THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

(CIVIL)

CLAIM NO. ANUHCV 2004/0509

BETWEEN:

ROMA CHARLES
By her Next Friend LURLEEN SPENCER

Claimant

And

RUFUS THOMPSON

Defendant

Appearances:
Ms. C. Debra Burnette for the Claimant
Mr. Alex Fearon for the Defendant

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2006: November 22
2007: May 25
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Tort - Trespass to goods – Complaint lodged with police against Claimant – Forcible entry into the Claimant's chattel house by police officers assisted by Defendant armed with crowbar – Claimant removed from her home to Mental Hospital – Property and contents destroyed after such removal – Whether Defendant liable in trespass and for the destruction of house and contents – Whether Defendant's conduct falls within the second category for the award of exemplary damages.

JUDGMENT

[1] Thomas J: By way of a claim form filed on 8th December 2004, the Claimant seeks damages for trespass to goods in the amount of $25,878.00 exemplary damages, interest, further or other relief and costs.

[2] The Claimant's case is that on or about 17th August 2004, the Defendant unlawfully and without claim of right demolished and destroyed the Claimant's chattel house and the contents therein by bulldozing the same with a backhoe.

[3] In his amended defence, filed on 17th March 2005, in which the Defendant admits that he was the Claimant's neighbour and that he is a police officer in the Royal Police Force of Antigua and Barbuda. The Defendant denies "categorically" the Claimant's allegation that he unlawfully and without claim of right demolished and destroyed the Claimant's chattel house. He contends further that he did not either directly or indirectly authorize anyone to demolish and/or destroy the Claimant's house and/or its contents. It is the further contention of the Defendant that he did not cause the loss and/or the damage of which the Claimant complains.

[4] In her reply the Claimant confirms that the Defendant was at all material times her neighbour and further the said Defendant assisted in having her committed to the Mental Hospital by order of the Court made on 17th August 2004.

[5] At paragraphs 2-4 of her Reply the following is pleaded:

> "2. As to paragraphs 3 and 4, the Claimant states that upon her discovery of the said destruction and damage, she made a report to the St. John's Police Station where the Officer superior to the Defendant contacted the Defendant and advised him of the said report.
>
> 3. In or about September 2004, the Defendant through one of his family members informed the Claimant that she can collect some [of] the belongings of the said Roma Charles salvaged from the wreck at the St. John's Police Station. In that regard, paragraphs 3 and 4 of the Defence are denied.
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> 4. The Claimant states further that the Defendant at the material time is and was the Registered Proprietor of the parcel of land on which the chattel house sat".

ISSUES

[6] The issues for determination are as follows:

1. Whether or not the defendant unlawfully trespassed on the Claimant's goods, namely, her chattel house.

2. Whether or not the Claimant suffered loss and damage to the value of $25,878.00

3. Whether or not the Defendant's action falls within the second category under which exemplary damages are rewarded.

ISSUE NO.1

WHETHER OR NOT THE DEFENDANT UNLAWFULLY TRESPASSED ON THE CLAIMANTS' GOODS, NAMELY, HER CHATTEL HOUSE

[7] In basic outline trespass to goods consists of any direct and wrongful interference with possession of such goods. It is actionable *per se* though the Claimant can also recover any loss actually suffered.

THE EVIDENCE

[8] Testimony on behalf of the Claimant was given by the Claimant herself and Lurleen Spencer, the Claimant's next friend and daughter.

[9] A summary of the Claimant's evidence is as follows: In examination-in-chief Roma Charles said she once lived at Fifth Avenue, Villa but no longer does so because Rufus Thompson, the Defendant "deliberately destroyed" her home on 17th August 2004. She also testified that she knew the Defendant. She also said that the accommodation was a wooden tenement, 12' x 14' which is land which she has rented for over twenty years.

[10] According to the Claimant, on the morning of 17th August 2004, she was preparing her breakfast when she heard her name called and responded but that she also peered through the door and saw two policemen in uniform, whom she recognized, at the entrance. She said that soon after that the front and back door were "plucked open". In continuing her testimony the witness said: "The policeman at the front entrance came inside the house and the one at the back entrance came in also. The policeman at the back entrance grabbed me and Rufus Thompson had a mattock in his hand, gave a blow to the wood".

[11] It is the witness' testimony that prior to the event when the Defendant hit the partition, he took the keys to the police van and opened the door. This she saw when she peered through the door. According to her, she was later led to the van by one of the policemen. She continued: "After I saw what Rufus Thompson did to my house I told the policeman that led me to the van to put the shackles on my hand and he did. The policemen went to the crowd, two policemen, the one that led me to the van and other policeman. They saw what Rufus Thompson did and said nothing". And when questioned as to what Rufus Thompson did to her house, this was her response: "Rufus had a mattock in his hand and he did like that (Demonstrating) to the house and rip the board. He destroyed my house".

[12] Concerning the Defendant, his mother and sisters, Roma Charles testified that they live next door to her on Fifth Avenue, Villa and that they are her neighbours.

[13] In her further testimony, Roma Charles said that prior to the 17th August 2004, there was another incident involving her and the Defendant. She said that on the prior occasion Rufus Thompson sprayed her house for approximately 20 minutes and his mother, Elizabeth Thompson pitched water. She said that Rufus Thompson used a hose to spray but did not know what chemicals were used "… that eat out the house".

