REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008-03812

BETWEEN

PEER NASSEIR

Claimant

AND

VANISSA NASSEIR
ANDREW NASSEIR
THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

Defendants

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Before: Master Alexander

Appearances:
For the claimant: **Mr Ravi Heffes-Doon instructed by Asa Archie**
For the first and second defendants: **Ms Anne Marie Phillips**
For the third defendant: **Mr Sanjeev Lalla instructed by Ms Ollivierre**

REASONS

Background

1. Peer Nasseir, the claimant in this matter and a mechanic by trade (hereinafter "Peer"), was a self-employed operator and owner of a garage located at LP 51 El Socorro Extension Road, El Socorro ("the garage"). In the garage, he kept the tools of his trade and certain vehicular parts (hereinafter together called "the said items"). On or about 27th April, 2008 when he was abroad providing mechanical services for a company incorporated in the US Virgin Islands, the defendants and/or their servants and agents entered into the garage and wrongfully broke into a vault and truck, housed in the garage, and carried away the said items. Peer claims that since that date they have wrongfully retained possession of the said items and continue so to do, preventing him from carrying on business as a mechanic and causing him to suffer losses. He filed his claim on 3rd October, 2008 seeking compensation for the damages and losses he has suffered and annexing a comprehensive list of the said items marked "A" to his statement of case.

2. On 27th January, 2009 Smith J (as he then was) ordered as follows:

Subject to the filing of an affidavit of service by the claimant that –

(i) The first and second defendants do return to the claimant the said items referred to and marked "A" annexed to the statement of case filed on the 30th (sic) October, 2008 or the value thereof including interest on the value from the 27th day of April, 2008.

(ii) The first and second defendants do pay to the claimant damages for the detention of the said items including aggravated and/or exemplary damages.

(iii) The first and second defendants do pay to the claimant damages for the conversion of the said items including aggravated and/or exemplary damages.

(iv) The first and second defendants do pay to the claimant damages for loss of use and enjoyment of the said items.

(v) The first and second defendants do pay to the claimant damages for loss of income and profits.

(vi) The first and second defendants do pay to the claimant damages for trespass into the claimant's garage and on his said tools of trade and the said motor vehicle parts.

(vii) The hearing for the assessment adjourned to a date to be fixed on filing of a notice by the claimant.

3. On 23rd September, 2010 Rampersad J entered judgment for the claimant against the third defendant with damages to be assessed and costs to be computed at a later date. By order dated 19th April, 2011 Rampersad J adjourned the assessment before a master. This court was seized subsequently with the assessment of damages in this matter. At the hearing of the assessment, permission was granted by consent for the claimant to withdraw the claim against the first and second defendants and the matter proceeded against the third defendant only. At the hearing, three witnesses were called to give viva voce evidence: Peer Nasseir; Joel Paul and Nazir Hosein.

General Damages

4. The main aim of an award of damages is to compensate a claimant for the harm sustained. The secondary object is to punish the defendant for his conduct of inflicting harm. The Privy Council has recommended that when determining the primary award to compensate a claimant, a distinction must be drawn between compensatory damages (including aggravated damages) and exemplary damages and the elements attributable to these awards are to be

identified.[1] In making the compensatory award, the court should take into account the aggravating features and compensate for any physical and mental suffering and damage endured. See ***Siewnarine Buchoon et al* v *The AG.***[2]

(a) Trespass

5. It is not in dispute that there was trespass onto Peer's property including his garage, his tools of trade and motor vehicle parts. He is entitled, therefore, to damages for this trespass. Counsel for Peer recommended that nominal damages be awarded for this trespass. He submitted that as there was no actual damage or loss in value occasioned to the land or items as a consequence of the trespass committed and facilitated by the third defendant, nominal damages would suffice. Reliance was placed on ***Manzoor Ali* v *Tobago House of Assembly***.[3] It is duly noted that Peer has suffered a wrong in trespass. As a rule, he is entitled to nominal damages for trespass to land even if no loss or damage is caused.[4] The submissions of Peer's counsel were accepted and nominal damages for trespass are awarded in the sum of **$5,000.00**.

