

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

CLAIM NO. SLUHCV2017/0668

BETWEEN:

COMPTROLLER OF CUSTOMS AND EXCISE

Claimant

and

THOMSON LOUIS

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Seryozha Cenac with Mr. Kurt Thomas for the Claimant

Mrs. Carol Gedeon-Clovis with Ms. Leandra Verneuil for the Defendant

2019: September 18;
October 8, 9; (written submissions)
2020: June 9.

JUDGMENT

[1] **CENAC-PHULGENCE J:** The claimant, the Comptroller of Customs and Excise (“the Comptroller”) filed a fixed date claim¹ against the defendant, Thomson Louis (“Mr. Louis”) who is the importer of a 1997 Mitsubishi Challenger XR, Chassis Number K96-1005180 (“the Challenger”) seeking an order that the said Challenger be deemed condemned as forfeited pursuant to section 130(4) of the **Customs (Control and Management) Act**² (“the Customs Act”).

The Claimant’s Case

¹ The original claim was filed on 7th November 2017 and amended on 18th April 2018.

² Cap. 15.05 of the Revised Laws of Saint Lucia.

- [2] The short facts as alleged by the Comptroller are that Mr. Louis, on or about November 2012, imported the Challenger which was identified by the marks "1207185 PORT CASTRIES MADE IN JAPAN". On 7th November 2012, Mr. Louis submitted a Customs Entry No. C60945 ("the Customs Entry") in which he declared that the value of the Challenger was US\$3,800.00 CIF (Cost Insurance and Freight) and had been purchased from Kan-De (Nagoya) Trading Co. Ltd., a supplier from Japan ("the Supplier"). Mr. Louis paid the sum of EC\$18,709.29 being the chargeable duties on the declared value.
- [3] The Comptroller alleges that Mr. Louis had declared that the Challenger had been purchased at a used vehicle auction site, www.Tradecarview.com ("Tradecarview") by the Supplier's agent, Mr. Aslam Mohideen ("Aslam") for CIF US\$3,800.00. It was further alleged that Mr. Louis had indicated that Aslam was his business partner. Mr. Louis had also indicated that he had received a credit of US\$800.00 from the Supplier from a previous sale of a damaged Subaru and that that credit had been applied as a deposit towards the purchase of the Challenger.
- [4] The Comptroller further alleges that Aslam denied that he was Mr. Louis' business partner or that he was responsible for purchasing vehicles for the Supplier. It is alleged that Mr. Louis admitted that he had misrepresented the nature of his relationship with Aslam and about the US\$800.00 credit. The Comptroller alleges that about the time of the sale of the Challenger to Mr. Louis, the Challenger was advertised on Tradecarview's website for the FOB (Freight on Board) price of US\$3,284.00. The Bill of Lading issued by the Supplier showed a sum of US\$2,848.11 as the cost of shipping the Challenger.
- [5] The Comptroller claims that Mr. Louis failed and refused to provide documents to confirm payments to the Supplier of the purchase price and shipping cost for the Challenger. The Comptroller alleges that Mr. Louis declared a value on the Customs Entry which was less than the total FOB price and shipping costs and therefore breached sections 113(2), 114(b) and 116(2) of the **Customs Act**. On

9th November 2012, Mr. Louis was served with a notice of seizure. Mr. Louis claimed against the seizure by notice dated 12th November 2012. The Comptroller alleges that several efforts were made to resolve the issue of the seizure with Mr. Louis but those failed.

The Defendant's Case

- [6] Mr. Louis in his amended defence avers that he did pay US\$3,800.00 CIF for the Challenger and that given the age of the Challenger (being 15 years old) it should be no surprise that such a vehicle would be sold for that price including shipping costs. Mr. Louis avers that the statement received from the Supplier spoke to a discount and not a deposit as alleged in paragraph 9 of the amended statement of claim. The US\$800.00 was applied as a discount on the price of the Challenger.
- [7] Mr. Louis avers that he purchased the vehicle from the Supplier and not from Tradecarview and puts the Comptroller to strict proof that the Challenger was advertised on Tradecarview for the Supplier. Mr. Louis denies that he failed or refused to supply the information requested of him and avers that he continued to disclose information to the Comptroller. He alleges that the Comptroller has all the documents relating to payments made to Japan but has chosen to attach irrelevant transfers. He produces documents which he avers are bank transfers in relation to the Challenger.
- [8] Mr. Louis avers that the basis of the seizure was flawed and the claim ought to be dismissed with costs and the Comptroller ordered to pay the replacement value of the Challenger and compensate him for the loss which he has suffered because of the actions of the Comptroller.
- [9] One of the main planks of Mr. Louis' defence is that the Comptroller has usurped the function of the court in that there is no evidence that Mr. Louis is guilty of the offences alleged, yet he has been made to pay duties and the Challenger has been kept for five years.

- [10] Mr. Louis also avers that the notice of seizure is flawed in that it does not contain particulars of the allegations being made against him and does not comply with the requirements as set out in the **Customs Act**.
- [11] Mr. Louis further avers that he complied with the **Customs Act** by filing a claim against seizure. After several meetings trying to ascertain what was required of him, a letter of revaluation was sent to him on 3rd August 2016 in breach of Schedule 2 of the **Customs Act**.

Issues

- [12] The issues to be decided are as follows:
- (a) Whether there is the need for a criminal conviction to be secured by the Comptroller prior to bringing condemnation proceedings?
 - (b) Whether the Challenger was liable to forfeiture at the time of seizure?
 - (c) Whether the consignment should be condemned as forfeited?
 - (d) If not, whether Mr. Louis is entitled to any relief and if so, the nature?
- [13] At trial, Mr. Grantley Promesse ("Mr. Promesse") and Mr. Edmund Charlery ("Mr. Charlery"), Senior Officers in the Investigations Unit gave evidence on behalf of the Comptroller. Evidence for the defendant was given by Mr. Louis and Mr. Miran Sidonie ("Mr. Sidonie").

Issue 1-Whether there is the need for a criminal conviction to be secured by the Comptroller prior to bringing condemnation proceedings?

- [14] Mr. Louis in his defence averred that he was never convicted for the offences allegedly committed by him. In closing submissions, counsel for the defendant, Mrs. Carol Gedeon-Clovis ("Mrs. Gedeon-Clovis") argued that Mr. Louis was never prosecuted in the magistrate's court and therefore there was no conviction secured for the alleged offences said to have been committed by Mr. Louis. The contention therefore is that before the Challenger could have been liable to forfeiture, the offences had to have been heard and determined and Mr.