[14] Concerning the police van, Roma Charles testified that Valerie Barnes, two policemen and herself were in it and that they went to the Magistrates' Court on Nevis Street. Further that on arrival there one of the policemen went upstairs with some papers and later they drove to the Mental Hospital where the policeman gave the nurse some papers and where she stayed for two months. According to her, before that event, in December 2003, she had paid Lowell Jarvis rent and was told that a man had bought the land. She said that the man was not specified.

[15] Returning to the question of her house, Roma Charles said that when she left the house on the morning of 17th August 2004, Rufus Thompson had started to tear apart her house with a mattock. She continued: "He started to destroy my house and I asked the policeman to shackle my hands because I was not pleased".

[16] In terms of the contents of the house the witness testified that it contained her bed, stove, refrigerator, pots, pans clothing, underwear, head-ties, bed spreads, fencing wire, radio, baths and pails, toiletries, clothes pins, trays and mugs – a total of 25 items approximately $25,878.00. She added that she was claiming the items against Rufus Thompson because he destroyed the house with the contents.

[17] Concerning the ownership of the land on which the chattel house was located, Roma Charles said that she was aware that the Defendant owned the land. And although she paid $120 yearly for the rent, it was never paid to Rufus Thompson. In further testimony the Claimant did testify that some-time after 17th August 2004 when she returned to the land she did hear the Defendant and his mother tell a gentleman something in this regard.

[18] In cross-examination the witness testified that Valerie Barnes was her neighbour who has a son and daughter. According to her they mash down her fence and interfere with her. She said that she does not have a problem with them but that Jamal, his sister and their mother have a problem with her. At a later stage in the cross-examination when asked about the reason for the unhappiness between Valerie [Barnes] and herself, the witness said it was: "because she don't give satisfaction for her children, she indulge them. The witness went on to testify that the situation with Valerie, and her children and herself did not create any tension between them as far as she was concerned.

[19] On the matter of the spraying of her house with chemicals by the Defendant prior to 17th August 2004, Roma Charles testified that she did not report the matter to the police but she did report twice to the police that "he bring a man in the yard to spray the yard". This was later denied since according to the witness it was night. When pressed further for a specific response on the matter, the witness said: "Not at the moment, I reported several occasions". And when it was put to the witness that the event never happened, this was her response: "It happened. His mother pour water on the house too, and his niece sprayed the house and they called her from spraying the house. Rufus woke me up when he sprayed the house because I was sleeping on Sunday night". In the end the witness

agreed that she did not report that particular incident on the Sunday night but insisted that she reported other incidents on other occasions.

[20] With respect to the house, Roma Charles testified that while she saw the Defendant do things to it, it was still standing when she left. However when she subsequently passed through the area some time after the event the land was vacant. And when questioned as to whether she saw who destroyed her house the witness said she saw Rufus Thompson start the destruction of the house. She continued in this progression: "I was in the house when it was destroyed. I was inside". The witness went on to testify that when she left the house was still standing "but mutilated" and insisted that Rufus Thompson destroyed her house.

[21] In a line of cross-examination aimed at showing that the Defendant did not have a mattock but rather he assisted in removing her from the house, these were all denied by the witness. And in particular in response to the latter suggestion, this was her response: "Never. He stood up and watched everything after he held the mattock in his hand when he finished do what he had to do because he premeditated it". Roma Charles then went on to testify that Rufus Thompson used the mattock to damage her house by ripping the board and that she was in the house when this happened. The witness further insisted that when her house was destroyed she was not in the Mental Hospital.

LURLEEN SPENCER

[22] In her witness statement Lurleen Spencer says that Roma Charles is her mother who since in her 20's had been diagnosed with a mental illness and was on medication. This witness also says that her mother's house rested on rented land and that the rent was usually collected by Lowell Jarvis, the son of the owner.

[23] With respect to the said land, the witness says that the said Lowell Jarvis informed her that the land was for sale and this information was also given to her by the Defendant, Rufus Thompson. The witness says further that the Defendant expressed an interest in purchasing the same.

[24] It is Lurleen Spencer's evidence that on her return from the United States she discovered that her mother's house was in pieces in a heap of debris and the contents buried in the wreck. It is the further evidence of the witness that the land is now cleared of the remains of the wreckage but that she was not aware as to who did the clearing. According to Spencer the contents of the house consisted of personal belongings, appliances, bedding and wearing apparel including her mother's several prized hats. She says also that she also learnt that her mother was at the mental home pursuant to an order of the Court.

[25] According to the witness, the matter of the destruction of her mother's house was reported to the police, in particular Officer Anthony of CID. Further she says that "Since then on two or three occasions Officer Anthony attempted to set up meetings with Rufus and he never attended any of the said meetings. I never got a report from the Police as to what their investigations revealed despite my many attempts to get one".

[26] It is Lurleen Spencer's further evidence that after her mother's release from the mental home she learnt from her that on the morning of 17th August 2004 Rufus Thompson had already begun destroying the house with a mattock and had rip the side boards apart while her mother was being spirited away to the Magistrate's Court for committal to the mental home. The witness also says that she learnt that the Defendant became the registered proprietor of the said land in or about July 2004. It is also her contention that, as afar as she was aware, her mother was never served with any notice to quit the land, the rent was up to date and neither Rufus Thompson nor Lowell Jarvis had informed her of the sale of the land.

[27] In cross-examination Lurleen Spencer said that the pictures of the house were taken in the late 1990's but she was not present when it was developed. And with respect to paragraph 13 of her witness statement she said that her mother discovered the matter of the house with her before April 2005. She also testified that her mother bought the house from Nurse Simon's mother who is alive but bed ridden.

