

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-00380

BETWEEN

RICARDO HUGGINS

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Honorable Justice David C Harris

Appearances:

Mr. Alvin Brazer **for the** Claimant.

Mr. Stefan Jaikaran and Ms. Sasha Sukhram instructed by Mr. Nairob Smart **for the** Defendant.

JUDGMENT

INTRODUCTION

1. This claim arises out of certain incidents between police officers and the Claimant after the Claimant's alleged detention at a roadblock, which was initiated by the said police officers at Mausica Road, Arouca. At the time that the Claimant was allegedly stopped at the roadblock, he was driving motor vehicle registration number PBG 9194(**also referred to as "PBG"**) for which the Claimant claims ownership through purchase from one Michael Paul on 16th March 2009. The Claimant avers that at the time of purchase, the said vehicle was extensively damaged and he had done extensive repairs between March 2009 and December 2010 in anticipation of it being inspected, transferred and registered in his name.

2. The **Claimant's case**¹ is that on 12th December 2010 he was driving vehicle PBG 9194 on Mausica Road Arouca, when he was stopped at a roadblock by police officers and ordered to park his vehicle at the side of the road. A police officer, one Corporal Joseph checked the chassis number and then ordered the Claimant to sit in the back of an unmarked vehicle parked nearby. He was driven to his home, where Corporal Joseph ordered the other police officers to search his home, garage and computer files without a warrant.
3. After the search of the property, the Claimant was taken to the Arouca Police Station and placed in a cell for several hours, until 7:30 p.m. on 13th December, at which time he was released by the same police corporal and given the keys to his vehicle, with no reason given for his arrest.
4. The Claimant was visited at his home by the same Cpl Joseph on 16th February 2011, who demanded that he remove the music system from PBG 9194 and to hand over the keys for the vehicle. The Claimant complied. A wrecker arrived thereafter and two other vehicles were allegedly removed from the Claimant's garage. He was taken to the Arouca Police Station where he remained in a cell until around 2:00 p.m. on 17th February when he was released without any explanation for his detention. He was given the keys to his vehicle PBG 9194. Upon driving off, he realized that the left axle was damaged.
5. The said officers came to the Claimant's home on 24th February 2012 and demanded that he hand over the keys to PBG 9194, without any warrant being shown. The following day the Claimant called the Arouca Police Station to find out the status of his vehicle and was told to call Cpl Joseph on his cell. The corporal promised to check the status and call back the Claimant which, the Claimant states, the corporal never did. The Claimant last saw his motor vehicle in the Arouca Police Station in February 2012 after which it disappeared. In October 2015 the said vehicle was discovered at a lot in Mangra Trace Aranguez guarded by police officers. To date the Claimant has not been prosecuted nor has his car been returned to him. The Claimant brings this claim in wrongful trespass to goods, detinue and conversion.

¹ Extracted from the Claimant's pleadings and submissions

6. The **Defendant's case**² is that the registered owners of the vehicle PBG 9194 are Dennis Clayton and Merle Clayton, according to the true certified copy. The Claimant was stopped as a result of reliable information received that the vehicle driven by him was a stolen vehicle disguised as PBG 9194 and that the Claimant had erased the original chassis number and etched a fraudulent number on the said vehicle.

7. Acting Sgt. Joseph and the other officers went to the Claimant's home to give him an opportunity to produce his documents for the vehicle; the Acting Sgt. never ordered a search of the Claimant's home nor his computer files. The Claimant could not produce the documents and as a result, the police kept the motor vehicle and took the Claimant to the Arouca Police Station to continue enquiries. Further enquiries showed that PBG 9194 was owned by Dennis Clayton of Sou Sou Lands Tobago.

8. On January 28th 2011 the Acting Sgt. went to the Claimant's home where it was discovered that the chassis number of the vehicle in the Claimant's possession appeared to be that of a foreign used vehicle. The original chassis number was erased and the present number etched back into the surface. A Certificate of Analysis from a Forensic Science Officer who examined the vehicle, confirmed the Acting Sgt.'s suspicion, according to the Defendant. Therefore, the true identity of the vehicle in the Claimant's possession purporting to be PBG 9194 was not that as lawfully registered as PBG 9194.

