

SAINT VINCENT AND THE GRENADINES
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)



CLAIM NO SVGHCV2009/00326

BETWEEN:

CHRISTOPHER MCMASTER

Claimant

AND

[1] THE ATTORNEY GENERAL

[2] BRENTON CAINE

Defendants

Appearances:

Mrs Kay Bacchus-Browne for Claimant
Ms Ruth-Ann Richards for Defendants

.....
2010: October 13

2011: June 3
.....

ASSESSMENT OF DAMAGES

Introductory

- [1] **LANNS, M:** On 20th May 2010, Master Barnard [Ag] entered judgment for the Claimant for damages to be assessed.
- [2] A short background to the facts leading up to the assessment as gleaned from the Statement of Claim follows.
- [3] On or about 20th March 2009, the Claimant – a fisherman, left his pirogue boat named “Romel Taxi” at Walliabou Beach because one of the boat’s propellers was damaged. The second Defendant Brenton Caine, an officer of the St Vincent Coast Guard Services

removed the boat, and had it towed to the Calliaqua Coast Guard Base where it had been detained and left to deteriorate for over a year without any explanation for its detention.

[4] Despite several demands for the release of the boat, the Second Defendant refused to release the boat; and thus, the Claimant brought suit claiming an order for release of the boat, special damages, and damages for depreciation; interest and costs.

[5] The record shows that the Defendants filed their Defence out of time. Their subsequent application for extension of time within which to file a Defence and for relief from sanctions was dismissed, and judgment was entered for the Claimant for damages to be assessed.

[6] The boat was released on 21st May 2010 by court order of Master Barnard.

The issue

[7] The main issue to be decided is what quantum of special damages and general damages should the Claimant recover?

Special damages

[8] It is well settled that special damages must be pleaded and proved.

[9] The Claimant is entitled to be put in a similar position to that which he would be in had his boat not been detained. The concept has been referred to as *restitutio in integrum*.

[10] As restitution of the boat has now taken place the true measure of loss and damage must be the diminution in Market Value of the boat, and its fixtures, fittings between the time when the boat was seized, and any consequential loss claimed as a result of the detention of the boat.

[11] In the case of **Castaways Hotel Ltd v University of Dominica (1992) 43 WIR, 180** the Court of Appeal confirmed the trial judge's ruling that the appropriate measure of damages in a case for wrongful detention is the diminution in Market Value between the time when the goods were detained and the date of their return.

[12] In the Statement of Claim, the Claimant claimed special damages in the sum of \$78,800.00 made up as follows:

(1)	1 boat	\$30,000.00
(2)	2 engines	\$20,000.00
(3)	Tie bar	\$ 2,000.00
(3)	Power steering	\$ 2,500.00
(4)	Meters	\$ 2,000.00
(5)	Fitting parts	\$ 3,000.00
(6)	Gas	\$ 800.00
(7)	Tool kit	\$ 1,200.00
(8)	2 batteries	\$ 800.00
(9)	Miscellaneous	\$ 1,500.00
(10)	Bimini Top	\$ 3,000.00
(11)	Loss of income	<u>\$12,000.00</u> and cont'ng
	Total	\$78,800.00

The evidence

[12] The evidence before the court is contained in the affidavit sworn by the Claimant on 22nd June 2010 and filed 28th June 2010, together with the documents exhibited thereto. A boat evaluation report is also before the court.

[13] In his affidavit, the Claimant stated among other things that he used his boat for fishing weekly, carrying a crew of 4 men. After a payment of all expenses, he makes a weekly income of about \$1000.00 to \$1200.00. He stated that it will cost him \$17,900 to repair his boat and he has lost [earnings] of approximately \$76,800.00, being \$1200.00 x 64 weeks. The Claimant deposed that when the boat was taken by the coast guard he had on board two 240 engines, a tie bar valued at \$2000.00, batteries, valued at \$800.00, a Bimini Top valued at \$3000.00, and that all these items are now missing from the boat. The Claimant stated that the total value of the items on the boat is \$78,000.00.