RUFUS THOMPSON

[28] In his witness statement Rufus Thompson says that he is a constable in the Royal Police Force of Antigua and Barbuda, that he is the registered proprietor of land at 5th Avenue Villa on which the Claimant once lived. Further, that he had no problem with the Claimant although he was aware that she had problems with people in the neighbourhood. Further still, that he saw having her as a tenant as a means to help with the payment of the mortgage on the said land.

[29] Concerning the morning of the 17th August 2004 Thompson said he was preparing for work when he heard a voice repeatedly calling out Ms Charles' name for about fifteen minutes but there was no response. According to him, it was in fact Constables Stevens and Tittle who could not gain entry into Ms Charles' house. He says that he took a crow bar to one of the constables so that they could use it to gain entry. This the constable did by removing the rear door and then the front door was opened whereupon Ms Charles was removed from the house and taken away accompanied by the two officers.

[30] The Defendant contends that after those events he went back to his house and then left for work. He says further that on his return home from work he saw Ms Charles' house raised to the ground and was subsequently made aware of a complaint by Lurleen Spencer to the St. Johns Police Station to the effect that I was responsible for the destruction. He however denies any responsibility and could not ascertain who had done it.

[31] In commenting on the Claimant's evidence, Rufus Thompson testified that he did not destroy the Claimants house nor did he spray her house for twenty minutes as alleged. He says also that he did not see his mother spray anything on the said house.

[32] Concerning the Claimant and the police, the Defendant says that he was present when they arrived to take her to the Mental Hospital. He also says that he assisted the police.

[33] It is the Defendant's evidence that he lived on 5th Avenue before the Claimant moved there. He testified further that the Claimant came in the late 1990's at which time the

house was there and that she lived in the house for about seven years before it was destroyed. According to him, the house was old and dilapidated.

[34] In cross-examination Rufus Thompson said that the Claimant came to 5th Avenue before he and his mother did. He also said that he was not aware that the previous house belonging to the Claimant was burnt down.

[35] Concerning the ownership of the said land, the Defendant testified that he owned it from 2004. He said he never had a conversation in this connection with the Claimant but he did tell her daughter that he had an interest in it and that he had bought it. His recollection is that the conversation took place in December 2004 and the incident took place in the same year.

[36] It is the Defendant's testimony that when he went to give assistance the others on the scene were Valerie Barnes, and police constables, Stevens and Tittle. According to him PC Stevens is not married to his sister.

[37] It is the Defendant's further testimony that he asked the police officers why they were there and was told that there was a complaint. He said that he saw them trying to get into the house. Further that he did not see Roma Charles but that the complaint was not that there was a dead woman in the house.

[38] In so far as entry into the house is concerned, the Defendant's testimony is that he is a police officer of four years standing and it is normal for the police to use a crowbar to enter a person's house and, depending on the situation, a police officer has the right to enter at any cost which means that it does not have to be a crowbar. However, in further cross-examination Thompson said he was not taught this during his training, but if there was a dead person one can use a crowbar. According to him this was not the situation on the morning in question. On that occasion it was a complaint made by neighbours which was not made to him and as such he was acting on hearsay. He denied that his actions were unreasonable as he considered it necessary to use a crowbar.

[39] Concerning the whereabouts of the crowbar, Thompson said that after Roma Charles was taken away in the van, he retrieved it and that it was not used to remove the sides of the house. For him the house was not secured and in any event the door was not fully prized off.

[40] It is the evidence of the Defendant that he was asked to attend a meeting which, as far as he understood, was to be attended by Lurleen Spencer and himself. According to the Defendant the meeting should have been about the allegation that he had destroyed the Claimant's house.

[41] At the end of his evidence in cross-examination, the Defendant made two denials. The first was that he did not know where they were going with Roma Charles and as such he was not aware where they went after they left. He also denied that he asked for the rubble to be removed or caused it to be removed.

[42] In re-examination Rufus Thompson said that if Roma Charles testified that she saw him using a crowbar to remove the door that would not be right. He also testified that he went back to his house after the police left after spending ten minutes at the Claimant's house. Further still, that he took the crowbar to the house because of the police.

VALERIE BARNES

[43] In her witness statement Valerie Barnes says that she lives on 5th Avenue, Villa and that she is a neighbour of Roma Charles. According to this witness, the Claimant "… lived in an old dilapidated house, which had several holes in its sides where the sideboards were missing. Some parts of the side were covered with sheets of galvanize [and] other parts had galvanize hanging from it".

[44] At paragraphs 13 to 16 of the witness statement the following is the evidence:

> "13. On the morning of 17th August 2005 I went to the St. John's Police Station and I made a report to the Police. The Police accompanied me to the Claimant's house. The Police who accompanied me were Constable Tittle and Stevens.

14. At the Claimant's house they knocked at the door of her house but there was no answer. There was however movement inside the house. They called the Claimant by name and asked her to open the door but she did not do so.

15. The Police continued to knock on the Claimant's door for about 10/15 minutes but they were ignored. Finally, Constable Stevens went to the back of the house while Constable Tittle remained at the front of the house. They continued to ask the Claimant to come out to speak with them. Then one of the Constables used a crow bar to remove a door of the house which the Defendant gave to them so that they could gain access to the house. They also removed some galvanized sheeting from the back of the house which blocked up the door.

16. Both Constables went into the house one from the back and the other from the front. I could see the Claimant sitting down in the house. The Police removed her from the house. The Defendant came on the scene in plain clothes from across the road where he lives but he did not take part in the removal of the door or in removing the Claimant from the house".

