

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Civil)**

SLUHCV2014/0804

BETWEEN:

JAMES ENTERPRISES LIMITED

Claimant

and

ALBAN HERMAN

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Kimberley Roheman for the Claimant

Mr. Alban Herman, the Defendant in person

2017: June 21, 22;
October 25.

JUDGMENT

- [1] **CENAC-PHULGENCE, J:** The claimant, James Enterprises Limited ("James Enterprises") filed a claim against Mr. Alban Herman ("Mr. Herman") on 31st October 2014 in which it claims declarations as regards the ownership of a Leyland Freighter vehicle, special damages and delivery up of the said vehicle, or in the alternative, damages for conversion and trespass to goods, interest and costs.

Preliminary Issues

- [2] At the trial, three issues arose which were dealt with by the Court as preliminary issues. It was noted that the document filed by Mr. Herman as a witness statement had been signed by his attorney at the time and not Mr. Herman himself and could not therefore be a witness statement as provided for in the **Civil Procedure Rules 2000** ("CPR 2000"). The Court therefore treated the statement as a witness summary for the purposes of the proceedings. Counsel for the claimant, Mrs. Kimberley Roheman ("Mrs. Roheman") was granted leave to rely on affidavits which had been filed by Mr. Herman in support of applications which he had earlier filed. The report of Mr. Glen Parmassar, ("Mr. Parmassar") deemed an expert by the Court, was allowed to stand as his evidence in chief.

Background Facts

- [3] James Enterprises appears as the owner of a Leyland motor vehicle at the Transport Division of the Licensing Authority, Model year 1978, chassis number SLE4HSOLL005500 as seen from the vehicle enquiry record dated 26th February 2014.
- [4] The story as revealed in the pleadings is that James Enterprises purchased a Leyland Truck from Mr. Herman for the sum of \$48,000.00. At the time of the purchase, the registration number and chassis number of the vehicle provided by Mr. Herman were TA1186 and SBLE4H60LLCG50500, respectively. This is seen by letter dated 28th October 1997 addressed to Mr. Leroy James, a director of James Enterprises. That letter confirmed that Mr. Herman had sold the vehicle to Mr. James of James Enterprises and that he held no further interest in the said truck as of 28th October 1997 ("the 28th October letter"). On that same day, James Enterprises took possession of the vehicle. This was confirmed by the evidence of witnesses, Ethelbert James and others who testified of the work done on the truck when it was taken from Mr. Herman.

- [5] It appears that James Enterprises encountered difficulty in recording the change of ownership as the Licensing Authority indicated that the chassis number provided for the vehicle did not match any vehicle in their records nor did they have record of any vehicles recorded in the name of AH Communication Construction Limited. This was confirmed by letter from the Ministry dated 15th October 2014.
- [6] As a result of the difficulties encountered and the state of the purchased truck, James Enterprises claimed that they combined parts from the truck which they purchased and another truck and proceeded to register the vehicle with the Licensing Authority on 29th May 2013, the registration number being TB3864 and chassis number SLE4HSOLL005500. The value placed on the vehicle after construction was \$64,000.00 as per the valuation dated 26th February 2014.
- [7] The pith and gravamen of James Enterprises' claim arises because on or about 3rd October 2013, some sixteen years after Mr. Herman sold the truck to James Enterprises, Mr. Herman, without the consent of James Enterprises took the vehicle from where it was parked by the roadside at Zabo, Belle Vue, Vieux Fort and has continued to have the vehicle and use it as it were his.
- [8] The registration particulars relating to TA1186 at the Licensing Authority reveal a Leyland vehicle with a chassis number of SBC4COLLCE5050 in the name of Alban Herman. It stated the first registration date of the vehicle as 12th April 1995.
- [9] James Enterprises claims that the chassis number on the vehicle is not clear and has been described by various chassis numbers, SLE4HSOLL005500, SBC40LLCE5050, SBLE4HOOLL50500, SL4HOLL005500, SBLE4H60LLCG505, SBC4COILCE5050. Mr Leroy James testified that it is sometimes difficult to decipher a chassis number and that he had tried to contact Mr. Herman to verify the chassis number but could not find him for a number of years.

