IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. CL 2002 W021

BETWEEN	TREVOR WRIGHT	CLAIMANT
AND	DET. SGT. YATES	1ST DEFENDANT
AND	INSPECTOR CANUTE HAMILTON	2ND DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	3RD DEFENDANT

Mr. Gayle Nelson and Ms. Analisa Chapman instructed by Gayle Nelson & Company for the claimant.

Mr. Curtis Cochrane instructed by Director of State Proceedings for the defendants.

Heard: 20th December 2010 and 9th, 18th and 25th May 2012

Drug Offences (Forfeiture of proceeds) Act – Search Warrant, pursuant to S20 – Whether Reasonable or Probable Cause – Tainted Property – Derived, Obtained or Realised Directly – Convicted Person – Commission of Offence – Pleading Unclear Whether Action in Detinue or Conversion – Distinction Demand – Measure of Damages – Market Value at the Date of Judgment

Campbell, Q.C., J.

Background

[1] On the 8th February 2001, the claimantôs Ford 150 pick-up truck registered 2081 DM, was taken from his home at Glendale in St Catherine by the 1st defendant, who was accompanied by other police officers. The 1st defendant showed a search warrant to the claimant. A year later, on the 7th February 2002, the claimant filed a writ, which alleged that the 1st and 2nd defendants ñdid wrongfully and unlawfully seized the claimantôs F150 motor vehicle and have refused to release it and as a result of which, the plaintiff has suffered loss and damageò

[2] In his Statement of Claim, he contended that having been taken to the Narcotics Division, he was interrogated by the 2nd defendant, who asserted that the said motor vehicle was under investigation, as it had been purchased and sent to Jamaica by a known drug dealer. The claimant told the defendants that he purchased the F150 motor vehicle from a Mr. Berkely Hepburn, of Papine, in St. Andrew, paying for it between May 2000 and November 2000, and having it transferred into his name about January 2001. The claimant said he fully explained that he ñwas a purchaser for value without any knowledge of what was been alleged in respect of the motor vehicle.ò He gave the defendants details of the name and whereabouts of the vendor of the motor vehicle.

[3] He alleged malice and lack of reasonable and probable cause on the part of the 1st and 2nd defendants because, ñdespite the clear fact of no illegal or unlawful act on the part of himself, the 1st and 2nd defendants have continued to detain his motor vehicle, while vainly asking him for information which he does not have . . . and maliciously keeping the vehicle in the meantimeò.

[4] The Defence, filed by the defendants, stated at paragraph 11;

> That the said F150 Ford pick-up was seized under and by virtue of the Drug Offences (Forfeiture of Proceeds) Act. That on investigations carried out by the First and Second Defendants, information was received that the said F150 Ford pick-up truck was the property of Samuels Knowles, a convicted drug dealer. That the Plaintiff failed to produce receipts to show that he made genuine payments for the said motor vehicle. That the transfer of the said motor vehicle to the Claimant was merely to conceal the interest of a convicted drug dealer in the said motor vehicle.

[5] The claimant and his sister gave sworn evidence as to the acquisition of the motor-vehicle. The claimant stated that he had observed the F150 displaying ñFor Saleò sign and a telephone number. He contacted the number and eventually met the vendor of the vehicle, and had it assessed twice before completing the payment of the purchase price, which were made in three instalments, between May and November 2000. He testified that the funds

were those of his sister who lives in the United States, and on whose behalf he had purchased the vehicle. For each payment, the sister visited Jamaica, making withdrawals from her account at Victoria Mutual Building Society (VMBS) in the amounts of J$800,000; J$400,000 and J$100,000. The total purchase price was of $1,200,000, the additional $100,000 was to accessorise the vehicle. Of his sister, he said she had a home in St. Jago Heights in St. Catherine. He had received receipts for the sums tendered, but they were among the 37 documents removed from his home at the time the 1st defendant visited his home and seized the vehicle.