Louis found guilty. Only then could the goods properly be seized. No authority was provided by Mrs. Gedeon-Clovis for these submissions.

[15] Counsel for the Comptroller, Mr. Kurt Thomas (“Mr. Thomas”) in response submitted that sections 113, 114 and 116 of **Customs Act** mandate that the goods ‘shall be liable to forfeiture.’ He further submitted that these provisions only create the offence and the consequences which flow from commission of such offences. Nowhere does it state upon summary conviction.

[16] Mr. Thomas refers to section 130(1) which states that anything liable to forfeiture may be seized or detained by any officer or police officer and to paragraph 8 of the Fourth Schedule which states that ‘proceedings for the condemnation of anything shall be civil proceedings’. In this regard, the claimant relies on the case of **Goldsmith v Customs and Excise Commissioners**.³ Mr. Thomas further submitted that these proceedings are the appropriate forum to determine the question of whether the vehicle is liable to forfeiture.

Analysis and Conclusion

[17] In the case of **Goldsmith** Lord Woolf CJ stated that:

“The proceedings for forfeiture and condemnation have been distinguished from various proceedings which are brought for a fraudulent evasion of duty etc under section 170 of the Customs and Excise Management Act 1979 (section 116 of the Customs Act)”.⁴

[18] As in **Goldsmith**, Mrs. Gedeon-Clovis’ argument is that Mr. Louis’ Challenger was seized and condemnation proceedings have now been brought which gives rise to an innuendo that he has committed the offences alleged without having been tried and convicted of such.

³ [2001] 1 WLR 1673.

⁴ Ibid, paragraph 11.

[19] At paragraph 22 of **Goldsmith**, the learned Chief Justice stated as follows:

“I turn to the question of whether forfeiture proceedings are criminal. Full weight must be given to the consequence of goods being forfeited and condemned as forfeited. However, reference must also be made to the fact that the legislation categorises the proceedings as civil. Reference is also to be made to the fact that none of the usual consequences of a criminal conviction follow from condemnation and forfeiture proceedings. There is no conviction or finding of guilt. Under domestic law the person is not treated as having a conviction. The person concerned is not subject to any other penalty, apart from the consequences of the forfeiture and loss of the goods.”

[20] Section 130 of the **Customs Act** states that anything which is liable to forfeiture can be seized or detained by Customs. As held in case of **R (On the Application of Eastenders Cash and Carry plc and others (Respondents) v The Commissioners for Her Majesty’s Revenue and Customs (Appellant); R (on the application of First Stop Wholesale Limited) (Appellant) v The Commissioners of Her Majesty’s Revenue and Custom**,⁵ the determination of whether the goods are liable to forfeiture is to be made by Comptroller based on objectively ascertained facts.

[21] Once seized the importer has the right to claim against the seizure i.e. claim that the property seized is not liable to seizure. Where a claim is made against the seizure by an importer, the Comptroller is called upon to prove that the goods are liable to forfeiture. If, as Mrs. Gedeon-Clovis submits, a conviction is required in order for a determination that goods are liable to forfeiture and for condemnation proceedings to be initiated, then what would be the purpose of the procedure set out in the Fourth Schedule, which allows one to claim against the seizure. It is the claim against the seizure or a failure to make such a claim which leads to condemnation proceedings, which the Comptroller is mandated to initiate.

⁵ [2014] UKSC 34.

[22] In section 121(2)(b) of the **Customs Act** which deals with the place of trial, it states that proceedings for an offence under the Act may be commenced:

“if anything was detained or seized in connection with the offence, in any court having jurisdiction in the place where that thing was so detained or seized or was found or condemned as forfeited.”

[23] This clearly contemplates seizure or detention of a thing which is liable to forfeiture even before proceedings are brought in relation to the relevant offence and supports the point that no conviction or charge is necessary for seizure of goods found to be liable to forfeiture.

[24] The **Customs Act** provides that condemnation proceedings are civil proceedings. Therefore, seizure of goods and condemnation proceedings are not premised on a criminal conviction but on a determination of whether the goods are liable to forfeiture. I therefore cannot accept the defendant’s submissions on this issue.

Issue 2-Whether the Challenger was liable to forfeiture at the time of seizure?

[25] It is not disputed that Mr. Louis was the importer of the Challenger and that he submitted a Customs Entry in relation to same on 5th November 2012 and paid duties based on the declared value of US\$3,800.00.

The Evidence

Mr. Promesse

[26] At the material time and up to August 2015, Mr. Promesse along with Mr. Charlery were part of the Valuations Unit of the Customs Department which was responsible for the examination of declarations and verification of customs values of imported goods.

[27] The Customs Entry submitted by Mr. Louis comprised:

- (a) an assessment notice
- (b) Single Administrative Document

- (c) Supplier's Invoice Number 1207185 of 20/10/2012
- (e) Bill of Lading Number NYKS005153231 of 02/10/2012
- (f) Export Certificate
- (g) Declaration of duty payment for vehicle registration
- (h) Form 61-declaration of particulars relating to Customs Transaction Value Method
- (i) Customs payment receipt no. 2012 R 5264 dated 7th November 2012.

[28] Mr. Promesse's evidence is that in keeping with the policy of the Customs Department that all used vehicle imports should be reviewed by the Valuation Unit, he verified the documents in the Customs Entry for the Challenger to ensure that all the particulars were correct.

[29] His review of Form 61 revealed that the declaration indicated that the transaction for the Challenger was FOB which meant that the shipping cost to Saint Lucia was not included; the amount of CIF US\$3,800.00 was paid for the consignment; that cost for shipping was included in the amount paid for the Challenger and the sale was not subject to any condition for which a value cannot be determined with respect to the goods to be valued.

[30] This information Mr. Promesse says gave reasonable grounds to conduct a further review into the importation of the consignment.

[31] A review of the Bill of Lading revealed that the cost of shipping was a prepaid amount of US\$2,848.11. The number 1207185 formed part of the Marks and Number of the consignment on the Bill of Lading and this number was also listed as the number for the Commercial invoice for the consignment. A review of several valuation reviews on consignments for the Supplier revealed that the invoice number supplied by the Supplier was the identification number attached on the bill of lading and marked on the imported Challenger. Mr. Promesse says this number was also used to identify the said Challenger being online for sale.