9. The vehicle in the possession of the Claimant purporting to be PBG 9194 was later identified as a B14 with previous registration number PBL 3258 which was reported stolen on 13th February 2010 by one Jason Sooklal, who identified the said B 14 vehicle in the Claimant's possession purporting to be PBG 9194, by several distinctive features and modifications he had made to it. The Defendant contends that the authentic PBG 9194 is the vehicle that was owned by Dennis Clayton and Merle Clayton, which was subsequently sold to Morris Chevielliers, who has possession. The chassis number on the vehicle in Morris Chevielliers' possession was found to be original. The Acting Sgt. therefore concluded that the vehicle in the Claimant's possession was the stolen vehicle PBL 3258 and as such, it could not be returned to the Claimant.

² Extracted from the Defendant's pleadings and submissions

ISSUES TO BE DETERMINED

10. (i) Whether the vehicle PBG 9194 was lawfully seized and retained by the police;
- (ii) Whether the said seizure occurred on 28th January 2011 or 24th February 2012;
- (iii) Whether the Claimant's vehicle is one and the same as PBL 3258 stolen from Jason Sooklal;
- (iv) Whether the Claimant has made a demand for the chattel and when was that done;
- (v) Whether the continued detention of the said vehicle is lawful;
- (vi) Whether the Claimant is entitled to the return of the said vehicle or alternatively, damages for the continued detention of same;
- (vii) Whether the ingredients of Conversion, Detinue, Trespass to Goods and/or Distress have been satisfied on the facts;
- (viii) Whether the Claimant incurred damage and loss as a result of the actions of the police.

THE LAW

11. Police Standing Order No. 26 at section 28 provide the conditions under which property held by the police, is returned.³
12. In *Ghani v Jones*⁴, Lord Denning MR opined at 708-709, on the requisites that must be satisfied when police officers seize citizens property⁵:
 - i. *The police officers must have reasonable grounds for believing that*
 - a) *a serious offence has been committed....that the offenders should be caught and brought to justice.*
 - b) *the article in question is either the fruit of the crime, or is the instrument by which the crime was committed, or is material evidence to prove the commission of the crime.*
 - c) *the person in possession of it has himself committed the crime, or is implicated in it, or is accessory to it, or at any rate his refusal must be quite unreasonable.*

³ (b) **General Property**—

(i) where the ownership of property lodged is not in dispute, it shall be returned to the owner;

(iv) exhibits must not be returned to persons claiming them in the circumstances shown hereunder—

1. *Motor Vehicles*- where there is a dispute as to ownership, or there has been tampering with the engine and/or chassis numbers...

⁴ [1970] QB 693

⁵ Summary of 708-709

- ii. *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. As soon as the case is over, or it is decided not to go on with it, the article should be returned.*
- iii. *The lawfulness of the conduct of the police must be judged at the time, and not by what happens afterwards.”*

13. Section 23(1) of the Sale of Goods Act⁶ provides:

“Subject to this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller’s authority to sell.”

14. **The claim in Detinue**⁷: This action lies at the suit of a person who has an immediate right to the possession of the goods against a person who is possession of the goods and who on proper demand, fails or refuses to deliver them up without lawful excuse. (See dictum of Donaldson J. in ***Alicia Hosiery v Brown Shipley and Co. Ltd.*** [1969] 2 All E.R. 504 at 510).

15. The learned author, John G. Flemming in **The Law of Torts** 8th edition, at page 58, opined as constitutes detune.⁸

16. **The Motor Vehicle and Road Traffic Act Chapter 48:50 (MVRT)**. Section 2 defines “owner”; section 12. (1), (6); (7); Section 19. (1) (5); (6) are all instructive on the manner in which a motor vehicle is registered, transferred and on changes of possession.

⁶ Chapter 82:30

⁷ Carlton Rattansingh (The legal Personal representative of the Estate of Joseph Rattansingh) v The Attorney General TT and Kanahar Doopan, The Controller of Customs C. A. Civ No. 105 of 2000 at pp 7-8.