- [10] Since taking the vehicle, Mr. Herman has removed registration number TB3864 and is driving the vehicle under registration number TA1186 whose registration particulars continue to exist at the Licensing Authority.
- [11] James Enterprises claims that Mr. Herman has converted the vehicle for his own use and has wrongfully taken the vehicle and has therefore committed a trespass. By letter dated 21st February 2014, James Enterprises by their attorney wrote to Mr. Herman requesting that he deliver up the vehicle but he has failed to do so. James Enterprises in their pleadings stated that they are contracted to use the vehicle for heavy duty work and installing of electrical poles and lines and as a result of Mr. Herman's actions, they have suffered loss and damage.
- [12] Mr. Herman filed a defence in which he states that he agreed to sell his vehicle, a Leyland to James Enterprises for \$110,000.00. He said James Enterprises issued him with a Scotia Bank Manager's cheque for \$40,000.00. He claims that the vehicle was already in possession of James Enterprises from the day before for the purpose of repairs. He stated that to date James Enterprises has failed to pay him the balance of the purchase price.
- [13] Mr. Herman avers that James Enterprises owes him \$70,000.00 from 1997 being the balance of the purchase price and that James Enterprises has recovered any monies expended on the truck by the income received over the years when the truck was operated.
- [14] By order dated 29th April 2014, the Court granted an injunction restraining Mr. Herman from damaging, selling, transferring or otherwise disposing or dealing with the vehicle which is the subject of the claim. Mr. Herman was also restrained from driving the Leyland vehicle until determination of this claim.

- [15] The issues for the Court's consideration are:
- (a) Whether Mr. Herman transferred title to the Leyland Truck to James Enterprises on 28th October 1997.
 - (b) Whether the letter dated 28th October 1997 was a letter signed by Mr. Herman and given as proof of the transfer of ownership.
 - (c) Whether Mr. Herman was entitled to take possession of the truck.
 - (d) Whether Mr. Herman intentionally deprived James Enterprises of the possession of the truck.
 - (e) If the answer to (d) above is yes, what remedies is James Enterprises entitled to.
- Issues (a) and (b) will be dealt with together.

Transfer of Leyland truck issue

- [16] At the heart of the first two issues is the 28th October 1997 letter which Mr. Leroy James, director of James Enterprises testified was given to him by Mr. Herman. He testified that having paid Mr. Herman a cheque in the sum of \$48,000.00, he was advised that he needed to get a document from Mr. Herman so that the vehicle could be registered at the Transport Division of the Ministry of Communications and Works ("the Ministry") and change of ownership be effected. Mr. James testified that Mr. Herman left and returned with the 28th October 1997 letter.

- [17] The 28th October letter was in the following terms:
- "To whom it may concern
- 'I Alban Herman of A H Communication Construction Ltd., have sold a vehicle Leyland Truck to Mr. Leroy James of James Enterprises Ltd., New Dock Road, Vieux Fort. The registration number of the truck is TA1186 and chassis number is SBLE4H60LLCG50500.
- I hold no further interest in the said truck as of this date."

This letter Mr. James said was taken to the Ministry to register the truck and the Ministry advised that the truck could not be registered as the Ministry had no vehicle matching the chassis number given.

[18] Mr. Herman in his witness statement stated that he never gave or signed any document indicating that he held no further interest in the vehicle. He said that if he held no further interest he would have issued James Enterprises with change of ownership papers which he never did. Despite this, in cross examination of Mr. Bryan James, the Financial Controller of James Enterprises, Mr. Herman asked him whether he was not the one who received documents for TA1186 from him. Mr. Bryan James was very clear that he had not received any documents from Mr. Herman. Mr. Herman also attempted to say that the letterhead on which the 28th October letter appeared was not his company's letterhead. He exhibited a letterhead which he said the company had been using since 1993 and had never changed. This however was soon shown to be untrue as counsel, Mrs. Roheman presented Mr. Herman with a copy of a document filed at the Registry of Companies and Intellectual Property with a different letterhead to that which he had exhibited and he said had never been changed.

[19] James Enterprises presented evidence from, Mr. Glen Parmassar who was deemed an expert based on his extensive qualifications. Mr. Parmassar is a forensic document examiner, currency examiner and a forensic accounting specialist and fraud examiner. He has over 20 years' experience in the field of document examination and has testified at all levels of the court.

[20] Mr. Pamassar in his report dated 23rd September 2016 stated that he received specimen documents and the questioned document which was the letter dated 28th October 1997 via email. The purpose of his examination was to determine whether or not the signature on the letter was that of Mr. Alban Herman. To do

this he examined several specimen documents bearing specimen signatures attributed to Mr. Herman.

- [21] Mr. Parmassar reported that similarities of significance were disclosed in some of the face detail and letter form design characteristics which included matches in style, slant, spacing, connectivity, layout, proportions and letter character formalities between the questioned signature on the 28th October 1997 letter and the specimen signatures. He went on to say that full assessment of the line quality features was limited due to the unavailability of the original letter for examination.
- [22] Mr. Parmassar concluded that it was probable that the questioned signature of Alban Herman on the 28th October 1997 letter was executed by the specimen writer Alban Herman. Mr. Parmassar in his remarks stated that the availability of the original of the 28th October 1997 letter for examination, if could be arranged, should allow for a more effective and conclusive forensic handwriting determination.
- [23] Mr. Herman urged the Court to reject the evidence of Mr. Parmassar as he did not have the original of the letter and so his conclusions should not be accepted. Mr. Parmassar in cross examination was clear that had the original been available, it was probable that an even more conclusive finding could have been possible. In answer to a question as to the accuracy of his findings in the absence of the line quality assessment, Mr. Parmassar indicated that there are different kinds of features that an examiner looks for and line quality features is just one. He indicated that all other features would be visible from email copies and any differences would also be visible.
- [24] Mr. Herman led not a shred of evidence before this Court to contradict the findings of the expert. His only contention was that the expert did not have the original document to examine. I accept the evidence as presented in the report of Mr.

Parmassar that Mr. Herman did sign the 28th October 1997 letter despite his evidence that he did not.

[25] I had great difficulty accepting some of the evidence of Mr. Herman which presented as a sieve with many holes so that the resulting story was very confusing and riddled with inconsistencies as counsel, Mrs. Roheman pointed out. In his evidence, Mr. Herman said that he offered to sell the truck to James Enterprises for \$110,000.00 and was paid \$40,000.00 so that a balance of \$70,000.00 is owed to him. However, in the exhibits which he has presented to this Court, the sale price is stated as \$60,000.00 on a letter written to Mr. Leroy James by solicitor, Mr. Owen Barnard dated 13th January 2004, and as \$70,000.00 on a letter to Mr. Leroy James written by solicitor Ms. Maureen John dated 7th January 2011. Both letters were written on Mr. Herman's behalf.

[26] Mr. Herman testified that the truck which he has in his possession is the same truck which he sold to James Enterprises. Having determined that the letter dated 28th October 1997 was signed by Mr. Herman and was intended to pass ownership of the truck to James Enterprises, it is not necessary to delve too much into the chassis numbers.

[27] Suffice it to say that all the documents from Britcom which is the company from which Mr. Herman said he purchased the truck showed the chassis number as the same as that stated in the 28th October 1997 letter. The application for registration of motor vehicle form dated 12th April 1995 has the same chassis number with that on the letter but the authenticity of that form is questionable. The form does not bear a date in the official use section or a stamp from the Ministry. The vehicle enquiry report from the Ministry which Mr. Herman says relates to TA1186 which was sold to James Enterprises shows the chassis number to be different. That chassis number is SBC4COLLCE5050.

[28] Interestingly, when questioned about the discrepancy in the chassis numbers, Mr. Herman said that the Ministry had just given a different chassis number. This was from 1995 and Mr. Herman never made any attempt to correct the error. He could not account for this discrepancy at all. The document which he supposedly presented for registration of the truck bore the chassis number stated in the 28th October 1997 letter.

[29] Mrs. Roheman rightly submitted that it is for Mr. Herman to prove that the 28th October 1997 letter was not signed by him. As I have indicated, Mr. Herman has failed to discharge this burden.

[30] Article 289 of the **Commercial Code**¹ which deals with the time at which property in goods passes to the buyer states at rule 1 that:

“Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial **whether the time of payment or the time of delivery, or both , be postponed.**” (my emphasis)

[31] Article 306 of the **Commercial Code** provides as follows:

“The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.”

[32] Based on the foregoing sections, I conclude that the 28th October 1997 letter was intended to pass the property of the truck to James Enterprises who was in possession of the truck from that date having collected it from the premises of Mr. Herman. I do not accept the evidence of Mr. Herman that he sold the vehicle for \$110,000.00 and that James Enterprises owes him a balance of \$70,000.00 or any

¹ Ch. 244, Vol. V, Saint Lucia Revised Ordinances 1957.

balance for that matter. I believe the testimony of Mr. Leroy James, director of James Enterprises who presented as a credible witness when he said in cross-examination that he would never have bought a truck for that much money as he had other trucks and that the truck was not worth that amount of money. I believe Mr. James when he said that Mr. Herman offered the truck for sale at \$60,000.00 and he counter-offered with \$48,000.00.

Mr. Herman's entitlement to take possession of the truck

[33] If as Mr. Herman contends, (which I have already indicated I do not accept) James Enterprises owes a balance of money as a result of the sale of the truck to them, the question is whether Mr. Herman had a legal right to take possession of the truck.

[34] The time period for bringing a claim for the unpaid monies is six years in accordance with Article 2121 of the **Civil Code**² as this would represent a breach of contract. The evidence reveals that the first attempt by Mr. Herman to seek any redress for the alleged balance of the sale price was in January 2004 when he went to solicitor, Owen Barnard. By that time though, it was 6 years and 3 months after the sale took place. A letter was written by the solicitor to Mr. Leroy James but no claim was filed. By the time the second letter was written by solicitor Maureen John in January 2011, a little over 13 years had passed. And then in October 2013 when Mr. Herman took the truck from James Enterprises, 16 years has passed. In order to claim for the unpaid balance, Mr. Herman would have had to have filed a claim against James Enterprises within 6 years. Therefore, in 2013, he could no longer maintain an action against James Enterprises for any unpaid monies. As Article 2129 of the **Civil Code** states, the right as well as the remedy is extinguished.³

² Cap. 4.01, Revised Laws of Saint Lucia, 2013.

³ Norman Walcott v Moses Serieux Saint Lucia Civil Appeal No. 2 of 1975, delivered 20th October 1975 (unreported).

Whether Mr. Herman intentionally deprived James Enterprises of the possession of the truck.

- [35] The evidence reveals that Mr. Herman took the truck from James Enterprises' workers on 3rd October 2013 and brought it to his premises and this was done with the intention of depriving James Enterprises of the truck. In cross-examination, Mr. Herman admitted to the Court that he had simply removed the registration number TB3864 which the truck carried at the time he took it and replaced it with the number plate TA1186. He said he did not change the number; he just replaced it. He admitted that he did not go the Transport Division to effect this change albeit that the truck was registered at the Transport Division with registration number TB3864.
- [36] Mr. Herman admitted that the truck which he took was the same one he had sold to James Enterprises but he felt that he had a right to take it because James Enterprises owed him a balance on the purchase price. But as has been established, Mr. Herman did not take any action until six years after the sale and again seven years later.
- [37] I find that it is not disputed on the evidence that Mr. Herman intentionally took possession of the truck whereby depriving its lawful owner, James Enterprises of its use. I also find that the truck was in the possession of James Enterprises at the time it was taken by Mr. Herman and this is supported by the evidence of the witnesses.
- [38] Conversion has been defined as a common law action tortious in form, imposing strict liability for a wrongful interference with the right of 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.⁴

[39] The authors of **Halsbury's Laws of England** explain the tort of conversion in this way:

“Conversion of goods can occur in so many different circumstances that framing a precise definition of universal application is virtually impossible. However, its basic features are as follows:

- (1) the defendant's conduct was inconsistent with the rights of the owner (or other person entitled to possession);
- (2) the conduct was deliberate, not accidental; and
- (3) the conduct was so extensive an encroachment on the rights of the owner as to exclude him from use and possession of the goods.

Another notable feature of conversion is that liability in the tort is strict. Although the defendant's interference with the claimant's chattel, in the sense of his dealing and physical contact with it, must be deliberate, his infringement of the claimant's right need not be. Indeed, there is no need to prove that the defendant was at fault at all, so complete ignorance of the existence of the claimant's right affords no general defence.”⁵

[40] It is clear from the evidence that Mr. Herman's taking of the truck was a deliberate action albeit he thought he had the right to take possession of it. I have already determined that even if James Enterprises owed a balance on the purchase price (which I find on a balance of probabilities is not the case), this would not entitle Mr. Herman to take possession of the truck. In addition, the time period for Mr. Herman to maintain any action against James Enterprises had long passed by the time he took the truck from James Enterprises. When Mr. Herman took the truck, James Enterprises was excluded from use and possession of the truck as it was now in Mr. Herman's possession.

⁴ See Thom J in *Eric Conliffe v Sergeant Jeffrey Laborde et al*, SVGHCv2009/0331 at para 50, (delivered 24th August 2011, unreported).

⁵ Halsbury's Laws of England, para 604, Vol. 97 (2015).

