SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHCV2010/0665

BETWEEN:

ALLAN SMITH

Claimant

and

THE ATTORNEY GENERAL

Defendant

Appearances:

Mr. Gerard Williams for the Claimant
Ms. Jan Drysdale for the Defendant

2010: November 22;
2012: March 26.

DECISION

Background Facts

[1] **CENAC-PHULGENCE, M. [AG.]**: At the onset, I wish to apologise to counsel and the parties for the delay in delivery of this decision. This decision concerns an application to strike out a claim form and statement of claim. A brief background to this matter is set out below.

Background

[2] The claimant by claim form and statement of claim filed 27th July 2010, claimed damages for detinue. The claim was set out as follows:

"Amount claimed	$10,758.00
Together with interest thereon at the rate of 6% from the 11th February 2010 to the 16th April 2010. ($1.79 per day)	$ 118.00
General damages	

Legal Practitioner's fixed costs	$ 750.00
Service	$ 100.00
Court fees	$ 27.50
Total Claim	$11,753.64"

The statement of claim alleges that on or about 11th February 2010 at about 6:30 a.m. a Customs Officer assisted by a team of police officers took possession of the claimant's red Honda motorcycle by virtue of a warrant under the hand of the Comptroller of Customs authorizing the Customs Officer to search, seize and detain or remove from the claimant's property anything which appeared liable to forfeiture. I note that in relation to the red Honda motorcycle, the Claimant at paragraph 3 of the statement of claim states in parenthesis "an item not liable to forfeiture".

[3] Paragraph 4 of the statement of claim states that the seizure was without any reasonable basis upon which the Customs Officer could have relied to justify the seizure of the claimant's bike. Paragraph 5 states that the arbitrary search and seizure which was conducted in the presence of neighbours caused grief and embarrassment to the claimant. At paragraph 6, the claimant states that the motorcycle was returned to him on 16th April 2010 with an apology from a Customs Officer of the Enforcement Department. He further states that no reasonable explanation for the seizure was given to the claimant upon his enquiry. The final paragraph of the statement of claim avers loss of use of the motorcycle for 66 days while it was detained and that the claimant suffered loss. The Statement of Claim contains a claim for exemplary damages.

[4] The defendant acknowledged service of the claim on 18th August 2010 and filed its defence on 30th August 2010.

Application to strike out

[5] The defendant by notice of application filed 7th October 2010 applied for the claimant's statement of claim to be struck out as disclosing no reasonable cause

of action against the defendant and for costs. The sole ground for the application was that the claim form and statement of claim did not establish the basis for the claim in detinue. The application was supported by an affidavit of L. Rudolph Francis in which he deposes that "the claimant has sought to rely on the seizure of the motorbike pursuant to the written authorisation of the Comptroller of Customs in accordance with the Customs Control Act and the resultant detention of the item pursuant to that authorization as a basis for damages in detinue", that the claim submitted by the claimant is "insufficient and cannot establish a claim in detinue" and "that the actions of the servants of the Crown were lawful and the claimant has failed to establish otherwise".

Submissions of the defendant in support of the application to strike out

[6] The defendant in its submissions filed on 7th October 2010, states that in order to prove detinue, a demand for the return of the goods taken, coupled with a refusal to return them after the expiration of a reasonable time is necessary. They cite **3 Halsbury's Laws**[1] at paragraph 1294[2] in support of this proposition and the cases of **Carlton Rattansingh (Legal personal representative of the estate of Joseph Rattansngh) v The Attorney General of Trinidad and Tobago et al**[3] and **Ganesh Gopaul v Roodal Balkaran et al**.[4]

[7] The defendant contends that the administrative proceedings initiated pursuant to the **Customs (Control and Management) Act**[5] ("the Customs Act") are not a demand for the release of any goods. Where a person wishes to make a demand, he or she must specifically demand a release of the goods seized.

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[2] Para 1294 states: "The gist of the cause of action in detinue is wrongful detention. In order to establish that it is usual to prove demand and refusal after a reasonable time to comply with the demand. The mere keeping of another person's goods does not amount to conversion. Where, however a person has possession of the goods of another and a valid demand is made for them by the owner, an unqualified and unjustifiable refusal to deliver them up entitles the owner to sue in detinue..."