⁸ *“Merely being in possession of another’s goods without his authority is not a tort... To establish that the detention has become adverse and in defiance of his rights, the claimant must prove that he demanded return of the chattel and that the defendant refused to comply...but such refusal must be categorical; if qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the plaintiff’s rights, it amounts to neither detinue nor conversion...”* (see: *Nelson v Nelson* [1923] QSR 37

17. The circumstances of this matter and the nature of the 'res' if you will, is subject also to the import of the Sale of Goods Act Chap. 82:30 generally and more specifically section 25(1) thereof. This section provides that where goods (a car in this instance) - have been stolen and the offender *prosecuted to conviction*, then the goods reverts in the owner notwithstanding any intermediate dealing with the goods.
18. **The claim in conversion**: To constitute conversion, there must be a positive wrongful dealing with the goods in a manner inconsistent with the owner's rights and an intention in so doing to deny the owner's rights or to assert a right inconsistent with them. The gist of the action is *inconsistency*. There need not be any intention to challenge the true owner's rights. A demand and refusal is sufficient evidence of conversion⁹.
19. At para 201 pages 59-60 In ***Gerard Mootoo v The Attorney General***,¹⁰ Stollmeyer J (as he then was) stated the distinction between Detinue and Conversion as follows:
- “Conversion is a purely personal action for pecuniary damages resulting in judgment for a single sum, generally measured by the value of the chattel at the date of judgment together with any consequential damage flowing from the conversion which is not too remote. Where conversion cannot be directly proved, it may be inferred from proof of a demand for the item and the refusal to hand it over. Detinue is more in the nature of an action in rem because the Plaintiff seeks the return of the item or payment of its value assessed at the date of judgment, together with damages for its detention. This effectively gives a defendant a choice of whether to return or pay for the item. It is immaterial whether a defendant obtained the item by lawful means because the injurious act is the wrongful detention, not the original taking or obtaining of possession. Detinue is usually evidenced by a failure to deliver an item when demanded. Damages for Detinue are intended to compensate a plaintiff for his loss, not to punish a defendant...” [Emphasis added]*
20. **The claim in trespass to goods**: This Tort involves the wrongful interference with the possessory title of a Claimant in respect of chattel in his possession at the time of the interference. The action in this Tort, is actionable per se and the Claimant is entitled only to damages and not

⁹ See *Garnett Simmons & Anor v Clinton Mohan et al* CV2016-03803.

¹⁰ HCA CV 431 of 1997

recovery of possession of the chattel. In *Pooran Sookdeo and Superior Doors Limited v Wayne Lum Young and Elvis Lum Young* the Judgment of Rampersad J given on 11th November 2013 at para 39, provides a good working definition of the tort, as contained in Halsbury Laws of England.¹¹

THE EVIDENCE-THE FACTS

21. At the onset, the court notes the following: The person stated as the seller of the vehicle to the Claimant, one Michael Paul, was not called as a witness in this matter. Further, the several persons stated by the defence as both previous and present owners of the bona fide BDB 9194 vehicle were not called. In both cases, the Claimant and one Jason Sooklal for the Defendant, testified that they had failed, respectively, to complete the transfer by registration to their names from the respective sellers of the Vehicle PBL 3258 (the falsified PBG 9194). *The Motor Vehicle and Road Traffic Act* Chapter 48:50 (**'MVRT'**) at Section 2 defines "owner"; Section 12. (1), (6); (7) provides for illegality of keeping of a motor vehicle use without registration and onus of proof etc; Section 19. (1) (5), (6) thereof, provides for the process for formalizing ownership. Neither person has complied with the Act. Jason Sooklal said that the vehicle was stolen from him shortly after he purchased it and before he could have completed the transfer to himself. The Claimant said that he was unable to locate the seller of the said vehicle to him. Both these parties are not named as owners of the said vehicle on the records of the Licensing Department. These are facts, proved to this court.

22. The evidence in this matter on certain issues is not complex. That the subject vehicle had the chassis number erased and another inserted is undisputable. Further, that there were two vehicles that bore the registration number PBG 9194 is proved. Further to this, it is also proved that the other vehicle registered in Tobago as PBG 9194 is the original and only bona fide holder of that registration number. I accept this evidence as proved. Indeed, in the end, it does not appear that the Claimant is contesting these facts.

