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

SVGHCV2016/0233

BETWEEN:

MARVIN MULCAIRE CLAIMANT

and

DOTSIE PRINCE-CRUICKSHANK DEFENDANT

Appearances:
Mrs. Rochelle A. Forde-Duncan and Ms. Rose-Ann Richardson for the Claimant
Mr. Jomo Thomas for the Defendant

2018: June 26
October 18

JUDGMENT

BYER, J.:

BACKGROUND:

[1] This dispute arises from an oral agreement (a point accepted by both parties) made between the Claimant and the Defendant for the Claimant to build a home for Defendant at Campden Park, St. Vincent for the sum of $151,783.20.

[2] The Claimant was to provide both labour and materials for this contract price.

[3] Construction was to be undertaken in phases with the Claimant being paid in tranches when the said sums were released by the bank with whom the Defendant had entered a loan agreement.

[4] Once the funds were released to the Defendant by the banking institution after the requisite internal valuations had been conducted, both parties accept that the due sums would then have been paid to the Claimant.

[5] The parties agreed on these basic terms however there was no set completion date. In fact in the evidence of the parties the Claimant maintained that it was a December 2016 date while the Defendant stated it was January 2017. Nothing turns on these dates as the parties did not even reach to that stage of the contract.

[6] However despite this difference, the Claimant commenced work on the Defendant's property for the first phase of the home in September 2016. A deposit was paid to the Claimant which both parties agreed was $22,000.00. Where the difference occurs is that the claimant stated in evidence that the agreed sum was in fact $26,000.00 but he agreed to accept $22,000.00 the Defendant retaining the remaining $4,000.00 which he stated he understood could have been accessed by him during that stage of the construction, if needed. The Defendant denies this and proffers that the agreed amount at the commencement of the work was the $22,000.00 which the claimant was in fact paid.

This is an issue to which this Court will return later in the judgment, as it is this discrepancy in the sum due and owing that led to the breakdown of the relationship.

[7] By October 2016, it appears that unhappy differences arose between the parties, leading to the Defendant terminating the agreement and ordering the Claimant off her property, forcing him to leave certain of his materials and tools on the said property.

[8] Immediately after this action by the Defendant, the interaction between the Claimant and Defendant became highly confrontational leading to a confrontation between the Claimant and Defendant in public which purportedly led to the Claimant's prayer for damages for slander.

[9] As a result of the breakdown, the Claimant filed this suit against the Defendant claiming: -

1. Special damages of $16,165.00.

2. General damages for breach of contract.

3. Damages for detention and conversion of the Claimant's property, materials and equipment.

4. Damages for loss of use of the Claimant's property, materials and equipment.

5. An order for the Defendant to account for and deliver up the Claimant's property, materials and equipment.

6. Alternatively an order that the Defendant pay to the claimant the value of the Claimant's property, materials and equipment.

7. Damages for slander.

8. Aggravated damages.

9. Interest as the court deems fit.

10. Further or other relief as the court deems necessary or appropriate.

11. Costs.

[10] In this court's mind these 11 prayers can be subsumed succinctly in three main issues, namely the termination of the contract and its results, whether there was conversion of the Claimant's materials and tools and the claim for slander against the Defendant.

Issues

[11] (i) Whether the Defendant was entitled to terminate the agreement with the Claimant?

(ii) Whether there was conversion or wrongful detention of the Claimant's materials and tools?

(iii) Whether the Defendant is liable for slander?

Issue #1 - Whether the Defendant was entitled to terminate the agreement with the Claimant?

[12] Both parties agree that there was a legally binding contract between the Claimant and the Defendant.

[13] There are four (4) fundamental provisions for an agreement to be legally binding – an offer, the acceptance, the consideration and an intention to create legal relations.

[14] From the evidence contained in the witness statements and under cross examination, I accept that there was an oral agreement between these parties, having agreed all the fundamentally important provisions.

[15] The only issue which may have imputed any vagueness, may have centered around as to what was the date of completion. However, as I intimated earlier this did not raise itself as a bone of contention and as such I will make no determination as to the impact of this on this subject matter of this action.

[16] The main question must be, was the Defendant entitled to terminate the said agreement?