[3] [2004] UKPC 15.

[4] Trinidad and Tobago High Court Action No. 38 of 1996.

[5] Chapter 15.05, Revised Laws of Saint Lucia 2008.

[8] The defendant further contends that the claimant has made no demand for the return of the goods seized and that moreover there has been no failure to return the goods. The goods were in fact returned to the claimant upon successful completion of investigations. In oral submissions, counsel for the defendant submitted that the letter of 11th March 2010 from counsel for the claimant to the Comptroller of Customs does not satisfy the requirement of a demand for release of an item and that there was no other communication which would qualify as such.

[9] The defendant cites the case of **Ganesh Gopaul**[6] in support of their contention that the statement of claim should be struck out. In that case it was held that failure to plead that there was a demand or refusal meant that the elements of detinue were absent from the statement of claim and the matter was dismissed.

Submissions of the claimant

[10] The claimant filed submissions in reply on 5th November 2010. In these submissions, the brief statement of facts refers to a letter dated 11th March 2010 in which the claimant invoked the administrative process by requesting a meeting pursuant to the notice served on him. That request he says was specific in that it had to do with the seized item then in the hands of the defendant and that there was no reply to the request. I pause here to note that these facts do not form part of the statement of claim filed on 27th July 2010, which point I will address later.

[11] The claimant submits that the wrongful detention is the basis of the cause of action in detinue and that in order to prove that wrongful detention, there ought to be proof that the person entitled to the item had made a demand for its return and that the person in possession of the item had refused or failed to comply with the demand. He further submitted that proof of demand is unnecessary in actions for detinue where the defence discloses such an adverse claim to the claimant that it

[6] Supra, n. 4.

is obvious that the demand would have been refused. He cites the case of **Baud Corporation NV v Brook**[7] which I do not find particularly helpful.

[12] The claimant went on to address the defence filed by the defendant to support his contention that the defendant had an adverse claim to him in that the defendant stated that they had reasonable cause to believe that there had been a violation of the Customs Act and therefore even if a demand were made, it would have been refused and so there was no need to prove that there was a demand and a refusal.

[13] The claimant contends that the second issue for determination is whether the letter of 11th March 2010 constituted a demand. In his brief statement of facts, he says it does constitute a demand and even if it was in respect of the administrative process, it focused on one thing only, the return of the item seized.

Further Submissions

[14] On the 22nd November 2010, I made an order requiring the defendant to address the issue of whether **Halsbury's Laws** 4th edition and the exception therein applied to detinue on or before 3rd December 2010. The claimant was to respond on or before 10th December 2010. The defendant filed further submissions on 3rd December 2010 in which it sought to indicate that the reliance by the claimant on the 4th edition of **Halbury's Laws** was misleading as the tort of detinue had been abolished by the **Torts (Interference With Goods) Act 1977**. The 4th edition of **Halbury's** was published in 1985. In any event, the defendant contends that the case of **Baud Corporation NV v Brook**[8] relied on by the claimant in support of the adverse claim exception which obviates the need to have a formal demand and refusal, shows no connection or nexus with the assertion made by the claimant. I have already indicated that I found the case to be of no real assistance with regard to the point made as the circumstances of that case bear no relevance to the instant case. I agree with the defendant that the case briefly mentions

[7] (1974) 40 DLR (3rd) 418.
[8] Ibid.

detinue and there is no discussion as regards a general exception in relation to proving detinue as raised by the claimant. The case of shares which were duty bound to be returned by virtue of an agreement and where it was impossible to return them due to the fact that they had been sold to a third party are completely different from this case.

[15] The claimant filed its reply submissions on 9th December 2010. The contention of the defendant as I understood it in its further submissions and in oral submissions was that since the tort of detinue had been abolished in England, one had to be cautious what authorities were relied on. I did not understand them to be saying as learned counsel for the claimant states in his further submissions that the action of detinue was no longer maintainable in Saint Lucia following its abolition in England. I do not think that this merits much discussion as it is clear that the tort of detinue still exists in Saint Lucia.

