

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
THE TERRITORY OF THE VIRGIN ISLANDS**

CLAIM NO. BVIHCV2011/0223

BETWEEN:

MARIO MATTHEW

Claimant

AND

[1] THE COMMISSIONER OF POLICE

[2] THE ATTORNEY GENERAL

Defendants

Appearances:

Mr. Lewis Hunte QC and Shelly Bend for the Claimant

Ms. Khadia Edwards-Allister for the Defendants

2015: June 15th

JUDGMENT

[1] **ELLIS, J.:** The Claimant is the owner of a black 2001 Toyota Corolla motor vehicle, Registration No. PV0396. On or about 1st May 2007 between 7:00 p.m. and 7:30.p.m, the Claimants was driving his vehicle from Josiah's Bay when the members of the Royal Virgin Islands Police (the Police) attempted to stop his vehicle.

[2] A vehicular chase ensued which eventually resulted in the Police discharging several rounds of ammunition into the vehicle damaging the body of the vehicle and the rear tires. The driver's side window of the vehicle was also smashed in the

process in order to retrieve the Claimant who was pulled through the broken window.

- [3] The Defendants submit that on that day the Anti-Drug and Violent Crime Task Force were conducting an armed operation which resulted in the search of the Claimant's vehicle. Illegal drugs were found in the vehicle and later, illegal substances and ammunition were also found in the Claimant's residence.
- [4] The vehicle was seized by the Police and detained in Police custody at the Road Town Police Station. The Claimant was later criminally charged and bailed. He contends that while he was on bail, he attempted to retrieve his vehicle from Police custody but he was informed that the vehicle was evidence in the ongoing police investigation and prosecution and could not be released.
- [5] The Claimant was granted bail on 1st August 2007 and remained on bail until 19th August 2009 when he was convicted and sentenced to 2 ½ years' imprisonment. The vehicle remained at the Road Town Police Station until the Claimant was released from prison on 27th May 2011. He thereafter sought the return of the vehicle which was eventually released into his custody.
- [6] After securing the services of an auto mechanic, the Claimant attended the Police Station where he observed damage to the vehicle which he alleges was caused by the negligence of the Police. On 14th September 2011, he filed the Claim Form herein, in which he claims damages arising from the negligence of the Defendants.
- [7] The Defendants have challenged these proceedings on the basis that the Claim is statute barred.¹ They contend that the Claim Form should be dismissed on the basis that it was filed outside the time prescribed by section 2 of the **Public Authorities Protection Act Cap 62 of the Laws of the Virgin Islands** (the Act) for the bringing of a claim against a public authority. This was raised as a

¹ See: paragraph 1 of the Amended Defence

preliminary point and the Defendants contend that in the event that they are successful, that it would dispose of the proceedings. It is therefore critical that this *point in limine* be decisively determined.

Is the Claim statute barred?

[8] Section 2 of the Act provides as follows:

“Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act or Ordinance, or of any public duty or authority or of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect –

(a) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in the case of a continuance of injury or damage, within six months next after the ceasing thereof.”

(b)...

(c)...

(d) ...”

[9] The section sets a time limit of six months for a claimant to institute a claim against any person for alleged neglect or default in the execution of a public duty or authority or for acts done in pursuance or execution or intended execution of a statute.

[10] It is not disputed that the Defendants are public authorities as contemplated by the Act and are therefore entitled to rely on the protection afforded by this statutory

provision provided that the conditions for the application of the Act apply.² The Crown is however guided by the dicta of Lord Goddard in **Western India Match Company Limited v Lock**³ where at page 606 paragraph 2, he notes:

“It is beyond question that the Crown (and for this purpose the Minister and his officers must be regarded as the Crown) is a public authority, and whether a public authority is protected by the section depends on whether the act complained of arose out of the discharge of a public duty or the exercise of a public authority: see *Bradford Corporation v Myers* [1916] 1 A.C. 242.”

[11] If the Defendants are to have the benefit of this statutory protection, it is therefore imperative that the Court determine whether the alleged acts or omissions have a public character. In that regard, the Court is guided by the words of Lord Buckmaster LC in **Bradford Corporation v Myers**.⁴ At pages 247 – 248 he stated:

“... it is not because the act out of which an action arises is within their power that a public authority enjoy the benefit of the statute. It is because the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority. I regard these latter words as meaning a duty owed to all the public alike or an authority exercised impartially with regard to all the public. It assumes that there are duties and authorities which are not public, and that in the exercise or discharge of such duties or authorities this protection does not apply.”

[12] What then are the alleged acts or neglect or default out of which this Claim arises? The answer is found in the Claimant’s Amended Statement of Claim. At paragraph 15 of that pleading, the Claimant states:

² See: paragraphs 2 or the Amended Statement of Claim and section 26 and 27 of the Crown Proceedings Act

³ [1946] KB 600

⁴ [1916] AC 242

“The deterioration of the Vehicle from its previous excellent condition is exclusively due to the negligence of the police while it was stored at the Road Town Police Station and physical damage inflicted by the Police at the time the vehicle was seized.”

[13] The Claimant then particularised the negligence and physical damage which he alleged was inflicted by the Police. In support of his claim in negligence he pleads:

- (1) Failure to exercise proper care in choosing an area for storage of the vehicle.
- (2) Failure to take care to secure the exterior and interior of the vehicle from the effects of the elements.
- (3) Failure to prevent the vehicle being used as a dumpster for garbage.
- (4) Failure to secure the vehicle so as to preserve it serviceable for delivery to the Claimant in due time.

[14] In the case of the latter, he pleads:

- (1) Discharge of bullets into the rear tires of the vehicle.
- (2) Smashing of the left front glass window of the vehicle.
- (3) Damage to the rear bumper and trunk of the vehicle.

