

SAINT VINCENT

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 5 of 1986

BETWEEN:

WILLIAM LITTLE - Appellant

and

STEVE KING
BRIDGETTE HORMANN - Respondents

Before: The Honourable Mr. Justice Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: Arthur Williams for the Appellant
E. Robertson for the Respondent

1986: Dec. 10, 11.

JUDGMENT

BISHOP, J.A.

On the 4th March, 1986, Bertrand J. gave judgment in favour of Steve King and Bridgette Hormann against William Little for U.S. \$45,000.00 with interest from 18th July 1982 and for U.S. \$100.00 for unlawful trespass to the yacht and U.S. \$100.00 for its unlawful detention. They were also awarded costs, to be taxed.

William Little appealed against this decision on five grounds: "(1) The learned trial Judge erred in law by holding that there was no lawful excuse for the defendant to have kept the ship in his possession after a demand was made for its return (2) the learned trial Judge erred in law by holding that the defendant unlawfully removed the ship from its moorings and converted it to his own use (3) the award of U.S. \$45,000.00 with interest on the said sum from the 18th day of July 1982 is unreasonable having regard to the evidence (4) the finding of the learned trial Judge that the ship was not abandoned is unreasonable having regard to the evidence led in this case and (5) that the decision of the learned trial Judge was against the weight of the evidence."

The learned trial Judge saw and heard Steve King in support of the claim and William Little, Robert Pate and Douglas Williams in defence of it.

/Steve.....

*note: Trespass
unlawful detention
conversion*

Steve King explained that he bought the yacht from Robert Pate for U.S. \$35,000.00 with certain agreed terms and conditions. He was required to pay U.S. \$15,000.00 cash on delivery of the yacht and the remaining U.S. \$20,000.00 in 2 years. The yacht would be used in the charter business so as to earn the balance due and if he failed to earn such sum, then he would sell the yacht and pay Robert Pate. He told the Court that the U.S. \$15,000.00 was paid and possession of the yacht delivered up to him on the 26th November 1980. Thus the 2 year period for payment would have ended on the 25th November 1982. This period was not allowed to run before action was taken by William Little and on behalf of Robert Pate to dispossess him of the yacht.

Robert Pate, in his evidence, agreed with Steve King on the sale, the purchase price and initial payment; and on the fact that the balance was to be paid in two years from 26th November 1980. He confirmed that they agreed that the yacht was to be used in the charter business, from which the balance due would be obtained, and that if charters did not provide enough income to do so, then King would sell the yacht and pay Pate the outstanding balance.

The learned trial Judge found that "the terms of the contract were as set out by the plaintiff in his evidence". This was a finding clearly available to the Judge.

Robert Pate also told the Court that in December 1981 he took steps to instruct a lawyer in St. Vincent to re-possess the yacht because up to that time he had not been paid any further money. The yacht was not re-possessed and then in January 1982 he offered to buy it from Steve King, after he had been told by King that the charter business was not earning enough to allow for payment. Pate's offer of U.S. \$38,000.00 included a condition that there be a survey of and report on the seaworthiness and other state of the yacht. Pate gave a reason - under cross-examination - for his offer. However Steve King who was not told and would not have been aware of the reason operating in Pate's mind, refused that offer.

Steve King also claimed in evidence that William Little enquired of him whether he was willing to sell the yacht.

/He....

He said he was and quoted a price but heard nothing further from William Little. William Little denied that evidence and so it was left to the trial Judge to decide what, if anything, to accept as true. If she believed King then Little must have known that King had the power to sell the yacht.

In any event the admitted offer of Robert Pate to purchase the yacht from King, along with the other facts agreed and mentioned earlier, were a clear indication that Steve King had ownership and possession of it at the material time, and could sell it in accordance with the condition of the sale by Pate to King.

Robert Pate left St. Vincent in May 1982 and went to the U.S.A.

Steve King left St. Vincent in July 1982 but before he left, and during the time that he operated the yacht he carried out certain work on it. I shall refer to such work when I come to the question of the award of the Judge.

Around 18th July 1982 Steve King went to the U.S.A. He left the yacht moored off Princess Margaret Beach. Its engine was not in working order and it was also necessary to pump it regularly. However, Bert Hendrickson, a mechanical engineer, was left in charge of it (by virtue of a power of attorney), and he was instructed by King to carry out repairs to the engine and maintain the yacht. A young man named Michael, who had worked on the yacht when it was owned and run by Robert Pate, was allowed to remain and live aboard as he had no fixed place of abode. His presence would provide King with his services, as a watchman.

While in the U.S.A. Steve King received certain information about the yacht and as a result he contacted a lawyer, through whom he sent letters to William Little, Robert Pate and Bert Hendrickson. The letters to Little and Pate appeared to have been largely ignored and so, on the 6th October 1982 King and Hormann filed an action against Little for return of the yacht or its value and for damages for trespass, for detention and conversion.