(b) Conversion

6. The essence of the tort of conversion is the unauthorized dealing with another's property so as to question or deny the true owner's title to it. Thus, *"[A]nyone who, without authority, receives or takes possession of another's goods with the intention of asserting some right or dominion over them, or deals with them in a manner inconsistent with the right of the true owner is prima facie guilty of conversion; provided there is an intention on the part of the person so dealing with them to negative the right of the true owner or to assert a right inconsistent therewith*." See **Clerk & Lindsell on Torts 19th Edition page 1008, paragraph 17-09**. Conversion refers to a single wrongful act and the cause of action accrues at the date of the conversion. A demand and refusal is sufficient evidence of conversion. See ***Carlton Rattansingh* v *The AG and anor***[5] per Warner JA.

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1 *Tamara Merson* v *The Attorney General of the Bahamas* PC Appeal 61 of 2003

2 *Siewnarine Buchoon et al* v *The AG* CV2006-01846

3 *Manzoor Ali* v *Tobago House of Assembly* CA No 43 of 2008

4 Halsbury's Laws of England vol 5 4th ed, para 1170 at page 460 where it was stated that a trespasser may have to pay damages not only for the injury caused by the trespass to the land, or to the plaintiff's interest in the land, but also for any consequential injury to the plaintiff from the trespass complained of, notwithstanding that the further injury might have formed the subject matter of a separate action.

5 *Carlton Rattansingh* v *The AG and Kanahar Doopant the Comptroller of Customs and Excise*, CA No 105 of 2000

7. Conversion is 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. Recoverable consequential damages may include aggravated and exemplary damages and damages for psychiatric injury, inconvenience or loss of enjoyment, in addition to consequential monetary loss. The time at which value is taken is generally the time most appropriate to achieve justice between the parties; this may be at the time of judgment; value at date of conversion or value at some intermediate date. 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. There appears, however, to be a broad degree of flexibility in assessing the damages payable to a claimant. It is stated in **Halsbury's Laws of England** vol 45 (2) 4th ed. para. 618-622 thus, "*[W]here damages in conversion fall to be awarded according to the value of the goods converted, the time by reference to which that value is to be assessed is that time which is most appropriate to do justice between the parties and to compensate the claimant for the loss suffered…. Subject to normal conditions, aggravated damages may in principle be awarded in conversion. Persons wrongfully deprived of the possession of goods (whether by conversion or some other tort) may also be entitled to damages for their resultant physical inconvenience and mental suffering. Exemplary or punitive damages may be available to a claimant for conversion provided that the conditions necessary to such an award are fulfilled."* (discussed below)

Tools

8. Peer gave evidence that like his father before him, he carried on the business of a mechanic and proprietor of a garage. Over the course of his career, he acquired certain tools for the use in his business. He installed a vault in his garage for the purpose of protecting his tools, each shelf being earmarked for a particular category of tools. He also kept tools locked in the cabinet of a truck on the premises. In his witness statement, he described his tools as: "a valuable collection of tools"; "premium brand tools"; and "high quality performance tools". It is his evidence that he had purchased the higher-end or premium brands because they were more durable; less susceptible to wear and breakage; designed in a more ergonomic fashion to be less cumbersome to use; fit more easily in one's hands and were easier to manoeuvre in small tight spaces. At some point, he left the jurisdiction to pursue employment in the US Virgin Islands, leaving his garage operational and under the care of one of his employees, returning periodically to inspect his stock of tools. Following the trespass, he inspected and

prepared a detailed schedule of all the tools he could recall that were stored on each shelf in the vault and in the truck. The list included the brand and probable price for a replacement of that tool; as taken from a catalogue of a brand called 'Mac-Tools'. He gave evidence that this 'Mac-Tools' brand is a cheaper, less prestigious brand of tools from China, than what he had owned. However, given the difficulties in accessing the catalogues for the more premium brands, he has had to rely on this brand. It is his evidence that it was not a complete or exhaustive list as it was based on his recollection. He states that subsequent to the preparation and filing of the list based on recall, he discovered numerous miscellaneous items and tools that were in the garage but had been left out of the initial inventory because they were not used as frequently.

