

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 331 OF 2009
BETWEEN:



ERIC CONLIFFE

Claimant

AND

SERGEANT JEFFREY LABORDE

First Defendant

INSPECTOR SYDNEY JAMES

Second Defendant

THE COMMISSIONER OF POLICE

Third Defendant

THE ATTORNEY GENERAL

Fourth Defendant

Appearances: Mr. Ronald Marks and Ms. Patricia Marks for the Claimant
Ms. Ayanna Baptiste for the Defendants

2011: June 27
August 24

JUDGMENT

[1] **THOM, J:** On the 31st December 2007 a report was made to the Police of robbery committed at the Saint Vincent Brewery (the Brewery robbery).

[2] The Claimant who was at that time employed at the Brewery was arrested in relation to the robbery. PK500 which is registered in his name was taken into custody by the Police. The

Claimant was subsequently released. He was not charged with any offence. PK500 was returned to him on December 31, 2009.

- [3] On 15th March 2008 a report was made to the Police of a robbery committed at the Western Union Official (the Western Union robbery). The Claimant and others were arrested and charged in relation to the Western Union robbery. Motor Vehicles P1510 and P5027 which were in the Claimant's possession were taken into the custody of the Police. In November 2008 the charges were withdrawn. P1510 was returned to the Claimant in July 2009 and P5027 was returned to a third party on December 31, 2009.
- [4] The Claimant instituted these proceedings on 12th October 2009. By Order of Court dated 3rd November 2010 the Claimant was permitted to amend his Claim Form in which he seeks the following reliefs:
- (i) Special damages of \$217,800.00
 - (ii) General, aggravated and exemplary damages for wrongful arrest, unlawful arrest and false imprisonment
 - (iii) Damages for conversion
 - (iv) Interest and costs.
- [5] The Defendants in their defence admitted that no charges were laid against the Claimant for the Brewery robbery but they contend there was reasonable and probable grounds to arrest the Claimant. They also admitted that the charge in relation to the Western Union robbery was withdrawn in November 2008. The Defendants alleged that they had the right at common law to detain property which they reasonably believed to be "the fruit of crime". Also they were entitled to detain property as exhibits.
- [6] The Claimant testified on his own behalf. No witnesses were called. Sergeant Jeffrey Laborde, Inspector James and Sergeant Clauston Francis testified on behalf of the Defendants. The evidence of the Claimant is that at all material times he was entitled to possession of PK500, P1510 and P5027. He was arrested on December 31st 2007 in relation to the Brewery robbery. He was released on 3rd January 2008. On the day of his

release Sergeant Laborde and others took possession of PK500. No charges were laid against him in relation to the Brewery robbery. On 15th March 2007 he along with others were arrested and charged in relation to the Western Union robbery. Sergeant Laborde and Inspector James took possession of vehicle P1510 and P5027. In November 2008 the charges were withdrawn. On 12th October 2008 he instituted these proceedings in which he sought damages and the return of his property. In December 2009 he received a letter informing him to collect his property. PK500 was returned to him but P5027 was delivered to a third party, the Saint Vincent Co-operative Bank Ltd (the Bank) who had granted him a loan to purchase the vehicle and he had defaulted in making the loan repayment. P1510 was returned to him in July 2009. Both PK500 and P1510 had deteriorated and also P1510 was damaged.

- [7] Under cross-examination the Claimant agreed that P1510 was not registered in his name but he maintained that he was entitled to possession of it. He maintained that he was the owner of P5027. He testified that he could not recall when he purchased PK500 or when it was registered.
- [8] Sergeant Jeffrey Laborde testified that on 31st December 2007, he received a report of robbery at Saint Vincent Brewery. Based on his investigations into the robbery he had reasons to believe that the Claimant was involved in the robbery. On 30th January 2008 as a result of his investigations he found that PK500 was registered in the name of the Claimant on the 15th January 2008. He went in search of the Claimant but did not find him. Later that same day the Claimant reported to the Police Station. He took statement under caution from the Claimant in the presence of Justice of the Peace Benjamin Haynes. Later the same day he took motor vehicle PK500 into custody as an exhibit. The Claimant was discharged pending further investigations. The file was sent to the Director of Public Prosecutions for advice. Advice was only received from the Director of Public Prosecutions on the 4th December 2009. On receiving advice from the Director of Public Prosecutions arrangements were made immediately for the return of the vehicles to the Claimant.

