ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV2005/0164

BETWEEN

OTWELL JAMES

Claimant

And

EDSON BROWNE

1st Defendant

THE ATTORNEY GENERAL

2nd Defendant

Appearances:

Mr. John Fuller for the Claimant
Mr. Ralph Francis for the 1st Defendant
Ms Carla Harris Crown Counsel for the 2nd and 3rd Defendant.

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2006: April 26th
July 6th

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JUDGMENT

[1] **Blenman, J:** This is a claim for damages for wrongful arrest and a counterclaim for damages based on the wrongful detention of a motor vehicle.

[2] I heard the matter on the 26th April 2006 and on conclusion of the evidence the parties were required to furnish the Court with closing written submissions in accordance with Part 39 (3) CPR 2000. Indeed the Court granted Mr. James eight days leave within which to file and serve written submissions while the defendants were granted 14 days leave to file and serve their closing submissions. The court reserved its decision. To date no closing submissions have been received.

Issues

(a) The first issue before the court is whether Constable Browne wrongfully arrested Mr. James;

(b) If the answer to the first question is in the affirmative, the second issue that the Court has to resolve is that is the quantum of damages Mr. James is entitled;

(c) The third issue is whether Mr. Browne is entitled to claim damages from Mr. James to the extent of the value of his vehicle.

Background

[2] Mr. Otwell James of Yorks St John's Antigua is the owner and operator of a business that is familiarly known as "Cox Junk Yard" situate in Yorks Village St John's Antigua.

[3] Mr. Edison Browne (Mr. Browne) is the owner of a Toyota Rav 4 motor vehicle Registration No. A 875 (vehicle)

[4] Mr. James alleged that on 20th October 2003, Ms Natasha Alfred (Ms Alfred) asked him to repair the Toyota Rave 4 vehicle registration NoA 875. A 875. He took the vehicle and inspected it. He observed that some parts were missing. He required her to pay a deposit of $2000

[6] Mr. James said that he took out the transmission and sent it to Puerto Rico to be repaired.

[7] Subsequently, Mr. Browne visited the junk yard and told him (James) that the vehicle belonged to him. Mr. James threatened him that "he could have been locked up" and left the junk yard.

[8] Mr. James further complained that a few minutes later the police arrived and told him to "fix the vehicle or failing which he would be locked up." He said that about one week after the police returned and took him to the St John's Police Station for questioning where he was kept for about 3 hours and released.

[9] He was subsequently arrested and charged with having stolen parts from the vehicle to the value of $34,083.00. He alleges that he was wrongfully arrested and seeks both general and exemplary damages from the defendant.

[10] Mr. Browne has counter claimed from Mr. James and seeks damages to the extent of the value of his vehicle.

[11] On behalf of the Attorney General it is contended that Constable Browne has acted on reasonable grounds that Mr. James had stolen the vehicle parts which belonged to Mr. Browne. The Attorney General further contended that Constable Browne had reasonable and probable cause to arrest and charge Mr. James.

[12] Learned counsel Mr. Ralph Francis cross-examined Mr. James and forced him to admit that the receipt that the he tendered in evidence was dated in 2002 even though (he) Mr. James had alleged that he received the vehicle from Ms Alfred to repair in 2003.

[13] Mr. James conceded that Mr. Browne approached him in relation to the vehicle in early in 2004 and that he was not arrested until August of 2004. Mr. James further conceded that he had no doubt when Mr. Browne approached him about the vehicle in January 2004, that it belonged to Mr. Browne. He was forced to admit that the police first visited his premises in March 2004.

[14] Mr. James agreed that it does not take 10 months to repair a transmission and that he did not fix the transmission because he was waiting for the deposit from Ms Alfred.

[15] He stated that even though he had not received the deposit, Mr. James said that he took the transmission to Puerto Rico in order for it to be repaired. He said that between February and August 2004 he did not initiate anyone when he would have the vehicle.

[16] During further cross-examination by Mr. Francis, Mr. James admitted that his business is primarily selling used parts. He said that in January 2004 he had no doubt that the vehicle belonged to Mr. Browne when he (Mr. Browne) visited his premises and so informed him.

[17] He said that he fixed the vehicle a couple of months ago even though at the time of filing his claim he had not repaired the vehicle.