Discussion

Striking out principles

[16] Rule 26.3(1) of the **Civil Procedure Rules 2000** ("CPR 2000") is the enabling rule which gives the court the power to strike out a statement of case if it appears to the court that the statement of case does not disclose any reasonable ground for bringing or defending a claim. Striking out of a statement of case is considered a draconian power and several cases have spoken to the need to exercise caution when exercising this power.[9] The court when exercising the power to strike out will have regard to the overriding objective and to its general powers of case management. On an application to strike out on the grounds that the statement of case does not disclose any reasonable ground for bringing the action, the court is

[9] See discussion by Edwards JA in Citco Global Custody NV v Y2K Finance Inc, Territory of the Virgin Islands High Court Civil Appeal No 22 of 2008, delivered 19th October 2009.

concerned with the statement of case as pleaded and should assume that the facts in that statement of case are true and evidence is inadmissible.[10]

[17] In the case of **Partco Group Ltd. v Wragg**[11]**,** Potter LJ stated that cases where striking out under the English CPR 3.4(2)(a) which is equivalent to our CPR 26.3(1)(b) include: (a) where the statement of case raises an unwinnable case where continuing the proceedings is without any possible benefit to the respondent and would waste resources on both sides and (b) where the statement of case does not raise a valid claim or defence as a matter of law. Subject to the court giving permission to amend, a statement of case that omits some material element of the claim will be struck out. A statement of case ought also to be struck out if the facts set out do not constitute the cause of action alleged or if the relief sought would not be ordered by the court.[12]

[18] **Blackstone's Civil Practice 2009**[13] states:

> "The court may allow a party to amend rather than striking out. The power to amend will be exercised in accordance with the overriding objective, and this may militate against giving permission depending on the circumstances of the case. ... An amendment should only be permitted as an alternative to striking out if there is a real prospect of establishing the amended case."

Detinue

[19] An action for detinue arises where the claimant has a right to immediate possession for the wrongful detention of his chattel. The wrongful detention was normally, though not invariably evidenced by the defendant's refusal to deliver up on demand. The redress claimed was the return of the chattel or payment of its value, together with damages for its detention if it is not returned. In England after the abolition of the tort of detinue, the tort of conversion now encompasses the cases which were formally regarded as detinue but the applicable principles

[10] Morgan Crucible Co. Plc v Hill Samuel & Co. Ltd. [1991] Ch 295 per Slade LJ.
[11] [2002] 2 Lloyd's Rep 343 at [46]; see also para 33.8 Blackstone's Civil Practice 2009.
[12] Para 33.8, Blackstone's Civil Practice 2009.
[13] Para 33.11, page 432.

remain the same. The ordinary way to prove detinue is to prove that the defendant, having the goods in his possession, refused to surrender it on demand. Such a demand is generally a precondition to the right of action. In **Carlton v Le Roy**,[14] the court held that upon the facts given there had been no wrongful refusal on the part of the defendant to return the watch to the plaintiff before the date of issue of the writ and the plaintiff had no cause of action against the plaintiff in detinue. It must be established that at the moment of issuing the writ, the plaintiff was in a position to bring an action in detinue. It is necessary to find as a fact that there was a demand and a refusal. In **General Finance Facilities Ltd. v Cooks Cars (Romford) Inc.**[15] it was held that detinue is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and continues until delivery up of the goods or judgment in the action for detinue. Demand for delivery up of the chattel was an essential requirement of an action in detinue.

[20] Demand must be unconditional and specific in its terms.[16] If the demand is unclear or equivocal, for example, because it is merely a request for "immediate commencement of the process to return the goods", it may not be enough. Refusal must also be unconditional.

