

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CIVIL SUIT NO.543 OF 1999

BETWEEN:

VIOLA SAMUEL

Plaintiff

And

EYON CATO

Defendant

Appearances:

Joseph Delves for the Plaintiff
Arthur Williams for the Defendant

2001: May 22 and June 5

JUDGMENT

[1] **Webster, J. (acting):** This is a claim for damages for conversion of the Plaintiff's property by the Defendant.

[2] The Plaintiff and the Defendant started a romantic relationship in St. Vincent in 1987. At the time the Plaintiff was living in England. In 1992 she returned to St. Vincent and moved into her house at Glen with the Defendant. The house at Glen was furnished and outfitted by the Plaintiff. Many of the items were purchased by her in England prior to her departure and shipped to St. Vincent. In 1996 the parties acquired a house at Calder Ridge and moved into it. The Plaintiff's case is that this house was partly furnished and outfitted with some of her belongings from the house at Glen. The Defendant's case is that the house was furnished and outfitted entirely by him, and the Plaintiff's belongings were left in her house at Glen which she rented as a furnished house.

- [3] Unhappy differences developed between the parties while they were living at Calder Ridge and they separated in November 1997. It is not disputed that after the separation the Plaintiff went to the house at Calder Ridge and took virtually everything in the house, leaving only a washing machine and chest of drawers with the Defendant's clothes. On becoming aware of this the Defendant went to the house at Glen and removed all the items that he considered to be his. The Plaintiff claimed that the Defendant took several items belonging to her, and she made a list of these items with their respective values. The Defendant did not dispute that he had some of the items claimed by the Plaintiff, and he pleaded in his Defence that he was willing to return them to the Plaintiff. However, the items were never actually returned and on November 11, 1999 the Plaintiff started this action. The Statement of Claim lists a total of 61 missing items with a total value of \$68,202.91.
- [4] On March 16, 2001 Master Pemberton made an order that the Defendant return the items listed in the Statement of Claim to the Plaintiff by March 23, 2001. The Defendant delivered some of the items to the Plaintiff but it transpired that they were not all the items listed in the Statement of Claim. On April 23, 2001 the Master made a further order that the Plaintiff compile and file a list of the missing items with a valuation. On May 18, 2001 the Plaintiff filed a list with 27 missing items and the Plaintiff's assessment of the value of all but three of the items.
- [5] The Defendant's position is that he did not convert any of the missing items. His evidence is that he retained some of the items, such as the carpet, gas bottles and the mattress, because they were his and not the Plaintiff's, and he did not have the other items. Alternatively, if he is responsible for any of the missing items, the Plaintiff has not provided the Court with sufficient evidence to make an award of damages for their alleged conversion.
- [6] With regard to the Defendant's position that he does not have some of the items, the undisputed evidence is that the Defendant went to the Plaintiff's home at Glen and removed a large quantity of items which included some of the Plaintiff's property, and that he eventually returned some 35 of the 61 items listed in the Statement of Claim, thereby conceding that some of the items he removed belong to the Plaintiff. There is no other credible evidence indicating what else could have happened to the 27 items that are now missing, and I find that the Defendant was legally in possession of these items at the material time. Insofar as I find that any of these items are owned by the Plaintiff, the Defendant is liable to account for them.

- [7] The remaining issues are the ownership of the missing items and the loss, if any, the Plaintiff has proved so as to entitle her to an award of damages.
- [8] Learned Counsel for the Defendant submitted that the Plaintiff's claim is for special damages, and she has failed to prove those damages strictly as required by law by the production of receipts and otherwise. Therefore, if the Court makes an award, it can only be for nominal damages.
- [9] Learned Counsel for the Plaintiff emphasized the disputed items were purchased at the time when the parties had a romantic relationship. The Plaintiff made a list of the items taken from her house immediately after they were taken, and put a value to each item. Some of the values were based on receipts that she then had, and some were estimates. She delivered the receipts that she had to her Solicitors who misplaced them. In the circumstances Counsel urged the Court to take a reasonable approach to the matter and not require strict proof in the traditional sense, but in a sense that is appropriate to the facts of the case.
- [10] The difficulty that a Court faces in this type of case is not unknown. The Court must reconcile the general principle that special damages must be strictly pleaded and proved, with the reality that in some cases, such as the present, it is impossible for a Plaintiff with a bona fide claim to prove her losses strictly. It is not disputed that the Plaintiff purchased at least some of the disputed items. However, she does not have the receipts to prove the amount that she paid for the items, and she has not provided the Court with any other method of determining the respective values. The option of obtaining a current valuation does arise because the Plaintiff is not in possession of the disputed items.
- [11] The approach that the Court should adopt in these cases is to be found in the case of **Grant v Motilal Moonan Ltd. and Another** (1988) 43 WIR 372, a decision of the Court of Appeal of Trinidad and Tobago. The Appellant obtained a default judgment against the Respondents for damage to her furnishings and household effects as a result of the negligence of the Respondents. At the assessment before the Master the Appellant did not produce receipts for the damaged articles, nor could she state when she purchased them. She also admitted that she had not engaged the services of a valuator to value the articles. Her evidence of value consisted of a list of the articles with their respective prices that she had compiled the day after the accident. The total estimated value was \$20,000. The Master found that the Appellant had failed to prove her losses strictly and made an *ex gratia* award of \$6,000. The Court of Appeal allowed the Appellant's