[15] In advancing that the Claimant’s action is statute barred under the Act, Counsel for the Defendants relied on section 4 of the Police Act Cap 165 of the Laws of the Virgin Islands which provides that the objects of the Force are:

- (a) The maintenance of law and order;
- (b) The preservation of peace;
- (c) The defence of the territory from external aggression or threat thereof;
- (d) The protection of life and property;
- (e) The prevention and detection of crime; and
- (f) The enforcement of all laws that is required to enforce.

[16] Additionally, section 21 of the Police Act sets out the general duties of every member of the Police Force. It provides that:

“The general duties of every member of the Force are -

- (a) to preserve the peace and prevent and detect crimes and other breaches of the law;
- (b) to serve and execute at any time (including Sundays) all process which may be directed by any court of criminal jurisdiction or by any Magistrate or Coroner, or by any Justice of the Peace in any criminal matter, to serve or execute;
- (c) to summon before a Magistrate and to prosecute –
 - (i) persons found committing any offence; or
 - (ii) persons whom he reasonably suspect of having committed any offence or may be charged with having committed any offence;
- (d) to apprehend and bring before a Magistrate-
 - (i) persons found committing any offence that renders them liable to arrest without warrant; or
 - (ii) persons whom he reasonably suspect of having committed any such offence, or may be charged with having committed any such offence;
- (e) to stop, search, and detain –
 - (i) any aircraft, vessel, boat, vehicle, cart or carriage in or on which he suspects that any stolen or unlawfully obtained or any smuggled goods may be found; and
 - (ii) any person whom he reasonably suspects of having or conveying in any manner anything stolen or unlawfully obtained or any smuggled goods;
- (f) to apprehend smugglers or others found in the commission of offences against the revenue laws, and to seize all goods liable to

seizure for any breach of the revenue laws, and otherwise to aid in the detection of such offences and to give such assistance as may be necessary to the officers of the revenue in all departments;

- (g) to keep order in and within the precincts and in the vicinity of the Legislative Council and of all courts during all sittings thereof;
- (h) to repress internal disturbance;
- (i) to defend the Territory against external aggression or the threat thereof when called out to do so;
- (j) generally to do and perform all the duties that relate to the office of constable.

[17] Counsel for the Defendants also relied on section 24 (2) of the Drug (Prevention of Misuse) Act Cap 178 of the Laws of the Virgin Islands which provides that:

“If any member of the Police Force has reasonable grounds to suspect that any person is in possession of a controlled drug in contravention of this Act or any regulations made thereunder, the member of the Police Force may subject to subsection (3) (6) and (7) –

- (a) search that person and detain him for the purpose of searching him;
- (b) search any ship, vessel, boat, aircraft vehicle or other means of conveyance of any description in which the member of the Police Force suspects that the drug may be found and for that purpose require the person in control of the any ship, vessel, boat, aircraft vehicle or other means of conveyance of any description to stop it; or
- c) seize and detain for the purposes of proceedings under this Act –
 - (i) anything found in the course of the search which appears to the member of the Police Force to be evidence of an offence under this Act;

(ii) any ship, vessel boat, aircraft, vehicle or other means of conveyance of any description in which any controlled drug is found.”

[18] Applying these legislative provisions to the Claimant’s pleadings, it is clear to the Court that the acts complained of (i.e. the discharge of bullets into the rear tires of the vehicle; smashing of the left front glass window of the vehicle; damage to the rear bumper and trunk of the vehicle) arose out of the discharge of a public duty or the exercise of a public authority. The Defendants submit that the officers’ actions arose out of a police operation aimed at the prevention and detection of crime and this was not really challenged by the Claimant.

[19] Where injury loss and damage is caused in the course of an attempt to apprehend and search the vehicle of a person reasonably suspected to be in possession of controlled drugs, the Police were clearly acting in direct execution of the Drug (Prevention of Misuse) Act and in discharge of a public duty.

[20] It follows that time would begin to run for the purpose of the Act from the time when the act occurred; that is from 1st May 2007 and the Claimant was obliged to commence his action within six months of the alleged acts. The Court’s record reflects that the action herein commenced on 14th September 2011, well outside the time prescribed by section 2 of the Act.

[21] It follows that the Claimant’s claim as regards the “physical damage inflicted by the Police” would be statute barred unless the Claimant advances a legal basis to the contrary.

[22] Turning now to the second limb of the Claimant’s case, wherein he alleges that the Police negligently stored his vehicle which had been detained in the course of their investigations. Counsel for the Defendants also alleges that this claim is also statute barred under the Act and she relied on section 24(2) (c) of the Drug (Prevention of Misuse) Act in advancing that the seizure and detention of the

vehicle were done in pursuance or execution or intended execution of that Act and in furtherance of their public duty and authority. Accordingly, Counsel argued that the Claimant was obliged to commence his action within 6 months after the act, neglect or default complained of, or in the case of a continuance of injury or damage, within six months next after the ceasing thereof.

[23] In opposing this contention, Counsel for the Claimant argued that the Defendants are not shielded by the Act as the duty of care in this case was owed to the Claimant specifically and not to the public at large. Counsel relied on the cases of **Bradford Corporation v Myers** and **Attorney General of Antigua and Barbuda v Williams**.⁵ In the latter case, he referred the Court to page 172 of the judgment of Floissac CJ where the Learned Judge held that a public authority can only plead protection of that statute where the act complained of is done in discharge of a public duty or in the exercise of a public authority. He argued that the negligent acts complained of in the case at bar do not arise out of a duty which was owed to the public at large but rather out of a duty which was owed to the Respondent.

[24] Further, Counsel argued that the Police were not acting bona fide when they failed to preserve the Claimant's vehicle and instead used it as a garbage dump. He relied on the judgment in **Gordon v Attorney General**⁶ in which the Privy Council held that the Crown might be liable for the acts of the police officers who were (alleged to have maliciously and without reasonable cause killed the claimant) on the principle of *respondeat superior* if they were not acting bona fide in the execution of their duty.