- [32] An enquiry to the shipping vessel's local agents revealed that the amount quoted on the Bill of Lading had to be paid prior to shipment of the Challenger or before delivery was effected. No supporting evidence from the local agents was provided.
- [33] Mr. Promesse's evidence of his interactions with Mr. Louis and of the investigation is as follows:
- 7th November 2012 – he questioned Mr. Louis about the purchase of the Challenger and Mr. Louis informed that about 25th July 2012, Aslam had purchased the Challenger and a Subaru Forester ("the Subaru") from an auction site www.AutoTraderjapan.com ("AutoTrader"); that Aslam, the Supplier's agent and himself were business partners and that the Challenger was purchased at CIF for US\$3,800.00; that he had received special discounts on the price because of the relationship he had developed with Aslam when he visited Saint Lucia in 2005; that the prices declared were the usual auction fees and deposit and that the prices paid were the auction prices paid by Aslam. Mr. Louis indicated that all payments would be made to the Supplier and not Aslam.
- [34] At this same interview, Mr. Louis presented a printout of a webpage www.AutoTraderjapan.com dated 6th October 2012 advertising the Challenger, as proof of the identity of the Supplier of the Challenger. He says Mr. Louis informed him that a US\$800.00 credit from a previous sale of a damaged Subaru was applied as a deposit for the purchase of the Challenger. He says further that Mr. Louis did not provide any further documentation to prove that payments were being made to the Supplier for the Challenger but maintained that the freight amount that was paid was discounted. A copy of a webpage is exhibited to Mr. Promesse's witness statement, but the Court is unable to ascertain that this is indeed a page from the stated website.

- [35] Mr. Louis was then presented with information obtained from the website of Tradecarview for sale by the company Kan-De (Nagoya) Trading Co. Ltd. (the Supplier) of a vehicle stated as being a 1997 Mitsubishi Challenger and bearing the number 1207185 which was the same number on the commercial invoice and showing a FOB price of US\$3,284.00. When presented with this information, Mr. Louis explained that the advertised price did not apply to him because of the business relationship he shared with Aslam and that he had received up to 50% discount on the advertised price of the Challenger and the freight payable for shipping. He was asked to submit proof of these discounts but failed to do so.
- [36] 8th November 2012 - Mr. Louis informed that Aslam wanted to speak to an officer from the Valuation Unit via telephone concerning the importation of the Challenger. Mr. Louis placed a call to Aslam using his personal mobile phone and set it on speaker phone. He advised that Mr. Promesse and Mr. Charlery could ask Aslam questions about the Challenger and the Subaru. When the individual answered the call, he introduced himself as Aslam Mohideen. Aslam informed that he was only a sales agent for the supplier and was not responsible for purchasing any vehicles at auction. Aslam also informed that he had never been to Saint Lucia and that it was the Challenger which was damaged and repaired but could not give details of the damaged part. At the end of the call, Mr. Louis indicated that Aslam had spoken the truth but was mistaken about which of the vehicles was actually damaged. He also admitted that he never really met Aslam.
- [37] On this same day, Mr. Promesse says he and Mr. Charlery examined the Challenger and observed that there were no visible signs of damage to it.
- [38] 9th November 2012 - Mr. Promesse conducted a review of the Supplier's website and noted the conditions for purchasing vehicles. He states in his evidence that these terms were highlighted as the conditions for sale on Mr. Louis' invoice dated 8th October 2012 to the purchaser of the Challenger. However, I am not sure what the significance of this evidence is.

- [39] Mr. Promesse says that as part of his review, he found that the Challenger was being advertised as available for sale from the Supplier on Tradecarview at an FOB price of US\$3,248.00 six days after the date Mr. Louis claimed it had been purchased from the auction site AutoTrader.
- [40] Mr. Promesse also gives evidence that a physical examination of the Subaru revealed no visible signs of damage as described by Mr. Louis.
- [41] Mr. Promesse's evidence is that from his investigations there was no reasonable explanation from Mr. Louis or documentation to confirm that the actual price or FOB price of the Challenger was US\$951.89 which represents the difference between the declared value of CIF US\$3,800.00 and the shipping cost of US\$2,848.11. Mr. Promesse states in his evidence that based on his research, the Japanese auction is a local auction available to buyers in Japan and worldwide and that the winning bid is inclusive of local and auction charges but not an overseas freight charge to a specific destination.
- [42] Mr. Promesse says his conclusions were that:
- (a) Mr. Louis' statement that the Challenger was purchased directly at an auction was untrue;
 - (b) Mr. Louis failed to show that he paid the supplier the declared price;
 - (c) There was no proof to confirm that the Challenger was paid for by way of a credit of US\$800.00 from the suppliers for physical damage to the Subaru as there were no physical signs of damage to it and also based on the statements made by Aslam and Mr. Sidonie, the owner/importer of the Subaru;
 - (d) Mr. Louis was unable to provide evidence to refute the claim that the Supplier advertised FOB cost, plus the pre-paid freight amount far exceeds the total declared CIF amount.

- [43] Based on his findings, Mr. Louis was informed on 9th November 2012 of the conclusions of the investigation and as a consequence the Challenger was seized. In his evidence, Mr. Promesse states that the notice of seizure was served on Mr. Louis on the said 9th November 2012 and stated the grounds for the seizure as being breach of sections 113(1), (2), 114(a), (b) and 116(2)(a) of the **Customs Act**.
- [44] Mr. Promesse states in his evidence that Mr. Louis formally contested the seizure by letter dated 12th November 2012 but that notwithstanding this, at Mr. Louis' request, the Comptroller engaged him in numerous discussions with a view to resolving the issue of the seizure through Administrative Processing.
- [45] Mr. Promesse's evidence details what transpired subsequent to the seizure of 9th November 2012. He provides details of a meeting held on 12th December 2012 where he says that Mr. Louis admitted to lying about his relationship with Aslam and that he became his friend when he visited Saint Lucia in 2005. He admitted that Aslam had never visited Saint Lucia. At that meeting, Mr. Louis promised to provide any information that would provide further clarification.
- [46] The Comptroller wrote asking for certain documents by letter dated 18th December 2012 and by letter dated 31st December 2012, Mr. Louis provided supporting documents for the importation of the Challenger. Among those documents was an undated statement from the Supplier stating Mr. Louis' purchase transactions. However, the information contained therein, bore no proof of payment for the Challenger and contradicted the email message of Aslam.
- [47] Mr. Promesse's evidence is that between 2012 and 2017, he is aware of and attended several meetings convened with a view to resolving the issue of the seizure of the Challenger administratively, requesting that Mr. Louis provide information to confirm that the vehicle was purchased from an auction and proof of payment to the Supplier of the invoice amount of US\$3,800.00 but he failed,

neglected or refused to provide all or any of the information that was requested.