Boat Valuation Report

[15] At the request of the Claimant, Mr Keith Howard of KP Marine Ltd carried out a valuation of the boat. His Valuation Report dated 25th May 2010, is before the court marked as Exhibit "CM1". It is apparent, from the report (which was well prepared and well presented) that

KP Limited is well qualified and well placed to carry out an evaluation on the boat and I accept the report to be accurate and complete.

Condition of Boat:

- [16] In the report, Mr Howard stated that the boat is in fair condition but needs some cosmetic repairs in the form of paint and fiberglass. He estimated the cost of these items to be EC\$2500.00. I accept this estimation and award the Claimant the sum of **\$2500.00** for paint and fiberglass.

Outboard Motors

- [17] Mr Howard found that the two outboard motors are irreparable. According to him "absolutely nothing can be done to make them workable". I accept his estimated cost of **\$8,900.00** as the replacement value and I award the Claimant this sum.

Manual Steering System

- [18] The manual steering system is reported to be significantly damaged and unworkable. The estimated cost of **EC\$4500.00** is accepted and awarded to the Claimant.

Items said to be missing from Boat

- [19] There is considerable overlapping, discrepancies and repetition of figures in relation to this subhead.

- [20] In the Schedule of Special Damages, the Claimant itemized his special damages totalling \$78,000.00. This sum included \$30,000.00 for the boat; \$20,000.00 for engines, \$2500.00 for power steering; \$800.00 for gas; \$1500.00 for miscellaneous items; \$12000.00 for loss of income which he claims was continuing.

- [20] However, in paragraph 5 of his affidavit in support of the assessment, the Claimant listed about 7 items that he claimed were missing from the boat. The items that he listed totalled \$20,900.00. Then, the Claimant simply continued "the total value of the items on the boat is \$78,000.00. This is confusing, conflicting and unacceptable. The Claimant must prove

his damages. The affidavit is too bare and is not very helpful to the court He has not shown how the \$78,000.00 was computed. It would appear that the Claimant simply plucked the \$78,000.00 from the Schedule of Special Damages set out in the Amended Statement of Claim filed 27th January 2010, and reproduced it in his affidavit without more.

[21] I note too, that the \$78,000.00 claimed in the Amended Statement of Claim includes an amount of \$30,000.00 for the boat. I take this to be the value placed on the boat at time of seizure. The boat was released on 21st May 2010, and Mr Howard's Valuation Report has given an estimate of what it would cost to get the boat back into working condition. I have already awarded the sum of \$2,500.00 suggested by Mr Howard in his Valuation Report.

[22] I am not satisfied that the Claimant has proven that the total value of the items on the boat amounts to \$78,000.00. Nor do I agree that the Claimant should be compensated for items allegedly missing from the boat. To do so will be to invite speculation. There is no certainty that items said to be missing from the boat were on the boat at the time it was seized. I therefore disallow the sums claimed for tie bar, meters, fitting parts, tool kit, batteries, and Bimini top.

Cost of repairs to boat

[23] In paragraph 4 of his affidavit in support of the assessment, the Claimant states "It will cost me \$17,900.00 to repair my boat ...". The Claimant has not pleaded nor proven that he will incur \$17,900 to repair the boat. He has not explained how he arrived at that figure, and he has not given any particulars as to how the figure was made up. As was previously stated, special damages must be pleaded and proved. I do not allow the \$17,900.00. I have already accepted and awarded the figure for repairs suggested by Mr Howard.

[24] Curiously, on the issue of cost of repairs to the boat, Mrs Bacchus, in her written submissions on behalf of the Claimant, suggests a figure of \$2500.00 for boat repairs. This figure seems to be based on the estimated cost of repairs to the boat, as given by Mr

Howard in his Valuation Report. If I am right, then, I reiterate, this sum has already been awarded. (See paragraph [16]).

Loss of earnings

[25] The Claimant asks the court to award him \$76,800.00 for loss of earnings for 64 weeks at \$1200.00 per week. His evidence in this regard is inadequate and unreliable. He simply stated "I have lost approximately \$1200.00 per week multiplied [by] 64 weeks \$76,800.00." The exhibits attached to prove loss of earnings do little or nothing to prove the alleged loss of earnings. His earnings cannot be determined with any certainty. They are at best speculative. Sufficient facts must be shown to enable the court to avoid speculation.