[25] The Court is satisfied that Claimant's latter argument is not supportable. First, nowhere in the Claimant's pleadings is a claim of malice or an absence of bona fides made out. The Claimant's evidence also makes no mention of this contention. In fact, this issue was raised only in legal submissions advanced by Counsel in response to the Defendant's preliminary point.

⁵ (1993) 45 WIR 169

⁶ (1997) 51 WIR 280

- [26] In the same way, it was only during cross examination of the Defendant's witnesses and in legal submissions that Counsel for the Claimant contended that the Defendant's also failed to observe their statutory obligations under section 78 of the Police Act. This came as no small surprise to the Defendant's witnesses who were clearly unprepared to address this new contention.
- [27] There are numerous authorities which make it clear that this is wholly unsatisfactory. See: per Gordon JA in **Margaret Joseph v. [1] The Attorney General [2] Raphael Hamilton Civil Appeal No. 9 of 2003** applied in **Shankiell Myland v. Commissioner of Police et al GDAHCV2012/0045 at paragraphs 37-45**. In light of the way that the Claimant has chosen to plead his case, the Court is satisfied that the Claimant cannot in legal submissions purport to advance a claim which he deliberately chose not to advance in his written pleadings and evidence.
- [28] However, in regards to the Claimant's former argument, the Court is persuaded that the claim in negligence arises from a breach of the Defendants' duty of care as a bailor. This duty was clearly illustrated in **Sutcliffe v Chief Constable of West Yorkshire**⁷ in which a Chief Constable appealed against a judgment for the claimant whose car had been seized as bailment by police officers and parked in an unguarded yet busy station yard in exercise of their powers under the Police and Criminal Evidence Act 1984 s.19. The car window had been left open during the two months bailment and vandals poured petrol through it in an arson attack. The Defendant appealed on the ground that the judge was wrong to find foreseeable risk on the evidence. In allowing the appeal, the Court held that although there was at common law a duty of care where the transfer of possession took place under a bailment, there was no higher duty of care merely by virtue of the exercise of a statutory power. The duty was discharged if the bailee could prove that the damage occurred without any failure on his part to take reasonable

⁷ (1995) 159JP 770

care.⁸ In that case, the court found that the Chief Constable was not liable to the claimant as he was not in breach of his duty.

[29] In the Court's view, it is not the act of seizing or detaining the Claimant's vehicle which is in issue, but rather the discharge of the Defendant's common law duty of care to the Claimant as the bailor of his vehicle. The Court has some difficulty in these circumstances in concluding that the Defendant's neglect or default was in the execution of a public duty or in breach of a public duty. Using the words of the English Court of appeal, the Defendants have not demonstrated that the duty was "*owed to all the public alike or an authority exercised impartially with regard to all the public.*"

Incapacity of the Claimant

[30] While the Claimant accepts the import of section 2 of the Public Authorities Act, Counsel for the Claimant referred the Court to section 21 of the Limitation Act Cap 43 of the Laws of the Virgin Islands which provides that time does not run against a person under disability until the disability ceases. Section 2(2) of the Limitation Act defines the term "disability" and Counsel argued that this definition includes convicts under section 8 of the **Forfeiture Act** Cap 29 of the Laws of the Virgin Islands. This section provides that:

"No action at law or suit in equity, for the recovery of any property, or damage whatsoever, **shall be brought by any convict** against any person **during the time while he shall be subject to the operation of this Act**; and every convict shall be incapable during such time as aforesaid, of alienating or charging any property, or making any contract, save as hereinafter provided." Emphasis mine

[31] Counsel pointed out that the Claimant's vehicle was seized by the Police and remained in their custody while he remained in custody. The Claimant was only

⁸ British Crane Hire Corp Ltd v Ipswich Plant Hire Ltd [1975] Q.B. 303, Brook's Wharf & Bull Wharf Ltd v Goodman Bros [1937] 1 K.B. 534 followed

released from custody on 27th May 2011 and so Counsel argued that the Claimant was under a statutory disability and could not bring any action prior to that time.

[32] While the Court has some concerns about the constitutionality of section 8 of the Forfeiture Act given section 16(9) of Territory's modern Constitution Order 2007 and the case of **Golder v United Kingdom [1975] 1 EHRR 524**, it is clear to the Court that this provision does not assist the Claimant. Section 8 makes it clear that it applies to convicts during the time when they are subject to the operation of the Forfeiture Act and section 2 of that Act a "convict" is specifically defined as:

“...any person against whom after the passing of this Act , **judgment of death, or of imprisonment with hard labour**, shall have been pronounced or recorded by any Court of competent jurisdiction in the Territory.” **Emphasis mine**

[33] It has not been contended that the Claimant's sentence fell within either category. The Court therefore finds that he would not have been operating under a disability arising from this legislative provision, so that time would not begin to run only when he had undergone the full term of imprisonment which had been imposed.⁹

[34] In any event, it is clear that the Claimant would have only become a convict when sentenced had been pronounced on 19th August 2011. Based on the Court's findings above, the limitation period for commencing the action claiming damages for the physical injury inflicted by the Police would have terminated within 6 months of 1st May 2007 well before time when the Claimant would have been sentenced.

[35] The Court therefore finds that the first limb of the claim is statute barred. All claims relative to this part of the claim are accordingly struck out. In so far as the second limb of his claim is concerned, the Court finds that the Defendants are not entitled to the protection of section 2 of the Act.

⁹ Section 7 of the Forfeiture Act

[36] The Court must therefore proceed to determine whether the Claimant has made out his claims for relief in negligence to the requisite degree of proof.