Mr. Charlery

- [48] Mr. Charlery's evidence provides no additional evidence to that presented by Mr. Promesse and in fact the witness statements are carbon copies of each other.

Mr. Louis

- [49] Mr. Louis' evidence is that he paid \$3,000.00 to the supplier for the Challenger after getting the discount of US\$800.00. The original price he says was US\$3,800.00, cost insurance and freight. His evidence is that the Challenger was twelve years old at the time it was purchased and that is why it cost US\$3,800.00. Mr. Louis says he did find that expensive, but this is what the client liked.
- [50] Mr. Louis says that although Customs has levelled allegations of under-invoicing, making an untrue declaration, fraud and falsifying documents they have not prosecuted or convicted him for any of these offences. Mr. Louis says he was asked for documents in relation to his dealings with the Supplier and he provided this by way of a letter from his lawyer dated 31st December 2012. The allegations Mr. Louis says are all based on an advertisement from Tradecarview and Mr. Promesse and Mr. Charlery are familiar with how Tradecarview works.
- [51] Mr. Louis says he has attended many meetings with the Customs Department on his own, with his lawyer and with a Customs Consultant and has complied with all the requests made of him except where it was impossible to do so.
- [52] Mr. Louis says that Customs has not followed the procedure set out in Schedule 2 of the **Customs Act** for establishing the value of the Challenger and that the value could have been ascertained from the beginning but the Customs officers refused to accept this and then attempted to re-value it.
- [53] Mr. Louis' evidence is that he was asked by Mr. Promesse at some point in the process to produce an invoice in line with what Mr. Promesse thought the vehicle

cost. He says he was frustrated with the whole process as he could not make money because of how Customs treated his business.

Mr. Sidoine

- [54] Mr. Sidoine's evidence was simply that he was customer of Mr. Louis and had purchased a vehicle from him which he still does not have. Mr. Sidoine says he attended meetings with officers of the Customs Department concerning Mr. Louis' importation. He says the main focus was to establish wrongdoing on the part of Mr. Louis based on the advertisement on Tradecarview. He says he attempted to explain how Tradecarview worked but no one listened. His evidence did not do much for the defendant's case.

Analysis

- [55] Section 130(1) of the **Customs Act** empowers an officer of the Customs Department to seize anything which is liable to forfeiture. Paragraph 3 of Schedule 4 states:

"Where any person, who was at the time of the seizure of anything the owner or one of the owners of it, claims that it was not liable to forfeiture, he or she shall, within one month of the date of service of the notice of seizure or, where no such notice was served, within one month of the date of seizure, give notice of his or her claim in writing to the Comptroller at any customs office." (my emphasis)

- [56] It is not disputed that notice of seizure was issued to Mr. Louis on 9th November 2012 in respect of the Challenger and that he claimed against the seizure on 12th November 2012.

- [57] Paragraph 6 of Schedule 4 states as follows:

"Where notice of claim in respect of anything seized is duly given in accordance with paragraphs 3 and 4, the Comptroller shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of its seizure liable to forfeiture, that court shall condemn that thing as forfeited." (my emphasis)

- [58] The salient question is whether the Challenger was in fact liable to forfeiture at the time it was seized, i.e. 9th November 2012. Put another way, the Court is only concerned to assess the information obtained from the investigation of 9th November and prior. Any information obtained after that date would not be relevant to a finding of whether the Challenger was liable to forfeiture at the date of seizure.
- [59] As stated by Smith J in **Econo Parts Ltd. v The Comptroller of Customs and Excise; Mr. Parts Ltd. v The Comptroller of Customs and Excise**,⁶ at the time of seizure, the consignment must have been actually liable to forfeiture under one of the various forfeiture provisions of the **Customs Act**,⁷ and whether this is so is to be based on objectively ascertained facts and not on the beliefs or suspicions of the Comptroller or his officers, however reasonable.
- [60] The Act provides that goods are liable to forfeiture upon certain breaches of the Act. Therefore, before Customs is entitled to seize goods, Customs must have objectively ascertained that Mr. Louis committed a breach of one or more of those provisions. In this case, what grounded the seizure on 9th November 2012 were breaches of sections 113(2)(a), 114(b) and 116(2)(a) of the **Customs Act**. These were the sections quoted under the section of the notice of seizure titled 'Schedule 2 (State relevant section (s) and status)'. I note here that the sections quoted by Mr. Promesse and Mr. Charlery in their witness statements are slightly different to those quoted on the notice of seizure. What is relevant is the sections on the notice as these are the sections which the Comptroller had to be satisfied had been breached by Mr. Louis.

⁶ SLUHCV2014/0309 and SLU/HCV2016/187 consolidated, delivered 10th May 2017, unreported.

⁷ See R (On the Application of Eastenders Cash and Carry plc and others (Respondents) v The Commissioners for Her Majesty's Revenue and Customs (Appellant); R (on the application of First Stop Wholesale Limited) (Appellant) v The Commissioners of Her Majesty's Revenue and Customs (Respondent) [2014] UKSC 34.

[61] Section 113(2)(a) provides as follows:

“113. Untrue declarations

(2) If any person knowingly or recklessly—

(a) makes or signs, or causes to be made or signed or delivers or causes to be delivered to the Comptroller or an officer, any declaration, notice, certificate or other document; or

(b) ...

being a document or statement produced or made for any purpose of an assigned matter, which is untrue in a material particular, he or she commits an offence and is liable to a fine of \$10,000, or to imprisonment for 2 years, or to both, and may be arrested, and any goods in relation to which the document or statement was made are liable to forfeiture.”

[62] Section 114(b) states:

“114. Counterfeiting documents

If any person—

(a) ...

(b) knowingly accepts, receives or uses any such document so counterfeited or falsified;

(c) – (d) ...

he or she commits an offence and is liable to a fine of \$10,000, or to imprisonment for 2 years, or to both.”

[63] Section 116(2)(a) provides as follows:

“116. Fraudulent evasion

(1) ...

(2) Without prejudice to any other provision of any customs enactment, if any person is, in relation to any goods, in any way concerned in a fraudulent evasion or attempt at evasion—

(a) of any duty chargeable on those goods; ...

(b) ...

and is so concerned with fraudulent intent, he or she commits an offence and is liable to a fine of \$10,000, or to 3 times the value of the goods, whichever is the greater, or to imprisonment for 5 years, or to both, and may be arrested, and the goods in respect of which the offence was committed are liable to forfeiture.”

[64] I note at the outset that a breach of section 114(b) does not render the goods in respect of which the offence was committed liable to forfeiture. Therefore, the Comptroller would have had no authority to have seized the Challenger on the basis of section 114(b).