[6] The claimantôs sister, Hilma Wright, a nursing assistant, has lived in the United States for the past 38 years. She earns US$25,000 per annum, and testified that she had visited the island in April 2000, with a view of making arrangements to facilitate her permanent return to Jamaica. She, on that visit, requested that her brother buy a vehicle to be utilised at her farm in St. Elizabeth. She testified, there was no house on the farm, although she had made attempts to start construction there some years ago, but those building materials have been stolen. On each of her visits to the VMBS, her brother and a cousin, Derrick Dewdney, had accompanied her.

[7] Counsel for the Attorney General, in his written submissions, pointed to areas of inconsistencies in the evidence of the two witnesses for the claimant. He further submitted that there was no certainty as to the cause of action relative to the claim. That the claim is neither detinue nor conversion, as neither had been pleaded. The claim therefore fails. The defendant relied on the case of **George and Brandy Ltd. v Lee (1964), 7 WIR 275**, to support their submission that the claimant need to specify whether their claim was in detinue or conversion. In that case, the Resident Magistrate had wrongly found that there had been a refusal in the absence of which the claim in detinue must fail. The Court of Appeal went on to hold that, without an amendment, it would not be open for the Resident Magistrate to have found a conversion.

[8] Mr. Cochrane further submitted that the evidence reveals a criminal enterprise, and that the 1st and 2nd defendants carried out an extensive investigation, which resulted in the Ford pickup being seized. Crown counsel submitted that the court should find, on a balance of probabilities, the pickup is the property of Samuels Knowles. He said, on an examination of the statements of Hepburn, it is clear that the claimant was involved in activities in breach of the Money Laundering Act. Moreover, there is no evidence that the action of the 1st and 2nd defendants were malicious and without probable and reasonable cause, as required by sections 13 and 33 of the Jamaica Constabulary Force Act.

Discussion

[9] The seizing of the van was under colour of the warrant, which was not exhibited before us. The defendantsô testimony is that the warrant was issued under the Drug Offences (Forfeiture of Proceeds) Act. Was there reasonable and probable cause for the seizure of the motor vehicle? The applicable section for the issuance of the warrant would be the Drugs Offences (Forfeiture of Proceeds) Act. (the Act) Section 20, which provides that:

> Where a Justice of the Peace is satisfied by information on oath that there are reasonable grounds for suspecting that tainted property is to be found on any premises specified in the information, he may issue a search warrant authorising a named officer to enter those premises, and seize property found in the course of the search that the officer believes, on reasonable grounds, to be tainted property.

[10] There has to be first, tainted property, and the officer should have reasonable grounds for believing that there are on the premises to be searched. Section 2, provides;

> Tainted property in relation to a prescribed offence, means, (a) property used in, or in connection with the commission of the

offence; or (b) property derived, obtained or realised directly by the person convicted from the commission of the offence.

An offence, for purposes of the Act, is an offence contained in the Schedule.

[11] Neither the 1st nor the 2nd defendant has alleged that the Ford pick-up was used in or had any connection with any offence at all or, in particular, an offence in the Schedule to the Act. In the defence filed, it is alleged inter alia, at paragraph 11, ñThat on investigation carried out by the first and second defendants, information was received that the said F150 Ford pickup truck registered 2081DM was the property of Samuels Knowles, a convicted drug dealer. In the pre-trial memorandum, the Attorney Generalôs Department further alleged that the claimant failed to produce receipts to show that he made genuine payments for the said motor vehicle.

[12] Is there any evidence adduced to prove, on a balance of probabilities, that this motor vehicle had been derived, obtained or realised directly by the person convicted, from the commission of a scheduled offence, as required by S. 2(b) of the Act? Mr. Cochrane has invited the court to find, on a balance of probabilities, that the Ford pick-up was the property of Samuels Knowles. It might very well be, although there is nothing in the evidence to support such a finding. The mere allegation that the motor vehicle is the property of Samuels Knowles, a convicted drug dealer, is not enough. In order to meet the requirements of the Act, the defendants need to adduce evidence that the motor vehicle is the property of Samuels Knowles, who is a person convicted of a scheduled offence. Next, that the motor vehicle was derived, obtained or realised *directly*, from the offence for which Knowles was convicted. Finally, that the said motor vehicle accrued to the claimant at the request of Samuel Knowles.

