

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE**

CASE NO: GDAHCV2007/0189

BETWEEN:

FRANCIS DEROCHE

Claimant

AND

PORT LOUIS TRADING LIMITED

Defendant

Appearances:

Mr. Anselm Clouden for the Claimant
Mr. Dickon Mitchell for the Defendant

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2009: May 4
November 26
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JUDGMENT

[1] **MICHEL, J:** By a Claim form filed on 7th May 2007, the Claimant, Francis Deroche, claimed against the Defendant, Port Louis Trading Limited, the following relief:

1. Delivery of the vessel MV Ability or payments of \$75,000.00, its value.
2. Damages for conversion.
3. Damages for trespass.
4. Interest pursuant to section 27 of the Supreme Court Act.

[2] By a Statement of Claim filed on the same date the Claimant claimed against the Defendant the following:

1. Damages for trespass.
2. Damages for conversion.
3. Alternatively delivery of the MV Ability or substitute or payment of \$75,000.00, its value.
4. Special damages EC\$108,000.00.
5. Interest, pursuant to section 27 of the Supreme Court Act.

[3] On 6th June 2007 the Defendant filed a Defence to the Claimant's claim and on 11th July 2007 the Claimant filed a Reply to the Defence.

[4] By an Amended Claim Form filed on 12th July 2007 the Claimant claimed against the Defendant the following:

1. Delivery of the vessel MV Ability or payment of \$75,000.00, its value.
2. Damages for conversion.
3. Alternatively damages for gross negligence as an involuntary bailee.
4. Interest pursuant to section 27 of the Supreme Court Act.

[5] By an Amended Statement of Claim filed on the same 12th July 2007 the Claimant claimed against the Defendant the following:

1. Damages for conversion and or gross negligence as an involuntary bailee.
2. Alternatively delivery of the MV Ability or substitute or Payment of \$75,000.00, its value.
3. Special damages EC\$108,000.00.
4. Costs.
5. Interest pursuant to section 27 of the Supreme Court Act.

[6] In his Statement of Claim filed on 7th May 2007 the Claimant alleged that on or about 30th November 2006 the MV Ability was docked or lying in a disabled condition on the landward side of the low water line on the shoreline within the

coastal zone of Grenada "on that part of the shoreline, within the territorial sea of Grenada known as the public domain to which the public has an inhibited right of access both egress and ingress." He alleged that on the aforesaid date the Defendant wrongfully and without the consent of the Claimant "wilfully destroyed the Claimants' boat, by using its excavator to demolish and remove it in bits and pieces from its location, where it was docked as aforesaid since September 2004." The Claimant further alleged in the Statement of Claim that by letter dated 5th December 2006 he requested, through his attorney, that the Defendant "deliver up his motor vessel a substitute or pay a replacement cost of \$75,000.00," but that the Defendant had not afforded him the courtesy of a reply. In the premises, he alleges, the Defendant has wrongfully removed and converted to his own use the Claimant's vessel. He further alleged that the Defendant detained the said vessel and refuses to give up same to the Claimant, by reason of which conversion the Claimant has suffered loss and damage from January 2005 to present. The particulars of loss and damage alleged by the Claimant in the Statement of Claim were as follows:

1. Value of the MV Ability EC\$75,000.00.
2. Loss of income from fishing with the boat in the course of the Claimant's business from January 2005 to present at \$2,000.00 per trip after expenses at 2 trips per month totalling EC\$108,000.00.
3. The said fishing boat can be easily replaced.

[7] In response to the Claimant's allegations the Defendant filed a Defence on 6th June 2007 and alleged that it was the servant and agent of a company called Port Louis Land Limited, which was the owner and occupier of the property on which the Claimant's vessel was located, and that Port Louis Land Limited had given notice to the Claimant and to other owners of vessels docked there to remove their vessels from the property of Port Louis Land Limited and, upon the refusal of the Claimant to comply, Port Louis Land Limited instructed the Defendant to remove the Claimant's vessel from its property. The Defendant alleged that in attempting to remove the vessel as instructed, because of the rotten and disabled state of the

vessel, it completely fell apart and that the salvage constituting rotten pieces of wood was lawfully removed and placed in a dump.

[8] On 11th July 2007 the Claimant filed a Reply joining issue with the Defendant on its Defence, affirming that the vessel was in a public area and not on the Defendant's property (although the Defendant's allegation was that the vessel was on the property of its employer/principal) and that he is entitled to the compensation claimed by him.

[9] Then the following day the Claimant filed an Amended Statement of Claim in which he alleged for the first time that the Defendant was an involuntary bailee and was grossly negligent in removing the boat and subsequently destroying it. He alleged that the Defendant, by its servants or agents, did not take due or proper care of the boat and, by reason of their negligence, the boat had been destroyed. The Claimant also provided in the Amended Statement of Claim particulars of the negligence alleged, abandoned the claim for damages for trespass and claimed damages for gross negligence of the Defendant as an involuntary bailee in addition to or as an alternative to damages for conversion.

[10] On 14th September 2007 the Defendant filed an Amended Defence, in response to the Claimant's Amended Statement of Claim, in which the Defendant denied that it was an involuntary bailee of the Claimant's vessel and reiterated that the Claimant's vessel was trespassing and, that if it was an involuntary bailee, it exercised all reasonable care when it attempted to remove the vessel – it employed proper equipment in its attempt to remove the vessel and it employed skilled persons to do so, who exercised all reasonable care when attempting to remove the vessel.