- [41] The evidence also reveals that James Enterprises wrote to Mr. Herman via its attorneys on 21st February 2014 demanding that he deliver up possession of the truck to them within 24 hours from the date of receipt of the letter. The letter was served on Mr. Herman on 4th March 2014. Mr. Herman has not denied this at all.
- [42] Based on the evidence, I find on a balance of probabilities that Mr. Herman is liable in conversion as it relates to the truck, registration number TB3864. I find that this is the same truck which Mr. Herman has in his possession and has changed the registration plates to registration number TA1186.

What remedies is James Enterprises entitled to?

- [43] Having established that Mr. Herman is liable in conversion, the question is what remedies are available to James Enterprises. James Enterprises has claimed special damages in the sum of \$69,500.00 representing loss of use from 3rd October 2013 to 20th February 2014 and mesne profits continuing from 31st October 2014 at a rate of \$100.00 per day, an order for delivery up of the truck currently in Mr. Herman's possession or alternatively, the value of the truck in the sum of \$64,000.00 and special damages in the sum of \$69,500.00. They also claim damages for conversion and trespass to goods, general damages, interest and costs.
- [44] The normal measure of damages for conversion is the value of the goods converted. Mr. Leroy James gave evidence that the truck was valued at \$64,000.00 and produced a vehicle inspection report showing that value as at 26th February 2014. Mr. James in his witness statement at paragraphs 9 and 10 stated that the truck at the time it was taken was contracted to be used for heavy duty work and installing of electrical poles and lines and that the truck was put to full use after it was licensed in 2013. He further stated that James Enterprises suffered loss of use of the truck from 3rd October 2013 at a cost of \$500.00 per day.

[45] Loss beyond that represented by the market value of the goods may be incurred by the claimant through being deprived of his goods. The witnesses who gave evidence on behalf of James Enterprises all spoke of the truck being used to carry out contracts with LUCELEC (the electricity company) although no evidence of such contracts was provided to the Court to ascertain the extent of use of the truck. It is accepted though that the truck was being utilized by James Enterprises at the time Mr. Herman took it and James Enterprises would have suffered loss which was a direct result of Mr. Herman's conversion of the truck. Whilst James Enterprises has not provided any evidence in support of the loss which it claims by way of any documentation to support its use and the amount being claimed as the daily rate for its use, I am prepared to accept that there would have been some loss suffered by James Enterprises not having use of the truck whilst it remained in Mr. Herman's possession.

[46] In all the circumstances of this case, I am prepared to make an award of nominal damages in the sum of \$50,000.00 representing loss of use of the truck.

[47] James Enterprises has claimed declarations as part of the relief sought. I do not consider that the declarations sought with regard to the amendment of the chassis number of TB3864 are warranted. This is so because it has been established and accepted that the truck in Mr. Herman's possession is registered at the Transport Division as registration number TB3864 in the name of James Enterprises. There is therefore no question as to the ownership of the truck. It has also been established and I have determined that the truck registered at the Transport Division as TA1186 in the name of Alban Herman and TB3864 in the name of James Enterprises Limited respectively is the same truck.

Conclusion

[48] In the circumstances, the Court makes the following order:

1. It is declared (a) that Mr. Herman is not the owner of the Leyland Vehicle registered at the Transport Division under vehicle registration number TA1186 and that the said registration ceases to be valid as the vehicle to which it pertains has been sold and is registered in the name of James Enterprises Limited and (b) that TA1186 and TB3864 refer to one and the same vehicle despite the different chassis numbers appearing on the respective vehicle enquiry reports from the Transport Division.
2. The Transport Division of the Ministry of Infrastructure is to make the necessary entry on its records to reflect the cessation of the registration of the vehicle registered as TA1186 in the name of Alban Herman as that vehicle has been sold to James Enterprises.
3. Mr. Herman is to deliver up the Leyland truck currently in his possession which was taken from James Enterprises and has carried the number plate TB3864 and now carries TA1186 to James Enterprises forthwith, the truck to be collected from the premises of Mr. Herman by James Enterprises.
4. Should Mr. Herman fail to deliver up the vehicle as ordered, he shall pay to James Enterprises damages in the sum of \$64,000.00 representing the value of the said vehicle.
5. Mr. Herman is to pay the sum of \$50,000.00 for loss of use of the truck during the period of its conversion.
6. Mr. Herman is to pay interest on the sum/s to be paid at the rate of 6% per annum from the date of judgment to the date of payment.

7. Mr. Herman is to pay prescribed costs to James Enterprises in accordance with rule 65.5 of the **Civil Procedure Rules 2000**.

Justice Kimberly Cenac-Phulgence
High Court Judge

By the Court

Registrar