COURT'S ANALYSIS AND FINDINGS – LIABILITY

[37] The Claimant's pleadings reveal that he has only made a claim in negligence but not one in bailment. In broad terms, the law of negligence provides that if a person suffers injury as the result of the negligence of another, they should be compensated for the loss and damage which arises from the negligent act or omission. In order to successfully bring a claim in negligence for compensation for an injury, a person must establish on the balance of probabilities that:

- i. duty of care was owed to the person harmed at the time of the injury;
- ii. the risk of injury was foreseeable;
- iii. the likelihood of the injury occurring was more than insignificant;
- iv. there was a breach of the duty of care or a failure to observe a reasonable standard of care;
- v. this breach or failure was a cause of the injury.

[38] Bailment on the other hand describes a legal relationship which is created when the property of one person [the bailor] is physically transferred to another [the bailee], who then assumes possession of that property. A bailee's duty is to take due care of the bailed property and to return it at the end of the bailment. If the property is damaged while in his possession, there is a presumption that the bailee is liable and the bailor can bring action against him in either contract or in tort.¹⁰

[39] Although this common law concept was not specifically pleaded by the Claimant it is common ground between the Parties that from 1st May 2007, the Police were in possession of the Claimant's vehicle and owed a duty of care to the Claimant while it remained in their possession.

¹⁰ Pollock and Wright *Possession in the Common Law* at page 163

- [40] The Defendants would therefore have a duty to take reasonable care of the Claimant's vehicle. If it sustained damaged while in Police possession, then they would be liable unless they can show that the loss or damage occurred without any neglect or default or misconduct on their part. In this regard the Court is guided by the judgments of the English court in **Sutcliffe v Chief Constable of West Yorkshire**¹¹ and **Coster v Chief Constable of Sussex**.¹²
- [41] However, the Defendants contend that their duty of care terminated when they transferred possession of the vehicle to the Claimant and they contend that the vehicle was returned to the Claimant or his agents as early as 9th May 2007. The Claimant on the other hand contends that delivery of the vehicle only occurred on 15th August 2011 when the Claimant personally received the vehicle following the completion of his sentence of imprisonment.¹³
- [42] The Parties divergent positions are underpinned by the conflicting evidence of their witnesses.

The Parties' Evidence

- [43] The Defendants contend that the vehicle was released from police custody on 9th May 2007. Crown Counsel submitted that the Police were advised by the Director of Public Prosecutions (DPP) that the vehicle was no longer needed and could be released to the Claimant. In accordance with that direction, she submitted that the Claimant authorised the release of all of his property including the vehicle. Counsel submitted that the Claimant gave permission for his belongings to be released to his wife who together with collecting various articles, collected the keys for the vehicle and signed a release form in the presence of Sergeant Kartick. She argued that in turning over the keys, the Defendants demonstrated an intention to no longer exercise custody and control over the vehicle. Having received the keys,

¹¹(1995) 159 J.P. 770

¹² [1999] C.L.Y. 4279

¹³ See paragraph 15 of the Claimant's witness statement

Counsel submitted that control of the vehicle was transferred and the Matthews were at liberty to remove the vehicle from the Police compound.

[44] In advancing this case, the Defendants relied on the evidence of 4 witnesses. In his witness statement, Detective Constable MacGregor Horne told the Court that after he became aware that the vehicle was no longer of interest to the DPP, he contacted the Claimant's wife and later the Claimant himself (who was at the time remanded in prison) regarding the collection of the vehicle. He stated that the Claimant directed him to his attorney who told him that she had already spoken to him about sending someone to collect the vehicle.

[45] This evidence was confirmed by DC Horne in his oral testimony. When he was examined, he testified that he initially spoke to the Claimant's wife Mrs. Matthew, but she was very upset and did not want to have anything to do with the car or the Claimant. He stated that Mrs Matthew advised him to go to the Claimant's mother. When he contacted the Claimant's mother, she directed him to the Claimant who was in prison at the time. Thereafter, his recount of his visit with the Claimant was consistent with his written evidence.

[46] And in cross-examination, he told the Court that the vehicle remained at the police station for 4 years and while he begged the Matthews to collect it, they did not do so. DC Horne also told the Court that the normal course of action where property is deemed to be no longer relevant to an investigation is to return it to the owners. He stated that he would normally call the person (or the next of kin) to collect the vehicle and where that persona is incarcerated, he would normally have the wrecker deliver it to their last place of abode. In the Claimant's case however, he was unable to follow this course because the Claimant at that time had no place of abode because he had been "put out" by his landlord.

[47] He further stated that when the vehicle was brought to the Road Town Police Station, he personally placed it at the side of the Station outside of the reach of

any person or other vehicles. He noted that the front passenger side of the vehicle was broken, so he secured the vehicle by taping a black garbage bag over the window. He also opened the bonnet and removed the terminal thus preserving the battery. He denied that proper care was not taken of the vehicle. When re-examined, he confirmed that he had personally secured the vehicle and that until 9th May 2007, it would have remained in the condition that he had secured it.

[48] In his written evidence, Sergeant Adrian Kartick told the Court that the Claimant was informed that he should collect the vehicle. He stated that the Claimant gave permission to his wife Stacy Ann to collect the vehicle and that he later gave her the keys for the vehicle. He documented the delivery of the keys and he referred the Court to Exhibit "AK 2", a document dated 9th May 2007 carrying his signature and that of the person receiving the keys – Stacy Ann Matthew. Sergeant Kartick further stated that despite the fact that he was on bail from 1st August 2007, the Claimant took no steps to retrieve the vehicle. He stated that even after the Claimant was sentenced, the Police continued to contact him, his wife, and his mother in order to secure the removal of the vehicle as the keys had been handed over to his wife on his instructions.

[49] Sergeant Kartick's oral testimony also confirmed his written evidence. He confirmed that he personally delivered the keys to the Claimant's wife who signed the document acknowledging receipt in his presence. He stated that when he turned over the keys to Mrs. Matthew, he intended to pass over possession of the vehicle. Thereafter, Mrs. Matthew had full access to the vehicle and permission to remove from it the Station. Notwithstanding this, no one took any steps to collect it.