¹¹Halsbury's Laws of England/Tort (Volume 97 (2010) 5th Edition)/3. Torts to specific interests/ (4) Wrongful interference with goods/602: *"Trespass to goods is an unlawful disturbance of the possession of goods by seizure or removal, or by a direct act causing damage to the goods. The subject matter of trespass to goods must be a personal chattel which is the subject of lawful possession..."*

23. The Claimant has testified to a bona fide purchase of the vehicle from another, one Michael Paul. Michael Paul has not testified in this matter of this fact. The Defendant alleges that the Claimant has not provided them with contact information for the said alleged seller. I accept the evidence that Paul's contact has not been forwarded to the Defendant. The Claimant has not robustly opposed that allegation. In any event one would think that the claimant would be motivated without request from the police, to provide the contact of the seller in order to establish the bona fides of the purchase transaction.

Is the claim statute barred?

24. This defence turns on the date of the commission of the Tort of Conversion and of Detinue. The limitation period for the commission of a Tort is 4 years. This claim was filed on the 15th February 2016. The Claimant's case is that the vehicle was wrongfully taken from him on the 24th February 2012. The Defendant contends that the vehicle was taken from the Claimant on the 28th January 2011. This issue is set out as issue "(ii)" above. There is no evidence contrary to the assertion of the Claimant other than the bald assertion by Cpl Joseph that the vehicle was taken in 28th January of 2011 and not in 2012 as alleged by the Claimant. It is not in dispute that at the time of the filing of this action the car was in the custody of the police.

25. Assuming that the demand for the vehicle and refusal to give up the vehicle were made on the said 28th January 2011 as alleged by the Defendant, then both causes of action would be statute barred. If the 'demand and refusal' were on the 24th February 2012, then neither matter would be statute barred. However, the determination of this issue is not such a linear one.

26. In relation to the **Detinue** action; it starts with determining when the unequivocal demand and refusal took place as opposed to when the car was seized¹². The date at which the car was seized would serve as the commencement of the circumstances after which a demand can be made. Either date suggested by the Claimant and Defendant respectively as the date of seizure, are not determinative of the date of the unequivocal demand by the Claimant. The unequivocal demand for the chattel was by the Attorney's pre-action protocol letter of December 2015. The Claimant never testified to an unequivocal demand prior to that. His evidence is replete with references to enquiring about the 'status' of the car and other like equivocal references to the status of the car

¹² See Schwarzschild v Harrods Ltd [2008] All ER (D) 299(Mar) at paras 21-25.

that simply do not reach the required threshold. The Tort at the very earliest would have been committed at the date of that letter. This was several years after the seizure but this fact does not invoke the limitation defence to the Defendant's benefit¹³. The Defendant has denied knowledge of receipt of the letter. I do not accept that evidence and find that the letter was sent to and received by the Defendant. In any event, the filing of this action in February 2016 would also serve as an *unequivocal demand* and the Defending of this matter (see the content of the defence) as the refusal. Either way, the Detinue action is within the limitation period.

27. What about the action in **Conversion**? The definition of this Tort does not include the *demand and refusal* as an ingredient of the Tort. It is not necessary to prove this conventional demand and refusal in order to establish the Tort. However, more often than not it is this evidence that is led, which proves the conversion. On the facts of this case it is the also the evidence of the *demand and refusal* that proves the Tort. The demand and refusal is the same facts as relied on for Detinue in this action, i.e. the December 2015 pre-action protocol letter and later, the definitive refusal in fact to deliver up the chattel to the Claimant. The evidence of non-delivery is at the very latest, the defence first evinced in this action and the actual filing of the defence and consequent continued factual retention of the chattel/car thereafter. The Tort then was committed at the earliest in December 2015 and in any event at the date of the filing of the defence in 2016. Either way the matter is not statute barred as contended by the Defendant. This answers the **issues: 10 (ii), (iv), and in part, (vii)** above.

