THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

(CIVIL)

CLAIM NO: ANUHCV 2005/0217

BETWEEN:

KEITH PIGOTT Claimant

And

ALBURN SAMUEL Defendant

Appearances:
Mrs. Eleanor R. Solomon for the Claimant
Mrs. Denise Jonas-Parillon for the Defendant

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2007: May 02, July 30
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JUDGMENT

[1] Thomas J: On 19th May 2005 the Claimant, Mr. Keith Pigott filed a claim form in which Alburn Samuel is named as Defendant. The claim is for damages for trespass and conversion of the Claimant's goods on or about 17th August 2002.

[2] The statement of claim is in the following terms:

1. The Claimant is and was at all material times the owner and entitled to possession of a motor truck registration number P 8071 of the value of $25,000.00.

2. On or about 17th August 2002 the defendant's servant or agent wrongfully took and carried away the said motor truck from the place on Cemetery Road, St. Johns where it was parked.

3. On or about 27th September 2002 the Defendant agreed to pay the Claimant $25,000.00 for the truck but has failed to do so, whereby the Claimant has suffered loss and damage namely $25,000.00 the value of the said truck.

AND THE CLAIMANT CLAIMS

1. Damages for conversion

2. Damages for trespass to the said truck

3. Interest thereon at such rate and for such period as to the Court may seem just.

4. Costs.

DEFENCE

[3] In his defence the Defendant denies paragraphs 1, 2 and 3 of the statement of claim.

[4] Instead the Defendant pleads that there was a verbal agreement on 16th August, 2002, with the Claimant for the sale of a loader and dump truck (not in running condition) for the sum of EC$55,000.00. It is further pleaded that it was agreed that there would be a deposit of EC$30,000.00 to be paid to the Claimant on 19th August 2002 with the balance being paid in weekly instalments of EC$2,500.00. And it was further agreed that both pieces of equipment could be collected on 17th August 2002. It is pleaded that the deposit was not collected by the Claimant.

[5] The Defendant contends that on or about 21st August 2002 he was informed by the Claimant that only the dump truck remained for sale. The Defendant says that he did not agree as his interest was in the loader and accordingly informed the Claimant to collect the dump truck.

[6] It is the Defendants contention that he was instructed to return the dump truck to the premises of a one Aubrey Lake and upon attempting to do so there was a refusal to accept same.

[7] Finally, the Defendant pleads that the Claimant was informed of the said refusal but has failed or refused to collect his dump truck which still awaits collection by the Claimant.

REPLY

[8] In his reply the Claimant joins issue with the Defendant on his defence.

[9] At paragraphs 2 to 4 of the said reply the following is pleaded:

> "2. And in further reply to paragraphs 2 and 3 of the Defence the Claimant says that on 15th August 2002 he agreed to sell the truck to the Defendant for $25,000.00 and a loader for $30,000.00 subject to a written contract specifying the details of the transaction. The Claimant made it absolutely clear to the Defendant that nothing was to be done about the transaction until the written contract was signed. There was no agreement that a deposit of $30,000 would be paid on 19th August 2002 or that the truck or the loader would be collected on 17th August 2002 or at the Defendant's convenience. No written contract was ever signed by the parties.
>
> 3. As to paragraphs 5 and 6 of the Defence the Claimant says that on 10th October 2002 he reported to the Police that the Defendant had stolen his truck after the Defendant had agreed to and then refused to pay him $25,000.00 for the truck. The Claimant never made any report to the Police about Willy D Enterprises.
>
> 4. The Claimant denies paragraphs 8 to 14 inclusive of the Defence and says that there was never any discussion between the parties concerning the return of the truck."

ISSUES

1. Whether there was a contract between the Claimant and the Defendant for the sale of a dump truck or loader or both.

2. Whether the Defendant is liable in damages for conversion or trespass to goods.

EVIDENCE

KEITH PIGOTT

[10] In his witness statement filed on 8th December 2006, the Claimant, Keith Pigott, says that sometime around 4th August 2002 the Defendant, Alburn Samuel, approached him concerning the purchase of a loader. The Claimant says that at this time he informed the Defendant that he also owned a dump truck and enquire whether he, the Defendant, was interested in both vehicles. The answer was in the affirmative and it was agreed orally that

both vehicles in an "as is" condition subject to a written contract being prepared by the Defendant's brother, an attorney-at-law.