[65] Mr. Thomas in closing submissions relied on paragraph 11 of the Fourth Schedule of the **Customs Act** which provides that in any proceedings arising out of the seizure of anything, the fact, form and manner of the seizure shall be taken to have been set in the process unless the contrary is proven. He submitted that the equivalent of this section in the Barbados Customs legislation was examined in the case of **Clarke v Comptroller of Customs**⁸ and the Court held that Comptroller was required to lead evidence that the items were liable to forfeiture and that once the Comptroller has done so, the burden shifts to the defendant to prove to the contrary.

[66] The provision in paragraph 11 of the Fourth Schedule is relevant in so far as the defendant sought at some point to suggest that the notice of seizure did not comply with the provisions of the Act. He had to lead evidence to show that the fact, form and manner of the seizure was otherwise than that put forward by the Comptroller. This section does not to my mind shift the burden to the defendant in relation to satisfying the Court that the goods were liable to forfeiture. Mr. Thomas' submission does not square with what the Court said at page 32, paragraph g to h. The Court said this:

“...counsel for the Comptroller reiterated her submission that the burden of proof had been shifted to the claimant. She contended that the Comptroller became entitled to an order of forfeiture when the claimant chose not to lead any evidence.

This is in our view an erroneous interpretation of paragraph 12 of the Schedule, (paragraph 11 of the Fourth Schedule of the Customs Act) the effect of which was to shift to the claimant, not the burden of proof of showing that the thing is not liable to forfeiture under section 190, but the burden of proving certain specified matters, namely the fact, form and manner of the thing seized.”

[67] It is clear that it is for the Comptroller to prove that the Challenger was liable to forfeiture. In order to determine whether the Challenger was indeed liable to forfeiture at the date of seizure, a careful assessment of the evidence which was available to the Comptroller at that date has to be undertaken.

⁸ (1987) 39 WIR 29.

[68] This is what the evidence reveals:

- (a) The assessment notice shows the total assessed for the declaration to be EC\$18,659.29.
- (b) The Single Administrative Document shows the consignee as Mr. Louis with a Jesse Charles as the declarant and states the delivery terms as CIF and the currency and total amount invoiced as US\$3,800.00.
- (c) The Supplier's invoice dated 20th October 2012 states the particulars of the Challenger and the Amount CIF USD\$3,800.00.
- (d) The Bill of Lading dated 2nd October 2012 shows the total shipping cost as USD\$2,848.11 and has a note to the bottom which reads "FREIGHT PREPAID AS ARRANGED".
- (e) The specifications for the Challenger on the Export Certificate and the Declaration of payment of duties for vehicle registration match and are consistent.
- (f) The Form 61 which is the declaration of particulars relating to customs value transaction value method dated 29th October 2012 and signed by Mr. Louis states the terms of delivery as FOB and the net price in the currency of invoice as \$3,800.00 USD. It also states at 16 of the form - costs to deliver to Saint Lucia at (a) Transport – "INC" which is suggestive that transportation costs were included which would mean that the terms of delivery seemed to have been CIF and not FOB.

[69] In my view, the presence of FOB on the declaration in the face of all the accompanying documents stating CIF cannot be conclusive that the declaration was false. It could simply have been an error.

[70] Until the Form 61, there had been consistency in the documents. For the sake of clarity, I will define the terms CIF and FOB. CIF is an expense paid by a seller to cover the costs, insurance, and freight of a buyer's order while it is in transit. The goods are exported to a port named in the sales contract. Once the freight loads,

the buyer becomes responsible for all other costs. FOB means "Free on Board Shipping Point" and in this shipping method the buyer takes delivery of goods being shipped to it by a supplier once the goods leave the supplier's shipping dock.

[71] With an FOB shipment, this occurs when the shipment reaches the port or other facility designated as the point of origin. With a CIF agreement, the seller pays costs and assumes liability until the goods reach the port of destination chosen by the buyer.

[72] The statement of claim alleged that Mr. Louis had said that the Challenger had been purchased from an auction on the website of Tradecarview yet Mr. Louis is said to have produced a web page from AutoTrader advertising the Challenger. The statement of claim never mentioned AutoTrader. The webpage from Tradecarview is for the most part not in English and no official translation of same was provided. In addition, there is nothing to which the Court was pointed to substantiate the claim that this was being advertised for sale by the Supplier except for the similarity in the reference numbers. The Court does not place any reliance on this document as it is not properly before the Court.

[73] Mr. Louis is said to have indicated that the Challenger was bought from AutoTrader somewhere about 25th July 2012. Mr. Promesse in his evidence says that the Challenger was advertised on Tradecarview website six days after. That however still does not conclusively prove the price of the Challenger. The Challenger could have been purchased at the auction from AutoTrader by the Supplier and then advertised for sale by them through Tradecarview. The used car business is a fast moving one and it would come as no surprise to me that the Supplier could have listed a vehicle within such a short space of time.

- [74] Further, the fact that a vehicle is listed as being sold for a particular price on a website is not conclusive that this is the price it was actually sold for as there is still place for negotiation.
- [75] The Court notes that whilst the conversation with Aslam revealed that the damage was to the Challenger, the email sent contradicts this and states that the damage was to the Subaru. However, I do not understand why this is so material when Mr. Promesse says he and Mr. Charlery found no visible signs of damage on the Challenger. Could it have been that Aslam was mistaken? Mr. Promesse and Mr. Charlery doubted Mr. Louis' story of the US\$800.00 discount on account of the damaged Subaru which was applied to the purchase of the Challenger as he produced no documentation to prove that the Subaru was a damaged vehicle and had been repaired. Mr. Louis' story was not believable not only because he did not produce the documentation but because the Subaru, by Mr. Promesse's and Mr. Charlery's standards, was not a damaged vehicle. No evidence was sought from a garage or mechanic to support their contentions as regards the state of the Subaru or the Challenger for that matter. The Comptroller cannot simply rely on its officers who are not trained auto mechanics to come to a conclusion that the vehicles had not sustained damage.
- [76] Whilst a lot of focus has been placed on the Japanese auction, Mr. Promesse does not say what research he conducted and where he sourced his information about the auctions from. Also, the Court notes that though Mr. Louis indicated that the Challenger had been purchased at an auction, he was quite clear that he did not purchase from an auction himself and had purchased the Challenger from the Supplier, Kan De Nagoya Trading Company Limited. In cross-examination, Mr. Louis said that he had given the copy of the website on page 27 of Bundle 3 to Mr. Promesse. That was the webpage from AutoTrader. Mr. Louis said in his comment on Mr. Promesse's evidence that the valuation officer had told him that he wanted proof that the vehicle was bought at an auction and so he told him about the website, AutoTrader. Later in cross-examination, Mr. Louis said he did

not actually give the document to the Customs officers but gave them the website. Mr. Louis also agreed that the reason Mr. Promesse had asked for proof of the auction was because he had said that the Challenger had been bought at an auction.