[11] In his Witness Statement filed on 3rd November 2008 the Claimant made no allegations of trespass to or conversion of his boat by the Defendant, but simply asserted that the Defendant had on 30th November 2006 removed his boat from where it had been since September 2004 undergoing repairs and that, as a consequence of its removal by the Defendant, the boat was broken into bits and

pieces and was a complete loss and that, in the circumstances, he was claiming the sum of \$75,000.00 "which was the value of the boat at the time when it was destroyed."

[12] On 3rd December 2008 the Claimant filed a Pre -Trial Memorandum in which he identified the following as the legal issues in the case:

1. Whether the Defendant wrongfully and unlawfully destroyed the Claimant's vessel when it used an excavator.
2. Whether the Defendant was under a duty to ensure that in removing the vessel it ought to have exercised care in so doing.
3. Whether the notice to owners of vessels on the Defendant's premises exculpates the Defendant from liability.

[13] By now the variation and vacillation of the Claimant's allegations and averments are manifold and manifest and create the impression that the Claimant was seeking to use his previously disabled but now damaged or destroyed fishing boat to go fishing for compensation from the Defendant for something – whether trespass, conversion, negligence or otherwise, he was not particular. That the Claimant was so inclined may be understandable given his occupation as a fisherman, but one is left to wonder how he managed to convince Learned Counsel to embark with him on this fishing expedition, so that each document filed by Counsel varied and vacillated from the previous one. In the process, the credibility of the Claimant's case was compromised, so that when it came down to the evidence in the case and to the Court accepting one of two versions of the events which transpired on 30th November 2006 and the period leading up to it and immediately following it, the Court had little difficulty in accepting the evidence presented on behalf of the Defendant, which was consistent with the position maintained by the Defendant right through the case of an entity operating as servant and/or agent of Port Louis Land Limited – the owners of the property on which the Claimant's boat was located – which endeavoured to have the Claimant's boat removed from the property after the Claimant had been asked to

and had failed and/or refused to remove it, whereupon the boat fell apart as a result of its dilapidated condition at the time.

[14] Not only did the Claimant fail to satisfy the Court that the damage to his boat resulted from trespass, conversion or negligence by the Defendant, but the Claimant also failed to justify his claims for damages in the event that the Court had found in his favour. He admitted under cross examination that the figure of \$75,000.00 claimed as the value of his boat was guess work. He adduced no evidence on his claim for loss of use of \$108,000.00 or even as to why he claimed loss of use from January 2005 when his claim is that his boat was damaged/destroyed in November 2006, or why he claimed for two fishing trips per month and why \$2,000.00 per trip, as opposed to (say) ten trips per month at (say) \$10,000.00 per trip. The Court is none the wiser at the end of the case.

[15] On the whole the Court found the Claimant's case to be lacking in cogency and coherence and could not lead the Court to be satisfied on a balance of probabilities that the Defendant was liable to the Claimant in trespass, in conversion or as a negligent bailee of the Claimant's boat. The Claimant's case is accordingly dismissed.

[16] I note that the Defendant, which has been consistent in its allegations and averments throughout the case, has not sought costs in any of its documents filed - from its Defence filed on 6th June 2007 to its Closing Submissions filed on 11th May 2009. Bearing this in mind and bearing in mind too the Court's powers under Rule 64.6 of the Civil Procedure Rules 2000, no order shall be made as to costs.

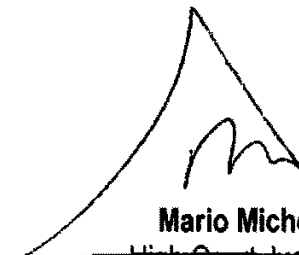
[17] The following authorities were cited by Learned Counsel for the Claimant in the Skeleton Arguments of the Claimant:

1. Coggs v Bernard¹
2. Territorial Sea And Maritime Boundaries Act²
3. The Winkfield³
4. The Wagon Mound (No.2)⁴

5. Atkin's Encyclopaedia of Court Forms in Civil Proceedings, Volume 39
6. National Coal Board v J.E. Evans & Co (Cardiff) Ltd. et al⁵
7. Elvin and Powell Limited v Plummer Roddis Limited⁶
8. Heugh and Another v The London and North Western Railway Company⁷
9. Clerk & Lindsell on Torts, Eighteenth Edition

[18] The following authorities were cited by Learned Counsel for the Defendant
In the Closing Submissions of the Defendant:

1. Rea v Sheward & Another⁸
2. Halsbury's Laws of England, 4th Edition, Volume 45, Paragraph 1513
3. Slater v Swan⁹
4. Atkin's Encyclopaedia of Court Forms in Civil Proceedings, Volume 39
5. National Coal Board v J.E. Evans & Co (Cardiff) Ltd. et al⁵
6. Elvin and Powell Limited v Plummer Roddis Limited⁶
7. Heugh and Another v The London and North Western Railway Company⁷



Mario Michel
High Court Judge

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1. [1558 – 1774] All E. R. Rep. 1
 2. Chapter 318 of the Revised Laws of Grenada
 3. [1900 – 3] All E. R. Rep. 346
 4. [1966] 2 All E. R. 710
 5. [1951] 2 K. B. 861
 6. The Times Law Reports Volume 1 January 26 1934
 7. (1860 – 70) L. R. 5 Ex. 51
 8. (1837) 150 E. R. 823
 9. (1730) 93 E. R. 906