- [9] Under cross-examination he agreed that PK500 could have been returned to the Claimant on December 31, 2009. He further testified that he took no part in the investigation into the Western Union robbery.
- [10] Inspector James testified that Sergeant Laborde was in charge of the investigation into the Brewery robbery. During the investigation the file was sent to the DPP for his advice. In December 2009 advice was received from the Director of Public Prosecutions and the vehicle was returned to the Claimant. Under cross-examination Inspector James testified that no one was charged with the Brewery robbery. He was uncertain whether the charges in relation to the Western Union robbery were dismissed by the Court or withdrawn by the Prosecution. He testified that Corporal Hunte who has since resigned as a member of the Police Force was in charge of the investigation into the Western Union robbery.
- [11] Sergeant Clauston Francis a financial investigator attached to the Financial Investigation Unit, testified that he conducted investigations into the financial affairs of the Claimant and found that the Claimant only had one source of income being his salary at the Saint Vincent Brewery which was approximately \$1,340.00 per month and he was making loan repayments of \$1,190.00 per month. PK500 was purchased for \$15,000.00 cash.
- [12] Under cross-examination Sergeant Francis testified that the vehicles were not taken into custody by the Financial Investigation Unit, nor did the Financial Investigation Unit charged the Claimant with any offence.

SUBMISSIONS

- [13] At the end of the trial it was ordered that written submissions be filed on or before July 28, 2011. No submissions were received from the Claimant.
- [14] Learned Counsel for the Defendants submitted that the Claimant did not adduce sufficient evidence to prove unlawful arrest, wrongful arrest and false imprisonment. Learned Counsel referred the Court to Section 30(1)(a) of the Criminal Procedure Code Chapter 172 of the 2009 Revised Edition and submitted that based on the evidence, Sergeant

Laborde had reasonable grounds to suspect that the Claimant had committed robbery at the Saint Vincent Brewery. There is no allegation that the Police held him beyond the time permitted by law.

[15] In relation to the Western Union robbery Learned Counsel submitted that Corporal Hunte was in charge of the investigation. Neither Sergeant Laborde nor Inspector James were involved in the investigation.

[16] In relation to claim of false imprisonment Learned Counsel submitted that where there is no wrongful arrest an action for false imprisonment must fail. Learned Counsel referred the Court to the case of **Margaret Joseph v A-G of Grenada and Raphael Hamilton** Civ. App. No. 9 of 2003.

[17] In relation to the tort of conversion, Learned Counsel submitted that the Claimant had failed to prove conversion. The Claimant in his testimony made no allegation of conversion but confirmed that the vehicles were taken into custody by the Defendants as exhibits. Learned Counsel further referred the Court to **Halsbury's Laws of England** vol 45(2) paragraph 548 and submitted that there was no wrongful act of dealing with the vehicle by the Defendants and they were not acting inconsistent with the rights of the Claimant. The vehicles were returned as soon as the advice was received from the Director of Public Prosecutions. Further the evidence shows that the Claimant is not the owner of P1510 nor is he the legal owner of P5027, thus he cannot maintain an action for conversion in relation to the vehicles.

ISSUES

[18] The Issues to be determined are:

(i) whether the Claimant was wrongfully, and unlawfully arrested and was falsely imprisoned in relation to the Brewery robbery and the Western Union robbery.

(ii) whether there was conversion of motor vehicles PK500, P1510 and P5027 by the Defendants.