- [77] The fact of the vehicle being purchased at an auction cannot be conclusive of anything. The Comptroller produced no evidence to show that Mr. Louis did not purchase the vehicle from the Supplier as he claimed or to verify whether the Supplier had advertised the Challenger on Tradecarview's website. The simple use of a website cannot without more be used to substantiate the claims made by the Comptroller as relates to the Challenger. No attempt was made to contact the Supplier to even verify the information stated on the invoice prior to the date of seizure. When asked in cross-examination, whether it would not have been advisable to do so, Mr. Promesse responded, "It would have been but I have had experience with this company and they would not reveal information when requested."
- [78] Mr. Promesse's conclusion that Mr. Louis' statement that the Challenger was purchased at an auction was untrue was unsupported by the evidence. There is nothing to suggest that the Challenger was not first bought at an auction and then sold by the Supplier. In any event, as I have said, it is to my mind not even material whether the vehicle was first bought at an auction. It is well known that with vehicle auctions, the price quoted may not be the actual price eventually paid at the auction. I believe that is the whole idea of an auction. In addition, in cross-examination, Mr. Promesse admitted that he did not believe that Mr. Louis had himself bought the Challenger at an auction. Mr. Charlery likewise, in cross-examination, agreed with counsel for Mr. Louis that the defendant did not purchase the Challenger from AutoTrader and that it was possible that Mr. Louis could have paid another price. So, the question is why were the websites so important to Mr. Promesse and Mr. Charlery?

[79] In cross-examination, Mr. Promesse was asked whether he was challenging the invoice which Mr. Louis had presented and he responded that it was not being challenged in the initial stages but that it was the submissions that Mr. Louis made which caused them to question his declaration to Customs. Mr. Promesse was asked whether Mr. Louis had given a declaration which was false at any time to which he responded that Mr. Louis admitted to having made false statements and he went on to say that every document is a declaration submitted to Customs. He further said that 'at some point he did admit to making a false declaration and referred to paragraph 35 of his witness statement. At paragraph 35 of Mr. Promesse's witness statement he says, '...the Defendant admitted that he had lied to the officer of the bank when he told her that the funds being transferred was actually for the payment of parts when it was intended for the payment of the Subaru Forester. The Defendant also admitted that he also lied when he said that Mr. Aslam Mohideen, the sale agent of the Supplier became his friend when he visited Saint Lucia in 2005.'

[80] It must be noted that the alleged declarations made by the defendant were made at a meeting on 12th December 2012 and therefore could not have formed the basis of any determination as to whether the Challenger was liable to forfeiture since that information did not exist at the date of seizure. Mrs. Gedeon-Clovis indicated that she was referring to the Form 61 declaration when she asked whether Mr. Louis had made a false declaration, to which he responded, 'no, he did not admit to lying on that form.'

[81] Mr. Charlery in cross-examination said that the invoice was basically rejected because he did not believe what it stated and that it was on that basis that the Challenger was seized. When asked what information Mr. Louis failed to provide, Mr. Charlery responded, 'the actual proof of the payment for that particular vehicle.' Interestingly though, as part of his defence and his evidence in chief, Mr. Louis produced Customer Payment Receipts from Bank of Saint Lucia dated 3rd June 2013 and 14th August 2013 to the supplier in the payment amount of

US\$11,000.00 each which he claims was part of the documents given to Customs. The remittance information on both receipts states 'Payment of 15250 and Mitsubishi Challenger'. That information however would have been produced subsequent to the seizure, but no mention is made of this payment receipt by Mr. Promesse or Mr. Charlery.

[82] In cross-examination, Mr. Louis said that he was to have finished paying the supplier after he received the balance of the purchase price from the intended purchaser, Mr. Frederick. This was not part of his evidence in his witness statement and when counsel suggested to him that this as the first time he was saying this, he agreed but said that he had explained this to Mr. Promesse when he was at the valuation department. He also admitted that he did not say in his evidence in chief that the actual price of the vehicle was US\$951.89 but said that the price could be ascertained by subtracting the freight from the total invoiced amount. He admitted that he did not have any documents showing the payment of the US\$951.89 and that the vehicle was seized before he had fully paid the supplier. Again, I do not find that this rises to the level of objectively ascertained facts. None of the information provided was ever verified with the Supplier nor were attempts made to do so.

[83] I do appreciate that the information which Mr. Louis allegedly gave regarding his relationship with Aslam appeared to have been incorrect when Aslam was actually spoken to. Mr. Louis commenting of the evidence of Mr. Promesse stated that Mr. Promesse had told him that the only way he would release the vehicle was if he spoke to the Supplier himself and so he called Aslam on his phone and allowed Mr. Promesse to speak to him. He also stated that Aslam was his supplier and that Aslam was the agent for the Supplier and that there was no business relationship between him and Aslam. Interestingly, in the documents produced after the seizure had already been effected, Mr. Louis is shown to have produced a document from the Supplier signed by the same Aslam in which it describes Mr. Louis' relationship with the Supplier company for which Aslam is an international

sales agent. Neither Mr. Promesse nor Mr. Charlery reference any point in the conversation with Aslam where they tried to ascertain the contents of the invoice from the Supplier. The focus of the conversation seemed to have been on Mr. Louis' alleged relationship with Aslam.

[84] It appears from documents presented to Customs after the date of seizure, particularly in the account statement which accompanied the letter from Mr. Louis' lawyer dated 31st December 2012 that the undated account shows the price of the Challenger as being US\$3,800.00 with a discount of US\$800.00 applied. It also shows that no monies had been paid towards the Challenger. However, the Court does not know the date of the account and therefore cannot ascertain whether at the date of seizure the Challenger had been paid for as yet. This matter is in relation to the Challenger so I am not concerned with information regarding the Subaru and whilst discrepancies could raise suspicion in the mind of the Customs Department, what is required is more than mere suspicion.