[26] What should the court do in a situation where the Claimant has failed to prove his earnings fully?

[27] In **Bonham-Carter v Hyde Park Hotel** (1948) 64 TLR 177 at 178 Lord Goddard CJ, who found it possible to arrive at a conclusion despite the extremely unsatisfactory evidence as to damages said:

'Plaintiffs must understand that, if they bring action for damages, it is for them to prove their damage; it is not enough to write down particulars and, so to speak, throw them at the head of the court, saying: "This is what I have lost, I ask you to give me these damages". They have to prove it.'

[28] However, His Lordship went on to find that the probability existed that some loss resulted and went on to make his own assessment on the primary facts alone. In that case, the claimants claim was reduced.

[29] The fact that the Claimant is unable to prove his earnings by way of salary slips etc, is no bar to him recovering special damages. Although he cannot prove loss of earnings, so long as he has shown that he suffered a loss, he can still be awarded a nominal sum which is not out of scale.

(See **Greer v Alstons Engineering Sales and Services Ltd** (2003) 63 WIR 388 at paragraphs 7, 8 and 9).

[29] I am prepared to accept that the Claimant did suffer loss of earnings. However, I make the observation that in his Statement of Claim the Claimant pleaded a loss of earnings of \$1000.00. However, in his affidavit, he increased that sum to \$1200.00. I make the further observation that the boat was detained for a period of 60 weeks and not 64.

[30] Notwithstanding the obvious conflicts I am prepared to accept that the probability existed that the Claimant earned about \$1,000.00 per week for 60 weeks. This computes to \$60,000.00.

[31] On the issue of mitigation; in answer to the court, the Claimant disclosed that he did some farming for domestic consumption and went out to fish with other fisherman in an effort to mitigate his loss of income. He told the court that since his boat was seized, he made about \$500.00 altogether from fishing. The explanation he gave for the meager sum of \$500.00 was that he had discontinued going out to fish with other fishermen and had subsequently "pulled up" his fish pots.

[32] Though I have some reservations about the mitigation steps taken by the Claimant and the amount earned since the boat was seized, there is no good reason for me to disbelieve him. However, he must give credit for the \$500.00 he said he earned since the boat was seized.

[33] In the premises, I assess the Claimant's loss of income at \$1000.00 per week for 60 weeks. That amounts to \$60,000.00 less \$500.00 = **\$55,500.00**.

Damages for detinue/Loss of Use.

[34] The Claimant is entitled to an award for loss of use and enjoyment of his boat and for its detention. The boat was detained for about 60 weeks. I assess loss of use and enjoyment in the sum of **\$5000.00**.

Summary of the Awards

[36]	Special damages		
	i.	Repairs to boat	\$ 2,500.00
	ii.	Outboard motors (2)	\$ 8,900.00
	iii.	Manual Steering System	\$ 4,500.00
	iv.	Loss of earnings	<u>\$55,500.00</u>
		Total	\$71,400.00
	General Damages		i.
		Loss of Use	<u>\$ 5,000.00</u>
		Grand Total	\$76,400.00

Costs

[37] The parties have agreed costs in the sum of \$2,000.00. I therefore award the Claimant that sum as costs.

Interest

[38] Rule 8.6 (4)of the CPR 2000 states that a claimant who is seeking interest must say so expressly in the claim form and include, in the claim form or statement of claim, details of the basis of the entitlement, rate and period for which it is claimed. The Claimant failed to comply with this rule.

[39] Therefore, the Claimant is only entitled to post judgment interest from the date of this assessment to the date of final payment at the statutory rate of 6 per cent per annum.

Conclusion

[40] IT IS ORDERED THAT

- [1] The Defendants shall pay the Claimant the sum of \$71,400.00 as special damages.
- [2] The Defendants shall pay the Claimant the sum of \$5000.00 as general damages.
- [3] The Defendants shall pay the Claimant costs agreed in the sum of \$2000.00.
- [4] The Defendants shall pay the Claimant post judgment interest at the rate of 6 per cent per annum from the date of this judgment to the date of final payment.


PEARLETTA E. LANNS
Master