[11] It was a term of the contract that the Defendant would pay $55,000.00 for both vehicles – loader $30,000.00 and dump truck $25,000.00.

[12] According to the Claimant on or around 20th August 2002 the Defendant indicated to him that he had $30,000.00 which he wish to pay as a deposit but it was refused because the contract had not been prepared and further there was no agreement for a deposit.

[14] The Claimant says further that sometime in 1998 he had placed the dump truck in the premises of one Aubrey Lake but that on 20th August 2002 the said truck was removed from the premises aforesaid by the Defendant's son.

[15] According to the Claimant he received the contract from the Defendant's brother on 21st August 2002 and upon perusal at the attorney's office it was noted that it contained errors including the stipulation that the vehicles were being sold "as is". The Claimant says that this omission was pointed out and also the fact that the Defendant has improperly removed the dump truck. He added: "The defendant's brother inquired whether I wished to proceed with the transaction and I informed him that I would get back to him."

[16] The Claimant contends that on 27th September 2002, the Defendant agreed to pay him $25,000.00 for the dump truck but that he has not been able to collect the same. Instead the sum of $15,000.00 was offered but this was refused. It is the evidence of the Claimant that the matter of the removal of the truck without his knowledge and permission and without paying for it was reported to the police.

[17] It is the Claimant's contention that since the removal of his truck he has not seen it and it has remained in the possession of the Defendant. Further that he has not held any discussion with the Defendant concerning the return of the truck.

[18] Finally, the Claimant says that: 1. there was no agreement with the Defendant concerning the collection of the loader or the dump truck; 2. there was no written contract that was executed with the Defendant and 3. the Defendant has not paid for the dump truck and wrongfully remains in possession thereof.

[19] In commenting on the Defendants' witness statement, the Claimant testified that at the time of the oral agreement it was agreed on an instalment would be made after the contract. He said further that he did not agree with the Defendant that he could collect both pieces of equipment on any Sunday and that in any event he never collected the deposit of $30,000.00.

[20] In cross-examination the Claimant testified that on 16th August 2002 he agreed with the Defendant for the sale of the truck and loader and that he also agreed for a deposit of $30,000.00 and instalments $2,500.00. However the deposit of $30,000.00 was to be paid after the written agreement.

[21] Concerning the return of the truck, the Claimant said he did not go back for it because Mr. Samuel took it without his consent. He stole it and the matter was reported to the police in October 2002. In this regard when it was put to the witness that he was making up stories, this was denied. And he continued his testimony by saying that to the best of his knowledge the truck was in Mr. Samuel's possession and would not accept the truck if it was brought back. Rather, he wanted the Defendant to pay him the sum of $25,000.00.

[22] When it was put to the Claimant that there was no agreement on price for the truck and loader, this was denied by the Claimant. He said that the agreement was in the sum of $55,000.00 for both items. He however added that there was no agreement that the two vehicles could be collected the next day.

[23] It was also put to the Claimant that he collected a cheque for $30,000.00, this was denied. He said that what he did collect was a copy of a cheque from his attorney-at-law. At a latter stage in his cross-examination on the issue of the $30,000.00, the Claimant also

denied that there was no agreement for the payment of that sum whereupon the truck could have been taken.

[24] In re-examination the Claimant's testimony is that the agreement was $25,000.00 for the truck and $30,000.00 for the loader. Further, that on 27th September 2002 the Defendant agreed to pay $25,000.00 for the dump truck.

ALBURN SAMUEL

[25] In his witness statement filed on 2nd November 2006, Alburn Samuel, the Defendant, says that on 16th August 2002 he entered into an agreement with Keith Pigott for the sale of a loader and dump truck for the sum of $55,000.00. According to him there was no breakdown regarding the loader and dump truck. He adds that the truck did not have tires and was not in running condition.

[26] The Defendant says that the agreement called for a deposit of $30,000.00 to be paid on 19th August 2002 and the remainder in weekly instalments of EC$2,500.00. The deposit was to be collected at his lawyer's office and it was further agreed that the two vehicles could be collected on or after 17th August 2002.

[27] The Defendant contends that he hired Willy D. Enterprises to remove the dump truck but that while that was being done the Claimant called the police and as a result the loader was not collected. Further, that the Claimant did not collect the deposit as agreed.