FINDINGS

- [19] It is not disputed that the Claimant was arrested in relation to the Brewery robbery but he was not charged. It is also not disputed that the Claimant's motor vehicle PK500 was taken into custody by the Defendants during the investigation of the robbery as an exhibit and the vehicle was returned to the Claimant on or about 31st December 2009.
- [20] There is a difference in the evidence of the date when the Claimant was arrested. The Claimant's testimony is that he was arrested on the 31st December 2007 and released on 3rd January 2008. On that same day the Defendants took possession of PK500. The evidence of Sergeant Laborde is that the Claimant was arrested on the 30th January. I believe the testimony of Sergeant Laborde that the Claimant was arrested on the 30th January 2008 and not on the 31st December 2007. The vehicle PK500 was only registered in the Claimant's name on the 15th January 2008. It was after this information was received that the Claimant had purchased this vehicle that the Claimant was arrested and the Defendants took the vehicle into their custody on the same day. I do not believe the Claimant's testimony under cross-examination when he testified that he could not recall when he bought PK500 and he was not sure when he registered it.
- [21] In relation to the Western Union robbery it is not disputed that the Claimant was arrested and charged along with others and the matter was withdrawn by the Prosecution on 28th November 2008.

WRONGFUL AND UNLAWFUL ARREST

- [22] Section 30(1)(a) of the Criminal Procedure Code Chapter 172, 2009 Revised Edition read as follows:
- "30.(1) Any police officer may, without an order from a magistrate and without a warrant arrest -
- (a) any person whom he suspects upon reasonable grounds of having committed an indictable offence;"
- [23] It cannot be disputed that robbery is an indictable offence for which the penalty is life imprisonment.

- [24] The question is whether there was reasonable grounds for arrest. The onus is on the Defendants to show that there was reasonable grounds for the arrest.
- [25] The standard of proof is set out in the case of Dallison v Caffrey [1963] 2 AER p. 610 by Diplock L.5 at p.619 as follows:
- “The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely, whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause. Where that test is satisfied, the onus lies on the person who has been arrested or prosecuted to establish that his arrestor did not in fact believe what ex hypothesis he would have believed had he been reasonable.”
- [26] It is settled law that facts which occurred after the arrest are irrelevant in determining whether the Police Officer had reasonable grounds. Similarly if the officer had reasonable grounds for his suspicion which are later proved to be erroneous it does not mean that the officer did not have reasonable grounds.
- [27] I will deal first with the Brewery robbery.
- [28] The information that Sergeant Laborde possessed was that the Claimant had identified two persons as the robbers but upon investigation the two persons had just left their place of employment at the time of the robbery therefore it was not possible for them to be the robbers. Further the Claimant was acting unusually on the day of the robbery, he was loitering in the Accounts Building of the Brewery during the entire morning when he had no reason for being there. He was deterring customers from entering the Accounts Clerk's Office. Some two weeks after the robbery motor vehicle PK500 was registered in the name of the Claimant. I find that a reasonable man assumed to know the law and possessed of the information which Sergeant Laborde had would believe that there was reasonable and probable cause to arrest.
- [29] The Claimant did not challenge this testimony of Sergeant Laborde or in any way contradict it. No evidence was led to show that Sergeant Laborde did not in fact believe this information or he would not have believed it had he been reasonable.

[30] In relation to the arrest for the Western Union robbery, both Sergeant Laborde and Inspector James testified that the lead investigator was Corporal Hunte. They were not involved in the arrest of the Claimant.

[31] By virtue of the Crown Proceedings Act, the crown is liable for torts committed by its servants or agents and an aggrieved person may institute proceedings against the Attorney-General. The relevant sections are Sections 4(1)(a) and Section 15(2). These sections read as follows:

“4(1) Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject -

(a) in respect of torts committed by its servants or agents;

(b) ...

(c) ...

Provided that no proceedings shall lie against the crown by virtue of paragraph (a) in respect of any act or omission would, apart from the provisions of this Act, have given rise to a cause of action in tort against that servant or agent or his estate

15.(2) Civil proceedings against the Crown shall be instituted against the Attorney-General.”