[13] The adverb ñdirectly,ò in S. 2(b) of the Act modifies or qualifies all three verbs (i.e., derived, obtained and realised) as to the manner in which it was acquired from the commission of the offence. What this means is that, not all property owned by a person convicted of a scheduled offence, become

ñtainted property,ò for the purposes of the Act. There needs be evidence to prove it was derived, obtained or realised *directly* from the commission of the offence. The Concise Oxford Dictionary, 5th Edition, states, ñdirectò means, ñfollowing an uninterrupted chain of cause and effect.ò There must therefore be adduced evidence of an uninterrupted or unbroken link connecting the property to the commission of the crime. Section 2 of the Act treats or deems the link as being unbroken or uninterrupted when the property accrues to or is found in the possession of someone other than the convicted person, and accrues to that possessor, at the convicted personôs request or direction. No sanction is applied by the Act, generally to the property of a person convicted of a scheduled offence, unless an uninterrupted link is shown that it is the ill-gotten gains from a scheduled offence under the Act.

[14] Mr. Cochrane submitted that, on an examination of the statements of Mr. Hepburn, (from whom the claimant purchased the car) it was clear that the claimant ñwas involved in a breach of the Money Laundering Actò The tainted property has to be acquired by the ***person convicted*** of a scheduled offence to the Act. It is not enough to prove that the person had been charged, tried, acquitted or suspected of involvement in a scheduled offence. An essential element vital to qualify the property as tainted property for the purposes of the Act, is its acquisition by a *person who has been convicted* of a scheduled offence. Proof of a conviction, where required, in either civil or criminal proceedings, is provided for in The Evidence Act, S. 27:

> Whenever, in any proceeding whatever, it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but it shall be sufficient that it be certified or purport to be certified under the hand of the clerk of court, or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the Deputy of such Clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof.

[15] The testimony of a police officer, who is present in court in some circumstances, may not constitute sufficient evidence of the conviction. Such testimony has been held, not alone proper proof of conviction. See **Dash v Marley [1914] 3 KB 1226**; Kennedy L.J. said:-

> I confess that this is the first time I have heard ï there may be authority of which I am unfortunately ignorant ï that oral evidence of a conviction can be given by somebody who heard the jury give a verdict which is to let in directly, evidence of the conviction as to the proof of which we have express statutory provision.

[16] Deputy Superintendent Canute Hamilton testified that he had no honest belief that the claimant was involved in drug trafficking or money laundering. Mr. Hepburn, from whom the claimant purchased the vehicle, has not been charged with any offence. There is no sufficient evidence before this court, of any conviction of Samuels Knowles, for a scheduled offence. The question and answers of Hepburn, which were admitted into evidence, conflicts with the sworn testimony of the claimant and his witness as it concerns the acquisition of the motor vehicle. The court did not have the benefit of seeing Mr. Hepburn respond to cross-examination. There was no evidence before this court to prove the conviction of anyone. No charges have been laid against either Hepburn or the claimant. There has been shown no direct link between the acquisition of the motor vehicle and the commission of a scheduled offence. I find that there is no reasonable or probable cause proved for the detention of the motor vehicle.