[18] Under cross-examination by learned crown counsel Mrs. Carla Brooks Harris, Mr. James denied that Constable Browne had given him time to replace the missing parts.

[19] Mr. Edison Browne in his defence said that he was the owner of the vehicle. On 13th October 2003 he lent his vehicle to Ms Alfred who resides in Canada. He had lent her the vehicle previously. However, on the last occasion when he lent it to her she did not return the vehicle as promised. He was convinced that his vehicle was stolen. Subsequently, he made a report to the police station that the vehicle was seen at Mr. James' premises. As a consequence, other police officers together with Constable Browne visited the premises where he (Mr. Browne) identified the vehicle.

[20] Mr. Browne said that a number of parts were missing from his vehicle. He made a list of the missing parts which he gave to Constable Browne, the latter who requested Mr. James to replace the missing parts in the vehicle and he failed to do so.

[21] Mr. Browne said that originally when he visited "Cox Junk Yard" he enquired of the sales attendant whether parts from his vehicle were for sale and she answered in the affirmative. He subsequently visited Mr. James and advised him that the vehicle belonged to him.

[22] Under cross examination by learned counsel Mr. John Fuller, Mr. Browne stated that he has not received his vehicle. He said that he was not aware that the vehicle has been repaired. He said that the value of the vehicle at the time he lent it to Ms Alfred was $52,000.00.

[23] Constable Edson Browne (Constable Browne) said that he was attached to CID office of the St John's Police Station. On 23rd February 2004 he was at work when Mr. James made a report to him that his motor vehicle had been missing since December 2003.

[24] He visited the "Cox Junk Yard" and spoke to Mr. James. He told Mr. James that the report indicated that the transmission had been removed from the vehicle and requested Mr.

James to replace the mission parts from the engine. Mr. James told him that Ms Alfred had given him the vehicle to repair. Constable Browne informed Mr. James that the vehicle belonged to Mr. Browne and advised Mr. James to replace the parts in the vehicle.

[25] Constable Browne stated that he returned to Mr. James and the parts were still missing, he gave Mr. James a list of the missing parts and told him to replace the parts and have the vehicle returned to Mr. Browne where upon Mr. James replied "Are you going to have to lock me up!"

[26] Constable Browne said that he left and returned to Mr. James' business the following month, after he had received the complaint from Mr. Browne as to the exact parts that were missing from his vehicle.

[27] Constable Browne said during cross-examination by learned counsel Mr. John Fuller that Mr. James gave him a note and a telephone number which James said belonged to Ms Alfred. Constable Browne telephoned Ms Alfred and a female answered and said that she was indeed Ms. Alfred. The person told Constable Browne that she had given Mr. James the vehicle in order for him to effect repairs on it.

[28] Constable Browne maintained that having received several reports from Mr. Browne that Mr. James had removed parts from his vehicle that he visited Mr. James and requested him to replace the parts.

[29] Constable Browne admitted that Mr. James had him that he had received the vehicle from Hs Alfred to repair and that she was required to pay a deposit.

[30] Constable Browne said that he ordered Mr. James to replace the missing parts that Mr. Browne had complained of and were confirmed by a mechanic. It was only after Mr. James failed to replace the missing parts that Constable Browne arrested and charged him.

[31] Learned counsel Mr. Francis cross-examined Constable Browne at length. Constable Browne maintained that it was as a consequence of the reports that he had received from Mr. Browne coupled with his investigations that he arrested and charged Mr. James for larceny of the vehicle parts.

[32] Under further cross-examination by learned counsel Mr. Francis, Constable Browne stated very clearly that he charged Mr. James with larceny of the vehicle parts and not larceny of the vehicle.

Courts findings

[33] I have reviewed the evidence in this matter and the facts as I find them are as follows.

[34] Mr. Browne lent his vehicle to his friend Ms. Alfred for her to utilize while she was in Antigua. She was supposed to have returned it to him instead she took it to Mr. James who is a dealer in spare parts, and left the country.

[35] Let me say straight away that I do not believe as Mr. James would have me believe that the vehicle was given to him for repairs. I am satisfied in my mind that Mr. James was given the vehicle for him to "cannibalize it" and sell the parts. I believe Mr. Browne when he told me that was the information he received from Mr. James attendant that parts were being sold from the vehicle. Mr. James' business is primarily one that involves the selling of vehicle parts.