appeal finding that although special damage must be pleaded, particularised and proved strictly, the Appellant had *prima facie* established the cost of the articles and the Respondents had not attempted to challenge the values placed on them. The only courses of action open to the Master were to accept the Appellant's claim in full or to apply her mind judicially to each item and its value. As the values were not unreasonable the claim for special damage was allowed in full. The unanimous judgment of the Court of Appeal was delivered by Bernard CJ who stated at page 378:

"In the event , the Master, in my view, either had to accept the appellant's claim in full or, if for whatever reason she had reservations, she should have approached the matter along the lines in *Ratcliffe's* case by applying her mind judicially to each item and the cost therefor in the list."

And further on the same page:

"At this stage I must pose the question whether in this country it is unreasonable, in a case of this kind, for a person to be unable to produce bills for clothing, groceries, watches, kitchen utensils, furniture and/or other electrical appliances and/or for that matter to remember the time of their purchase. To my mind, the answer is clearly in the negative and to expect or to insist upon this is to resort to "the vainest pedantry"."

[12] Following the approach of the Court of Appeal in Trinidad and Tobago in **Grant v Motilal Moonan Ltd.** I will deal with each item in the list of missing items to see if the Plaintiff has made out a case, on a balance of probabilities, for an award of damages based on the amount claimed or a reasonable amount thereof. I am guided in this exercise by the Plaintiff's evidence of value which was largely uncontradicted by the Defendant. For convenience I will deal with some of the items in groups where the same principles apply.

[13] **Mattress and Carpet**

I am not satisfied that the Plaintiff is entitled to the mattress (\$675) and the carpet (\$3,000). The mattress was allegedly removed from the Plaintiff's house in November 1997 and yet the receipt that the Plaintiff produced is dated September 14, 1998. The Plaintiff explained this by saying that she got the receipt a few weeks ago when she was preparing for this case, but this explanation does not satisfy the Court that the Plaintiff purchased the mattress for which she is now claiming. This claim is therefore disallowed. The Plaintiff's evidence relating to the carpet is that she paid

the deposit of \$1,000 and the Defendant paid the balance of \$2,000. The Defendant produced a receipt in his name for the full \$3,000 and there is no evidence that he intended to make a gift of the carpet to the Plaintiff. The only conclusion that the Court can come to is that the Defendant is entitled to the mattress.

Video Player, Tapes and Album

There was no evidence whatsoever of the values of the video player, video tapes and the photo album, and the claims for the values of these items are disallowed.

Hairdryers

The evidence relating to the hairdryers is that they were returned to the Plaintiff without plugs. The Plaintiff did not attempt to put on plugs and see if they were otherwise functional. In the absence of evidence that they were not functional, I cannot hold the Defendant responsible for these items and the claim for their value is refused.

Curtains

There are two sets of curtains. One set was bought in England for £2,000. The Plaintiff admitted that some of these curtains were used, but did not say how many. The Plaintiff could have given the Court more assistance on this issue, but did not, and the Court cannot speculate on how many curtains were used and how many are left. This part of the claim is therefore denied. The other set of curtains was purchased in Trinidad for TT\$2,050 and never used. The evidence is that one EC Dollars is equal to two TT Dollars. The sum of EC\$1,025 is therefore allowed.

Cosmetics

The Plaintiff's evidence is that some but not all of the cosmetics were used. Again the Court cannot speculate on the amount remaining and so the claim for £200 is disallowed.

Marble Table

The marble table was purchased for £35. The foot of the table was broken while the Plaintiff had it and the claim should therefore be for the value of the marble top. No evidence was given as to the relative value of the marble top to the rest of the table, and the claim is disallowed.

Cassette Tapes

The evidence relating to the claim for the cassette tape or tapes was very vague and is disallowed.

Miscellaneous

The claims for the following items are allowed:

Curtains (supra)	\$1,025
Bed linen	\$4,000
Foodstuff	\$300
1 Gold vase	\$68.14
1 Electric kettle (reduced based on one year's use)	\$125
1 Electric blender (allowed at \$275 and reduced based on one year's use)	\$137.50
2 Large gas bottles with gas	\$729
1 Set toilet paper holder	\$36
1 Teddy bear	\$150
Curtain cords (£100)	\$454
2 Gold chains (from Trinidad)	\$1,500
Rings and gold chain	\$1,500
1 Large platter (£200)	\$908
1 Set of 5 Ladybird books (£50)	\$227.15
1 Electric iron (£40)	\$181.72
2 Bed heads (£70)	\$317.80
1 Box dishes	\$35
TOTAL	\$11,694.31

[14] There will be judgment for the Plaintiff for the sum of \$11,694.31 and costs to be taxed if not agreed.

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Paul Webster
High Court Judge(acting)