leased premises and she continued its operation after his demise.

It was also related by her that Claudius Henry forcibly removed her from the premises, subsequently taking possession of certain articles and equipment which were in a building on the property. She also asserted that the articles and equipment belonged to her and following Claudius Henry's death, the defendant took possession of her goods and chattels.

The defendant testified that he is the son of Claudius Henry and he lived in the U.S.A. from 1974 to 1987 Claudius Henry died testate in 1986. The property at Pen Harbour Sandy Bay was owned by his father and devised to the defendant and his sister under his will. The will was admitted to probate some time after September 9, 1992 by the executor, Mr. Extol Mignott.

He further stated he was and had been in possession of the property since August 1987. At the time on which he took possession there were fixtures, items of furniture, crockery and glassware in the building.

He also acknowledged the receipt of a letter from the plaintiff's attorney-at-law claiming payment for a number of items but he did not comply with the request.

To maintain an action in trespass, a plaintiff must show that he had a right to possession of property. He must also prove that there had been direct and immediate interference with his possession of the goods by the defendant.

It was asserted by the plaintiff, that, as a business with Mr. Mullings, she purchased certain items which were part of the assets of the assets of the business. She declared that Mr. Mulling purchased the costly items while she bought the less expensive ones but everything belonged to them equally. If her evidence were to be accepted, only those items which she bought would have been her property.

She identified some of the articles which she stated that Mr. Claudius Henry had confiscated. However, she did not distinguish those which she said belonged to her as distinct from those which were owned by Mr. Mullings. However, proceeding on the presumption that some of those items were bought by her, she is obliged to show that the defendant had directly interfered with her possession of these goods.

It has been established from her evidence that chattels were confiscated by Mr. Claudius Henry in 1986 for non payment of rent. In 1986, the defendant was neither the owner, nor entitled to possession of the property at Sandy Bay or the contents therein. Subsequently to that date he

was not the owner nor was he entitled to exclusive possession of the property and its contents. Although Claudius Henry died testate in 1986, his will had not been admitted to probate until 1992 and up to the date of trial of this action, the property had not been transferred to the devisees, one of whom is the defendant.

On Mr. Claudius Henry's death all real and personal properties of his estate would have been vested in his executor. There is evidence that the defendant is in physical possession of the property. He would have had no right to have parted with any of the times he found on the building. He could not have made delivery to the plaintiff of any of the chattels he found on the building as he remained answerable to the executor until his part of the realty and personalty of his father's estate becomes vested in him.

I will now turn to the second issue, that is whether the defendant had wrongfully detained and still detains the plaintiff's goods she contends. The plaintiff has not established her claim to ownership of goods or the right to possession of any goods which she alleged the defendant has detained.

But even if it is assumed that some of those items to which she refers belonged to her, she alleges that the defendant had been wrongfully in possession of the goods since 1986. It was the following year she made a

demand for the goods. In 1986 the defendant had been resident in the United States of America and did not return to Jamaica until 1987.

The plaintiff, through her attorney-at-law, made the demand on the defendant for the return of the goods in 1987. At the time of the demand, the defendant was under no obligation – to have acquiesced to any demand for chattels, made by the plaintiff as all the realty and personalty of the estate of Mr. Claudius Henry would have been vested in his executor.

In any action for conversion, the cause of action accrues at the date of conversion unlike detinue, wherein the cause of action accrues from the date of wrongful refusal to deliver up the goods. In *General Finance Facilities Ltd. v Cooks Cars (Romford Ltd.)* [1963] 1 W.L.R. 6444 at page 648 Diplock L.J. stated:

“There are important distinctions between a cause of action in conversion and a cause of action in detinue. The former is a single wrongful act and the cause of action accrues at the date of 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.”

Any claim which the plaintiff might have had with respect to conversion would have accrued on the date on which Claudius Henry seized her goods. Therefore any dispute with respect to the detention of the

goods would have been between Mr. Claudius Henry, or his executor and not between the Plaintiff and the defendant.

There is no evidence to establish that any of the tortuous acts as alleged by the plaintiff had been committed by the defendant. As a consequence no liability can be attributed to the defendant. The plaintiff's claims must of necessity fail.

Judgment for the defendant against the plaintiff with costs to the defendant.