

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

CV2016-0951

Between

**ONIKA MODESTE**

Claimant

And

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Defendant

**Before The Honorable Justice David C. Harris**

Appearances:

Mr. Alvin Brazer **for the** Claimant

Ms. Coreen Findley instructed by Ms. Amrita Ramsook **for the** Defendant

### **JUDGMENT**

#### **INTRODUCTION**

1. This claim arises out of a motor vehicle accident and subsequent detention of the Claimant's damaged vehicle PBO 3299, at the St. James Police Station, then located at Cor. Lazare Street and Carlton Avenue. The vehicle was towed to the said location at the instance of the Police and placed on the road outside of the said Police Station. The Claimant claims that her vehicle was subsequently removed from the Police Station by police officers, the servants and/or agents of the State or other persons without lawful authority and under the watch of the police and further, that several parts of the vehicle

were removed permanently before the rest of the car was handed back over to her. The Defendant is sued pursuant to s. 19(2) of the State Liability and Proceedings Act Chap. 8:02.

### **CLAIMANT'S CASE<sup>1</sup>**

2. It is the Claimant's case that the State is liable in damages for the damage and loss to her vehicle and vehicle parts; arising from: **(i)** Trespass (upon her goods) **(ii)** wrongful Distress and/or **(iii)** Conversion and **(iv)** Detinue. Her case is that around 11:44 pm on Tuesday 27<sup>th</sup> January 2015 she was involved in a motor vehicle accident involving motor vehicle PBO 3299 which she was driving at the time. A short while after a police vehicle arrived on the scene together with a wrecker and an ambulance. One of the police officers at the scene told the Claimant that her vehicle was going to be towed to the St. James Police Station and in fact the vehicle was towed to the station. When she was discharged from the hospital the next day, she went to the St. James Police Station as instructed to do the previous night, to make an official police report. She saw her vehicle outside of the police station. It is the Claimant's case that the Police moved the vehicle from the scene of the accident and to the police station.
3. On 12<sup>th</sup> May 2015 when she returned to the station to enquire as to when she might take possession of her vehicle, she observed that the vehicle was no longer parked where it was previously. Upon enquiring at the station, she was told that the vehicle could not be located and that she was to return in a couple days. She returned on 15<sup>th</sup> May 2015 and 19<sup>th</sup> May 2015 but the police officers could not give an explanation for the disappearance of the vehicle. She made reports that her vehicle was stolen to the police station and the Police Professional Standards Bureau on the 19<sup>th</sup> May 2015.
4. Sometime during the period 28<sup>th</sup> January 2015 and Wednesday 19<sup>th</sup> May 2015 the Claimant's motor vehicle was removed from the custody and control of the St. James Police Station and later returned with several parts missing, without the permission of the Claimant. This is the allegation of the Claimant.

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<sup>1</sup> Substantially reproduced and summarized from the Claimant's pleadings and submissions

## **THE DEFENDANT'S CASE<sup>2</sup>**

5. The Defendant disputes the Claimant's case for the most part. The Defendant agrees that there was a vehicular accident at the Maraval Parkway on 27<sup>th</sup> January 2015, involving the Claimant's vehicle PBO 3299 and another vehicle. The Claimant made the report of the accident on 28<sup>th</sup> January 2015 at the St. James Police Station. Further, on 19<sup>th</sup> May 2015 the Claimant made a further and formal report that after the accident in January 2015 her vehicle was towed to the St. James Police Station and parked at the corner of Lazzarre Street and Carlton Avenue; that the front axle of the vehicle was damaged and the vehicle would not drive; that after several visits to the station she discovered that her vehicle was missing.
6. On or around the same day of the report of the missing car, a physical check was made of Lazare Street for the vehicle but it was not located. Further, on or about 20<sup>th</sup> May 2015 one PC Hannibal received a phone call from an informant that he should check on Carlton Avenue for the vehicle. PC Hannibal subsequently went to the said location in the company of WPC Gordon and observed a vehicle parked at the corner of Carlton Avenue and Matura Street fitting the description of the Claimant's vehicle, but bearing license plate number 321. The vehicle was towed to the St. James Police Station.
7. The Defendant contends that the Claimant's vehicle was not moved from the accident scene to the police station by the police. Further, that the vehicle was never in the custody and control of the police and that no servant/agent of the Defendant removed any parts from the said vehicle. Further still, the Defendant states that the Claimant was never told by any police officer that her vehicle was being detained. The Defendant asserts that the said vehicle was never on the compound of the police station but was parked on Lazzarre Street.

## **ISSUES TO BE DETERMINED**

8. The following issues have been identified for the Court's determination:

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<sup>2</sup> Substantially reproduced and summarized from the Defendant's pleadings and submissions.