[45] According to this witness the Claimant was taken to St. John's Police Station and then to the St. John's Magistrate's Court and then to the hospital. The witness also says that after these events she went to work and that on her return home from work she saw the Claimants house broken down.

[46] In cross-examination Valerie Barnes said that she met the Claimant in 1987 when she went to live in Villa. The witness also said the Claimant left Villa in 2005 after the incident which took place in that year. At a later stage in her cross-examination the witness said that she was positive that the incident took place in August 2005.

[47] According to the witness the Claimant would be well attired in church clothes and a fancy hat while at other times she would be wearing a straw hat.

[48] Concerning the crowbar Valerie Barnes testified that it was brought by P.C. Thompson, the Defendant who gave it to one of the other officers. She however added that she was not sure. She also said that the crowbar was used after there was no answer from the Claimant's house. In the same connection the witness admitted that she was not sure. She also said that the crowbar was used after there was no answer from the Claimant's house. Nor was she aware that the police had a search warrant or if they presented anything to Roma Charles.

[49] With respect to the journey in the police van the witness repeated what she said in her witness statement as follows: Before the van left the Defendant went back to his house and then the Claimant, the two police officers and herself then went to the St. John's Police Station, to the Magistrate's Court and then to the Mental Hospital. The witness added that she went to the Mental Hospital because the police asked her to do so.

[50] In terms of the time factor this is the witness' testimony:

> "The incident happened at about 10 a.m. I had made the report at 8 a.m. I returned home at 5 p.m. and when I arrived I saw the Claimant's house broken down. I was surprised. I asked about it but nobody knew anything. At the time of the incident my son was 16 years. He did not see or hear anything.

[51] In re-examination, in relation to photograph 1, the witness said the house shown there did not look like the one she knew. According to her the one she knew had old, rotten boards and there were holes in the wood.

SUBMISSIONS

[52] The following are the submissions on behalf of the Claimant:

38. "It is submitted that the Court is to regard the terms "mattock" and "crowbar" as being one and the same instrument/tool, as both the Claimant and the Defendant gave evidence that the Defendant had an instrument in his hand.

39. Indeed where the witness part ways relate to the use to which the Defendant put the mattock/crowbar. The Court is urged to accept the evidence of the Claimant as to her vision of the events. The Court would be correct in doing this against the backdrop of the reasonableness of the Defendant's action.

40. It is submitted that the Defendant's actions were unnecessary, unlawful and improper in the circumstances to do the very least of introducing a crowbar as testified by him into the events as they unfolded on the morning of the 17th August, 2004.

41. Indeed, the Defendant's evidence that "it is normal for police officers to pry off the doors of the homes of private citizens" cannot be accepted as reasonable by this Honourable Court. There is no evidence that the occupant Roma Charles was dead, needed the assistance of the police, was wanted on a warrant of arrest or was suspected of any illegal activity in her house. The Defendant provided the Court with no evidence that his actions were justified.

42. If the Court accepts that in the circumstances as described by either the Defendant or Roma Charles or even the witness Valerie Barnes, it was not necessary, lawful or proper for the Defendant to have the crowbar, then the Court must conclude logically, that the Defendant in fact intended to and did use the crowbar to trespass on the Claimant's house by prying off her doors and ripping the side boards. If the Court draws that conclusion, it is a reasonable inference for the Court to find that the Defendant destroyed the Claimant's house.

43. Further, when the Court considers that the Defendant became the Registered Proprietor of a parcel of land on which the Claimant had her house only for one month before it was destroyed without informing the Claimant or her daughter or any other member of her family, together with the evidence of the Claimant that she saw the Defendant begin ripping the side boards and the Defendant's own admission that he inquired of the Claimant's daughter whether she had no other place to put her mother, the evidence is overwhelming and the Court can only conclude that the Defendant was instrumental in destroying the Claimant's house.

44. In the case of *John Cadette v Raphael & Stephen Ephraim Suit No. 538 of 2001, St. Lucia*, Edwards, J found that the Claimant had proven on a balance of probabilities that the Second named Defendant destroyed his wooden shed. The Claimant, Mr. Cadette received a letter from the Defendant's attorney asking him to desist from trespassing on the Defendant's land. Twelve days later, the Claimant's shed was destroyed. Mr. Cadette testified that the Second named Defendant had admitted to the Police that he destroyed his shed although such admission was denied by the Second named Defendant. The Court accepted the evidence of the Claimant and took the admission together with the Solicitor's letter as facts from which it could infer that the Second named Defendant destroyed the Claimant's shed.

45. It is submitted that the facts of the instant case go beyond the facts of *John Cadette's case*, which all arm the Court in deciding that on a balance of probabilities, the Defendant destroyed the Claimant's home.

46. Indeed, the Claimant claims in the law of trespass. Trespass to goods consists of the unlawful disturbance of the possession of the goods by seizure, removal, or by a direct act causing damage or destruction to goods. It is actionable without proof of actual damage – Halsbury Law of England 3rd edition, Volume 11, paragraph 434. Indeed, the act of ripping the side boards is an act sufficient to constitute trespass to the Claimant's house".

[53] The following submissions were tendered on behalf of the Defendant:

"The evidence is that the police received a complaint about Ms. Charles' behavior towards a minor, while she was in possession of an offensive weapon and was charging after the minor with it.

The police attended her home pursuant to that complaint in the lawful execution of their duty, and when Ms. Charles did not respond to their request for her to open to them, in a timely manner, her refusal amounted to an obstruction of the police in the lawful execution of their duty. They waited at her door for about fifteen (15) minutes or more.