Demand

[17] Defendantôs counsel had submitted that neither detinue nor conversion has been pleaded; that there is no certainty as to the cause of action, and relied on **George and Brandy Ltd.** (See paragraph 7 above). The rules require the pleadings to contain and contain only, and in summary form, the material facts on which the party relies for his claim or defence and not the evidence

by which they are proved per Lord Parker, **Banbury v Bank of Montreal, (1918) AC**, the cause of action or ground of defence should be stated with sufficient particularity to give to the other party adequate notice of the case intended to be set up, and prevent him from being taken by surprise. The defendants have not been taken by surprise and have identified the cause of action. The defence at paragraph 11 states;

> ñThe defendant will contend that the said F150 Ford pick up truck registered 2081 DM was seized under and by virtue of the **Drug Offences (Forfeiture of Proceeds) Act**.ò

[18] Waddington JA, in **George and Brandy Ltd.,** defines detinue, at page 278, letter e, as follows;

> ñThe 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.ò

[19] The learned authors of **Winfield on the Law of Torts, 7th Ed**, defines conversion, at 518, as follows;

> ñAs any act in relation to the goods of a person which constitutes an unjustifiable denial of his title to them. Conversion 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 personôs right or to assert a right which is inconsistent with such a right.ò

[20] It is open to the claimant, in a case of this nature where the essence of the complaint is the wrongful seizure of a good, to institute action in either conversion or detinue, or both. In **Attorney General and Transport Authority v Aston Burey, 2011 JMCA CIV 6,** the court held at paragraph 6, inter alia;

> ñBoth 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.ò

[21] Was there a demand for the release of the vehicle? The claimant has testified that he made numerous demands for the return of his vehicle from the police officers. In cross-examination, he maintained that he asked for the vehicle ñall the time,ò and testified that he would see Det. Supt. Hamilton outside of his office, and asked for the return of his vehicle. In the writ that was filed, it was alleged that the defendants have refused to release the vehicle. I find, as a matter of fact, that the claimant has made formal and specific demand for the return of his vehicle from the first day it was seized. Upon the refusal to comply therewith, there was a wrongful interference and withholding of the vehicle from that point, damages will run from the date of seizure.

Measure of Damages

[22] The measure of damages for the wrongful detention of the vehicle is the normal measure in detinue, the market value at the date the vehicle was wrongfully detained less the market value on its return. See **Castways Hotel Ltd. v University of Dominica (School of Medicine and Health Sciences) Ltd (1992) 43 WIR 180**. Where the goods are not returned, the measure of damages is the value of the goods as at the date of trial. In **Attorney General and Transport Authority and Aston Burey, 2011 JMCA C IV 6**, the Court of Appeal had contending arguments before it as to whether the award should be grounded in conversion or detinue. The claimantôs 1994 motorbus was wrongfully seized by the police on the 30th June 2006, demands were made commencing November 2008. The defendants/appellants argued that damages should be awarded at the market value of the motor vehicle at the conversion date, i.e., the 30th June 2006. The claimantôs counsel submitted that the damages should be the market value of the bus at the date of judgment, Sept 2010. At paragraph 10 of the judgment, the court held, per Harris , J.A.:

> 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. (Emphasis mine)

The ñloss emanating from the detentionò as the measure of damages, is not to be determined solely by the market value of the seized vehicle at the time of trial.

[23] Counsel for the appellants had argued that the award for $3,950,000, made by Jones, J. had included import duties and other charges. In **Castways Ltd**., the court approved the dictum of Brandon LJ, In **Brandeis Goldschmidt & Co. Ltd. v Western Transport Ltd.(1982) 1 All ER,** that damages in tort are awarded by way of monetary compensation for the losses of the plaintiff, and doubted whether there was any ñuniversally applicable rule for assessing damages for wrongful detention of goods. It is for the plaintiffs to prove what loss, if any, they suffered by the tort.

[24] Harris J.A, however, quoted with approval the principle enunciated in **Rosenthal v Alderton and Son (1948) KB,** where it was held**;**

> The value of the goods detained and not subsequently returned should be assessed as at the date of judgment or verdict.
>
> The same principle applied whether the goods had been converted (provided that the plaintiff was not aware of the conversion at the time) or whether the defendants failed to re-deliver them for some other reason. The defendants could not improve their position by reason of their own misconduct.