[21] The case of **Ganesh Gopaul v Roodal Balkaran et al**[17] is very instructive since the court felt in that case that the absence of the essential elements of detinue from the statement of claim was detrimental and struck out the claim. I cite two other cases to show the importance of the elements of demand and refusal to the tort of detinue. In the Privy Council case of **Carlton Rattansingh (Legal personal representative of the estate of Joseph Rattansngh) v The Attorney General of Trinidad and Tobago et al**,[18] a claim was brought in detinue and conversion for the return of 3016 motor car tyres or their value, and a declaration they were

[14] [1911] 2 KB 1031.
[15] [1963] 1 WLR 644 at 649.
[16] See Clerk and Lindsell on Torts, 20 ed., at para 17-24, page 1125.
[17] Supra, n. 4.
[18] Supra, n. 3.

the property of the appellant. The issue before the Board was whether the claim had been correctly decided as being statute-barred by the High Court and Court of Appeal of Trinidad and Tobago. The case is however instructive as it has a similar factual matrix to this case. The tyres were imported into Trinidad and were seized and detained by Customs in accordance with the Customs Act. The Customs notified of the seizure in a formal written notice advising of the right to claim the goods by written notice within one month. The solicitor for the appellant gave notice of claim. The Board in the course of its judgment said that up to that point, the Customs and the appellant were acting in accordance with the Customs Act. The Customs did not as the section required take proceedings for the forfeiture and condemnation of the tyres. The Board was of the opinion that the taking of such procedures was a necessary condition for the Customs to continue to detain the goods. But they had taken no proceedings. The solicitor for the appellant wrote two letters to the Customs requesting return of the tyres. Neither of these letters was answered and the Customs never asserted any right to detain the goods. A specific demand was made and the Customs did not comply with the request.

[22] In **Jaroo v The Attorney General of Trinidad and Tobago**,[19] the police impounded a car which the claimant had purchased and detained it for seven months on suspicion that it had been stolen. The claimant applied for relief by way of originating motion under the Constitution. The response of the police was that they were diligently proceeding with their enquiries and that, until they had completed them, they were entitled to continue to retain the car. The Board, in upholding the conclusion of the Court of Appeal that the notice of motion was an abuse of process, also indicated that the appropriate claim had been an action in detinue. The seizure and detaining of goods can form the basis for an action in detinue. The public has an interest in protection from unlawful search and seizure and this must be balanced against the interests of the State to investigate, detect and prosecute alleged offences.

[19] [2002] UKPC 5.

Conclusion

[23] At paragraph 10 above, I mentioned the fact that the letter of 11th March 2010 which the claimant relies on as his evidence of the fact that he made a demand was never pleaded in the statement of claim. There is nothing to suggest that there was a refusal from the Comptroller to release the goods to ground the action in detinue. If as the claimant submits, this case falls within the exception which he has raised, the pleadings do not even have any facts to support the fact that there was an adverse claim by the defendant hence there was no need to plead a specific demand. I have considered whether this omission could be cured by an amendment having regard to the fact that these elements were raised in submissions in response to the application to strike out and taking into consideration the overriding interest. Although I think that the defect could be cured by an amendment to include the details of the demand and refusal, I am of the opinion that there would not be a real prospect of establishing the amended statement of claim. The letter which the claimant relies on as his demand is in my opinion part of the administrative proceedings under the Customs Act and to satisfy the criteria of a demand he would have had to make a formal request outside that procedure for it to qualify as a demand.

[24] At the date when the claim was filed, 27th July 2010, the motorcycle which is the subject matter of this action had been released some three months prior on 16th April 2010. This means that there was no detention as at the date of the claim. This clearly does not satisfy the criteria that detinue is a continuing cause of action. One must be able to show that there was a cause of action in detinue at the date of filing his claim. There was no wrongful detention of goods which the claimant was demanding release of, as the goods had already been released. Accordingly, the pleadings do not disclose a cause of action in detinue.

Order

[25] In light of the foregoing, I would grant the defendant's application to strike out the statement of claim. I accordingly order that the claimant's statement of claim be stuck out in accordance with CPR 26.3(1)(b) as it does not disclose any reasonable ground for bringing it. The claimant is to pay the defendant costs in the sum of $2,000.00.

Kimberly Cenac-Phulgence
Master [Ag.]