Archbold – Criminal Pleading Evidence & Practice states the principle thus ....It is part of the obligations and duties of a police constable to take all steps which appears to him necessary for keeping the peace, or for preventing crime, ...There is no exhaustive definition of the powers and obligations of the police, but they are at least these, and would further include the duty to detect crime and bring and offender to justice: Rice-v-Connolly (1966) 2qB414 per Lord Parker CJ; re Coffin & ose-v-Smith (1980) 72 Cr App R 221.

In Duncan-v-Jones (1936) 1 KB 218, the Divisional Court (UK) held; that as it is the duty of a police officer to prevent breaches of the peace, which he reasonably apprehends the defendant was guilty of unlawfully obstructing the officer, in the execution of his duty, (in circumstances where the police sought to prevent D. from holding a meeting – where neither D, nor anyone attending had incited or provoked a breach of the peace, but where D did not accede to the police request not to address a number of persons in the street).

In re: Lewis-v-Cox (1984) 3 ALL ER 672. Divisional Court (UK)
The Court stated that the simple fact which the Court has to find are whether the Defendant's conduct in fact prevented the police from carrying out their duty, or made it more difficult for them to do so, and whether the defendant intended that conduct to prevent the police from carrying out their duty or to make it more difficult to do so. If those criteria are satisfied, then it matters not at all that D's predominant intention in doing what she did was not to obstruct the police.

These principles are applicable to the circumstances which obtain in the instant case.

The evidence is that Ms. Charles' behaviour offended certain persons in the neighborhood in addition to which she kept her house in an unhygienic state.

The Defendant states categorically that he had no problem with Ms. Charles and in fact saw her as a Tenant from whom he would obtain rent.

Further, there is no evidence that there was any dispute between the defendant and Ms. Charles, save the allegation by Ms. Charles, that "they" sprayed something on her house, and that the defendant's sister and brother-in-law threw water on the land. Pressed in cross-examination as to whether she had reported these incidents to the police, Ms. Charles was to say the least evasive.

There is no evasive, save for the allegation made by Ms. Charles, that she saw the Defendant rip-off boards from her house with a mattock, and which evidence is heavily contested; and denied by the Defendant and Ms. Barnes who were all present.

There is no evidence otherwise supporting this allegation, that the Defendant did it.

The fact that the Claimant could not get anyone in the neighborhood to witness to that effect, speaks volumes not only as to her relationship with her neighbors but, the face of it supports the Defendant's categorical denial that he did not do it.

This Honourable Court is being asked to deduce from Ms. Charles' allegation that she saw the Defendant rip-off a part of her house with a mattock, which statement is gravely to be doubted, that the pushing down of that house with a backhoe, was the Defendants doing.

It is respectfully submitted that there are no circumstances from which any such inference(s) deductions can be made.

There is no evidence of any conspiracy between the Defendant and Ms. Barnes and or the Defendant, and the police constable who attended at Ms. Charles' house on the morning in question, to precipitate her removal from the house, so as to facilitate its destruction by the Defendant, or otherwise.

Cross on Evidence – 6th edn. pp 18 put it thus:
The common fear of manufactured evidence applies, perhaps even more strongly to circumstantial evidence; circumstantial evidence may sometimes be evidence but it must always be narrowly examined, if only because evidence of this kind may be manufactured to cast suspicion on another".

In the instant case, there is no evidence of the Defendant being in the habit of quarreling with the Claimant, so that an inference could be drawn; on the contrary, he saw her as a Tenant from whom he would profit.

There is no evidence of a motive or plans on the part of the Defendant to destroy the Claimant's house.

> There is no single act or groups of acts taken together from which, on a balance of probabilities, it can be safely concluded that the Defendant destroyed the Claimant's house.
>
> It does not adopt so high a degree as a Criminal Court, even when it is considering a charge of a criminal nature; but still it does require a degree of probability which is commensurate with the occasion.
>
> There is no evidence before the Court that the Defendant, even did anything in the way of speaking to the owner/operator of a backhoe, or that he wanted to use the land himself. Indeed, the land remains as it was unaltered. On the evidence, at the relevant time the Defendant was at work".

THE LAW

[54] In Vol. II of HALSBURY'S LAWS OF ENGLAND (3rd ed.) at paragraph 434 the relevant law is stated thus: "A trespass to chattels is actionable without proof of actual damage, and a plaintiff is at least entitled to nominal damages for any unauthorized direct physical interference with chattels in his possession". Another statement of the law is contained in WINFIELD & JOLOWICZ ON TORTS (16th ed.) by W.V.H. Rogers at paragraph 17.3: "Trespass to goods is a wrongful physical interference with them. It may take innumerable forms, such as scratching the panel of a vehicle, removing a tyre from it or the vehicle itself from a garage, or in the case of animals, beating or killing them".

ANALYSIS

[55] It will be recalled that the Claimant's pleaded case is that the Defendant unlawfully and without claim of right demolished and destroyed the Claimant's house and the contents therein by bulldozing the same with a backhoe.

[56] It is common ground that the chattel house which rested on land now owned by the Defendant was owned by and in the possession of, the Claimant on 17th August 2004. And therefore in terms of the tort of trespass to goods the critical ingredient is that of wrongful or unauthorized interference.