[28] The further evidence of the Defendant is that on 21st August 2003 the Claimant informed him that he was now only interested in selling the dump truck but did not agree because his interest was in the loader. In the circumstances the Defendant says that he told the Claimant to collect the truck from his premises in English Harbour. This was not done by the Claimant.

[29] Under cross-examination Alburn Samuel testified that he only became interested in the dump truck because when he approached the Claimant about the loader and the truck

constituted a package. He said he went along with it and agreed to purchase them for $55,000.00. He said further that it was just an oral agreement.

[30] Upon being shown paragraph 5 of the agreement at TB p. 32 the Defendant agreed that it does not mention the word "as is" but insisted that the document represented what was agreed. He went on to say that it was never signed but he did remove the truck based on certain events. However he did admit that he is in possession of the dump truck.

ISSUE NO.1

WHETHER THERE WAS A CONTRACT BETWEEN THE CLAIMANT AND THE DEFENDANT FOR THE SALE OF A DUMP TRUCK OR LOADER OR BOTH.

FINDINGS OF FACT

[31] The findings of fact by the Court are as follows. Sometime around 4th August 2002 the Claimant and Defendant agreed orally on the sale and purchase of a dump truck and loader, "as is", for the price of $55,000.00. This was subject to the oral agreement being reduced to a written contract. However when this was done by the Defendant's attorney and perused by the Claimant, it was discovered that the words "as is" in relation to the two vehicles were omitted. In any event the contract was never signed. In the meanwhile the dump truck was removed from its location where it was placed by the Claimant and the Defendant subsequently offered the Claimant $25,000.00 for the dump truck which the Claimant accepted but the Defendant subsequently, however another offer of $15,000.00 for the dump truck was made by the Defendant but rejected by the Claimant.

CONCLUSION

[32] It is the determination of the Court that there was no contract between the parties. The evidence of the Defendant under cross-examination bears directly on this determination. It begins when the Defendant was referred to a contract at pages 32 & 33 of the Trial Bundle. The evidence which followed runs thus: "This is the contract prepared by Mr. Charlesworth Samuel. It does not mention the "as is" condition but I said that this is what was agreed. The contract was never signed. I gave Mr. Samuel the deposit of $30,000.00

so I assumed that I had the right to take the truck. I removed the truck with my son. I never told the Claimant that I was taking up the truck. I am aware that the Claimant reported the matter to the police."

[33] The testimony of the Claimant regarding the non-execution of the agreement and the offer and counter offer regarding the truck is in the same vein.

ISSUE NO. 2

WHETHER THE DEFENDANT IS LIABLE IN DAMAGES FOR CONVERSION

[34] Under cross-examination the Defendant testified that he gave Mr. Charlesworth Samuel a cheque for $30,000.00 and he therefore assumed he had a right to take the truck. There is no evidence as to the date on which the cheque was drawn but the Claimant testified that what he received was a copy of such a cheque. In any event the Defendant boldly admits that: he never told the Claimant that he was removing the truck, is aware that the Claimant reported the matter to the police, that he and his son were going to use the truck for parts and that he is in a possession of said truck.

[35] In CLERK & LINDSELL ON TORTS (18th ed.) at paragraph 14-11 conversion is defined in these terms:

> "Anyone who without authority receives or takes possession of another's goods with the intention of asserting some right or dominion over them, or deals with them in a manner inconsistent with the right of the true owner is prima facie guilty of conversion, provided that there is an intention on the part of the person so dealing with them to negative the right of the true owner or to assert a right inconsistent therewith."

[36] Learning on the issue is also to be found in Vol. 45(2) 4th ed. Reissue of HALSBURYS LAWS OF ENGLAND at paragraph 548 in these terms:

> "Conversion exists in three forms. To constitute the first form of conversion there must be a positive wrongful act of dealing with the goods in a manner inconsistent with the rights of the owner, and an intention in so doing to deny the owner's rights or to assert a right inconsistent with them. This inconsistency is the gist of the action. There need not be any knowledge on the part of the person sued that the goods belong to someone else; nor need there be any positive intention to challenge the true owner's rights liability in conversion is strict and fraud or other dishonesty is not a necessary ingredient in the action."

[37] Further in LANCASHIRE AND YORKSHIRE RY CO v MAC NICOLL (1919) 88 LJKB 601, 605 Atkin J, as he then was, defined conversion as "Dealing with goods in a manner inconsistent with the rights of the true owner … provided that it is also established that there is also an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right."