[25] The Court of Appeal, however, upheld Jones J, award of the market-value of $3,950,000 for a 2005 bus. The single ground of appeal was:

> The Learned Judge erred by making an award of $3,950,000.00 for the loss of the respondentôs motor **vehicle which is the value of a 2005 Toyota Hiace motor vehicle, including import duties and other charges, instead of $380,000.00, the value of a 1994 Toyota Hiace motor vehicle at the date of conversion. (**Emphasis mine)

[26] There was evidence that in 2006, the 1994 bus would have had a market value of $580,000.00 to $600,000.00 and a market-value of $2,000,000.00 in 2005. Counsel for the respondents submitted that the Regulations governing the importation of motor vehicle would not allow for the importation of a similar 1994 bus due to the prohibition of importation of vehicles in excess of five years old. Therefore in 2010, when Jones, J. assessed damages, the oldest vehicle that could be imported was a 2005 Toyota Hiace. The court had evidence from a Mr. Sean Green that the market value of the bus in the year of trial, 2010, was $2,000,000.00. The court however awarded the market value of $3,095,000.00 for the bus in 2005, that being the oldest dated vehicle that could be imported, the importation of a similar 1994 motor vehicle being impermissible.

[27] In this matter, the oldest vehicle that would be allowed to be imported is a 2007 vehicle. The case of **The Attorney General and the Transport Authority v Aston Burey** was not rehearsed before me during the hearing of assessment. I have brought the matter to their attention and invited their input in the limited area of adducing evidence on the market value of a 2007 vehicle. On the 18th May 2012, further submissions were made by both counsel on the question of valuation of the motor vehicle.

[28] Where there has been prolonged delay between the wrongful detention and the trial, the determination of the loss emanating from the detention is important, more so, when the seized good is likely to depreciate with age. Mr. Nelson submitted that there is no basis for an award of a 2007 vehicle, as in the instant case, the claimant did not import a vehicle but purchased it locally. The vehicle was one year old when it was seized. Further, there was, before Jones J,

evidence of the market value of a five year-old vehicle. Counsel relied on paragraph 7 of **Aston Burey's** case to support his submission that, in detinue the measure of damages is the value of the goods as at the date of trial. See **Rosenthal v Alderton & Sons Ltd**. **(1946) KB 374, [1946} 1 ALL E.R. 583**. Counsel submitted that what is required to put the claimant in the position where he was before the seizure, is the cost of replacement of a one-year old motor vehicle of a similar type, and not the market value of a twelve year-old vehicle. He referred the court to paragraph 14 of the judgment of **Aston Burey**, where Harris JA, said,

> ñWe are not in agreement with Mr. Cochrane that the value of the bus which was sold ought not to have been assessed at a greater value than at the date of sale, as the respondents remedy is in conversion. The claim could have been properly pursued in detinue and the learned trial judge could have and had correctly made an award in detinue as to the value of the bus as of the date of judgment.ò

[29] Mr. Cochrane submitted that there was no evidence as to the market value of the 2007 vehicle adduced at trial, and it was impermissible to receive that evidence after both sides have closed their cases. The court had before it the unchallenged estimated market values for a Ford pick-up 150 for the relevant dates in 2007, it was $4,343, 814.50 at the date of trial value, in December 2010 it was $7,208,245.80, and the current valuation is $7,800,000.00. Mr. Nelson submitted that the present replacement cost of the vehicle is $7,800,000.00. Mr. Cochrane further submitted that the remedy for the defendantsôbreach was the return of the vehicle. It was a submission with which I could not agree. There was no admissible evidence of the condition or roadworthiness of the motor vehicle after eleven years of being detained. There was no assessment of its value. There was no evidence that the vehicle was other than an ñordinary article in commerce.ò Neither has there been any evidence or suggestion that damages are less than an adequate remedy. The defendants had maintained their wrongful detention even after the trial of the matter had commenced, never

giving any indication they were willing to release the vehicle. The claimant, at trial, has understandably elected an award of the assessed value of the vehicle and damages. The defendant cannot choose to return the vehicle in face of the claimantôs entitlement to have the value of the vehicle assessed and damages for its detention.