William Little conceded that he moved the yacht from its moorings. He said that it was hurricane season and the

/condition.....

condition of the yacht and the position it occupied rendered it unsafe. Consequently, he communicated with Robert Pate who then requested him to move the yacht from its moorings and to carry out the necessary repairs to it. Michael and Bert Hendrickson assisted with the removal to Little's slipway where work was performed on it restoring, repairing and refitting. According to Little, before he moved the yacht he did not know that Steven King had purchased it in 1980. He admitted receiving a letter from King's lawyer demanding delivery of the yacht and he said "I did not accede to the request contained in Exhibit SK2 because I assumed Bob Pate was the owner"; and under cross-examination on 3rd April 1985 he said "up to the present time I am certain Lanakila II belongs to Robert Pate". In the light of such evidence it was, in my view, not accurate to say or suggest - as Counsel for the appellant said or suggested - that Little remained ready to deliver the yacht but no one came for it and it remained there for King to take. Clearly William Little was saying that he had acted and was acting upon the instructions of the owner; and he was not going to deliver it to anyone other than the owner or someone authorised by the owner who was Pate.

Robert Pate confirmed that he instructed William Little to move the yacht and carry out work on it; and although he also said that (1) in December 1981 he issued instructions to re-possess, (2) in January 1982 he offered to buy the yacht from King (3) in July 1982 he instructed Little to move it and repair it, and (4) he allowed King to remain on the yacht up to July 1982 because at the time he (Pate) was not in a position to take it over, yet he also stated on oath: "in July 1982 the plaintiff had abandoned the boat so I had no choice but to take it."

Learned Counsel for the appellant dealt with ground 4 first; and, as I understood him, he sought to rely substantially upon the dilapidated condition of the yacht, its place of mooring and the absence of Steve King from Bequia in July 1982, as proof of its having been abandoned; but, to the credit of Counsel, when the further facts mentioned in the evidence (and referred to already in this judgment) were brought to his attention he did not pursue the ground of appeal.

/Since the.....

Since the yacht was not abandoned then it must have been owned by someone and in the lawful possession of either its owner or an agent of the owner. The Defence of William Little, as pleaded, asserted at paragraph 1 that at all material times the yacht was the absolute property of Robert Pate, and at paragraphs 3 and 4 that he (Little) acted on the request and directions of the said Robert Pate to move the yacht to his slipway and carry out work on it. Yet, at paragraph 5, William Little pleaded that ".....the said removal and re-mooring was sanctioned by....Michael Williams and Bert Hendrickson who claimed to be the agents of the plaintiffs".

I think it is clear that there was confusion and conflict demonstrated in the appellant's pleading and in the evidence relied upon by him. It is equally clear, in my opinion, that upon the basis of the undisputed and agreed facts and upon the totality of the evidence accepted by the learned trial Judge, that it was not wrong in law or at all to hold that Steve King had purchased and was in possession of the yacht, that the appellant unlawfully removed the yacht from its moorings and converted it to his own use, and that the appellant had no legal justification for retaining it after there was a demand for its return to the respondent. Grounds 1,2 and 5 lacked merit.

The remaining ground concerned the award. Learned Counsel submitted that the sum of U.S. \$45,000.00 was unreasonable when all the relevant evidence was considered. He relied upon parts of the evidence of Steve King, (under cross-examination) on the evidence of the reason for the offer of U.S. \$30,000.00 by Robert Pate, the age of the yacht, and on the valuation of \$30,000.00 by William Little. On the other hand, learned Counsel for the respondent referred to the evidence of Steve King wherein he showed that he put the yacht on dry dock after he bought it, and that when he left St. Vincent it did not need a complete overhaul; further, that the yacht appreciated in value as a result of interior and exterior mechanical repairs, the purchase of new equipment, and installation of a more efficient electrical system than it had previously.

In her judgment the learned trial Judge explained why she preferred to accept the evidence of the plaintiff to that given by William Little and his witness. The trial Judge
/was.....

was entitled to do so and no good or sufficient reason was advanced to merit interference with her award on the ground that it was "most unreasonable" or unreasonable in the light of the evidence.

There was no objection taken before us on the award of interest by the trial Judge. The rate, in my view, should therefore be at six per cent per annum.

The appeal must, for the reasons given, stand dismissed and the respondents should be awarded their costs to be taxed if not agreed.

I feel constrained before leaving this matter to observe that it remains unclear to me why Robert Pate was not made a party to the action.

E.H.A. BISHOP,
Justice of Appeal

L.L. ROBOTHAM,
Chief Justice

G.C.R. MOE,
Justice of Appeal.