[57] In this context the evidence which the Court accepts is that on the morning of 17th August 2004, Valerie Barnes made a complaint at the St. John's Police Station. As a result, Constables Tittle and Stevens came to the residence of the Claimant called her name for a

while and based on her response that she was having breakfast removed at least one of the doors to the house. Assistance was provided in this regard by the defendant who came to the scene, in his words, to assist the officers.

[58] Although Valerie Barnes, the Claimant's neighbour, was somewhat uncertain about the date of the event, the Court accepts her evidence concerning the state of the chattel house. According to her the house had wooden shutters which were not always closed. And according to her when the police arrived at the Claimants' house, the Claimant was sitting. Barnes herself at this time was standing in the road.

[59] Learned counsel for the Claimant, C. Debra Burnette, brought out in her cross-examination of Valerie Barnes that she, Barnes, was not aware of any dead body being in the Claimant's house. She, Barnes, was also not aware of the existence of a search warrant or anything being presented to the Claimant by the police officers.

[60] The Court further accepts as fact that the Defendant entered the Claimant's house and by means of the crowbar started to rip out the boards of the said house. And by the Defendant's own admission the complaint was not made to him and whatever he may have learnt about it came from Constable Tittle and Stevens. Also accepted by the Court is the evidence that the Defendant was dressed in plain clothes at the time of the incident.

[61] Learned Counsel for the Defendant, Alex Fearon, advances a number of authorities which re-state the principle that a police officer has wide power to ensure that there are no breaches of the peace. But while this is undoubtedly the law, the countervailing principle is that the exercise of the power must relate reasonably depending on the circumstances.

[62] As noted before, the evidence reveals that there was no dead body or any other like emergency involved. Nor was there any search warrant in evidence. But as far as the Defendant is concerned the evidence is on a different level as the complaint was not made to him and he only learnt about it from his fellow officers. However he came to the scene armed with a crowbar to deal with a lady sitting having her breakfast.

[63] On the whole it is the conclusion of the Court that the conduct of Constables Tittle and Stevens was unlawful and unreasonable in the circumstances. However in so far as the Defendant is concerned the intentional action of entering upon the Claimant's house and ripping the boards is sufficient to ground the tort of trespass. Indeed, the Claimant's evidence is that the Defendant mutilated her house and she left it standing at the time when she was taken away. At the same time the Defendant's evidence is that he so entered to assist the police officers.

[64] It is a part of the Claimants pleaded case that the house was bulldozed by the Defendant. The question then becomes whether this inference can be drawn from the evidence given the fact that no witness spoke of such an event.

[65] In RE VANDERVELLS TRUSTS [1974] 3 ALL ER 205, 213 it was said that: "It is sufficient for the pleader to state material facts. He need not state the legal result. If, for convenience, he does so, he is not bound by, or limited to what he has stated. He can present, in argument, any legal consequence of which the facts permit".

[66] In this context the following facts arising from the evidence must be considered:

1. The house measured 12' x 14' and was constructed of wood and galvanized sheets. It also contained the Claimant's personal effects.

2. The land on which the house rested was initially owned by Sylvanus Jarvis but it was purchased by the Defendant in July 2004.

3. 'The unbelievable coincidence' that the land was purchased by the Defendant in July 2004 and the house resting on it was destroyed in August 2004.

4. Sometime prior to 17th August 2004, the Defendant enquired of the Claimant's daughter whether she had a place to put her mother.

5. On the morning of 17th August 2004 the Defendant came to assist the police officers and brought with him a crowbar which he handed to one of the officers in order to gain entry to the Claimant's house.

6. When the Claimant was taken away in the police van, the Defendant said in evidence that he returned to his house.

7. The Defendant was late in reporting for work on the morning of 17th August 2004.

8. The incident took place at about 10 a.m. according to Valerie Barnes. She also testified that when she came from work at about 5 p.m. on the same day the Claimant's house was demolished.

9. The meeting scheduled for St. John's Police Station in connection with the incident which was to be attended by the Defendant. He never did so.

10. The fact that the debris from the house and contents were removed some six months later by a person or persons unknown to the Court.

[67] In her submissions learned counsel for the Claimant has posed the proposition to the Court that if it is accepted that it was not necessary, lawful or proper for the Defendant to have a crowbar then the conclusion to be drawn is the Defendant intended to and did use the crowbar to trespass on the Claimant's house. Further, if that conclusion is drawn then the reasonable inference is that the Defendant destroyed the Claimant's house.

[68] On the other hand, the Defendant's position as articulated by counsel is that there is no evidence before the Court that the Defendant even did anything in the way of speaking to the owner/operator of a backhoe, or that he wanted to use it himself. Learned counsel even goes further by saying that the land remains as it was unaltered. And that at the relevant time the Defendant was at work.

[69] The aspects of the evidence highlighted above, point undoubtedly to the question of trespass and no further in terms of the actual destruction of the house and contents.

[70] In this regard two points made by the Defendant's counsel are cogent: That at the relevant time the Defendant was at work and also there is no evidence of a backhoe being involved. In actual fact there is a evidential gap between 10 a.m. and 5 p.m. when presumably the destruction took place. Indeed, the nature of the debris and the seven hour gap leans more to destruction by a person which in this case cannot be the Defendant as his uncontradicted evidence is that he was at work after the Claimant was taken away.

[71] In terms of the case of JOHN CADETTE v RAPHAEL EPHRAIM and STEPHEN EPHRAIM[1] cited in support by learned counsel for the Claimant, the Court agrees with learned counsel for the Defendant that it is distinguishable on the facts. This is because there was an admission by the Second Defendant that he had destroyed the Claimant's property. Accordingly the matter of an inference did not arise.