[50] In cross-examination, Sergeant Kartick denied that the Claimant did not authorize the release of the vehicle to Mrs. Matthew. Although he admitted that he had no "first-hand" knowledge of this, he told that Court that he had been so informed by DC Horne. He further told the Court that he personally made no attempt to contact

the Claimant or any member of his family to collect the vehicle. Rather, he stated that it was Mrs. Matthew who came to him enquiring about the vehicle.

[51] He reiterated that Mrs. Matthew came to him on two occasions (7th May 2007 and 9th May 2007) and signed the two documents acknowledging receipt of the Claimant's property. Although these documents carried no official logo, he testified that that they were still official documents reflecting that he handed over the keys to the vehicle to Mrs. Matthew.

[52] The Defendants' next witness was Detective Sergeant Vernon Larocque. In his written evidence he stated that, Detective Constable Horne informed the Claimant that he should collect the vehicle from the Police Station. He stated that the Claimant, who was in prison at the time, authorized the release of the vehicle to his wife, Stacy Ann Matthew. According to Sergeant Larocque, the police records verified that the keys were handed over to Mrs. Matthew by Sergeant Kartick. Notwithstanding this, the vehicle remained at the Station even after the Claimant was released on bail and up to the date of his conviction in August 2009.

[53] When he was cross-examined, it became clear to the Court that DS Laroque had very little to do with the Claimant's vehicle. Instead his evidence was based largely on information which had been passed to him by DC Horne. DS Laroque clarified that he did not personally visit the Claimant while he was in prison and so he did not witness the conversation between DC Horne and the Claimant. His evidence was therefore of limited assistance to the Court.

[54] He could not confirm that the Claimant had authorized Mrs. Matthew to collect the vehicle. However, he denied that he ever went into the vehicle to retrieve items which he later handed over to the Claimant. He also denied that the Claimant ever asked him for the vehicle and he further denied that he told the Claimant that he would never see the vehicle again because it was needed for evidence. Finally, he

denied that a note was placed on the vehicle indicating that it was not to be removed.

[55] The next relevant witness was Senior Crown Counsel Christilyn Benjamin, who confirms that the DPP had advised the Police that he had no interest in the vehicle prior to 9th May 2007. When at the sentencing hearing, it became clear that the vehicle was still at the Station. She states that the magistrate formally ordered that it be returned to the Claimant forthwith.

[56] In cross-examination, Ms Benjamin told the Court that she had a conversation with DC Horne who informed her that efforts were being made to return the vehicle to the Claimant. When she was finally advised that the vehicle remained at the Police Station, she requested (during the Claimant's sentencing hearing in August 2009) and the Magistrate granted an order that the vehicle be returned to the Claimant. She stated that the order was directed to the Claimant so that he could make the necessary arrangements to collect the vehicle. In fact, Ms. Benjamin went on to state that the order became necessary because the Claimant had made no arrangements to collect the vehicle despite all efforts by the Police. This evidence was not challenged by the Claimant.

[57] The Defendants' case was trenchantly opposed by the Claimant who contended that delivery of the vehicle did not take place until 14th August 2011 after he had been released from prison. Counsel submitted that the Defendants (1) have not provided cogent proof that the Claimant had authorized the collection of keys by his wife, Stacy Ann Matthew; (2) have not provided cogent proof that the Claimant had provided written authorisation for the keys to be delivered to Mrs. Matthew; (3) had not provided proof that the keys were in fact handed over to Ms Matthew; (4) even if the keys were handed to Mrs. Matthew, the Claimant contends that that would not amount to delivery of the vehicle, because Mrs. Matthew did not possess a driver's licence and in any event, the vehicle was not roadworthy.

- [58] Counsel for the Claimant argued that the evidence showed that the vehicle was not delivered to the Claimant (in accordance with the Police's normal procedures) and the Police remained in possession of the same on the basis that the vehicle was required for the pending criminal proceedings. Counsel concluded that the Defendants had a duty to take care of the vehicle until it was handed over to him.
- [59] In addition to his own evidence, the Claimant relied on the following witnesses (1) his wife, Stacy Ann Matthew and (2) his mother, Eldra Stevens. In his written evidence, the Claimant stated that he never authorised the Police to deliver his vehicle while he was in prison and he never authorized anyone to accept it from the Police. He stated that the vehicle was delivered to him in an inoperable condition on 15th August 2011 and he produced a document titled "Property Hand Over" - Exhibit "MM3" dated 15th August 2011 which is signed by Sergeant Kartick and the Claimant.
- [60] When he was cross-examined, the Claimant testified that he gave no one (including his wife) authorisation to collect his belongings. The Claimant stated that he did not send his wife to collect the vehicle because they were separated at the time and in any event she had no driver's licence. He stated that he only instructed her to go to the landlord if he did not get bail but that he would not know if she had collected his belongings. The Claimant was eventually granted bail in August 2007, but he stated that he was not able to collect the vehicle because he was informed that it was needed as evidence.
- [61] Mr. Matthew confirmed that while he was in prison, he was visited by DC Horne sometime after 1st May 2007 and before he was eventually bailed. He confirmed that at that time, DC Horne asked him to send someone to collect the vehicle. He informed DC Horne that he would send no one to collect the vehicle because he wished to consult his attorney and get legal advice because he "*knew what they had done to the car that morning*". He told DC Horne that the car "*was a case for his lawyer*" and that he wanted to talk to his attorney before he did anything.

[62] The Claimant told the court that he saw the puncture of the car, the bullets which went through it and he concluded that the Police had wilfully wrecked the car. He later told the Court that he watched his car deteriorate over the course of the next two years (he was required to report to the Police Station four times each week as a bail condition) but he knew that "*I was not letting my car go down like that.*" He deliberately waited until he was released from prison, because in his words, "*I knew what I was going to do*" because "*they deliberately and wilfully wanted my car to deteriorate.*" Even in the face of this evidence, the Claimant denied that he deliberately did not collect the vehicle because he intended to sue for damages. The Court was not convinced by this denial.