[17] The Defendant counsel's submission in this regard is that the Claimant was in breach when having started work, asked for further funds past the paid $22,000.00 before getting to the agreed phase of the construction.

[18] In fact the Defendant said this in her witness statement at paragraphs 4 and 5:

"*4. On or about 12th October 2016 Mr. Mulcaire had only finished the foundation columns which were supported by old rotting pieces of plywood. Mr. Mulcaire was falling behind in his work. No concrete was laid and this ought to have been done by this time. However, Mr. Mulcaire demanded additional sums before reaching the agreed milestone, which was to complete the deck. He never provided any accounting of any sort to justify his failure for completing the first-floor deck in.*

5. I was very distraught that Mr. Mulcaire had not completed the works as agreed yet he was asking me to provide more money without any justifications. I therefore told him not to trespass on my property to continue any construction work. I consulted with my lawyer and through him sent Mr. Mulcaire a no trespass letter. I did seek the assistance of the police to prevent Mr. Mulcaire from entering my property as I was simply upset and believed that Mr. Mulcaire was more than playing the fool. At no time, however, did I prevent him access to remove his tools and equipment and any other thing that belonged to him."

And definitively on cross examination she said:

"I had a Valuation Report up to the decking stage. I terminated the contract with the claimant at this stage".

"I asked the claimant for my bills. He did not produce bills at the time … I got upset when he asked for the second disbursement because I did not get my bills. I needed to see how income was being spent".

[19] It therefore appears that the reason behind termination by the Defendant was what she saw as failure to complete the work agreed to for the first amount of monies released compounded by her not obtaining bills for materials bought by the Claimant.

[20] Counsel for the Defendant has submitted that completion having not been met, the Defendant was entitled to "refuse[d] to release more money to the Claimant and ask[ed] him to leave and not return to her property"[1].

[21] In response, Counsel for the Claimant submitted that firstly there was no term of the contract, even despite it being an oral contract that mandated the Claimant to produce bills to the Defendant. In fact, the Defendant's own evidence does not substantiate that it may have been such a term. All she said was that the "she needed to see how the monies were spent".

Secondly, Counsel also submitted that time was not in fact of the essence of the contract but that in any event the Claimant's own evidence is that he was ahead of his timetable. She further submitted that because of the very nature of building contracts and the unforeseen variables that can occur with the same, time is not often made of the essence of such contracts unless one of the following situations arise: (1) the party expressly stipulates that conditions as to time must be complied with strictly, (2) the nature or subject matter of the contract or the surrounding circumstances show that time is to be of the essence and (3) a party who has been subjected to unreasonable delay gives notice to the defaulting party[2].

[22] Counsel therefore submitted that since none of these circumstances arose in the case at bar, time was not of the essence and in any event because the claimant was in fact ahead of schedule it was not relevant in all the circumstances or at all.

[23] Counsel for the Claimant therefore submitted that the purported termination of the contract amounted to a repudiatory breach which entitled the Claimant to damages for breach of contract.

Court's Consideration and Analysis

[24] Having heard the evidence and seeing the parties, I accept the version of events as given by the Claimant with regard to the provisions of the oral agreement. I accept that the Claimant and

[1]Defendant's Submissions filed 6 July 2018 at paragraph (d)
[2]Halsbury's Laws of England Vol. 22 (2012) paragraph 502

Defendant agreed that the Claimant would build her home for $151,783.20 inclusive of labour and materials. That it was a further term that in return the Claimant would be paid in tranches once the funds were released to the Defendant by her lending institution.

[25] I am fortified in this when I examine the evidence of the Defendant. Nowhere in her evidence, in spite her counsel attempting to make submissions on the same, does she agree that either time or presentation of bills was a part of the agreement to build.

[26] In fact, the Defendant in cross examination admitted to getting more than the $22,000.00 she paid the Claimant, she said she received $32,000.00. No explanation was given as to the reason for the extra $10,000.00 and this court is of the opinion that without an explanation having been forthcoming that on the balance of probabilities I accept that in fact the actual agreed deposit amount was $26,000.00 as stated by the Claimant ,of which he was paid $22,000.00.

[27] I also accept that this initial deposit was to take the stage of construction up to the decking, that is for the form work built around the area before concrete is poured. In fact, the Cambridge Dictionary defines decking as "a floor outside made of wood or the long pieces of wood used to make this floor".