[72] It is therefore the conclusion of the Court that the Defendant is liable in trespass. It is however unreasonable to draw the conclusion that the Defendant is liable for the destruction of the Claimant's house and its contents.

ISSUE NO. 2

WHETHER OR NOT THE CLAIMANT SUFFERED LOSS AND DAMAGE TO THE VALUE OF $25,878.00

[73] The figure of $25,878.00 relates both to the loss of the house and its contents.

[74] That the Claimant suffered loss and damage on account of the damage mentioned above is not in doubt. This is clear on the evidence. The question is whether the Defendant is liable.

[75] It has already been concluded that the evidence does not support the Claimant's contention that the Claimant's house and its contents were bulldozed and for this the Defendant bears no liability.

ISSUE NO. 3

WHETHER OR NOT THE DEFENDANT'S ACTION FELL WITHIN THE SECOND CATEGORY UNDER WHICH EXEMPLARY DAMAGES ARE REWARDED.

[76] In terms of the scope of exemplary damages the following learning is to be found in MCGREGOR ON DAMAGES (16th ed.) at paragraph 455:

> "This second common law category, according to Lord Devlin in *Rookes v Barnard*, is directed against a defendant who "with a cynical disregard for a plaintiff's rights has calculated that the money to be made out of his wrongdoing will probably exceed the damages at risk", and this, as has been seen, has been rightly interpreted in *Broome v Cassell* & Co. as, in the words of

[1] Case No. SLUHCV 2001/0538

> Lord Hailsham there, "not intended to be exhaustive but illustrative, and … not intended to be limited to the kind of mathematical calculations to be found on a balance sheet".

[77] The mantle of exemplary damages in this context was taken up in VALENTINE v RAMPERSAD [1970] 17 WIR 12 where such damages were awarded in respect of what the Court described as harassment and ruthless disregard by the landlord of the rights of the tenant. In a similar context exemplary damages were awarded in DRANE v EVANGELOU [1978] 3 ALL ER 437.

[78] Learned counsel for the Claimants rests on submissions on the latter authorities. In particular she urges the Court "… to find on the facts of demolition of the Claimant's house was tantamount to an unlawful eviction". Indeed coupled with the anxiety of being without her own home, the disgrace of having her personal belongings piled in a heap of garbage can only be satisfied by an award of exemplary damages.

[79] On the other hand, learned counsel for the Defendant contends that there is no evidence as to the Defendant's motive or that indeed, again, that the Defendant committed or caused the destruction of the Claimant's house. This constitutes the basis for the contention that exemplary damages should not be awarded.

[80] The submission on behalf of the Defendant concentrates only on one aspect of the alleged conduct of the Defendant. And therein lies the weakness of the submission as the entirety of the Defendant's conduct must be considered in the context of the issue of the award of exemplary damages.

[81] Therefore the following must be considered in this context:

1. The evidence is the Claimant's rent was up to date.
2. There is no evidence of any notice to quit being served on the Claimant.
3. The entry into the Claimant's house by the Defendant was unlawful and unreasonable as the Defendant ultimately admitted in cross-examination.

4. There is no evidence of any violent action on the part of the Claimant. Indeed the Claimant was having breakfast at the material time.

5. It is common ground that the Claimant is a person with a history of mental illness.

6. The actions of the Defendant in ripping out the boards of the Claimant's house or as the Claimant put it 'mutilating her house'.

7. The request by the Claimant to the police to place the handcuffs on her in the face of the Defendant's action.

8. The possession of a crowbar by the Defendant which he brought to the scene when he was assisting the police.

9. The question posed by the Defendant to the Claimant's daughter as to whether she had a place to put her mother.

10. The elapse of time (being a little more than one month) between when the Defendant became the lawful owner of the subject land and the destruction of the Claimant's house.

11. The reasonable inference that the Defendant wanted the Claimant off his land urgently, having regard to inter alia, the question to the Claimant's daughter.

[82] Having regard to all the circumstances, it is the conclusion of the Court that the evidence reveals the Defendant's motive in interfering with the Claimant's right to her house which rested on land which she lawfully occupied. In so doing the Defendant's action, in line with the authorities cited, may be categorized as, high-handed and a total disregard for the Claimant's rights. Accordingly exemplary damages are warranted.

QUANTUM OF DAMAGES

[83] It was noted before that the law with respect to trespass to goods is that the Claimant is at least entitled to nominal damages. But there are a number of authorities which support the proposition that a Claimant is entitled to substantial damages in this context.

[84] In INTERWOVEN STOVE CO Ltd v FWH HIBBARD ET AL [1936] 1 ALL ER 263, 269 Hilbery J makes the basis point concerning the recovery of damages for trespass. And then at page 270 he continues as follows:

> "And where there is a trespass to goods, though no actual damage results, the law gives a right to recover damages not limited to actual damage sustained, but a right to recover substantial damages even though there be no proof of actual loss. The case of *Bayliss v. Fisher* (1) was cited and is an authority for that pro-position. More recently the law has been alluded to and stated in the Court of Appeal in the case of *Owen & Smith v. Reo Motors (Britian) Ltd*. (2), which was an action for damages for trespass to goods. There GREER, L.J., says at page 278:
>
> > 'Now what damage have the dealers suffered by reason of the fact that these vehicles were removed without the opportunity being given which was provided for in the contract? I think, practically speaking, there was no damage. If they had been given the opportunity, there would still have been a loss of reputation to the dealers in their business. It does not follow that if the opportunity had been given the bodies would have been removed. It would only have meant their having a reasonable time in which to remove all the cabs and bodies which were theirs. The creditor looking out from the opposite side of the street would have seen just as much, if the contract had been strictly carried out, as he did, in fact, see. No authority has been cited to show that punitive damages could be recovered for trespass to chattels. I prefer not to express an opinion on that somewhat difficult matter, but I do think that in this case there must be something in the nature of substantial damages'.
>
> I am satisfied, therefore, that though no actual damage is proved, the court is entitled to give, if the circumstances justify it, substantial damages".[1]

[85] The case BRINKMAN DOUGLAS v MAJORIE BOWEN (1974) 22 WIR 327 is substantially in pari materia with the case at Bar in that it involved the destruction of demised premises while there was a subsisting tenancy. Additionally the tenant was a female.

[86] The Defendant having been found liable in trespass at the trial, Rowe J (as he then was) assessed damages. He awarded special damages, general damages, including compensatory damages, and exemplary damages. The matter of the exemplary damages was successfully appealed. The decision on this ground of appeal was however by a majority with Justice of Appeal Graham Perkins rendering a strong dissent. And after an analysis of the leading authorities, came to this conclusion: "As to the case now under review, I have not the least doubt that on its particular facts as recited by the Acting President, an award of exemplary damages was eminently justified and, indeed necessary".

[87] The headnote to the case reads in part as follows at page 336:

> "The appellant admitted that when he caused the demolition of the demised premises his state of mind was that he was prepared to pay for so doing. Rowe J found that the appellant knew that the notice to quit was invalid. He came to the conclusion that the appellant did not want

[1] See also: BAYLISS v FISHER [1830] 7 Bing 153

> the premises for any particular reason but that 'in a high-handed, oppressive, vindictive wanton manner destroyed the (respondents) means of livelihood, her house and that of her children'. He awarded the respondent $9,801.50 as special damages, $12500 as general damages, including $5000 as compensatory damages and $7500 as exemplary damages. In awarding exemplary damages, Rowe J said that this was 'the most outrageous trespass, the most cold-blooded disregard of anyone's rights, the most calculated misuse of personal power, the most cruel onslaught on a defenceless woman and her children without rhyme or reason that I have ever seen in these Courts' ".

[88] On appeal Luckhoo P (ag.) in addressing the issue of the quantum reasoned in part as follows:

> "It was not disputed that the respondent was entitled to an award which would include (a) the special damages proved (b) compensatory damages for injury to the respondent's feelings including the mental distress to which she was subjected by reason of the appellant's conduct in evicting her from the demised premises. Although challenge was ... made to the quantum of damages awarded under each of these two heads it was not contended before us that the quantum awarded in respect of special damages should be disturbed. But in regard to the award of $5000 under the head of compensatory damages for trespass to goods, it was submitted that an amount of $500 or perhaps $1000 would be nearer the mark as any inconvenience, distress or annoyance caused by the respondent by reason of the appellant's acts were matters of transient nature. This submission was sought to be supported by reference to the awards under the head made in cases of *Perera* v *Vandiyar* [1953] 1 WLR 612, *Kenny* v *Breen* [1962] 3 ALL ER 814; *Mafo* v *Adams* [1969] 3 ALL ER 1404. In those cases the amounts of £25, £2 and £100 were awarded in respect of the cutting off of gas and electricity, threats and deceit respectively. One has only to state the facts in the instant case in order to realize how different in degree they are from the facts in those cases, and consequently to appreciate the humiliation and mental distress that must have caused the respondent in this case. I would not interfere with the award made by the learned trial judge under the head of compensatory damages".

[89] The Court is guided by the dicta cited above and the award of general damages in the BRINKMAN DOUGLAS case. And having regard to the variation on the facts in this case the award of general damages is $5000.00

[90] In so far as the exemplary damages are concerned, in the VALENTINE case the award was a mere $500 in 1972 while in the DRAVE v EVANGELOU with respect to what the learned trial judge described as 'monstrous behavior', the award was £1000 in 1978.

[91] The criteria usually applied by the Courts in the award of exemplary damages are: whether the Claimant was a victim of punishable behavior, moderation in award, the means of the parties, the conduct of the parties, the amount awarded in compensation and

the relevance of any criminal penalty[1]. Added to the foregoing the Court considers that the Claimant's psychiatric history warrants serious consideration.

[92] Therefore having regard to the object of exemplary damages, the above mentioned criteria and the considerations as derived from the evidence, the award of exemplary damages is in the amount of $18,000.00 for what must be described as egregious conduct by a person who happens to be a police officer.

CONCLUSION

[93] In summary the determinations of the Court are: The Defendant is liable in trespass with respect to the Claimant's goods or property; but he is not liable for the destruction of the goods or property the value of which amounts to $25,878.00. The Defendant's conduct warrants the award of exemplary damages having regard to the law and all the attendant circumstances.

ORDER

[94] IT IS HEREBY ORDERED as follows:

1. The Defendant is liable in tort for trespass to the Claimant's goods or property and said Defendant must pay the Claimant general damages in the amount of $5,000.00.

2. The Defendant must pay exemplary damages to the Claimant in the amount of $18,000.00.

3. Interest at the rate of 6% is payable on the award of $5,000.00 from the date of the filing of the claim to the date of this judgment.

4. Prescribed costs in accordance with Part 65.5 of CPR 2000.

Errol L. Thomas
Judge

[1] See: MCGREGOR ON DAMAGES, *supra* at paras. 461-469