[63] Later in his evidence, the Claimant told the Court that he was aware that the Magistrate ordered the release of his vehicle and a certain sum of money. He stated that the money was collected by his mother together with some other personal items. And in evidence which later conflicted with that of his mother, Mrs Stevens, he told the Court that he was the one who sent his mother to collect the money (needed to pay bills) and his other belongings. He confirmed that his mother did inform him that the Police had approached her about collecting the vehicle. He further testified that he told her that before she took the car, she must have it checked and appraised to record the damage done to the car. He testified that while he was incarcerated, she did in fact get the vehicle appraised and she obtained an estimate which indicated that the cost of repairs would exceed the value of the vehicle.

[64] In a very concise written statement, Stacy Ann Matthew stated that while the Claimant was in prison, she was harassed several times about removing the vehicle from their premises, but she never did so. She stated that she never did so because she had no authority from the Claimant to take it into custody and because she had no driver's licence.

- [65] In cross-examination, she testified that in May 2007 she collected the Claimant's house keys from the Police and that she had been verbally authorised to do so by the Claimant. She admitted that she signed a document indicating that she had collected these keys. Mrs Matthew denied that she had permission to or did in fact collect any other items belonging to her husband including the keys for PV0396.
- [66] In fact when she was recalled, Mrs Matthew categorically denied that she signed the receipts dated 7th and 9th May 2007 (exhibits "AK1" and "AK2"). She told the court that these were not her signatures because she crosses her "Ts" and this was not how she shapes her 'S". She further denied that she signed these documents in the presence of Sergeant Kartick.
- [67] When she was again cross-examined, she suddenly recalled her earlier evidence in which she admitted signing a document at the police station which referenced some keys, but she could not recall the date on which this took place. She told the Court that she only met with Sergeant Kartick once; that is on the day she received the bunch of 4 keys, but she could not recall returning two days later. She reiterated that she received a bunch of keys and although she could not recall what they looked like, she was able to say that they did not include a car key.
- [68] Counsel for the Defendant questioned her extensively about the alleged forgery of her signature. Mrs Matthew could offer no explanation as to why someone would wish to forge her signature other than the fact that the Police were being sued by the Claimant. When she became aware of the alleged forgery, she stated that she took no steps to report or investigate the matter.
- [69] Having observed her demeanour on two separate occasions, it became clear to the Court that Mrs Matthew was a reluctant and untruthful witness. In the Court's view, her only believable evidence came when she admitted that she had been approached by an officer who asked her to remove the vehicle from the Police Station. She was clearly fretful in the witness box and she appeared to be more

concerned with giving evidence which was tailored to fit the Claimant's case even if it was clearly implausible. The Court had no difficulty rejecting her oral evidence that she did not sign both Exhibits - in particular, on the Exhibit acknowledging receipt of the keys for PV0396. The Court finds that she did in fact collect these keys. The Court further finds that as in the case of the house keys, she was also authorised to collect the keys for the vehicle.

[70] The Claimant's final witness was his mother, Eldra Stevens. She stated that while the Claimant was incarcerated, the Police approached her and demanded that she remove the Claimant's vehicle from the premises. She informed them that she had no permission from the Claimant to remove the vehicle. Thereafter the Police returned and told her that she had 2 weeks to remove the vehicle otherwise they would take it to the dump. Fearful that they would in fact dump the vehicle, she went to Prospect where she was given 2 keys; one of which belonged to the vehicle in question, as well as another key which belonged to another vehicle owned by the Claimant. She was also given other personal items belonging to the Claimant. She referred to Exhibit "ES1" signed by police officer, Beverly James. That document noted that "two keys" were delivered (among other items) in 2010.

[71] She stated that as far as she knows the Claimant never gave the police authority to hand over the vehicle to anyone. In fact, the only reason she accepted the keys was out of fear that the vehicle would be dumped. She stated that the vehicle remained in the police station until it was claimed by the Claimant.

[72] In cross-examination, Ms Stevens admitted that she spoke to Officer Cameron and DC Horne about the return of the Claimant's property. And in evidence which directly conflicts with that of the Claimant, she told the Court that the Claimant never authorised her to collect his property. In fact, her evidence is that she only collected his property when she was contacted by DC Horne and his superiors who came to her workplace and told her that she had two weeks to remove the Claimant's belongings.

- [73] She testified that she later collected the Claimant's belongings on her own initiative (after she consulted with legal counsel) and not because she had been authorised to do so. She stated that she did so because she was being "harassed" about the collection of the vehicle. She told the Court that at some point she discussed the vehicle with the Claimant who informed her that he had given no one any permission to retrieve or move the vehicle. However, later in her evidence, she told the Court that in 2010 (after she discussed the matter with her son) she took a mechanic to examine the vehicle. This latter evidence is critical because it appears to corroborate the Claimant's evidence and makes less credible his evidence that he authorised no one to collect the vehicle.
- [74] Mrs Stevens then told the Court that she received from Officer James two keys - one belonging to an old suburban car and the other belonging to PV 0396. She stated that by looking at the keys she could tell which vehicle it belonged to because one of them had a Toyota Corolla mark on it. Critically, at one point in her evidence, she told the Court that she had no conversation with Officer James about the vehicle because she had already sought legal advice about its removal. She stated that on several occasions, she visited the vehicle because she was instructed to do so by her attorney and at all times, she was allowed to access the vehicle in the company of Officer Cameron.
- [75] Ms Steven also told the Court that at one point she saw a note on the vehicle which indicated that the vehicle was evidence and could not be removed. When she consulted with DC Horne, he informed her that since the Claimant had failed to retrieve the car, the Police had seized it. The Court found this evidence to be wholly implausible.
- [76] It was only when she was cross-examined that Ms Stevens stated that when she received the keys, they were in a sealed white envelope which she opened about one month later because no one had explained the contents to her. She denied

categorically that the keys in question were given to the Claimant's wife and reiterated that they were given to her along with the Claimant's other belongings on 24th April 2010.

[77] In that regard, Ms Steven's evidence conflicts directly with that of Acting Sergeant Beverly James who told the Court that she was the custodian of all exhibits held at the Rodus Building Property and Exhibit Store. She stated that she received a call from Ms Stevens and arrangements were made to collect the Claimant's items which were held at the Rodus Building. On 27th April 2010, she met and handed over certain items to Ms Stevens, but she stated that these items did not include car keys. In fact, her evidence is that at no time did she discuss with Ms Stevens the handing over of the Claimant's car keys because it was her understanding that this had already been delivered by Sergeant Kartick.

[78] When she was examined under oath, Officer James told the Court that she was never in possession of the Claimant's car keys. She further told the Court that two keys which she handed over to the Claimant's mother were not in an envelope, but were rather loose in the box in which the Claimant's other property was placed. She also told the Court that the keys in question did not appear to her to be car keys.

[79] The Court notes that this latter evidence directly conflicts with that of Officer Stevens and yet this went largely unchallenged by the Counsel for Claimant.

[80] Generally, the Court was left with the distinct impression that Ms Stevens' was fabricating her evidence as she went along. Her evidence conflicted in material respects with the very credible testimony of Officer James. Other than her corroborated evidence that she was repeatedly asked to make arrangements to collect the vehicle from the Police, her evidence posed a great difficulty for the Court.

[81] Indeed for the most part, the Court doubted the credibility of the Claimant's witnesses. Their oral testimony materially supplemented their written evidence and the Court could not be satisfied on a balance of probabilities that either account was truthful. The Court found that their evidence conflicted in critical areas or was otherwise implausible and incredulous. Further, the Court found that their recollections were defective and unreliable.

[82] Counsel for the Claimant submitted that there were inconsistencies in the evidence advanced by the Defendants and that as a consequence, the evidence of the Claimant's witnesses should be preferred. The Court does not agree. To the extent that there were discrepancies, the Court does not consider them to be material, neither did they significantly impact the credibility of the defence witnesses. Having had an opportunity to observe their demeanour, the Court is satisfied that they were sufficiently truthful in their responses.

[83] Having reviewed the evidence, and with the benefit of having heard and observed the witnesses, the Court has no reservations in the following findings:

1. That on or before 9th May 2007 the DPP informed the Police that the vehicle was no longer of interest in the investigation. Thereafter, officers of the RVIPF repeatedly demanded ("harassed") that the Claimant, his wife, or his mother make arrangements to collect the vehicle.
2. That the keys to the Claimant's vehicle PV 0396 were never delivered to the Claimant's mother, Ms Stevens. Rather, they were eventually delivered to the Claimant's wife on 9th May 2007 by Sergeant Kartick.
3. That on receiving the keys, Mrs. Matthew signed the document listed at Exhibit "AK2" acknowledging receipt of the car keys.
4. That she collected those keys two days after she collected other keys belonging to the Claimant.
5. That thereafter no attempt was made by the Claimant, Mrs Matthew or Ms Stevens to collect the vehicle despite repeated demands from the Police.

6. That no attempt was made to collect the vehicle because the Claimant specifically instructed them not to do so. That he did so deliberately after he was well aware that the Police no longer required the vehicle and had demanded that it be removed from the premises. Further, that the Claimant's refusal to collect the vehicle was motivated by his desire to sue for damages and to maximise his recovery.
7. That following 9th May 2007, the Police took no steps to prevent the Claimant from removing the vehicle from the premises and in fact facilitated repeated visits by the Claimant and his agents including a mechanic.
8. That while he remained on bail, the Claimant visited the Police Station where the car was kept on a number of occasions and that at any point in time and even after he was eventually sentenced, he had the ability to remove the vehicle as he had been requested to do.
9. That on the date that he was eventually sentenced, the Magistrate ordered that the vehicle be released to him but again he took no steps to secure its return.
10. And importantly, the Court finds that on 1st May 2007, DC Horne took reasonable steps to secure the vehicle and preserve the vehicle on the Police premises.

[84] Counsel for the Defendants argued that the Claimant or his agents had legal possession of the vehicle as at 9th May 2007 when the keys were delivered to Mrs Matthew. Having divested themselves of possession of the vehicle, she argued that the Claimant no longer owed a duty of care to the Defendants. Counsel relied on paragraph 40 of judgment of Lord Browne-Wilkinson in **JA Pye (Oxford) v Graham**¹⁴ where he stated that

“...there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control ("factual possession"); (2) an intention to

¹⁴ [2003] 1 AC 419

exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess"). What is crucial is to understand that, without the requisite intention, in law there can be no possession."

[85] That case concerned a claim for adverse possession of land, but Counsel then referred the Court to the unreported Queen's Bench Division judgment in **Giles v Curtis**.¹⁵ After considering the relevant authorities on possession, Forbes J made the following statement of the law which the Court accepts:

That on consideration of all these authorities, it is only necessary to postulate that in the circumstances of this case the concept of possession involves but two elements –control and intention to exercise control. The main question raised is whether in the circumstances of this case there has been demonstrated a transfer of control from the owner of the vehicle (the First Defendant) to the AA. The overriding question is whether the parties intended, on the evidence before me, that control of the vehicle should be transferred from the owner to the AA and did something which evidenced that transfer.

[86] As in the case at bar, the vehicle in **Giles v Curtis** was not roadworthy and had to be towed and yet, Forbes J made the following ruling:

"The key, of course, was necessary not to start the motor – because no one envisaged driving the car under its own power – but to allow the steering lock to be freed so that the vehicle could be manoeuvred for recovery. Harbutt then drove Curtis home leaving the Triumph parked against the kerb."