9. His evidence has been corroborated by Joel Paul ("Paul"), who had taken over running Peer's business in his absence. Paul's evidence is that he was familiar with the range of tools in the garage as he used them for the purpose of repairs and maintenance of vehicles. He states that on 28th April, 2008 when he came to work he noticed the tools in the garage were missing. He states further that without the tools, he could not perform mechanical repair services so had no choice but to leave and seek alternative employment. Prior to that he would earn from running the garage $6,000.00 per month for auto-mechanic repairs, after paying Peer $2,500.00 for use of the garage and tools. The missing tools brought the agreement to an end.

10. The State has asked this court to view the evidence as self-serving and uncorroborated and on this basis reject it outright. To my mind, it is reasonably expected from a claimant who is running a 'commercial enterprise' to keep some form of records, particularly if he proposes to leave the jurisdiction for an extended period and leave his long standing clients and business in the hands of an employee. This recording keeping would be even more needed where the tools of trade are "premium brands" or a "valuable collection". In the instant case, there is a clear failure by Peer to do proper record keeping. There is no documentary evidence in the form of receipts, bank statements to reflect earnings of the business, credit card statements, purchase invoices, a proper inventory, business accounts or income tax returns. There is no business records reflecting the garage's earnings prior to his departure to the US Virgin Island or after he handed over the operations to Paul. There is also no

evidence of the monthly payment to Peer by Paul of the $2,500.00 for use of the tools and equipment. Peer testified that these monies were collected on his behalf by his sister, Neesha Boodram, if he were out of the jurisdiction or by him directly from Paul. It is his evidence further that he trusted Paul so never issued receipts and could not have foreseen the events of 27th April, 2008. To my mind, Peer could have furnished documentary evidence of this claim such as bank statements showing the monthly deposits of these sums by his sister or at the very least call his sister to corroborate this evidence.

11. To justify damages in the absence of documentary evidence, counsel for Peer sought to rely on the principles laid down in ***Grant* v *Motilal Moonan***[6]. In ***Grant***, a plaintiff's household furniture and other articles were damaged beyond repair and, at the assessment; a list of damaged articles with prices (but no receipts) was produced. The Court of Appeal held that this evidence was sufficient proof of the quantum of damages. This case, however, can be distinguished from the present one in that it involved household effects and not the tools of trade of a small business. To this end, I bear in mind the caution sounded by Archie JA in ***Anand Rampersad* v *Willies Ice-Cream Limited***[7] that for commercial enterprises it would be reasonable to expect that some evidence of the value of the larger items could be found in books and records but a lesser degree of strictness would apply in respect of smaller items that had to be replaced.

12. ***Anand Rampersad*** can also be distinguished from the present case. In the instant case at bar, Peer was a sole trader; a skilled mechanic operating a garage, fixing vehicles. This is a self-employed auto-mechanic running a small business (not a big commercial enterprise). His tools according to his evidence were "premium brands" but there was no evidence that these were large items. Was it unreasonable, therefore, given that the tools were accumulated over a period of years, for him to be unable to produce a detailed inventory of items purchased over many years, together with receipts? To my mind and particularly in the local context where many such 'rough' garage structures are set up from which self-employed mechanics ply their trade with the assistance of a worker or two, it is not unknown for such business structures to be very informal where there is no rigid adherence, if any, to proper

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6 *Grant* v *Motilal Moonan* (1988) 42 WIR 372

7 *Rampersad* v *Willies Ice-Cream Limited* CA Civ 20 of 2002

accounting/inventory system. On the other hand, I accept that it is only prudent that if one is leaving a business in the hands of another, then some inventory of stocks would have been kept, so that a proper account would be had on his return to the jurisdiction. This would be even more so where it is a commercial enterprise but, in a case where it is a garage, which is being left in the hands of a trusted employee and where frequent return trips are contemplated and made, during which tools are checked, a claimant may not necessarily be so methodical so as to keep a detailed inventory of items in his garage. I have looked at the evidence in this case and concluded that it is not inconceivable that the average Trinidadian or Tobagonian auto-mechanic, running a small garage, would have failed to keep a detailed inventory of his tools purchased over the years.