Whether the vehicle PBG 9194(PBL 3258) was lawfully seized and retained by the police

28. The short answer to this question is, yes; the PBG 9194 belonging to the Claimant was initially lawfully seized and retained by the Defendant pursuant to investigations.¹⁴ Cpl Joseph was in possession of a report of a stolen vehicle that led him to the Claimant's garage. The seizure would have been reasonable in order to carry out the investigations and scientific analysis. The vehicle was scientifically confirmed as having the chassis number tampered with, contrary to law. The owner of the original stolen vehicle Jason Sooklal sought to identify the Claimant's PBG car by

¹³ *Ibid* Schwarzschild

¹⁴ CV2015-02220 Afiba Mc Donald v AGTT at para 29 Donaldson-Honeywell J citing Ghany v Jones and CV2012-02695 Emraan Ali v AGTT

reference to certain allegedly peculiar characteristics, as his car that had been stolen shortly after he had purchased it. The fuller facts in support of the elements of this issue are variously set out in the judgment below.

29. The evidence led by the Defendant in support of the right to seize the car was substantially led by Cpl Joseph and by the Forensic Scientific Investigator, Ms. Josanne Salina. Her evidence remains substantially unchallenged. She testified to inspecting two vehicles with the same registration PBG 9194. One inspection in Tobago and one at the Arouca Police Station. Photographs of the vehicles and engines referred to in evidence in this matter were tendered into evidence by various witnesses. Ms. Salina related her observation of the various numbers she saw. The court could see it for its self also. Thereafter, the upshot of the whole of the evidence including that of Cpl Joseph is that the vehicle in Tobago had a chassis and an engine number that were untampered and original. Those untampered and original numbers on the PBG 9194 in Tobago were: Chassis # - JN1BBAB14Z0351376 and Engine # - GA15 651002E. On the evidence, the chassis number of both *PBG* vehicles matched. The engine numbers did not. She testified further, that the chassis number of the subject vehicle however, was tampered with but not the engine #. She noted that the original chassis number had been mostly filed off and that other visible number, *JN...1376* endorsed on it. That number that was visible to her was the said JN1BBAB14Z0351376 which appears on both *PBG* vehicles. I accept her narration of the number she saw and I accept her expert evidence of it being a false number that was inserted on the Claimant's vehicle. The Claimant is not suggesting that the chassis number was not filed off. His defence essentially is that he did not file it off, he was not aware that it was filed off and that he was a bona fide purchaser for consideration of the vehicle without notice.

30. The Claimant is a mechanic. He deals with motor cars. The Police came into information that identified his car as a stolen vehicle. A preliminary investigation further excited his suspicion. Cpl Joseph himself was trained as an 'etcher' at the forensic science center in 1996 to examine chassis and engine numbers of motor vehicles. He has examined hundreds of various types of vehicles. I accept this evidence of his experience and training. The vehicle would then have been lawfully seized as part of the investigation. The suspicion was well founded as the official forensic report from Ms. Salina supported the suspicion of the tampering of the chassis number. Further forensic investigation showed that there were two cars with the same registration number and that the

authentic registration was not that of the Claimant's vehicle but that of another *PBG* vehicle in Tobago. I accept this evidence. The further detention after this expert finding pending investigation was justified. This rendered the Claimant's vehicle without a lawful registration.

31. The Claimant's vehicle without a lawful registration under the *MVRT* Act would have been an offence under the Act.
32. The State kept the vehicle for several years up until the filing of this matter in 2016, without any charge it appears. There is no evidence that any further investigation was done either. Cpl Joseph testified that he was transferred to another department after and could not offer any evidence as to the state of the investigation or prosecution of the matter. The defence filed in this matter in 2016 does not suggest that up to that date the Claimant had been either charged or *prosecuted to conviction*¹⁵. Indeed the court has no evidence whether such is the case even up to the date of this judgment.

Whether the Claimant's PBG 9194 vehicle is one and the same as PBL 3258 stolen from Jason Sooklal AND Whether the continued detention of the said vehicle is lawful

33. These two issues can be conveniently dealt with together.
34. The short answer to the first limb of the issue is, no; the Claimant's PBG is not one and the same as the vehicle PBL 3258 stolen from Jason Sooklal.
35. The evidence of the scientific officer, Ms. Salina, is that the *PBG* Engine number was the original number. Further, both Cpl Joseph and Ms. Salina provided testimony to the effect that the 'certified copy' of the registration of Mr. Sooklal's stolen vehicle, PBL 3258 noted the engine and chassis number as different to that of PBG 9194¹⁶.
36. The court notes that based on the testimony of Ms. Salina and indeed even based on the observations made by the court with respect to the photographic evidence tendered in this

¹⁵Wording in s.25(1) Sale of Goods Act Ch. 82:30 concerning the return of stolen goods.