- (i) *Whether on Tuesday 27<sup>th</sup> January 2015 police officers caused motor vehicle PBO 3299 to be conveyed to the St. James Police Station and left in front of the station parked at the corner of Lazare Street and Carlton Avenue as a result of a motor vehicle accident;*
- (ii) *Whether the police caused the vehicle to remain in the location alleged;*
- (iii) *Whether the relationship of Bailor and Bailee existed between the Claimant and Defendant with regard to the conveyance of motor vehicle PBO 3299 by police officers or at their instruction to the St. James Police;*
- (iv) *Whether the ingredients of either conversion, detinue and/or distress have been satisfied on the facts;*
- (v) *Whether the damage and loss to the Claimant was incurred as a result of the actions or inactions – the default - of the police.*

#### **ASPECTS OF THE LAW**

9. The Claimant’s pleaded claim lies in Detinue, Bailment, Conversion, trespass to goods and Distress.

10. **The claim in Detinue**<sup>3</sup>: 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).

11. The learned author, John G. Flemming in **The Law of Torts** 8<sup>th</sup> edition, at page 58, opines as follows –

*“Merely being in possession of another’s goods without his authority is not a tort. If lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep them adversely or in defiance of his rights. (see: Spackman v Foster (1883) 11 QBD 99)... 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*

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<sup>3</sup> 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.

*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. One does not always act unreasonably in refusing to deliver up property immediately on demand but may inquire first into the rights of the claimant. Moreover, a mere omission to reply to a letter of demand cannot itself be construed as a refusal (see: Nelson v Nelson [1923] QSR 37...."*

12. In other words, if the Claimant's motor vehicle was lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep it adversely or in defiance of the Claimant's rights.

13. **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 conversion. (See **Garnett Simmons & Anor v Clinton Mohan et al** CV2016-03803

14. At para 201 pages 59-60 In **Gerard Mootoo v The Attorney General**,<sup>4</sup> 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*

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<sup>4</sup> HCA Cv 431 of 1997

*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. **Consequently, the fall in value of an item subsequently recovered can be recovered only if the loss is proved. Otherwise, only nominal damages are recoverable.** Loss of use is not generally regarded as a separate head of damage because the mere capacity for profitable use is part of the value of the item, and loss of use would represent pro tanto recovery twice over (see Clerk & Lindsell on Torts 15th Ed. para. 21–104). Where the item is usually let out on hire by a plaintiff and is used by the defendant, the plaintiff is entitled to a reasonable sum for the hire of the chattel (see Clerk & Lindsell at para. 21- 105)....” (Emphasis mine)*

15. The claim in trespass to goods: in **POORAN SOOKDEO and SUPERIOR DOORS LIMITED v WAYNE LUM YOUNG and ELVIS LUM YOUNG**; the Judgment of Rampersad J given on 11<sup>th</sup> November 2013 at para 39, provides a good working definition of the tort:

*“Halsbury’s Laws of England describes trespass to goods as follows<sup>5</sup>: ‘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. Defences available in an action for trespass to goods include claim of right, jus tertii, and that the act complained of was done by the leave and licence of the claimant or in the exercise of a legal right.’”*

16. The claim in *Distress* is simply unfounded and unsupported on the evidence. It is not necessary to set out the law here.

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<sup>5</sup> Halsbury's Laws of England/TORT (VOLUME 97 (2010) 5TH EDITION)/3. TORTS TO SPECIFIC INTERESTS/ (4) WRONGFUL INTERFERENCE WITH GOODS/602.

17. Through the Police Service Standing Order No. 44, the police have certain duties and responsibilities at the scene of an accident.
18. The accident involving the Claimant falls within the definition of a “serious accident” pursuant to 44(28). A “*very serious accident*” is not defined in the standing order. However, where a “very serious accident” occurs, 44(39)(g) and (i) authorize the police to remove the vehicle to the nearest police station and to return the vehicle to the owner as soon as it has been inspected and photographed<sup>6</sup>.
19. Standing Order 44 is supported by s. 108 of the Motor Vehicle and Road Traffic Act Chap. 48:50. See in particular subsection ‘(2)’.
20. Section 108 (1) reads:

*Where a vehicle is parked in contravention of any provisions of this Act or of any Regulations or Orders made thereunder, or is left on any road in such a manner that it is likely to cause any obstruction to persons lawfully using any such road, any member of the Police Service may—*

- (a) require the driver or other person in control or in charge thereof to remove it or cause it to be removed, and any person who fails to comply with any such requirement is liable to a fine of three hundred dollars or to imprisonment for three months;*
- (b) if the driver or other person in control or in charge of such vehicle cannot be found or refuses to remove it when required to do so, remove such vehicle or arrange for it to be removed from the place in which it is parked to a place of safe custody either by towing or driving the vehicle or in such other manner as he may think necessary.*

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<sup>6</sup> See also Police Standing Order 44(36) for other powers.