[32] Further Rule 8.5(1) of CPR 2000 provides:

“8.5(1) The general rule is that a claim will not fail because a person -

(a) who should have been made a party was not made a party to the proceedings; or

(b) was added as a party to the proceedings who should have not been added.”

[33] No evidence was led by the Defendants to show that the arrest was lawful. The onus was on the Defendants to prove on a balance of probabilities that the arrest of the Claimant was lawful. This they failed to do. The evidence of the Defendants is simply that neither Sergeant Laborde nor Inspector James who are named as Defendants in these proceedings arrested the Claimant but rather it was Corporal Hunte who is no longer a member of the Police Force.

FALSE IMPRISONMENT

- [34] False imprisonment is the complete deprivation of the liberty of a person without a lawful excuse. It does not matter if the time of deprivation is very short. The tort of false imprisonment is committed where a person is unlawfully imprisoned. Once the Claimant proves imprisonment, it is for the Defendant to prove justification for the imprisonment.
- [35] As stated earlier I find that the Claimant's arrest in relation to the Brewery robbery was not unlawful. Where the arrest was not unlawful then an action for false imprisonment must fail - see **Margaret Joseph v Attorney-General of Grenada and Raphael Hamilton** Civ. App. No. 9 of 2003.
- [36] In relation to the Western Union robbery, as stated earlier I found that the Defendants had failed to prove on a balance of probabilities that the arrest was lawful. The Defendants failed to lead any evidence to show that the imprisonment was lawful. They have shown no justification for the imprisonment. The fact that the Claimant was charged with a criminal offence is not by itself justification for the imprisonment. The Defendants evidence on this issue is simply that neither Sergeant Laborde nor Inspector James was responsible for the imprisonment of the Claimant but rather it was Corporal Hunte who has since resigned from the Police Force. The Crown Proceedings Act cited above, is very clear, actions against the Crown for the wrong doings of its officers shall be brought in the name of the Attorney-General. Part 8.5(1) of CPR 2000 cited earlier provides that failure to join a party will not vitiate a claim.

CONVERSION

- [37] The Defendants submitted that the Claimant cannot maintain an action for conversion in relation to motor vehicle P1510 and P5027 because he was not the legal owner of the vehicles. P1510 was not registered in his name and in relation to P5027 he had failed to pay the loan payments due and owing to the Bank thus they were entitled to possession of the vehicle.

- [38] The general rule is that the legal owner of the item is the person entitled to sue for conversion. However a person can maintain an action for conversion if he can show that at the time of conversion he had the requisite possessory title, that is he had actual possession of them or that he had the right to immediate possession of the item - see MCC Proceeds Inc v Lehman Bros' International (Europe) [1998] 4 AER - p.675; International Factors Ltd v Rodriguez [1979] 1 AER 17; Moorgate Mercantile Co. Ltd v Finch and Read [1962] 2 AER p. 467.
- [39] It was not disputed that P1510 was in the actual possession of the Claimant and that he had the right to immediate possession of P1510. It is also not disputed that P5027 was registered in the Claimant's name and was in his possession. The fact that sums were owing to the Bank in relation to P5027 does not mean that the Claimant is not entitled to sue in conversion. There is no evidence to show that the Bank had acquired legal title or had a right to immediate possession of P5027. The Defendants in paragraph 2 of their defence alleged that they were informed by the Bank that around August 2008 (at this time the vehicle would have been in the custody of the Defendants and the case was pending) that the Bank noted that the Claimant's account was in arrears and they contracted the services of a bailiff to repossess the vehicle. However no evidence was led at the trial by the Defendants to substantiate these allegations. The Defendant's case was simply that it was neither Sergeant Laborde nor Inspector James who took possession of P5027, they were not involved in the investigation of the Western Union robbery.
- [40] The present case is distinguishable from the Moorgate Mercantile Co. Ltd case. In Moorgate Mercantile Co. Ltd case evidence of the terms of Hire Purchase Agreement was led which showed that the hirers were entitled to immediate possession of the vehicle if there was a breach of term of the agreement. Evidence was led to show that an instalment on the hire purchase property was in arrears and that amounted to a breach of the agreement. The UK Court of Appeal therefore held that the hirers were entitled to maintain an action in conversion since they had a right to immediate possession of the vehicle. I therefore find that the Claimant is entitled to maintain an action in conversion in relation to both P1510 and P5027.