[85] It must be remembered that seizure is depriving someone of property which is theirs and there must be a basis for such seizure. It cannot be on a simple hunch or suspicion. In closing submissions, Mr. Kurt Thomas ("Mr. Thomas") referred to the Trinidadian case of **Saga Trading Limited v Comptroller of Customs**⁹ where Archie J said the following:

"It does not follow that the Customs must accept without question any invoice, presented to them. The invoice is prima facie evidence of price, but the customs must be entitled to conduct reasonable enquiries into the accuracy of the document presented to them. To hold otherwise would be to leave the Revenue at the mercy of those who would evade duties by "under-invoicing."

[86] That is certainly correct and is not at all disputed. However, the Comptroller cannot rely merely on his suspicions or that of his officers. He must provide more than just suspicion. Objectively ascertained facts are required. That is important especially where the offences alleged to have been committed ordinarily require

⁹ HCA CV 1347 of 1993 at page 23.

specific proof not just suspicion.

[87] When one examines this matter, taking the value declared of US\$3,800.00 CIF and the freight cost stated on the Bill of Lading as US\$2,848.11, the Challenger would have cost US\$951.89. What the Customs Department seeks to do is to take the price of US\$3,284.00 FOB seemingly advertised on Tradecarview and the shipping cost of US\$2,848.11 to decide that the Challenger is valued at US\$6,132.11. However, all the documents from the Supplier show the vehicle as costing US\$3,800.00 CIF. In none of the Supplier's documents does it show FOB.

[88] After assessing all the evidence which was available to the Comptroller as at the date of seizure, I am unable to conclude that the seizure of the Challenger was based on objectively ascertained facts. I find that the evidence relied on by Mr. Promesse and Mr. Charlery may have aroused suspicion but at the date of seizure there was nothing which pointed objectively to the fact that Mr. Louis had indeed knowingly or recklessly made a statement in answer to any question put to him by them which was untrue in a material particular. There is no evidence to suggest that Mr. Louis' declaration of the value of the Challenger was untrue. The evidence relied on by Mr. Promesse and Mr. Charlery whilst it could be said to have raised reasonable suspicions do not establish objectively that Mr. Louis fraudulently evaded or attempted to fraudulently evade chargeable duties on the Challenger. The mere fact that the officers continued to engage Mr. Louis in meetings is to my mind suggestive of the fact that there were no objectively ascertained facts at the date of seizure and that they were still trying to prove their suspicions even after the seizure.

Issue 3-Whether the consignment should be condemned as forfeited?

[89] Based on my finding above that the Challenger was not liable to forfeiture at the date of its seizure, the Comptroller cannot succeed on this claim for condemnation of the goods as forfeited.

Issue 4-If not, whether Mr. Louis is entitled to any relief and if so, the nature?

[90] Mr. Louis had originally filed a counterclaim along with his defence filed on 8th December 2017. The counterclaim essentially claimed special damages of \$80,390.00. In the counterclaim Mr. Louis stated that as a result of the claimant's action he had to intervene for Mr. Frederick, his customer and he suffered loss. At case management, questions were raised with counsel for the defendant about the nature of the loss that was being claimed on the counterclaim which seemed to that of a third party and not the defendant. Thereafter, the defendant filed an amended defence on 16th March 2018 omitting the entire counterclaim. A further amended defence was filed on 16th May 2018 and also did not contain a counterclaim.

[91] In the further amended defence, the defendant claims the replacement value of the Challenger and damages. He does not indicate what the damages claimed are for.

[92] Mrs. Gedeon-Clovis submitted in closing submissions that the Court has jurisdiction under section 17 of the **Eastern Caribbean Supreme Court Act**¹⁰ ("the Supreme Court Act") to grant relief or remedies to which any of the parties is entitled to avoid multiplicity of proceedings. Section 17 provides as follows:

"The High Court and Court of Appeal respectively in exercise of the jurisdiction vested in them by this Act, shall, in every cause or matter pending before the Court, have power to grant, and shall grant, either absolutely or on such terms and conditions as the High Court or Court of Appeal may think just, all the remedies or relief whatsoever to which any of the parties appear to be entitled in respect of any and every claim properly brought forward by him or her or them respectively in the cause or matter; so that, as far as possible, all matters in controversy between those parties respectively may be completely and finally determined, and all multiplicity of proceedings concerning any of those matters avoided."

[93] It is on this basis that the defendant is seeking the replacement value of the Challenger and damages. This relief was not claimed by way of counterclaim on

¹⁰ Cap. 2:01, Revised Laws of Saint Lucia.

behalf of the defendant. Instead, the defendant chose to abandon the counterclaim altogether. Whilst I am prepared to accept that the relief claimed in the defence could be seen as a counterclaim, I have been confronted by CPR18.7(2) which suggests that a counterclaim cannot be made in any other proceedings by or against the Crown except with the permission of the court or the consent of the Attorney General. This rule permits a counterclaim to have been filed in these proceedings but CPR18.7(2) sets out the conditions which must be met. The defendant did not seek the permission of the Court or the Attorney General to file the initial counterclaim but even if the Court wished to treat the relief sought in the defence as his counterclaim, CPR18.7(2) would preclude this.

[94] Whilst I would have been prepared to apply section 17 of the **Supreme Court Act** to decide the relief which ought to flow in the circumstances of this claim, I am of the considered view that I cannot do so in light of CPR 18.7(2) and the fact that no permission was obtained from the Court, neither was the consent of the Attorney General obtained for the filing of a counterclaim. The defendant has not laid the foundation for his claim for damages. In any event, the defendant would not be entitled to the replacement value as the Challenger as far as the evidence reveals is still in the custody of the Comptroller.

[95] It is to be noted that the only provision in the **Customs Act** which deals with what happens where anything seized as being liable to forfeiture is restored, sold or destroyed by the Comptroller pursuant to section 130(5) and is then found in condemnation proceedings to not have been liable to forfeiture is paragraph 13 of the Schedule 4.¹¹ Paragraph 13 provides that in such circumstances, the

¹¹ 13. (1) Where, under section 130(5), anything is restored, sold or destroyed, and it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Comptroller shall on demand by the claimant tender to him or her—

- (a) where the thing was restored, an amount equal to any amount paid as a condition of that restoration;
- (b) where the thing was sold, an amount equal to the proceeds of sale; or
- (c) where the thing was destroyed, an amount equal to its market value at the time of its seizure.

(2) Where an amount tendered under subparagraph (1) includes a sum on account of the duty chargeable on the thing which has not been paid, the Comptroller may deduct so much of that amount as represents the duty.

Comptroller shall on demand by the claimant¹² make payment of (a) the amount paid for the goods in question; (b) the proceeds of sale where the goods have been sold and (c) the market value of the goods at the time of seizure based on the action which was taken in relation to the thing which had been seized.