¹⁶ See exhibits 'JS 1' and /or 'RJ4' of Cpl Joseph and Jason Sooklal respectively; See also the photographic exhibits of Josanne Salina.

matter alone, then, for the PBL and the PBG cars to have been one and the same, the two untampered engine numbers would be the same. They are not¹⁷.

37. Cpl Joseph testified that when he was transferred out of the stolen car department there was still more investigations to be done. I accept this statement. He cannot now say whether the investigations had been carried out. He has not said what the nature of the remaining investigation is and how long it would take.

38. In the case ***Ghani v Jones***,¹⁸ more fully set out above, Lord Denning MR opined that in seizing the property of citizens: *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. As soon as the case is over, or it is decided not to go on with it, the article should be returned.* This stated principle is apposite in the case before me now. Further still, the lawfulness of the actions of the Police have to be judged at the time of the seizure¹⁹. The court is of the view that on the evidence, the seizure was lawful at the time.

39. Needless to say, whether the Claimant's car was or was not that of Jason Sooklal, this court is unable to discern why the car was still being kept at the time of the sending of the pre action protocol letter of December 2015 or at the time of filing this action in January 2016. No sufficient reason has been proved by the defence as to why it was reasonably necessary to keep the car for this time; **(i)** to complete their investigations (the nature of the remaining investigations has not been put before the court); **(ii)** preserve it for evidence (photographs and scientific reports having been secured by 2012). Further, there is no evidence before this court at the time of trial or indeed at the time of judgment that the State had decided to go on with the investigation and prosecution of the Claimant. It is reasonable to assume that the State has decided not to go on with the case and in fact has not done so. This is in any event the finding of the court.

40. In ***Webb v Chief Constable of Merseyside Police*** [2000] QB 427, [2000] 1 All ER 209, the police sought to retain sums of money which had been seized on suspicion that they were the proceeds of drug trafficking. It was held that, although it was established on balance of probabilities that

¹⁷ Neither does the other PBD 9194 from Tobago carry either the chassis or engine number of PBL 3258.

¹⁸ [1970] QB 693

¹⁹ *Ibid* [Ghani v Jones](#)

the money was the proceeds of drug trafficking, this was no defence to the plaintiffs' claims as they could rely on their right to possession as against the police. *May LJ* said at p 448: "As to entitlement to possession, there is an instructive analysis in the decision of the Supreme Court of Victoria in *Field v Sullivan* [1923] VLR 70. The essence of an extended passage in the judgment of *Macfarlan J*, at pp 84-87, is that if goods are in the possession of a person, on the face of it he has the right to that possession. His right to possession may be suspended or temporarily divested if the goods are seized by the police under lawful authority. If the police right to retain the goods comes to an end, the right to possession of the person from whom they were seized revives. In the absence of any evidence that anybody else is the true owner, once the police right of retention comes to an end, the person from whom they were compulsorily taken is entitled to possession."

41. The continued detention of the vehicle is not justified after the *demand and refusal*. It was not justified on the grounds that **(i)** it was not reasonably necessary to keep the vehicle for the period that it was so kept and **(ii)** it appears on the forensic scientific evidence and indeed even from the physical/photographic evidence, that the Claimant's PBG 9194 although clearly tampered with, all the same was not one and the same as the stolen vehicle of Mr. Sooklal's PBL 3258. Further still, the court notes that if the Claimant has not been *prosecuted to conviction*, that under section 25(1) of the Sale of Goods Act, he would be entitled to the return of the sized property – the PBG vehicle. Further still, in relation to ownership of the vehicle issues such as whether the State Prosecutor could have negated a claim by the Claimant as a *bona fide purchaser for consideration without notice*, was not argued before this court. Section 23(1) of the Sale of Goods Act²⁰ speaks to this issue. However, is it a factor in determining to whom is the car returned? Certainly the evidence is that the Claimant was in possession of the vehicle at the time of seizure. The State has not since proved that the car was that of Mr. Sooklal, even with all the identification points he had relied upon to identify the vehicle as his, along with the mismatched and implausible time lines between his modifications to the PBL and the date of the theft of the said vehicle. To be clear, there is no dispute or contrary finding by the court, that Mr. Sooklal did purchase a like vehicle, modify it and subsequently had it stolen from him.