- [41] It is not disputed that all three vehicles were taken into custody during the investigation into the Brewery robbery and the Western Union robbery.
- [42] It is settled law that the Police are entitled to detain items as exhibits in criminal matters. However after the case has been concluded, the items must be returned within a reasonable time - see Ghani v Jones [1969] 3 AER 1700; and Malone v Metropolitan Police Commissioners [1980] Q.B p.49.
- [43] In Thakur Persad Jaroo v The Attorney General of Trinidad and Tobago, the Court of Appeal in acknowledging that the Police could not detain a vehicle of a person suspected of a crime indefinitely said:
- "While the detention of the vehicle in the circumstances of this case and for the period in question were necessary for the purpose of enquiries and for preserving valuable evidence in the event that a criminal charge was preferred against someone, yet in the absence of appropriate criminal proceedings, there would of necessity arise a time beyond which it would be unreasonable to detain the vehicle any longer. It is not possible to stipulate what such a period would be in any given case since much would depend on the circumstances of the particular detention, the diligence with which investigations were pursued, the progress made and any other relevant consideration."
- [44] In relation to PK500, this vehicle was taken into the custody of the Defendants on 30th January 2008. The Claimant was not charged with any offence and the vehicle was returned to him on December 31, 2009 that is after these proceedings were instituted. The Defendants explanation is that the file was sent to the Director of Public Prosecutions (DPP) for advice. I note it was not stated when the file was sent to the DPP but Sergeant Laborde stated in evidence that the advice of the DPP was only received on December 4, 2009 and arrangements were made immediately for the return of the vehicle to the Claimant. Also Sergeant Francis testified that he conducted investigations into the financial affairs of the Claimant and submitted his findings to Sergeant Laborde. It was not stated when these investigations were completed and the findings submitted to Sergeant Laborde.
- [45] It must be acknowledged that financial investigations particularly tracing of funds is a tedious and time consuming matter. However having regard to the evidence of Sergeant

Francis all of the investigations were local. When all of the circumstances of this case are taken into account I am of the opinion that a period of nine months was a reasonable time with which the Defendants should have determined that they did not have sufficient evidence to charge the Claimant in relation to the Brewery robbery.

[46] In relation to P1510 and P5027 these vehicles were taken into custody by the Defendants on March 15, 2008. The charge against the Claimant was withdrawn on November 28, 2008.

[47] It is not disputed that P1510 was returned to the Claimant in July 2009. No evidence was led as to the circumstances in which this vehicle was returned to the Claimant. The vehicle remained in the custody of the Defendants for approximately seven months after the charge was withdrawn. No reason was given why the vehicle remained in the custody of the Defendants. I am of the view that when charges are withdrawn items seized in relation to the charge should be returned within one month save and except in exceptional circumstances or where there is a dispute as to ownership in which case the necessary steps for interpleader proceedings should be taken.

[48] It is also not disputed that the Claimant was informed by letter from the Defendants to collect P5027 and PK500 during the month of December 2009 at the Drugs Squad Base at Amos Vale. However the Defendants handed over PK500 to the Claimant but P5027 was handed over to the Bank. The Claimant admitted he was in arrears to the Bank. This occurred thirteen months after the charge against the Claimant was withdrawn and two and one half months after these proceedings were instituted against the Defendant.

[49] The Claimant's claim is in conversion.

[50] In **MCC Proceeds v Lehman Bros.** [1998] 4 AER p.675 the court defined the tort of conversion as follows:

"Conversion is a common law action tortious in form, imposing strict liability for a wrongful interference with the right to possession of a chattel. It consists of any act of wilful interference, without lawful justification with any chattel in any manner

inconsistent with the right of another, whereby that other is deprived of the use and possession of it.”