13. I, therefore, accept the evidence of Paul, which I deemed as compelling reasons as to why he is able definitively to remember that the items in Peer's inventory were in fact in the garage, as in mechanical work tools are very job specific. Peer's evidence of his tools having been irreversibly converted and as such is not recoverable was accepted also. In such a case, the general rule is that the measure of damages and the value of the property would arise from the date of the conversion, which is 27th April, 2008. This has been re-stated and re-affirmed in ***BBMB Finance (Hong Kong) Ltd* v *Eda Holdings Ltd***[8]. It is also accepted that the prices given in the inventory were conservative, reasonable and reliable, having regard to his periodic inspections and that mechanical tools are job specific.

The value of the tools

14. He is entitled to the value of his tools as at the date of conversion. His evidence is that he has provided a conservative value/estimate of items lost and that these prices related to second hand tools. The law is that in the absence of any evidence of a second hand market Peer would have been entitled to the cost of new items that were converted. Further, there is no onus on Peer to show that there is no second hand market. In the instant case, Peer has voluntarily relied on the second hand value of the tools that were converted. There is no issue of Peer being challenged with being truthful and given that the measure of damages for conversion is the value at the date of the conversion, Peer's estimate is accepted as

8 *BBMB Finance (Hong Kong) Ltd* v *Eda Holdings Ltd* [1991] 2 AER 129

conservative and reasonable in the circumstances. The sum of **$156,328.94** is awarded as damages for conversion.

Locks and travelling

15. Peer has given evidence that the locks he had on the vault and truck were both broken and he is entitled to their replacement cost of $50.00 and $499.00 respectively. He has failed to provide supporting documentation such as receipts for the purchase of these locks and has given no explanation for this failure. He also claims travelling on 5 occasions from the US Virgin Islands to attend court proceedings in the approximate sum of between US$550.00 to $750.00. No receipts were provided and the court dates attended were also not detailed. In his submissions, counsel asked for TT$3,872.34 to defray this cost. To my mind, these claims could have been substantiated by documentary evidence and, in the absence of an explanation as to why such information was not made available; I am constrained to disallow them.

Loss of income and profits from garage

16. The evidence of both Peer and Paul points to the existence of an oral contractual arrangement between them to pay Peer $2,500.00 monthly for use of the garage and tools. The conversion of the tools destroyed the fundamental basis of their business relationship bringing the contract to an end. He returned to Trinidad to re-open his garage in September, 2010 and in evidence is the fact that it took him some 3 to 4 months to get it up and running. Peer claims TT$2,500.00 per month from May, 2008 to December, 2010/January, 2011 in the global sum of $77,500.00. His evidence is that he had opted to remain in the Virgin Island and freelance to make some money before returning to re-open his business locally. He had done so although he had lost his job there and because, back home his tools were stolen and his longtime employee/associate had moved on. To my mind, this claim is unreasonable and exorbitant and his explanation as to why it took him more than 2 ½ years to mitigate his losses did not find favour with this court. As the aim of the law of damages for tortious conduct is to put Peer in as good a position as he would have been in if no misappropriation had occurred, I am prepared to award the sum of TT$2,500.00 per month for 6 months in the global sum of **$15,000.00,** which I consider as reasonable in the circumstances of this case.

Loss of use of profit earning chattel-car rented to Nazir Hosein

17. Peer is entitled, apart from the general value of the goods, to recoup the consequential losses, which are not too remote. Where the goods were used to generate income, this loss of profit may be recoverable see ***Bodley* v *Reynolds***[9]. Entitlement to consequential damage for conversion in respect of loss of profit is subject to proof of actual loss and the obligation to mitigate the loss. To be noted is that, "where no specific loss of profit can be shown, he may be awarded damages for general loss of use, or in default of either of the preceding, an award of interest may be given." See **McGregor on Damages 17th edition**. Peer has claimed loss of use/profits arising from the deprivation of his vehicle and provided proof of the estimated amount of loss. Generally, Peer would be entitled to an award of loss of use even if he would not have used the vehicle during the period which he has been deprived of its use, see ***Medina* v *Comet***[10]. To be noted is the dicta of Stollmeyer J (as he then was) in ***Gerard Mootoo* (supra)** that *"[L]oss 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)."*