In fact, the words of the Claimant on reexamination were clearly that "the decking does not include pouring of concrete that is separate altogether".

[29] So therefore on the evidence, on a balance of probabilities, I find that the total sum was indeed $26,000.00, that in asking for the balance of $4,000.00 the Claimant was entirely within his right to do so given the stage of the construction and that further there was no term of the agreement with regard to making time of the essence or for the presentation of bills before any such payment was due.

[30] The Defendant's actions I therefore accept fall within the definition given by Greer LJ in Harold Wood Brick Co v. Ferris[3] of repudiatory breach. There it was defined as "when a party indicates *by word or conduct that he is unable or unwilling* to perform his side of the contract. In such a case the innocent party may treat himself as no longer bound by the contract by accepting the repudiation and suing for damages". (My emphasis)

[3](1935) 2 KB/98 at 205-206

[31] In the case at bar, the Claimant had performed all his obligations to date. The Defendant, dissatisfied with what she thought was him "playing the fool", refused to pay the sums due and further instructed the claimant to remain off her property[4].

[32] Thus even though the actions by the Defendant may have amounted to repudiation simpliciter[5], Chitty on Contract stated "a failure by the employer to pay the contractor could amount to repudiation depending on the terms of payment and the circumstances of the refusal but generally there is no general right to suspend work where payment is withheld from the contractor, at common law".[6]

[33] Indeed this may be so, but this Court finds that the Claimant would have found himself facing other claims, for example trespass, when the refusal to pay was coupled with the Defendant taking possession of the construction site supported by legal advice.

[34] In the words of my fallen brother Bruce-Lyle J in the case of **O'Neil Cruickshank v. Andrea** Burgin[7], "the long and short of this is that the Defendant refused the Claimant to perform and he was forced to accept the repudiation of the contract".

[35] I therefore find that the Defendant had no good reason for the termination of the contract. She did so unequivocally sending the claimant packing, without an opportunity to collect his belongings from the site (a point I will return to shortly). Having done so, the Defendant is liable for breach of contract.

[36] Damages for such breach will be assessed on application to be filed by the Claimant within 21 days of today's date.

[37] For completeness of this issue the Claimant also made a claim for special damages in the sum of $16,165.00.

[38] It is trite law that special damages must be specifically pleaded and proven.

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[4]Confirmed by letter from Defendant's Attorney at Law exhibited at page 24 Trial Bundle
[5]See also Hudson's Building and Engineering Contracts where it is said that "a clear indication of refusal or inability to pay future installments will amount to repudiation".
[6]Vol. 1 11th Ed. Para 4 -221 cited in the case of **Clearile Todman-Brown v. Melvin Rhymer**BVIHCV2009/0195
[7]SVGHCV188/2005 at Para 20

[39] Having perused the evidence and the pleadings it is unclear to this court what this sum specifically relates to as the same is not itemized in the pleadings as required nor was any evidence led on the same to itemize the sum. In fact the only items that sums were attached to were the materials and tools left on the property and on a tabulation of the sums identified, they did not amount to the sum claimed as special damages. It is for the claimant to prove their case and not for the court to decipher the same.

[40] I am therefore, not in a position to grant this prayer and it is dismissed.

Issue #2 - Whether there was conversion or wrongful detention of the Claima**nt's materials and** tools?

[41] In the case at bar, the Claimant stated at paragraph 13 and 14 of his witness statement:

"13. Despite the fact that my property, equipment and materials remained on the site I complied with the Defendant's warning not to trespass on the Defendant's property. At no time did the Defendant communicate to me prior to 19th December 2016 that I should collect my materials and equipment.

14. Given that the Defendant made no allowances for me to collect my materials, property and equipment, I concluded that the Defendant had confiscated my property, materials and equipment and was putting them to her own use. I therefore caused my solicitor to serve the Defendant with a letter dated 20th October 2016 demanding the return of my materials, property and equipment. A copy of the said letter is hereto attached and marked "MM3"."

` Also at paragraph 21 and paragraph 23 the Claimant said:

"21. The Defendant enjoyed the benefit of my materials, equipment and property, to my detriment – which as stated above, I have concluded she has converted to her own use.