[36] Mr. James sought to persuade the Court that he took the transmission to Puerto Rico in order to have it repaired even though he had not received the deposit from Ms Alfred (a lady whom he did not know previously). I am far from convinced as Mr. James truthfulness.

[37] It is clear to me that Ms Alfred sought to deprive Mr. Browne of his vehicle and was ably assisted in so doing by Mr. James. I do not for one moment believe Mr. James entire story. He struck me as a very untruthful man.

[38] The real matter for the Court to determine however is whether or not Constable Browne was wrongfully arrested.

[39] Constable Browne struck me as a very truthful and straight forward officer who had "no axe to grind." I believe him when he said that he visited Mr. James on several occasions having received the report from Mr. Browne about the vehicle and ultimately the missing parts.

[40] I also have no reason to disbelieve that Constable Browne gave Mr. James several opportunities to replace the parts. It was only several months after Mr. James failed to remedy his breaches that he arrested and charged him with having stolen the parts of the vehicle.

[41] Mr. James told Constable Browne that he would have to lock him up. This was a clear refusal on Mr. James part to replace the parts.

[42] This is a civil matter. The burden of proof is on Constable Browne to establish on a balance of probabilities that he had reasonable and probable grounds for arresting Mr. James. He has to prove that he had reasonable cause for believing that the arrestee was guilty of the offence.

[43] In view of my findings above coupled with my respectful opinion that when Constable Browne arrested Mr. James he had received several complaints from Mr. Browne about the missing parts and his vehicle, he interviewed Mr. James, investigated the matter and charged him for an indictable offence of larceny. I am sure that when Constable Browne eventually charged and arrested Mr. James, Constable Browne had reasonable and probable grounds for thinking that Mr. James had committed an offence. Constable Browne did not act hastily but afforded Mr. James more than ample opportunity to make good his wrongdoings and Mr. James failed to comply. It was only then he arrested and charged Mr. James for the offence of larceny for the parts.

[44] Accordingly, Constable Browne has satisfied me that when he arrested and charged Mr. James he did so lawfully and he had reasonable cause for believing that Mr. James had committed a felony namely Larceny of the vehicle parts See Walters v WH Smith and Sons Ltd [1914] 1 KB 595

[45] I am of the opinion that Mr. Browne has not pursued his counterclaim with any vigor and I put this down to the fact that he admitted that he did not seek to ascertain whether his vehicle was repaired. I find this strange to say the least. Surely he ought to have taken steps to ascertain the present state of the vehicle.

[46] Mr. James stated that he repaired the vehicle and has replaced the missing parts. His evidence on this aspect of the matter was not successfully controverted. I have no choice but to accept his evidence.

[47] It is rather unfortunate that Mr. Browne has not seen it fit to retrieve the vehicle from Mr. James but rather seeks to be compensated to the extent of the full value of the vehicle.

[48] I have no doubt that Mr. Browne must collect his Rave 4 vehicle Registration No.A875 from Mr. James, the latter who has an obligation to ensure that the vehicle is in good and working condition.

[49] I am also satisfied that recently Mr. Browne has not sought to retrieve his vehicle. Mr. Browne has an obligation to mitigate his losses if any. In the absence of any evidence from Mr. Browne as to the extent of the losses he has suffered, I am unable to give judgment for Mr. Browne on his counterclaim. To put another way Mr. Browne has failed to persuade me, on a balance of probabilities that Mr. James is retaining his vehicle against his (Mr. Browne's wishes)

[50] Mr. Browne is therefore advised to retrieve his vehicle.

[51] In all the circumstances, I am of the opinion that Mr. James has failed to prove on a balance of probabilities that Constable Browne wrongfully arrested.

[52] Accordingly, Mr. James has failed to establish his claim against Mr. Browne and the Attorney General. I therefore dismiss Mr. Otwell James' claim and enter judgment for Mr. Edison Browne and the Attorney General together with prescribed costs unless otherwise agreed.

[53] In view of the above circumstances and for the above reasons, I dismiss Mr. Browne's counter claim against Mr. James and order that he pays Mr. James prescribed costs unless otherwise agreed.

[54] It would be remiss of me if I did not reiterate that I have received no assistance from counsel by way of closing submissions, this can hardly be appropriate.

Louise Esther Blenman
Resident High Court Judge