²⁰ Chapter 82:30.

42. Indeed the State has not proved the registered identity if you will, of the Claimant's car at all. The scientific evidence, the photographic evidence, the oral testimony and the various certified copies of registration, each, introduce uncertainty as to the identity of the true registered owner. The State did not bring anyone to deny the alleged seller of the PBG to the Claimant had the authority to sell the vehicle²¹.

Have the ingredients of conversion, Detinue, Trespass to Goods and/or distress have been satisfied on the facts AND Is the Claimant is entitled to the return of the said vehicle or alternatively, damages for the continued detention of same AND Has the Claimant incurred damage and loss as a result of the actions of the police.

43. These three (3) issues can be conveniently dealt with together. The Torts of Detinue and Conversion have been made out. That the Claimant's vehicle was seized from the Claimant is not in dispute. After the December 2015 letter demand, the Defendant by not responding to the letter demand, not returning the vehicle as demanded and later by filing a defence in the action and still not returning the vehicle to the Claimant, evinced an intention in so doing to deny the owner's rights or to assert a right inconsistent with them. That intention was realized. The lawfulness of the initial detention is of no moment here. It is the refusal to return the car after the December 2015 demand that crystalized both Torts. On the face of the defence there may appear to be a reasonable and legitimate purpose for the retention of the vehicle. However, on the evidence, there simply at that stage in December 2015, was not. It is the court's finding that by December 2015 (and indeed well before that even) when the unequivocal demand for the car was made, the Defendant had no lawful reason to detain the car.

44. The Claimant has claimed ***trespass to goods***. This tort has not been made out. The initial seizure and detention ("*...disturbance to his possession...*") was lawful for the reasons variously set out above under the different headings/torts.

²¹ *Ibid.* Section 23(1) of the said Sale of Goods Act. See also Ricardo Youk-See et al. v The Attorney General of Trinidad and Tobago CV 20111-04459 at para 121 (and generally)

45. **The claimant has claimed loss and damage**²². He claims that the value of the vehicle at the time of the filing of this action was \$25,000.00. There is no better value to date put in evidence. The figure does not appear implausible in the circumstances²³. In the interim, you may have had deterioration of the vehicle, but also there is the general inflationary increase in the purchase value of motor vehicles in the intervening years to date. The evidence from the Claimant was that at one time when he checked at the police station they could not even find a record of the vehicle being in their possession. However, the law is that one must prove the loss. The court awards the Claimant the nominal sum of \$20,000.00 for the conversion of the vehicle.
46. The Claimant has claimed further special damages. However, the Claimant simply has not provided sufficient specific proof to substantiate the special damage claims for **(i)** loss of use; **(ii)** loss of personal items and **(iii)** loss of earnings. That he lost the use of the vehicle to his detriment however, is evident and the court makes a nominal award of \$5,000.00²⁴. The Claimant seeks an award for the monies he claimed to have expended on the vehicle. To this end, he has exhibited invoices/receipts in support. Regrettably the inconsistencies, anomalies, and inadequacies several of which were admitted to by the Claimant in cross-examination render the proof incredible. This claim fails. The loss of earnings is not proved. The court is unable to discern the sufficient factual basis upon which the court is asked to make this finding.
47. The Claimant claims general damages, aggravated damages and exemplary damages. The Defendant seized the car lawfully. It does have a tampered chassis number. It still has it. In the end, it might well be unregistrable under the MVRT Act. That is a matter for the appropriate authorities however. Certainly at this juncture, the Claimant has proved that he was in possession at the time of seizure and he was a purchaser without notice. There is no evidence to the contrary. Further, there is no person who is proved to have a better right to the vehicle (or monies worth) than the Claimant²⁵. The fact of the non-prosecution and continued detention is accepted by the

²² See CV2011-04459 Ricardo Youk-See et al v AGTT on considerations for damages in Detinue and Conversion and loss of use; Defendant's submissions at para. 11.