[96] No other provision exists in relation to compensation to be paid where goods are subsequently declared not to have been liable to forfeiture. It is therefore incumbent on the defendant to have made his claim for damages properly.

[97] In light of the foregoing discussion, the Court makes no award of damages and declines to award the replacement value of the Challenger.

Comment-Other Issues

[98] I wish to highlight two areas which while not substantive issues for the Court's determination formed a substantive part of the defendant's closing arguments and therefore merit some comment.

A. The Valuation Issue

[99] Mr. Louis in his defence claimed that the revaluation which was sent to his lawyer by letter dated 3rd August 2016 breached the provisions of Schedule 2 of the **Customs Act**. That letter indicated that for the reasons stated therein the department was unable to accept the invoice value of the vehicle declared on the Customs Entry. The letter continued that in view of the provisions of the Second Schedule of the **Customs Act**, a valuation was carried out. In a table attached to that letter an assessed value was shown as US\$6,648.11 and an amount of EC\$8,813.61 being the total taxes payable. That figure would represent the

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- (3) If the claimant accepts an amount tendered to him or her under subparagraph (1), he or she shall not be entitled to maintain any further action on account of the seizure, detention, restoration, sale or destruction of the thing seized.
- (4) Where the claimant and the Comptroller are unable to agree upon the market value of anything destroyed under section 130(5), that value shall be determined by the Customs Appeal Commissioners. "**claimant**", in relation to proceedings for the condemnation of any thing as being liable to forfeiture, means any person claiming that that thing is not liable to forfeiture;

difference between the taxes paid on the declared value and taxes on the assessed value.

- [100] The issue of whether the Comptroller followed the right procedure as relates to valuation of the goods and the application of section 78 and Schedule 2 of the **Customs Act** are in my view not matters which should engage this Court on this claim. The **Customs Act** sets out a clear procedure where a person disagrees with the valuation placed on goods in sections 136, 138 and 139. The instant proceedings are condemnation proceedings and as a result, the issue for the Court's determination is whether the good in question was liable to seizure at the date of such seizure. Mr. Louis had ample time to utilise the above sections to dispute the assessed value as stated in the letter of 3rd August 2016. In the case of **The Attorney General of St. Lucia et al v Vance Chitolie**¹³ supports the point that the challenge to the manner of valuation by the Comptroller could only be made within the confines of the **Customs Act**. Gordon JA said thus:

"It is clear to me that in this case, the importer has been given a statutory right to challenge the determination by the second Appellant of a value of imported goods, but that such challenge can only be mounted within the constraints of the Customs Act. This the Respondent has failed to do and I am clear that neither this Court, nor the High Court has the original jurisdiction to hear such challenge by the Respondent. Clearly, the High Court and the Court of Appeal have appellate jurisdiction as given by Section 139 of the Customs Act, but only that."

- [101] Of significance is that the revaluation, valuation, assessment or howsoever one may choose to refer to it, was done four years after the actual seizure took place and therefore could not have formed the basis for any seizure. I think it is worth noting that the manner in which this matter was dealt with could only have caused confusion in the mind of an importer. The seizure of the Challenger took place two days after the Customs Entry had been made to the Customs Department. By then, the Comptroller would have determined that they had objectively ascertained that the Challenger was liable to forfeiture and issued a notice of seizure. Thereafter, Mr. Louis gave notice of his claim against the seizure effectively indicating that he did not think that the Challenger was liable to forfeiture. Instead

¹³ SLUHCVP2003/0014, delivered 10th January 2005, unreported at paragraph 10.

of proceeding with condemnation proceedings as contemplated by the Schedule 4 of the **Customs Act**, the Comptroller engaged in a series of meetings seeking to get information and documents from Mr. Louis.

- [102] Schedule 4 at paragraph 3 states that on receipt of the notice of the claim against seizure, the Comptroller of Customs shall initiate proceedings for the condemnation of the property by the Court. In the evidence of Mr. Promesse and Mr. Charlery, they claim that Mr. Louis requested administrative processing and cite this as the reason for the delay in bringing these condemnation proceedings. However, there is no evidence of this request for administrative processing by Mr. Louis. In fact, Mr. Louis in his evidence suggested that it was Mr. Promesse who asked him for information about the auction website. I am also of the view that the manner in which paragraph 3 of the notice is worded does not suggest that administrative processing is contemplated where a claim is made against the seizure except as provided for in section 130(5) of the **Customs Act**.

B. Constitutional Relief

- [103] The defendant never raised the question of a breach of any constitutional provisions in his defence but raises same in the submissions. The claimant would not have been aware of such and would not have responded to same. In any event, I do not think that one can claim substantive constitutional relief in this way in a private law claim and the appropriate course would have been for the defendant to have filed a constitutional claim. I will make no further comment in this regard.

Conclusion

- [104] The **Customs Act** provides the Comptroller and by extension his officers with many powers and ways in which it can treat with the myriad of issues which they encounter on a daily basis. In this case, it is clear to me that the Comptroller was questioning the transaction value of the Challenger as they did not believe that Mr. Louis had indeed paid US\$3,800.00 for the Challenger. However, if that value was

not accepted, Schedule 2 of the **Customs Act** could have been resorted to. I say no more as these are not proceedings where the actions of the Comptroller are being challenged by way of judicial review. Therefore, the Court cannot in these proceedings make any pronouncements as to whether the actions of the Comptroller were ultra vires the **Customs Act**. In this claim, which is condemnation proceedings and in which Mr. Louis has sought to challenge the seizure on the ground that the Challenger was not liable to forfeiture, he has also attempted to raise constitutional and other challenges to the process employed by and the decision of the Comptroller in delaying the initiation of condemnation proceedings. These however are better dealt with in a public law claim.

Order

[105] In light of the foregoing, the Court finds that the Challenger was not liable to forfeiture. The Court therefore orders as follows:

- (1) The claim brought by the Comptroller by way of condemnation proceedings is dismissed.
- (2) That the 1997 Mitsubishi Challenger XR Chassis No. K96-1005180 which was seized by the Comptroller on 9th November 2012 pursuant to provisions of the **Customs Act** be released and delivered to the defendant Mr. Thomson Louis forthwith.
- (3) The Comptroller is to bear any costs associated with delivery of the said Challenger to Mr. Louis.
- (4) Prescribed costs on the claim be paid by the Comptroller to the defendant, Mr. Louis in the sum of \$7,500.00.

Kimberly Cenac-Phulgence
High Court Judge

By the Court

Registrar