[38] When the factual matrix outlined above is examined against both statements of the law, the Court is satisfied that there is conversion on the part of the Defendant. As noted in HALSBURY'S LAWS OF ENGLAND, supra it is the inconsistency which is the gist of the action. And it is also a principle that the intention not to deprive the owner permanently of the goods is irrelevant, see: THE PLAYA LARGE [1983] 2 LIoyd's Law Reports.

TRESPASS TO GOODS

[39] In CLERK & LINDESELL ON TORTS, *supra* it is stated at paragraph 14-12 that:

> "A mere taking unaccompanied by an intention to exercise permanent or temporary dominion may be trespass, but no conversion. Atkin LJ put the difference thus:
>
> 'An act of conversion differs form mere trespass inasmuch as the former must amount to a deprivation of possession to such an extent as to be inconsistent with the right of the owner and evidence to deprive him of that right, whereas the latter includes every forcible injury or act disturbing the possession of the owner howsoever slight the act may be.'

[40] Again on the evidence and the law there can be no doubt that the Defendant disturbed the possession of the Claimant's goods, namely the dump truck. Therefore, it is the determination of the Court that liability also rests for the tort of trespass to goods.

DAMAGES

[41] Having regard to the Court's determinations regarding conversion and trespass, damages will flow in respect of both torts.

[42] In CLERK & LINDSELL ON TORTS *supra* at paragraphs 14-99, 14-100 and 14-103 the following principles are enunciated regarding the measure of damages for deprivation of goods:

> "At common law the measure of damages to which the claimant is entitled for deprivation of his goods is normally their market value, together with any special loss which flows naturally and directly from the wrong.
> In conversion, however, despite some contrary authority, it appears to be established that the time of conversion is normally the proper time for assessment of the value of the goods.
> If the goods decline in value between the dates of conversion and of judgment, the claimant may recover damages assessed by reference to the value at the date of conversion."

[43] In cross-examination the Defendant testified that based on advice from his son, his offer for the sump truck was $15,000.00 and denied that he had agreed to pay $25,000.00. On the other hand, also in cross-examination, the Claimant testified that the figure agreed initially for the truck was $25,000.00. And in terms of the valuation done in 2002 and the value then was more than $25,000.00 but he agreed to $15,000.00.

[44] In making a determination on the question of value, the Court notes that in the agreement prepared by the Defendant's attorney the truck is described as: "10 – wheel 20 – Ton Truck; INTERNATIONAL Serial No. C18P5K0001 FAAS 9253."

[45] Having regard to the fact that the figure of $25,000.00 was always in the factual matrix, including the letter dated January 31, 2003 from the Defendant's attorney to the Claimant's attorney[1], in relation to the truck plus the valuation, the Court accepts the figure of $25,000.00 as being the value at the date of conversion, being 17th August 2002.

INTEREST

[46] Learned counsel for the Claimant has drawn the Court's attention to the case of GREER v ALSTONS ENGINEERING SALES & SERVICES LTD [2003] 63 WIR 388 (PC). The case concerns, *inter alia*, detinue and conversion and interest on the award of damages. Among the factors considered by their Lordships in awarding interest at the rate of 12% was the fact that the Appellant had been deprived of his backhoe for a period of eleven years, it was a commercial vehicle and the loss of use during the period – 16th January 1984 to judgment on 29th November 1995.

[1] **TB page 29**

[47] The Court would distinguish the facts in the two cases on a single issue: the fact that in the GREER case the vehicle was taken for repairs while in this case the truck was parked without wheels since 1998. Therefore applying the rule as modified, the Court would award interest at the rate of 10% from 17th August 2002 to the date of this judgment. In making this award the Court is grounded and guided by section 27 of the EASTERN CARIBBEAN SUPREME COURT ACT, Cap. 143.

ORDER

[48] IT IS HEREBY ORDERED AND DECLARED as follows:

1. There was no contract between the Claimant and the Defendant for the sale of a loader or dump truck, or both.

2. The Defendant is liable for the torts of conversion and trespass to goods.

3. The award of damages to the Claimant is $25,000.00.

4. Interest on the award of damages is at the rate of 10% per annum from the date of conversion, being 17th April, 2002 to the date of this judgment.

5. Costs to the Claimant in the sum of $5,000.00 as agreed.

Errol L. Thomas
Judge