23. On the 19th day of December 2016 the Defendant through her agent, the foreman of the works contacted me requesting that I come to the site to collect my materials and equipment. By that time, the Defendant had already completed the construction using my materials and equipment without my consent or permission to her advantage and benefit."

The Defendant in response said at paragraphs 5 and 6 of her witness statement as follows:

"5. I was very distraught that Mr. Mulcaire had not completed the works as agreed yet he was asking me to provide more money without any justifications. I therefore told him not to trespass on my property to continue any construction work. I consulted with my lawyer and through him sent Mr. Mulcaire a no trespass letter. I did seek the assistance of the police to prevent Mr. Mulcaire from entering my property as I was simply upset and believed that Mr. Mulcaire was more than playing the fool. At no time, however, did I prevent him access to remove his tools and equipment and any other thing that belonged to him.

6. In fact, I repeatedly told Mr. Mulcaire to remove his stuff after I told him that he was no longer permitted to construct my house. It was not until sometime in December, 2017(sic) that Mr. Mulcaire's brother came to the site to do so."

[42] The witness for the Claimant, Nigel Mulcaire, however stated clearly that it was not until December 2016 that he had in fact been able to collect some of the items that had been left on the property. He said at paragraph 9 of his witness statement that he collected the following items:

"9. It was not until the 19th December 2016, I was instructed by the Claimant to collect items from the said construction project which I delivered to the Claimant. The items which I collected were:

(i) One generator
(ii) 12 metal props
(iii) 2 nail guns
(iv) One compressor
(v) One metal ladder
(vi) One pick
(vii) One plastic drum
(viii) Two metal drums

Court's Analysis and considerations

[43] The law of conversion as stated in **Halsbury's Laws of** England is described as being *"concerned with cases where one person has misappropriated goods belonging to another. 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".[8]

[44] Conversion unlike wrongful detention is therefore based more on the actions of the defendant rather than the Claimant. In fact, Millet J. in the case of Barclays Mercantile Finance v. Sibec Developments[9] quoted in the case of Eric Conliffe v. Sergeant Jeffrey Laborde[10] by Thom J. as she then was at paragraph 53 thereof stated *"demand is not an essential precondition of the tort in the sense that what is required is an overt act of withholding possession of the chattel from the true owner. Such an act may consist of a refusal to deliver up the chattel on demand made, but it may be demonstrated by other conduct, for example by asserting a lien. Some positive act of withholding, however, is required, so that, absent any positive act of withholding on the part of the defendant, the plaintiff can establish a cause of action in conversion only by making demand."*

[45] Thus it is that the Claimant must show that there was some act inconsistent, deliberate and excluding the claimant from use and possession of his goods.

[46] The evidence of the Claimant is simply:

"14. Given that the Defendant made no allowances for me to collect my materials, property and equipment, I concluded that the Defendant had confiscated my property, material and equipment and was putting them to her use. I therefore caused my solicitor to serve the Defendant with a letter dated the 20th October 2016 demanding the return of my materials, property and equipment. A copy of the said letter is hereto attached and marked "MM3"." (My emphasis)

[47] There was no evidence of actual usage by the Defendant or any act of actual conduct amounting to using what was left on the property by the Claimant. It all seemed to this court to be based on

[8] Vol. 97 2015 Ed. Para 64
[9] 1993 2 AER P 195 at 199
[10] SVGHCV2009/0331

supposition and inference. On the mere fact that the Claimant could not get them, then they must have been used.

[48] Unlike wrongful detention or detinue which relies on retention, conversion must be an active step on the part of the defendant. There must be cogent evidence to the effect that the Defendant did take such action. On the balance of probabilities, I do not accept that any such acts of conversion occurred. There was no definitive evidence to that effect and as such I do not find that the claim for conversion has been made out.

[49] However, the Claimant also claimed for wrongful detention. This is an entirely different tort and for which there are two pre-requisites: (1) there was a demand for the return of the chattels and (2) the Defendant has refused to turn it over.