[51] While it is generally acknowledged that it is not possible to state an exhaustive list of the modes of conversion, the most common forms of conversion stated by the Learned Authors of **Clerk and Lindsell on Torts** include the following:

- (a) when property is wrongfully taken
- (b) when it is wrongfully parted with
- (c) when it is wrongfully sold in market overt although not delivered
- (d) when it is wrongfully retained
- (e) when it is so dealt with that it is destroyed or otherwise totally lost to the person entitled.

[52] Having regard to the Claimant’s pleadings and his evidence, the Claimant’s case is based on conversion by wrongful detention. In **Clerk and Lindsell on Torts** para 1091 conversion by detention is explained in the following manner:

“Mere unpermitted keeping of another’s chattel is not a conversion of it. There must be some detention consciously adverse to the rights of the owner, such as an assertion of a lien that does not exist. The ordinary way of showing a conversion by unlawful retention of property is to prove that the defendant, having it in his possession, refused to give it up on demand made by the party entitled.”

[53] In order to prove conversion by detention a Claimant must show that he made a demand for the property and the Defendant refused to return it, or that there was some positive act of withholding of the property by the Defendant. In **Barclays Mercantile Finance v Sibec Developments** [1993] 2 AER p. 195, Millet J. in dealing with the requirements of conversion by detention stated at p. 199:

“Demand is not an essential precondition of the tort in the sense that what is required is an overt act of withholding possession of the chattel from the true owner. Such an act may consist of a refusal to deliver up the chattel on demand made, but it may be demonstrated by other conduct, for example by asserting a lien. Some positive act of withholding, however, is required, so that, absent any positive act of withholding on the part of the defendant, the plaintiff can establish a cause of action in conversion only by making demand.”

[54] In **Halsbury’s Laws** vol 45 at paragraph 1431 the Learned Authors explained what amounts to a demand in the following manner:

"The demand for the return of goods must be specific. An oral demand must be made by the owner of the goods or by some person in his name and with his authority. If the demand is made by some person on behalf of the owner, the person on whom the demand is made must have a reasonable opportunity to inquire into the authority of the person making the demand. The demand must be for delivery up of the goods; a failure by the defendant to dispatch them at the owner's demand is no evidence of a conversion."

- [55] In the present case the Claimant did not lead any evidence to show that he made a demand for the return of any of the vehicles. The Claimant also led no evidence of any positive conduct of withholding on the part of the Defendants. There is no evidence that the Defendants said or did anything to show that they would not or were not willing to return the vehicles to the Claimant prior to the institution of these proceedings. The Claimant's case is simply that the vehicles were taken from him during investigation into robbery committed at the Brewery and Western Union and the vehicles were not returned to him until in the case of P1510 in July 2009 and PK500 on December 31, 2009. The evidence that the Defendants handed over P5027 to the Bank is clearly evidence of conversion if the Bank at that time was not the true owner and entitled to possession of it - see Webb v Chief Constable of Merseyside Police [2000] Q.B p.427; and Winter v Bancks [1901] 65 JP 468. However this occurred after these proceedings were instituted. There is no evidence to show that the Claimant ever visited the Police Station to enquire about the vehicles.
- [56] Having reviewed the evidence I find that the Claimant has failed to prove on a balance of probabilities his claim in conversion.
- [57] In conclusion I find that the Third and Fourth Defendant are liable in damages for the unlawful arrest and false imprisonment of the Claimant in relation to the Western Union robbery. I find that the Defendants are not liable in conversion.
- [58] It is ordered that:
- (i) The Third and Fourth Defendants shall pay damages to the Claimant for unlawful arrest and false imprisonment in relation to the Western Union

robbery. Such damages to be assessed on application made by the Claimant within three months.

- (ii) The claim for conversion is dismissed.
- (iii) The Third and Fourth Defendants shall pay the Claimant prescribed costs.


.....
Gertel Thom
HIGH COURT JUDGE