[30] In **General & Finance & Facilities Ltd. v Cooks Cars (Romford) Ltd.** {1963} 1 W. L. R. 664, Diplock L.J.

> ñIn the result an action in detinue today may result in a judgment in one of three different forms (1) **for the value of the chattel as assessed and damages for its detention; or** (2) for return of the chattel or recovery of its value as assessed and damages for its detention: or (3) for return of the chattel and damages for its detention.ò
>
> A judgment in the first form is appropriate where the chattel is an ordinary article in commerce, for the court will not normally order specific restitution in such a case, where damages are an adequate remedy. **(Whitely Ltd. v Hilt) (1918) 2 KB 808, 819, 824)** A judgment in this form deprives the defendant of the option which he ha under the old common law form of judgment of returning the chattel; but if he has failed to do so by the time of the judgment, the plaintiff, if he so elects, is entitled to a judgment in this form as of right. (Emphasis mine)

[31] In assessing the value of the vehicle, I must resist the forceful argument of counsel for the claimant, for the value to be assessed using the replacement cost of the vehicle, at the date of trial, i.e. $7,208,245.80. I am guided by the formula for assessment in **Aston Burey**, for the oldest vehicle of its type that could be imported is a 2007 vehicle; the unchallenged market-value is $4,343,814.50. I make an award for the assessed value of the vehicle to be $4,343 814.50.

Damages for the detention of the vehicle

[32] The judgment in **Aston Burey** speaks to the ñ**loss emanating from the detention"**. As that judgment demonstrates, the assessed value of the vehicle may not by itself provide an adequate remedy for the claimantôs damages. In **Aston Burey**, the 1994 vehicle was twelve years old at the time it was seized, then valued at $580,000.00. The Court of Appeal ordered an award for the market-value of a five-year-old vehicle, i.e., a vehicle 7 year less worn than the vehicle that was seized. In the instant case, the award granted is on an assessment of a vehicle some four years older than the one-year-old Ford pick-up that was seized by the defendants. How then are damages to be assessed in respect of what Diplock L. J, refers to as ña judgment in the first formò Diplock L. J., states;

> *"In the ordinary way, where an action goes to trial, the issues of liability, assessment of value of the chattel, and damages for its detention, are dealt with at the hearing, and final judgment in one or other of the above form is entered."*

[33] I accept the principle as enunciated in **Castways Hotels** (supra) that damages in tort are an award of money compensation for loss or losses which the plaintiff has actually sustained. In **Darbishire v Warran CA, [1963] 1WLR 1067; [1963] 2 Lloyd's Rep. 187 at p. 192**. Pearson L.J said;

> What are the principles applicable? The first and main principle is that the plaintiff is entitled to receive as damages such sums of money as will place him in as good a position as he would have been in if the accident had not occurred.

[34] To put the claimant in the position as if the accident had not occurred, would involve (1) the market price of a comparable Ford pick-up. Such a vehicle would be a one-year-old vehicle at the time of trial. This would conform with Pearson L.Jôs statement in Darbishire, which defines ñmarket-valueò as being a standard replacement market-value, that is to say, the retail price that a customer would have to pay in July 1962 on a purchase of an average vehicle in the same make type and age or a comparable vehicle. The evidence before us is that the cost

of a vehicle of the same make, type and age, would be at the time of trial, $7,280,000.00, from this sum would be taken the assessed cost of the vehicle, i.e. $4,343,814.50, for a remainder of $2,864,431.30. Damages may still not place him squarely where he was before, because there was no claim for motor vehicle insurance and registration cost, as would have been required to operate the vehicle. No figures were given for insurance, certification of the vehicle, etc. Neither were there figures for any loss of use.

The Court awards:

The assessed value	$4,343,814.50
For detention	$2,804,431.30