And later;

"I am quite satisfied also that in the circumstances of this case, Curtis, in handing over the key to Harbutt, intended to pass control of his vehicle to the AA, confident that it would be recovered from the position in which it

¹⁵ Unreported judgment 14th January 1985 Queen's Bench Division

was left after the breakdown and delivered to the destination required without further intervention by Curtis. I am equally satisfied that in taking the key from Curtis, Harbutt intended to take over cover control of the vehicle on behalf of the AA and he placed the key in a position where it could be found by the Relay recovery driver so that recovery could later take place. It is unnecessary to delve into philosophical refinements about whether delivery of the key was a symbolic act or actual delivery of the means of control. There is no doubt in my mind that the arrangement both practically on the ground and as envisaged by the contract for Relay services was that there was a transfer of control from the owner to the AA and that it was intended as such. In my view, this amounted to transfer to possession from Curtis to the AA.”

[87] Notwithstanding that bailment was not specifically pleaded in the case at bar, this Court is also guided by the established judicial authority that makes it clear that possession of a motor vehicle’s keys could vitiate bailment. In **Chappell v National Car Parks**¹⁶ where a vehicle was parked on the defendant’s land for a fee but there was no barrier, the land was open; no keys to the vehicle were given to the defendant, and the vehicle owner locked the vehicle and retained the keys himself. The English County Court held that no bailment of the vehicle took place. The same conclusion was drawn in **Becvar v Jarvis Norfolk Hotel Ltd**¹⁷ where B attended a seminar at JNH and parked her car in the hotel car park, retaining her car keys. The Court dismissed B’s claim on the basis that, since B had never parted with possession of the car and its contents to JNH, a bailment had not arisen.

[88] Although the vehicle physically remained on the Police premises, there is no cogent evidence that the Claimant was in any way restricted from removing the same. The Court therefore finds that delivering the keys to Mrs. Matthew was not

¹⁶ Queen’s Bench Division 21 May 1987

¹⁷ [1999] C.L.Y. 83

merely symbolic.¹⁸ In the Court's judgment, the fact that Mrs Matthew did not have driver's licence could not *without more* affect the Defendant liability. The Court finds that in delivering possession of the vehicle's keys, the Police demonstrated their intention to divest themselves of possession or custody and control of the vehicle. Coupled with their repeated and harassing requests for the removal of the vehicle, the Court finds that the Claimant would have been well aware of the Police's intentions and that he failed to posit any reasonable justification for his deliberate refusal to physically collect the same.

[89] It is clear to the Court that following 9th May 2007, the Defendants in no way hindered the Claimant's ability to collect or remove the vehicle. It is also clear that The Claimant remained on bail for 2 years following the seizure of the vehicle and was always at liberty to comply with the "*harassing*" requests by the Police. In any event, even after his incarceration, the Court is not satisfied that this would without more affect his ability to facilitate its collection.

[90] It is also apparent from case law that the return of possession of property to a person with express (verbal or written) authority or ostensible authority would be sufficient exercise of the Police's reasonable care and skill. In **Coster v Chief Constable of Sussex**, the claimant was arrested for, and subsequently convicted of offences under the Theft Act 1968. A substantial number of goods were seized from his premises at the same time and returned either to the victims of his crimes or where his ownership was not challenged, to AM, whom the police believed to be the plaintiff's common law wife. AM absconded with the returned goods and the claimant brought an action for conversion against the police and AM. The learned Judge in that case agreed that the police were statutory bailees of the goods; and under the Police and Criminal Evidence Act 1984 s. 22 were therefore under a duty to retain the property only as long as necessary in all the circumstances. However, he held that the relationship was *sui generis* and that the police were not

¹⁸ Wrightson v MacArthur and Hutchisons [1921] 2 KB 807

under an enhanced burden pursuant to the Act. Rather, the duty only extended to that of a gratuitous bailee.

- [91] Relying on the judgment in **Sutcliffe v Chief Constable of West Yorkshire**, the learned Judge held that the burden was on the police to show that they had exercised all reasonable care and skill in all the circumstances and on the facts of that case where the claimant had given the police express verbal authority to return the goods to AM who, in addition, had ostensible authority, the police had exercised reasonable care and skill.
- [92] Having reviewed the totality of the evidence before the Court and having assessed the demeanour and credibility of the Claimant's witnesses, this Court is satisfied that the Claimant's wife did collect the keys to PV0396 and that she was authorised to do so. In addition, the Court also finds that she had the apparent or ostensible authority to take possession of the keys.
- [93] When the vehicle came into Police possession on 1st May 2007, the Court finds that they exercised proper care in choosing an area to store the vehicle and to secure it from the effects of the elements. The Defendants owed no duty of care to the Claimant after 9th May 2007 when the Police gave up custody and control of the vehicle and as such no liability can be ascribed in negligence.
- [94] The Court is satisfied that the Claimant's deliberate refusal to physically collect and remove his vehicle (when he was well able to do so and in circumstances where, in returning the keys, the Police had indicated a clear intention not to possess the vehicle and in the face of an express order from the Magistrate's Court) was wholly unreasonable and the direct cause of any damage which may have been caused to the vehicle. Indeed, where no less than 4 years had elapsed since the Claimant had first been asked to remove the vehicle, the Police could be forgiven for assuming that he had abandoned the same.

[95] In the premises and after applying the relevant law to the factual findings, the Court is satisfied that the Claimant's case should be dismissed.

[96] **The Courts order is therefore as follows:**

- 1. The Claimant's case is dismissed.**
- 2. As agreed, the Defendant will have their prescribed costs.**

[97] The Court is extremely grateful to both Counsels for their patience as they awaited the protracted delay of this judgment.

.....
Vicki Ann Ellis
High Court Judge