[50] In the case of Carol Campbell v The Transport Authority of Jamaica[11] McDonald J stated the following at paragraph 23:

"23. The learned author, John G. Fleming in The Law of Torts 8th edition, at page 58, opines as follows –

> *Merely being in possession of another's goods without his authority is not a tort. If lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep them adversely or in defiance of his rights. (see: Spackman v Foster (1883) 11 QBD 99)...*
>
> *To establish that the detention has become adverse and in defiance of his rights, the claimant must prove that he demanded return of the chattel and that the defendant refused to comply...but such refusal must be categorical; if qualified for a reasonable and legitimate purpose, without expressing or implying an assertion of dominion inconsistent with the plaintiff's rights, it amounts to neither detinue nor conversion. One does not always act unreasonably in refusing to deliver up property immediately on demand but may inquire first into the rights of the claimant. Moreover, a mere omission to reply to a letter of demand cannot itself be construed as a refusal (see: Nelson v Nelson [1923] QSR 37)..."*

[11] 2016JMSC Civ148

[51] In the case at bar, the Claimant in paragraph 14 of his witness statement indicated he demanded his belongings back and by letter dated 20 October 2016, the Claimant's solicitor stated in clear terms this:

> *"My client's shed remains on your premises and my client demands that you deliver his shed to him forthwith. As to this my client considers that he is entitled to $75.00 per day remuneration from the 12th October 2016 and continuing as you are making use of the shed. The breaker panel belongs to my client and is valued at $170.00. You have seized my client's generator which is valued $4500.00. My client demands that you deliver this forthwith. He quantifies his losses for this at $150.00 per day as of the 12th October 2015 until it is delivered. You have also seized 12 metal props, a compressor and two nail guns all belonging to my client. The compressor is valued at $1700.00, the nail guns are $500.00 each and the metal props are valued at $120.00 each. My client also demands that you immediately turn over this equipment to him. In the interim he quantifies his loss of use of these items together at $200.00 per day from the 12th October 2016 until delivery. You have further kept a quantity of lumber and ply valued at $10,000.00 belonging to my client. My client demands that you return these forthwith. In the interim he quantifies his loss of use in the sum of $125.00 per day until delivery.*
>
> *Additionally, you have seized 2 wooden ladders and a metal ladder belonging to my client. The wooden ladders are each valued at $100.00 and the metal ladder at $750.00. You have committed these to your own use and my client quantifies the loss of their use at $75.00 daily.*
>
> *My client has observed that you have engaged other person to continue the work on the project. These persons have been using his equipment and materials. As a result, he is unable to pursue other available work. In the premises my client claims damages for breach of contract which my client presently quantifies at $25,000.00. My client also claims damages for slander which he quantifies at $10,000.00."*

[52] In this Court's mind this amounts to an unequivocal demand. There was no response. Although it is recognised that the failure to reply to a letter of demand cannot be considered as a refusal[12], the

[12] Nelson v. Nelson [1923] OSR 37

fact that the Defendant did not contact the claimant and specifically sought the assistance of the police to prevent the claimant from entering her property[13], in this Court's mind creates a reasonable inference that such actions amounted to a refusal. Additionally, the fact that some of the belongings were collected in December 2016 (a fact not disputed by the Defendant), I also accept that until that date the Claimant was kept from his belongings.

[53] I therefore find on a balance of probabilities that the claim for wrongful detention is made out.

[54] However, the onus is on the Claimant to prove the loss incurred as a result of such detention. The bald figures given to the Court regarding the values of the belongings detained by the Defendant cannot satisfy a claim at this stage.

[55] I therefore order that assessment of such damages for wrongful detention is to be considered upon application by the Claimant.

Issue #3 - Whether the Defendant is liable for slander?

[56] The claimant's complaint is as follows:

"Much to my surprise and without any further explanation the Defendant directed me not to return to her premises and not to trespass further on the said site. The Defendant even came to the High Court yard and cursed me thereby slandering my good name by calling me a thief, and further confirming the fact that she had ended the contract."

[57] It was of note that it was however not until the Defendant was cross examined that she made any mention of these allegations and on cross examination she told the Court that she did not call the claimant a thief but told the claimant that he wanted to "rob her of her hard earned money".

[58] On first blush it would appear that the Defendant sought to take this court on a merry go round of semantics and therefore it is imperative that the first step in considering whether the words were in fact spoken and whether they were defamatory must be a determination on the specific words used.