- (2) *When any member of the Police Service removes or provides for the safe custody of any motor vehicle or arranges for any person to remove it or provide for its removal under subsection (1) then, except upon proof of failure to exercise reasonable care, neither such member of the Police Service nor any such other person shall be liable in any action or demand for any damages arising from the loss or damage to such vehicle in the course of its removal or otherwise.*

109. (1) *Where a motor vehicle is removed to a place of safe custody under section 108, the vehicle shall not be released to the owner unless there is paid to the Commissioner of Police a sum for—*

(a) *The removal of the vehicle; and*

(b) *Each day or part thereof during which the vehicle is kept in custody, as specified in the Sixth Schedule.*

21. Further, the Police Standing Order 26 sets out comprehensive processes for registering, recording and lodging property received by the police in the course of their duties.

22. The Defendant has raised issues with respect to the Claimant's failure to plead certain causes of action and has raised issues with respect to the claimant failing to discharge its evidential burden of proof on certain issues. To this, the following excerpt is apt;

23. The learned authors of Murphy on Evidence (12<sup>th</sup> ed.) state at 4.5 –

*The legal burden of proof as to any fact in issue in a civil case lies upon the party who affirmatively asserts that fact in issue, and to whose claim or defence proof of the fact in issue is essential... If the claimant fails to prove any essential element of his claim, the defendant will be entitled to judgment. The position of the defendant is somewhat different. Since the claimant affirmatively asserts his claim, he bears the burden of proving the claim, and the defendant assumes no legal burden of proof by merely denying the claim. However if the defendant asserts a defence which goes beyond a mere denial*



(sometimes referred to as an „affirmative defence“) the defendant must assume the legal burden of proving such defence. An affirmative defence is most easily recognized by the fact that it raises facts in issue which do not form a part of the claimant’s case...It is a sound rule, therefore, that every party must prove each necessary element of his claim or defence. (emphasis mine)

## **THE EVIDENCE**

24. The Claimant gave evidence on her own behalf. The Claimant filed one further witness statement of Stephen Modeste. He was not called to give evidence. Three police witnesses testified for the State: Sean Phillip; Jibreil Mohammed; and Miguel Hannibal.
25. It was submitted by the Defendant that the Claimant by her evidence has failed to establish any of the causes of action for which she has claimed relief.
26. The Claimant’s testimony is that after the accident and while still on the scene, a police officer told her that her vehicle would be towed to the police station. Consistent with that representation, she testified that whilst still on the scene and from her observation from the ambulance, a wrecker did come on the scene. The following day when discharged from the hospital she visited the station to make an accident report and she saw her vehicle and the other vehicle that was involved in the accident, parked close to the station.
27. Under cross examination the Claimant admitted that nowhere in her evidence does she say that she visited the St. James Police Station between the date she made the report, that is 28th January, 2015 and 12th May, 2015. She further admitted that she did not make any attempts to remove the vehicle from its location, nor to contact the investigating officer, nor was she expressly prevented by any police officer from collecting her vehicle.
28. Although the Claimant pleads that it was the servant/agents of the Defendant that removed her vehicle from the vicinity of the police station and its alleged missing parts, under cross examination she admitted that she did not know who removed the vehicle and/ or its

missing parts. The Claimant has presented no evidence in this case that any servant/ agent of the Defendant was responsible for the removal of the Claimant's vehicle and /or any items that she alleges is missing from same. At the onset the case for trespass to Goods and that of distress, falls away.

29. The Defendant called the three witnesses namely: Police Constable Sean Phillip, Police Corporal Miguel Hannibal and Police Constable Jibrael Mohammed. The Defendant also filed a hearsay notice in this matter on 20<sup>th</sup> July' 2017 indicating the intention to rely on the "general occurrence" hard copy – RTA - dated 28<sup>th</sup> January, 2015 and the general occurrence hardcopy – larceny motor car-19<sup>th</sup> May, 2015 annexed thereto.
30. It was submitted by the defence that the cross examination of these witnesses did not bring forth any evidence to further the Claimant's case. The evidence of Police Constable Sean Phillip is that he was at the scene of the accident where he made certain observations. He attempted to speak to the Claimant on the scene, however, he said, she was not in a position to speak. This evidence supports that of the Claimant that she did not and indeed could not have called for the wrecker to remove her vehicle. The officer went to the hospital and again attempted to speak to the Claimant without success. Counsel for the Claimant cross-examined this officer on whether he did perform certain functions at the scene and whether he organised the towing of the vehicle from the scene, amongst other things. It was submitted by the defence that this entire cross examination was irrelevant to the issues at hand for any dispute of facts between this officers evidence of what occurred on that day and the Claimant does not assist this court in resolving any fact in issue. I do not agree. There is no allegation that this specific officer removed the Claimant's vehicle from where it was parked in the vicinity of the station and/ or that he removed any of the alleged items from the vehicles. The case for the Claimant cannot be limited to: that this specific officer moved the vehicle but rather, that the "Police" did (or some other person with their knowledge perhaps).
31. Police Constable Mohammed's evidence is that he took the Claimant's report on 19<sup>th</sup> May, 2015 and had no further involvement in this matter. His cross did nothing to advance the Defendant's case.

32. Police Corporal Hannibal gave evidence that he interviewed the Claimant in respect of her report of larceny. He made attempts to get CCTV footage and determine the circumstances in which the vehicle was moved. He received information from an anonymous caller as to the location of the Claimant's vehicle and was able to recover same. He was interviewed sometime thereafter by officers of the Professional Standards Bureau. In cross examination counsel for the Claimant suggested that the vehicle was removed by police officers, allegations which the State witness denied.

### **ANALYSIS**

33. In the end, the application of the law/cause of action is dependent upon **(i)** whether the police caused the vehicle to be conveyed from the scene to the Police Station on their own volition and for their own lawful purpose; and **(ii)** whether thereafter, the vehicle remained in their charge/custody. **(iii)** whether the Claimant made an unequivocal demand for the car/chattel and was met with a categorical refusal; if the refusal was qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the plaintiff's rights, then the detention would be neither a conversion nor Detinue. If the answer to all three (3) questions or to "(ii)" or "(iii)" above are in the negative, then all the causes of action against the police fall away.

### **ISSUE 1<sup>7</sup>**

***Whether on Tuesday 27<sup>th</sup> January 2015 police officers caused motor vehicle PBO 3299 to be conveyed to the St. James Police Station and left in front of the station parked at the corner of Lazare Street and Carlton Avenue as a result of a motor vehicle accident.***

***Whether the police caused the vehicle to remain in the location alleged;***

34. Under cross examination<sup>8</sup> PC Phillip testified that he did all the things required of him under section 36 of the Police Standing Orders No. 44 except two things. He did not warn

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<sup>7</sup> Aspects of the Claimant's written submissions were apt and are substantially duplicated here. The first two issues can conveniently be dealt with together.

<sup>8</sup> This is a substantial reproduction of aspects of the written submissions of the Claimant in relation to this cross examination.

the drivers of intended prosecution and he did not mark the position of the vehicles at the scene.

35. When asked whether he caused the vehicles to be removed from the scene to allow the free flow of traffic as required under section 36(d)(iii) of the Police Standing Orders No. 44 he said yes, then later changed his response to 'no', stating that he left the scene with the vehicles in their original position.
36. When asked whether he left the scene of an accident with the disabled vehicles obstructing the free flow of traffic he stated that there was another police vehicle which came on the scene. He was asked why this was not previously mentioned in the record in the Station Diary at paragraph 2 on Wednesday 28th January 2015, he could not say.
37. PC Phillip was asked to read paragraph 14 of his witness statement where he testified that; *"A record of what occurred was made in the station diary at the station."* And to explain the inconsistency. He could not explain why he did not previously mention this new mobile unit/police vehicle.
38. He could not provide the court with any useful detail of the identity of the mobile unit. When further asked to state the registration number of this mobile unit he could not recall. When asked to name the officers who were in this mobile unit he could not recall them either.
39. It was submitted that PC Phillip could not explain why he would have left the scene of an accident with disabled vehicles obstructing the free flow of traffic. The claimant submitted that PC Phillip invented the existence of a new police vehicle on the scene of the accident to suggest that he left the scene with this new police in charge even though he was the first responder and had certain duties to perform. The court finds this conclusion to be extreme. It is sufficient to say that the disjointed account of what took place diminishes the veracity of the Defendant's denial that the police caused the vehicle to be removed from the scene to the police station. It is clear from the standing orders that the police are authorized to have a vehicle removed from the scene to another location of safekeeping including a police station or even a nearby location if that is what

the practice is for safe keeping of vehicles. That this is not the practice, has not been established on the whole of the evidence. The fact of the matter is that the vehicle was moved to the station and was not moved there by the Claimant.

40. The Defence failed to present any evidence from the other first responder to the scene of the said accident, No. 8002 PC Charles, so that there was no opportunity for the court to hear from him. The court notes that there is no evidence of whether the wrecker was a police/state wrecker or private contracted wrecker. If it were a police/state wrecker, then the question as to who was responsible for removing the vehicle from the scene to the station is settled. If contracted, then who paid the wrecker to move the vehicle(s). I think it safe to say that the private contracted wrecker does not work for free and that it is unlikely the Police pay for this service right away as opposed to "on account". It begs the question; who paid the wrecker? The evidence is that the Claimant did not cause her vehicle to be 'wrecked'. There is no evidence that the Claimant paid the wrecker. The evidence of whether the state paid the wrecker is peculiarly within the knowledge of the State.
41. The Defence further failed to present any evidence from No. PC Solomon John, the investigator of the Road Traffic Accident, as he also failed to give a witness statement.
42. The court notes that the police provided no evidence of their conclusion of the traffic accident investigation<sup>9</sup>. They have provided no information as to whether they had completed the photography or inspection of the vehicle as provided for in the standing orders. The police have not provided any information to the court upon which the court can conclude that the police had no initial or no further interest in the vehicle between the 27<sup>th</sup> of January and when the Claimant returned to the station to enquire further on the status of her vehicle and noticed the vehicle missing on the 12<sup>th</sup> of May 2015.
43. The court heard evidence from Constable Jibraeil Mohammed that he was instructed by the Inspector in charge of the St. James Police Station to record a report of larceny of s

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<sup>9</sup> See the Police Standing orders in relation to this.

motor vehicle from the Claimant and forward a copy to the Professional Standards Bureau (“PSB”).

44. The fact of a report to the PSB suggests that the Inspector who was the senior police officer in charge of the St. James Police Station after making checks that the Claimant's motor vehicle was stolen and that having regard to all the circumstances, entertained the prospect that police officers may be persons of interest to them. Hence the reason for the referral to the Professional Standards Bureau, whose purpose is to investigate the conduct of police officers. There is no evidence of the details of the investigation or that the PSB concluded that the vehicle was stolen or otherwise unlawfully dealt with by police officers. Nor is there any evidence that the said bureau concluded that any officer(s) were negligent in dealing with the Claimant's motor vehicle whilst in police custody and control. That negligence was an issue before the bureau, is not canvassed in this trial. The issue of negligence as a cause of action was raised for the first time in this matter in the Claimant's written submissions. It was not pleaded as an independent cause of action and does not form part of the case for the court's consideration.
  
45. PC Linton, referred to as the investigator in the larceny motor vehicle, did not give a witness statement nor did he testify and so the court was denied the opportunity to hear from him of his findings after he concluded his investigation into the temporary disappearance of the Claimant's motor vehicle. Undoubtedly, he would have been able to assist the court with respect to whose charge the vehicle lay at the material time.
  
46. Corporal Hannibal testified that on the night of May 14, 2015 he received a telephone call from a confidential informant that the Claimant's motor would be returned. Corporal Hannibal offered the court no explanation as to how this alleged confidential informant came to know that the Claimant's motor vehicle was missing from its previous location at the corner of Lazare Street and Carlton Avenue, St. James. He further testified that on May 20, 2015 he received another telephone call from the said alleged confidential informant informing that he should check Carlton Avenue, St. James for the return of the Claimant's motor vehicle. Again, Corporal Hannibal offered no explanation as to why this

alleged confidential informant was desirous of informing him as to the return of the Claimant's motor vehicle. The vehicle was subsequently identified in its 'new' location. The court notes that para 9 of the Hannibal witness statement he speaks of when he "*...informed the officer in charge of the vehicle on the date it was recovered*". Implicit in this statement is an acknowledgment of the car being under the control and charge of the police.

47. The evidence is in the court's view, that the Claimant did not cause the vehicle to be conveyed to the police station. Not only was she not in a physical or mental position to do so on the scene of the accident – and this is confirmed by the first officer on the scene - but there does not appear to be any reason why she would need to do so. That the car ended up at the police station or the vicinity of the station is not in dispute. The court finds that the vehicle was caused to be conveyed to the station by the police for their own further and bona fide purposes and not merely to remove it as an obstruction on the highway. Thereafter it remained in their charge wheresoever it was placed by the police or on their instructions, in the vicinity of the station. If the police were of the view that the car had no right to be there parked outside of the station they could have removed it. The police never had the car removed. Further, no one from the police testified as to the post - accident police procedures such that it would show that the taking custody, control and charge of the vehicle in the circumstances of this case as alleged by the Claimant, would not be consistent with police procedure and/or the standing orders.

48. The unrefuted evidence is that the Claimant returned several times to the station and at no time was she told that the vehicle was not under the control and custody of the police then or before. Indeed, when the vehicle was noticed missing, the nature of the investigations that followed from the police internal Bureau suggests, in part, that the Police acknowledged that it went missing under their watch. The evidence is that the Claimant's insurance company did a damage assessment of her vehicle at the location in the vicinity of the police station sometime in or around April of 2015. The claimant received a report of the assessment from the insurance company. There was no reason why she would have left her vehicle thereafter unless she was of the view that it was in the charge

of the Police. It is a notorious fact that accident vehicles accumulate outside of police stations nationwide. The court is satisfied that the Claimant was of the view – a reasonable view which has not been discharged by the whole of the evidence - that her vehicle was in the Police custody and control and that the claimant could not retake possession of it on her own volition.

49. Other than the bald assertions from the Defendant that they did not cause the Claimant's vehicle to be conveyed to the police station, there is no evidence to contradict the Claimant's evidence to the contrary. Given the circumstances as set out by the Claimant, her conclusion that the vehicle was taken to the station by the police on their own volition and for their purposes - and thereafter remained in their charge - is a reasonable one. The police cannot now come to say that no one told her that she could not remove it. It is akin to a scenario where after a motor vehicle accident a person is arrested and detained in an unlocked police cell and nine days after, for the police to say that the detainee could have left for no one told him that he could not have walked out of the cell.

## **ISSUE 2**

***Whether the relationship of Bailor and Bailee existed between the Claimant and Defendant with regard to the conveyance of motor vehicle PBO 3299 by police officers or at their instruction to the St. James Police Station.***

50. The defence case is that not only did they not cause the Claimant's car to be conveyed to the police station, but that if it ended up there, it was not under their custody and control. They contend that not only did the police never tell the Claimant that the vehicle was in their charge, but also they never told her that she could not remove the vehicle from where it was in front of the police station. The Claimant raised the issue of "bailment", in those words, in its submissions. The Defendant contends that this is a cause of action that was not pleaded and that ought properly to have been raised in the pleadings thereby affording the Defendant an opportunity to defend against it. It is true that the word "bailment" has not been expressly pleaded by the use of the word "Bailment", but certainly the facts upon which would arguably support such a cause of action is patently set out in



the pleadings and evidence. These facts include; the movement of the car from the accident scene; the control and custody of the car; the demand for the car and the failure to deliver the car. These are facts that have dual relevance in that they are the same facts relied upon to support all the causes of action pleaded in the case for the Claimant and would in any event have been needed to have been addressed by the Defendant. Indeed, the said facts were addressed by the Defendant in its pleadings, its evidence and its submissions. By virtue of all of this - "bailment" has been raised in the pleaded case.

51. Much turns on this point. The Claimant has to prove that at the material time(s) her vehicle was in the charge of the Defendant, before any of the causes of action pleaded can apply. One of the ways of doing so is by establishing the ingredients of bailment. The difficulty in this case is that the Claimant alleges that the Defendant had the vehicle in their charge for carrying out their official duties to the public. Therefore, the argument would run; it was not a gratuitous act on the part of the police or a voluntary concession by the Claimant, but a unilateral and deliberate act on the part of the police, pursuant to law. If this is so, then it appears that a demand by the Claimant for her vehicle would not necessarily have been a lawful demand and not one she could properly make if the police had the right to take charge of and detain her vehicle. This would impact on the causes of action she has pleaded, all of which require her to possess a right to demand her property. But, the police on the other hand, contend that they took no custody and control of the vehicle whatsoever. In other words, the Claimant was entitled to her property as of right, but not from the police, for the police had no custody or control over it. That demand would have to have been made of someone else who had such charge/custody and control (lawful or unlawful) or her vehicle. Either way all the ingredients of bailment are not met.

52. **A bailment arises** whenever one person (the bailee) is voluntarily in possession of goods belonging to another person (the bailor). This legal relationship can exist independently of any contract and is created by the voluntary taking into custody of goods which are the property of another. The main element of bailment is the imposition of an obligation, as the taking of possession in these circumstances involves an assumption of

responsibility for the safe keeping of the goods (Halsbury's Laws of England, Vol. 3(1), 4<sup>th</sup> Edition, 2005 (re-issue) para. 1).

53. If the court believes the Claimant's version of events; including that her vehicle was conveyed to the St. James Police Station at the instruction of police officers at the scene of the accident as is customary in cases where persons are injured and the vehicles may need to be inspected by a Motor Vehicle Inspector from the Licensing Office and so on; and also in accordance with section 36(d)(iii) of the Police Standing Orders No. 44, or for any other bona fide reason; then it must be concluded that the voluntariness/gratuitousness required in a bailment was absent<sup>10</sup>. There was no evidence for instance, that the Claimant was given the option and then exercised that option to permit the police to take her vehicle. The police had the authority in the appropriate circumstances to move the vehicle to the side of the road if it created an obstruction at the accident scene. They also had the authority to remove the vehicle to another location entirely for safe keeping and/or investigations. The Claimant's motor vehicle was conveyed to the St. James Police Station. The police officers there took custody and control of it on what must be the understanding that the said vehicle would be returned to the Claimant at a later date after the conclusion of the investigation into the cause of the accident or at any other time permitted in law, at the instance of the police. Alternatively, if the court were to accept the defendant's version of the events – that the vehicle was never in their custody and control – then clearly the requirements of a bailment set out above would not have been satisfied. There was no bailment.

### **ISSUE 3**

***Whether the Defendant acted negligently in allowing a third party to take and carry away the said vehicle from its custody.***

54. Negligence as a cause of action was simply not pleaded. There is an element of negligence in the ingredients of a bailment. So for example, the standard of care owed by a bailee to

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<sup>10</sup> Gonzales (Fidel) v Attorney General (1999) 57 WIR 393.

a bailor is to use such care as a prudent and vigilant person would exercise in the custody of his property of like character and in like circumstances: **Christopher Dindial v David Rose**<sup>11</sup> In this case, Stollmeyer J. (as he then was) opined:

*“A gratuitous bailee must take reasonable care of the item ... The onus is on the bailee to demonstrate that he was not negligent while the item was in his care, and among the factors to consider in deciding this are the fact that the bailment was gratuitous. Also to be considered are the nature and value of the item... ”*

55. This court has found above that there was no relationship that gave rise to a bailment in this case. The question of negligence whether as an ingredient of a Bailment, or indeed, as an independent tort does not arise for the court’s consideration.

56. The damages claimed for the **torts of conversion and that of detinue** rely on substantially (but not entirely) the same facts. There is an important distinction between the two that bears repeating:

*“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. It is important to keep this distinction clear, for confusion sometimes arises from the historical derivation of the action of conversion from detinue sur bailment and detinue sur trover; of which one result is that the same facts may constitute both detinue and conversion. Demand for delivery up of the chattel was an essential requirement of an action in detinue and detinue lay only when at the time of the demand for delivery up of the chattel made by the person entitled*

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<sup>11</sup> HCA Cv 212 of 2001

*to possession the defendant was either in actual possession of it or was estopped from denying that he was still in possession<sup>12</sup>”.*

57. There is no dispute that at the time the claimant made a demand for the car, the police claimed then and still claim that the car was not in their custody and control. The relevance of this to this cause of action in detinue, is that the Claimant was then (if not before as alleged by the Defendant) entitled to the immediate right to the car. The police thereafter failed to deliver the car. The evidence is that the police indicated not only was she entitled to retrieve her vehicle but had always been so entitled. The reality was that they were unable to deliver it to her because it was apparently stolen or otherwise wrongfully interfered with by another. There is no evidence from the Claimant that prior to her demand in May, 2015, she had made such a demand, unsuccessfully<sup>13</sup>.
58. On the action in detinue, the police had no *lawful reason for failing or refusing* to deliver the car to the Claimant upon demand. They offered none then, neither do they do so now. The Defendant’s case remains that the car was not in their custody and control. The court has found to the contrary. In any event, it is immaterial whether a defendant initially 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 an unequivocal failure to deliver an item when demanded. What presents itself now as the tort is the unequivocal *failure* to deliver the chattel car when demanded; in that although not expressly asserting any rights inconsistent with the Claimant’s rights, the vehicle, having unbeknownst to the police, disappeared, they did not have it to deliver to the claimant and did not deliver it upon the demand. Subsequently, upon delivery, nine (9) days later, the value of the chattel had been discernibly diminished due to the loss of the various parts as set out in the evidence. To be clear, this diminution is separate and apart from the damage created by the initial vehicular accident.

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<sup>12</sup> General and Finance Facilities Ltd. v Cooks Cars (Romford) Ltd 1963 1WLR 644(648).

<sup>13</sup> Alicia Hosiery v Brown Shipley and Co. Ltd. [1969] 2 All E.R. 504 at 510).

59. So is this factual situation sufficient to provide the State with a defence? When the police acting lawfully take a person's chattel into their custody and control, they are required to take reasonable care of it<sup>14</sup>. The reason provided for the failure to deliver to the Claimant is merely an explanation or excuse for the failure and does not in the peculiar circumstances of this case, rise to the defence of being an *equivocal* failure or refusal. The police ought to have been able to deliver and would have been able to do so had it taken the necessary diligent and reasonable care of the citizens vehicle in their care and control during the investigations of the motor vehicle accident and whilst they had it. It might well be the system for the recording of vehicles taken in and vehicles taken out, is flawed or improperly managed so that a vehicle could well remain in the system unaccounted for, indefinitely. But, that is a matter for the police administration and its standing orders.

60. **Conversion** on the other hand, although closely allied to detinue, does have some distinguishing features. First of all, it is a personal action for damages. Detinue is akin to an action *in rem*. To constitute conversion, there must be a positive wrongful dealing with the goods in a manner inconsistent with the owner's rights. 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. What is the positive act required to satisfy the ingredients of this tort of conversion? There is no sufficient evidence of a positive act on the part of the State to remove the vehicle from the location or to remove parts from the vehicle or to assert any dominion over the vehicle inconsistent with that of the Claimant. When the demand for the vehicle was made, *refusal or failure* to deliver in relation to conversion, would merely have been evidence of the earlier act of conversion i.e. the removal from the original location by persons unknown; and the removal of the body parts, again, by persons unknown. Conversion is a single act of dealing with the Claimant's property inconsistent with the rights of the Claimant. In this case we do not know when that single act(s) took place, save that it was before the demand in the month of May 2015, nor do we know by

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<sup>14</sup> Gonzales(Fidel) v Attorney General (1999) 57WIR 393; See Dillon Haynes v AGTT CV2008-01274 per Davindra Rampersad J; Jaroo v Attorney General of Trinidad and Tobago 2002 UKPC 5; see also the Police Standing Orders 44 s 14, 28, 39 '(g)' and '(i)'; see further, section 108(1),(2) of The Motor Vehicle and Road Traffic Act Chap.48:50.

whom the act(s) were carried out by. For these reasons it appears to this court that the action against the State in *conversion* cannot be sustained.

61. **Trespass to goods** as against the State is not made out on the evidence either. *'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'*. There is no evidence that the vehicle was taken into police custody and control from the accident scene unlawfully. In fact, the evidence accepted by the court is that the police acted in accordance with the law and the further guidelines of the police standing orders. Thereafter however, it appears on the evidence, that the vehicle and certain parts of it were removed from the custody and control of the police unlawfully by persons unknown. Whosoever that removed it not having any known or in any event, posited defence such as: a *claim of right, jus tertii, that or that the act complained of was done by the leave and licence of the claimant [or] in the exercise of a legal right*. None was pleaded. Indeed the perpetrator of the unlawful act(s) was not a party to this action, for the court finds that there is simply insufficient evidence to prove that it was the State that carried out or otherwise was responsible for the unlawful act(s) as required by the ingredients of this Tort.

62. Further, notwithstanding the sequence of events leading up to the final location of the vehicle and the evidence of the police advising the Claimant to make a formal station report of the apparent theft of her vehicle and further still, to report the incident to the Police Professional Standards Bureau ('PSB'), the evidence does not amount to proof of the trespass to goods or a *theft* being perpetrated by the police, as implied by the pleaded case for the claimant.

63. **Unconstitutionality:** The Claimant also seeks the relief of: *A declaration that the 'trespass upon the property of the Claimant was unconstitutional and illegal.'* This court does not find that there was a trespass to the property of the Claimant by the Defendant in the first place. In any event, the specific issue arising under the constitution has not been adequately fleshed out and it appears on the face of the pleadings and relief sought, that

there are adequate *parallel remedies* available to the Claimant, even as pleaded. The court notes further, that the claimant has not sought exemplary damages – of the **Rookes v Barnard** type.

#### **RELIEF/DAMAGES**

64. The fundamental basis of determining the measure of damages for a tort is: *restitutio in integrum*; It requires that the Claimant be placed in the position she would have been in had the tort not been committed.
65. Specifically for the tort of detinue; an action may result in a judgment in one of three (3) different forms: **(i)** for the value of the chattel as assessed and damages for its detention; or **(ii)** for return of the chattel or recovery of its value as assessed and damages for its detention; or **(iii)** for return of the chattel and damages for its detention<sup>15</sup>.
66. In this case, the chattel – the car – of the Claimant was returned to her. It was returned to her on the 21<sup>st</sup> may 2015. The Claimant’s first demand for it, was on the 12<sup>th</sup> of May 2015. The unlawful detention of the vehicle, from demand to delivery, was some nine (9) days.
67. The Claimant testified (and pleaded) that the vehicle received was damaged other than that which it sustained in the motor vehicle accident, in so far as it was missing the several parts set out in her particulars of special damage. The evidence is that the special damages amount to \$18,150.00. The court accepts on the balance of probabilities this evidence as the value of the chattel parts not returned. Then, the court determines damages for the detention of the vehicle, devoid of the specific chattel parts as it was, for a period of 9 days. The Claimant has made no claim that the detention between the accident and the demand in May 2015 was unlawful. The sustainable claim here is for the unlawful detention from the demand to the delivery set out above – 9 days.

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<sup>15</sup> See Diplock L.J. in General and Finance Facilities Ltd. v. Cooks Cars (Romford) Ltd 1963 1 WLR 644.

68. The Claimant has not sought relief for “loss of use” and has in any event not proved such loss. Neither has the Claimant testified to any other consequential loss resulting from the detention.

## **DISPOSAL**

69. The Claimant has not satisfied the requirements of bailment; trespass to goods, or conversion. Further, the Claimant has not pleaded negligence. The Claimant has satisfied the requirements in detinue for the reasons set out above. Much of the evidence the Defendant claims is absent in the case for the claimant, is evidence peculiarly within the knowledge of the said defendant. The Defendant failed to provide all the evidence that it could have done for the benefit of the court.

70. The Claimant is entitled to the value of the chattel – car parts – still not returned to the Claimant; and she is also entitled to damages for the nine (9) day detention of the whole of the vehicle. The actual proof of the consequential damage/loss for the detention is not adequately set out in the pleadings or the evidence regrettably, hence a nominal damage award is appropriate, in the sum of \$25,000.00.

71. For the reasons provided above, **IT IS HEREBY ORDERED:**

- i. Judgment for the Claimant;
- ii. Nominal Damages payable to the Claimant in the sum of \$25,000.00;
- iii. Special Damages in the sum of \$18,150.00 for the chattel still detained;
- iv. Statutory interest at 5% p.a on the Damages from the date of this Judgment until full satisfaction;
- v. Interest at the rate of 2.5% p.a. on the Nominal Damages of \$25,000.00, from the date of filing to the date of this Judgment;



- vi. Costs on the Prescribed Costs Scale based on a claim for \$50,000.00 or as otherwise agreed between the parties.

**DAVID C HARRIS**  
**HIGH COURT JUDGE**  
**June 18, 2019**