²³ See HCA 5897 of 1985 Azam Karim v Attorney General of Trinidad and Tobago; CV2007-01747 Deosaran Palakdhari v Attorney General of Trinidad Tobago and HC T51/2004, HC 3114/2006 Darren Mc Kenna v Grant.

²⁴ See Grant v Mootilal Moonan & anor (1988) 43 WIR 372; the court notes also Civ App 20/2002 Anand Rampersad v Willies Ice-Cream Ltd. There is no definitive evidence as to how the commissioner of MVRT would treat with the tampered vehicle and whether it could possibly be licenced for use at all.

²⁵ On superior title/Claimant's right to possession, see CV2012-02695 Emraan Ali v AGTT at paras. 145-146 Rajkumar J; Civ App No. 267 of 2011, HCA 1274/2009 Nigel Lashley v AGTT; CV2015-02220 Afiba Mc Donald v AGTT at para. 25 per Donaldson-Honeywell J.

court as true. That the police were confronted with a dilemma with respect to ownership and the identity of the 'proper owner' having regard to the tampered chassis number and Mr. Sooklal's identification evidence, is patent. However, it is the duty of the State to resolve this expeditiously. There is no evidence that the Claimant had been *prosecuted to conviction*. If he has been so prosecuted in relation to the theft of the subject PBG car at the date of this Judgment, then the car (or monies worth) cannot be returned to him²⁶.

48. **Aggravated Damages** has been defined by de la Bastide CJ as "*for mental suffering inflicted on the claimant... such matters as the affront to the person's dignity, the humiliation he has suffered, the damage to his reputation and the standing in the eyes of others..*" So far as **Exemplary Damages** are concerned, de la Bastide CJ stated "*the function of exemplary damages is not to compensate but to punish and deter.*"²⁷ Such punishment is aimed to deter "*outrageous behavior*" on the part of the Defendant.²⁸

49. On the facts and the evidence, the claim for Aggravated Damages has been made out: the length of time the vehicle has been seized by the police; their inability to locate said vehicle when questioned by the Claimant; the time which has elapsed without charge or conviction of the Claimant, the knowledge by his customer base of the whole saga and allegation against him, and in the end, indeed, no case brought for the Claimant to answer, all point towards mental anguish, humiliation and damage to reputation.

50. The Claimant has not however, satisfied the court that Exemplary Damages should be awarded in this case. In all of the circumstances, the police were within their right to seize the vehicle. Their continued seizure, while questionable or even deliberate given the issue with the chassis number, does create a dilemma for the police and in the peculiar circumstances of this case, does not rise to "*outrageous behavior*" on the part of the Defendant.

²⁶ This is so notwithstanding the judgment order in this matter.

²⁷ *Emraan Ali* at paras. 173 and 177 citing Civ App No. 159 of 1992 *Bernard v Quashie*

²⁸ *Takitota v AG of the Bahamas*, Privy Council Appeal 71 of 2007

DISPOSITION

51. For the reasons provided above; **IT IS HEREBY ORDERED THAT:**

- (i) Judgment for the Claimant in Detinue and in Conversion;
- (ii) Special Damages for the replacement value of the chattel in the nominal sum of \$20,000.00 and the nominal award of \$5,000.00 for loss of use;
- (iii) General Damages inclusive of Aggravated Damages in the sum of \$30,000.00;
- (iv) Interest on the Special Damages from the date of Judgment to full satisfaction at a rate of 5% per annum;
- (v) Interest of General Damages inclusive of Aggravated Damages from 12th December 2015²⁹ to date of Judgment at the rate of 2.5% per annum;
- (vi) Costs payable to the Claimant by the Defendant to be assessed before a Master on a date to be fixed unless otherwise agreed between the parties.

DAVID C. HARRIS
HIGH COURT JUDGE
JUNE 10TH 2020

²⁹ The date of the demand by the Claimant for return of the vehicle.