18. Peer gave evidence, as corroborated by Nazir Hosein (Nazir"), that there was an agreement between them whereby Nazir would pay Peer $700.00 per week for the use of his motor vehicle PAW 1172 (hereinafter "the said car"). The agreement was entered sometime in 2005. Nazir's evidence is that when the said car started giving problem in March, 2008 he took it to the garage for Paul to fix. The cylinder head and related parts for the vehicle were removed to be refurbished and placed in the truck for storage to then be reassembled by Paul. Before this could be done, the incident on 27th April, 2008 took place. As such the car remained unfixed and non-operational and Peer was left without the benefit of receiving $700.00 per week for the use of the said car. Counsel for Peer submits as reasonable a period of 27 months (May, 2008 to September, 2010) compensation amounting to $75,000.00, as Peer would not have been in the jurisdiction until he returned to live in September, 2010. This is rejected as wholly unreasonable and against the weight of evidence. Of note is that

9 *Bodley* v *Reynolds* [1846] 8 QB 779

10 *Medina* v *Comet* [1900-3] AER 126

Peer did not produce evidence of title to this Mazda 626 PAW 1172, such as his certificate of ownership or even vehicle insurance. I note that this vehicle was in the garage for an entire month, without being repaired, before the incident giving rise to this claim occurred. I accept that it was the conduct of the defendants that placed Peer in the position in which he found himself. Nevertheless, it is my view that he was responsible for acting speedily to mitigate his losses and, given that he was a mechanic, could have taken reasonable steps to minimize his losses with respect to the use of/repair of the said car. I also considered that all his tools were converted and Paul was no longer running the business. I accept that he would have had these and other challenges in having the vehicle repaired by his usual methods. I accept also that despite his frequent trips to Trinidad, he did not have his tools. To my mind, the said car was still in his possession and he could have taken steps to have it repaired by someone else to minimize this loss. He had ample opportunities as it is his evidence that he was in the jurisdiction on several occasions for the hearing of this matter. Of note also was the evidence of Paul that it was his intention to send the cylinder head of the said car to another auto shop to have it refurbished. In the above premise, I consider a claim of 27 months compensation unreasonable and wholly reject it. I am prepared only to allow as reasonable a period of 3 months to cover damages for this loss at $700.00 per week, amounting to the aggregate sum of **$8,400.00**.

Exemplary Damages

19. Since the incident Peer has returned to Trinidad to run his own business but finds he is still unable to re-purchase all his tools; to get the same premium quality; to re-stock the same wide range of tools with multiple items for efficient operation. He claims that in the auto-service industry, tools are very job specific and as such, his business is not at the same operational level and/or efficiency as before the accident. His evidence is that the deprivation of the use of his items has caused him considerable loss of income and profits and emotional stress from having to cope with the unexpected financial burdens. I bear in mind that the police officer was not the only player who participated in these acts against Peer and that the 1st and 2nd defendants are just as culpable. To my mind, the role of the police in facilitating and/or assisting with the wrongful seizure, detention and conversion of Peer's property must be frown upon. It is no excuse that a police officer is unfamiliar with or unaware of the Police Standing Orders, guiding police actions in removing items pursuant

to a court order. Police officers are State actors entrusted with the responsibility to protect citizens from the attempts of private parties to infringe upon their constitutional rights and privileges, including the right of an individual to the enjoyment of his property and the right not to be deprived thereof except by due process of law. Exemplary damages are awarded for arbitrary or reprehensible behaviour in cases where compensatory damages is perceived as inadequate to achieve a just result between the parties; the nature of the defendant's conduct calls for a further response from the court; the conscious wrongdoings by the defendant are so outrageous that something more is needed to show that the behaviour will not be tolerated[11]. I am not satisfied that the present case is deserving of such a response from this court so was not minded to make an award for exemplary damages.

Order

20. It is thus the order of this court that the third defendant do pay to the claimant -
    i. Damages for trespass in the nominal sum of **$5,000.00**;
    ii. Damages for conversion (inclusive of loss of use/profits) in the sum of **$184,728.94** with interest at the rate of 8% per annum from 27th April, 2008 to today's date.
    iii. Costs in the sum of **$28,791.13**.

Dated 21st May, 2013

Martha Alexander
Master

11 *Kuddus* v *Chief Constable of Leceistershire* [2001] UKHL/29