[59] In looking at the evidence, I find that on a balance of probabilities that the defendant did utter the words that the claimant wanted to rob her. Throughout her witness statement, she spoke of the

[13] Paragraph 5 of the Witness Statement of the Defendant filed 14 December 2017

Claimant "demanding" additional sums before reaching the agreed milestone[14]. And again, "I was very distraught that Mr. Mulcaire had not completed the works as agreed yet he was asking me to provide more money without any justification"[15] and again "… believed that Mr. Mulcaire was more than playing the fool".

[60] Even in the submissions by the Defendant's counsel the statement that "as per his claim for slander the Defendant gave uncontroverted evidence that she never called the Claimant a thief. She said she told him he wanted to rob her of her earned money"[16]. So even on the Defendant's own case some words were uttered that impugned to the claimant the characteristic of being a thief.

[61] It is therefore these words that I will consider.

[62] In order for this Court to determine the basis of this claim it must determine three essential questions:

i. Were the words capable of being defamatory?

ii. Were they in fact defamatory? and

iii. Were they defamatory of the Claimant?

[63] Defamation has been defined in Gatley on Libel and Slander[17] as being "committed when the Defendant publishes to a third person words or matter containing an untrue imputation against the reputation of the Claimant."

[64] The Learned Authors went on to say that there was a particular formula that should be used to assess whether the words can be considered as defamatory.

This was encapsulated as follows: (1) would the imputation tend to "lower the Plaintiff in the estimation of right thinking members of a society generally", (2) would the imputation tend to cause

[14] Paragraph 4 of the Witness Statement of Defendant filed on 4 December 2017
[15] Paragraph 5 of the Witness Statement of the Defendant filed on 4 December 2017
[16] Submissions by Counsel for the Defendant filed 6 July 2018
[17] 10th Ed. Paragraph 13

others to shun or avoid the Claimant? And (3) would the words tend to expose the Claimant to hatred, ridicule or contempt?[18]

[65] Thus, it is for this Court "in determining whether the words are capable of bearing any defamatory meaning … determine what was the permissible range of meanings that the alleged defamatory words could carry. When the court is satisfied that the words complained of are capable of a defamatory meaning, then the Court can consider whether in fact the words bore the alleged or any defamatory meanings."[19]

[66] It is therefore clear that I must look at the ordinary and natural usage of the words. That is, how would they be understood by **"**reasonable men of ordinary intelligence with the ordinary man's general knowledge and experience of worldly affairs".[20]

[67] It is permissible in doing this assessment to use the context in which the words were published as **"context affects meaning"**.[21]

[68] In so doing in the instant case, I find that the words spoken of the claimant could only have meant in local common parlance that the claimant was a thief.

[69] In relation to whether the words are in fact defamatory, it is clear that the words must carry such an imputation that would expose the complainant to a lowering in the minds of right-thinking individuals.

[70] In this Court's mind therefore not only were the words spoken in an environment where the claimant works but before members of the public, his prospective clientele. I therefore also find that the said words were both capable of being defamatory and were in fact defamatory.

[71] I therefore find that the claim for slander has been made out and again having had no real assistance on this issue of damages for slander, these are also to be assessed upon application by the claimant.

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[18] **Beulah Mills v. Michael Perkins et al** NEVHCV2009/0098 page 28

[19] Per Williams J. in **Beulah Mills v. Michael Perkins and other** Op cit. at Paragraph 75

[20] Gatley on Libel and Slander 8th Ed. Para. 93

[21] Per Williams J **Beulah Mills** Op Cit. Paragraph 79

I THEREFORE ORDER AS FOLLOWS:

1. The claim for special damages is dismissed.
2. Damages for breach of contract are to be assessed upon application filed by the Claimant within 21 days of today's date.
3. Damages for conversion are refused.
4. Damages for detention are to be assessed upon application filed by the claimant within 21 days of today's date.
5. Damages for loss of use of the claimant's property, materials and equipment to be dealt with under Order 4 above.
6. Prayers 5 and 6 for an order to account and deliver or alternatively to pay the value of the property, materials and equipment is dismissed.
7. Damages for slander to be assessed upon application filed by the claimant within 21 days of today's date.
8. Claim for aggravated damages is dismissed.
9. Interest on the said sums assessed is to be calculated at the statutory rate.
10. Costs to the claimant upon the assessment of the sums due.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar