

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2010-01873**

**BETWEEN**

**HAFEEZ ALI**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**Defendant**

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**Before: Master Alexander**

**Appearances:**

**For the claimant: Mr Abdel Mohammed**

**For the defendant: Mr Bhimsingh holding for Ms Farrah Ali-Khan**

**REASONS**

**Background**

1. The claimant, Hafeez Ali (hereinafter “Hafeez”) parked his vehicle, a Nissan Micro bus, registration number TBN 5748 along Broadway Road, Arima in front the driveway of Republic Bank and went inside KFC to purchase a meal. He left his friend, Rishi Samad, sitting in the driver’s seat (hereinafter “Rishi”). When he returned, both the vehicle (hereinafter “bus”) and Rishi were not there. He subsequently located Rishi and was presented with a fixed penalty ticket issued to Rishi for TT\$150.00 by a police sergeant (Sergeant Petty). His bus had been impounded by Sergeant Petty and was at the Arima Police Station. Since then and despite several requests, Sergeant Petty has refused to return

the keys or insurance for the bus, stating that a licensing officer would have to come to the station to check it before it could be released.

2. The bus was seized on 10<sup>th</sup> September, 2009. On 14<sup>th</sup> September, 2009 a formal request of Sergeant Petty for the return of the bus was denied. Three months later, on 8<sup>th</sup> December, 2009 Hafeez was returning home around 11:45 p.m. when he saw his bus parked on the roadway at 3/4mm Coalmine Road, Sangre Grande, facing north and without park lights. This was reported to the Sangre Grande Police Station but enquiries there as to why his bus was parked in that location solicited no pertinent information. Subsequently, on 28<sup>th</sup> April, 2010 around 12:00 a.m. he again spotted his bus parked along the same roadway in Sangre Grande but this time he noticed that the left hand side was severely damaged. Since then, his bus has neither been returned to him nor has he seen it.
3. Hafeez by this action is seeking to recover compensation for the detinue and/or conversion of his vehicle; aggravated and exemplary damages and consequential losses. The defendant did not file a defence and Hafeez obtained permission to enter judgment against the defendant for damages to be assessed from des Vignes J on 28<sup>th</sup> July, 2010. The assessment took place on 30<sup>th</sup> April, 2012.

#### **Detinue or Conversion**

4. In issue is whether Hafeez is entitled to recover damages for detinue or conversion of his bus. Conversion refers to a single wrongful act and the cause of action accrues at the date of the conversion. Detinue, on the other hand, 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. See *General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd* [1963] 2 AER 314 per Diplock LJ at page 317. Counsel for Hafeez submitted that he has alternative causes of action open to him and a right to elect the cause of action he is minded to pursue. In support of this, counsel pointed to the fact that on 14<sup>th</sup> September, 2009 Hafeez demanded of Sergeant Petty the return of his bus and to date he has never been provided with a lawful explanation for the detention. See *Rosenthal v Alderton & Sons Limited* [1946] KB 374.

5. In his statement of claim, Hafeez claimed damages for detinue and/or conversion. A claim in detinue can be made by a person with the immediate right to the possession of the goods against the person in possession of the goods and who, in the face of a proper demand to deliver them up, has failed or refused to do so without lawful excuse. See ***Carlton Rattansingh v The Attorney General of Trinidad and Tobago and Kanahar Doopant the Comptroller of Customs and Excise***, CA No 105 of 2000 per Warner JA. On the other hand, conversion consists of “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 ***Carlton Rattansingh*** supra. The distinction between these two concepts was explored by Stollmeyer J (as he then was) in ***Gerald Mootoo v The Attorney General*** HCA 431 of 1997 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 the 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 a 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.*

6. Counsel for Hafeez submitted that he was pursuing conversion (not detinue) of his bus in the sum of \$155,747.68, together with consequential losses (i.e. aggravated and exemplary damages); loss of use and enjoyment amounting to \$500.00 per day and continuing and loss of earnings.
7. It is accepted that conversion is the unauthorized dealing with another person's property in a manner that questions or denies 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 19<sup>th</sup> Edition page 1008, paragraph 17-09.**
8. Generally a claim for conversion is based on the defendant's wrongful detention of the goods. To prove conversion, it is necessary to show a demand was made for the goods and the claim will lie after the bailee (Sergeant Petty) wrongfully refused or failed to comply with the demand. The failure to comply cannot be justified or excused by proof that the goods are no longer in the control, custody or possession of the bailee or anyone over whom he exercises control or that they were negligently lost or destroyed or he parted with them without just cause. See **Halsbury's Laws of England, Bailment and Pledge volume 4, 5<sup>th</sup> edition at paragraph 232.**

### **Measure of damages**

9. Damages for conversion are normally compensatory, with the object being to restore Hafeez to the position which he occupied before the tort was committed. To be noted is that an award of damages in conversion must not operate to penalize the defendant or to grant a windfall to Hafeez, see **Halsbury vol 45 (20 4<sup>th</sup> ed. para 615)**. Generally, the measure of damages in conversion is the value of the goods at the time of conversion or in some cases judgment as stated in **Rosenthal (supra)**. 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) 4<sup>th</sup> 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)*

10. It is Hafeez’s evidence that his bus has been irreversibly converted and as such is not recoverable. This evidence is accepted. 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 10<sup>th</sup> September, 2009. This has been re-stated and re-affirmed in ***BBMB Finance (Hong Kong) Ltd v Eda Holdings Ltd [1991] 2 AER 129***. Counsel for Hafeez submitted that he is entitled to the sum of \$155,747.68 which is the cost of the bus. Does this sum constitute the bus’ value as at the date of conversion?
  
11. It is to be noted that Hafeez has claimed in his evidence in chief that he paid \$155,747.68 for the bus when it was originally purchased. He states that he paid \$84,802.68 in cash and \$70,945.00 via a loan taken from Scotiabank Limited. He provides evidence of the loan borrowed from Scotiabank Limited in the form of the mortgage bill of sale. The full loan with interest amounted to \$85,747.68. There was no evidence provided of the cash payment, whether in the form of a receipt or any other form of evidence, save and except that given in chief. To be noted is that the measure of damages for conversion is the value at the date of the conversion, which is accepted. However, there is no valuation of the bus as at the date of conversion or even judgment; no adjuster’s report or any other evidence as to the value of the vehicle at the date of conversion. There is also no evidence as to the insured sum of the vehicle. Further, the value of an asset such as a vehicle is subject to depreciation but there is no such evidence before this court. Hafeez is seeking simply the return of the full purchase price of the vehicle, for which he provides only partial proof. This is untenable and outside the range of reasonable compensatory awards in the circumstances of this case.

12. To my mind, the value of a vehicle is hardly likely to remain static and unchanged after 3 years of road use. To be noted is that the vehicle loan was taken in May, 2006 and it was for a 2002 make vehicle. At the time it was seized and impounded, it was a 7 year old vehicle and one let out for hire. Whilst I accept that Hafeez would have at least paid the sum reflected on the mortgage bill of sale for the purchase of his vehicle, I remain unconvinced of the cash payment. Given the dearth of evidence before me and in the face of the absence of a proper valuation or any other evidence as to the actual value of the bus at conversion and/or evidence of depreciation, I am constrained to make an award of nominal damages in the sum of \$5,000.00.
13. In making the award, I took into account Hafeez's claim for aggravated damages and concluded that this is not a proper case for such an award. Such damages can be awarded where there are aggravating features about the case which would result in the claimant not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award. It also covers any conduct of those inflicting the loss which shows insulting, malicious or oppressive behaviour. I am not satisfied on the evidence that Hafeez should be awarded aggravated damages. In so doing, I note the words of de la Bastide CJ (as he then was) that, "*aggravated damages ... are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have suffered. Under this head of mental suffering are included such matters as the affront to the person's dignity, the humiliation he has suffered, the damage to his reputation and standing in the eyes of others and matters of that sort.*" See ***Thaddeus Bernard, Airports Authority of Trinidad v Nixie Quashie*** CA Civ 159/1992.

#### **Loss of use**

14. The learning is clear that apart from the general value of the goods, Hafeez may also recover 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*** [1846] 8 QB 779. 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 17<sup>th</sup> edition.** In the instant matter, Hafeez pleaded loss of use/earnings arising from the deprivation of his vehicle and provided proof of the amount of loss.

15. Hafeez claims loss of use in the sum of \$500.00 per day for 5 days a week. In support of this claim he puts in evidence an agreement with one Dinesh Nanchoo of Autoplate 3D Signs and Plates for the use of his bus. Generally, Hafeez would be entitled to an award of loss of use even if he would not have used the bus during the period which he has been deprived of its use, see *Medina v Comet* [1900-3] AER 126. 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 15<sup>th</sup> 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*).” Counsel for Hafeez has asked for 8 months loss of use from the date of the conversion in the sum of \$80,000.00. To my mind this is not unreasonable and this submission was accepted.

### **Exemplary Damages**

16. Exemplary damages are awarded where the offender’s behaviour amounted to oppressive, arbitrary and unconstitutional action. It is usually awarded 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; see *Kuddus v Chief Constable of Lecestershire* [2001] UKHL/29. I am satisfied that without an exemplary award being made in this case, justice will not be done. It is used, therefore, to fill this ‘regrettable lacuna’.
17. The facts in this case are nothing short of shocking. Sergeant Petty’s highhanded behaviour of impounding Hafeez’s bus; his continuing detention of it over and above a reasonable period of investigation; his failure to give reasons and his refusal to return it some 3 years later amount to an abuse of his power and constitute conduct that is unacceptable. Further, it is outrageous that he would then assume the right to remove or allow the removal of Hafeez’s bus from the Arima Police Station to Sangre Grande, parking it at the side of the

road with all lights off. This conversion by Sergeant Petty of Hafeez's bus to his own personal use and the damage done to it in the process of such unlawful and unauthorized acts must be condemned in the most forceful of terms. It is improper for a police officer at the rank of sergeant to clothe himself with the authority to seize, detain and then "keep" another person's property for over 3 years, without any regard for the impact it would have on that man's life and livelihood. Such behaviour amounts to disgraceful and scandalous abuse of the power of an officer of the State. Officers of the State who hold themselves out as servants and protectors should not be allowed to get away with such acts. Hafeez has given evidence of the distress, inconvenience, embarrassment and stress he has been put to as a result of the actions of this errant officer and this unchallenged evidence is accepted. Hafeez was making a living by this means when this was brutally cut short by the actions of Sergeant Petty. Citizens must be free to go about their daily activities without being fearful of encountering officers like Sergeant Petty. To mark this court's disgust, exemplary damages will be awarded in the sum of \$20,000.00.

### **Order**

18. It is thus the order of this court that the defendant do pay to the claimant -

- i. Damages in the sum of \$85,000.00 (inclusive of nominal damages of \$5,000.00 and loss of use of \$80,000.00) with interest on the sum awarded for loss of use at the rate of 6% per annum from 10<sup>th</sup> September, 2009 to today's date.
- ii. Exemplary damages in the sum of \$20,000.00.
- iii. Costs in the sum of \$16,215.12.

Dated 31<sup>st</sup> October, 2012

**Martha Alexander**

**Master**