

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

SVGHCV2011/0029

BETWEEN:

DERRICK DANIEL

CLAIMANT

and

**THE ATTORNEY GENERAL
Of Saint Vincent and the Grenadines**

FIRST DEFENDANT

**THE COMMISSIONER OF POLICE
Of The Royal Saint Vincent And The
Grenadines Police Force**

SECOND DEFENDANT

**THE COMMANDER OF THE COAST GUARD
Of Saint Vincent and the Grenadines**

THIRD DEFENDANT

Appearances:

Mr. Ronald Marks with Mrs. Patricia Marks-Minors for the Claimant
Mr. Kezron Walters with Ms. Taies Thomas for the Defendants

2018: May 30
September 20

BYER, J.:

INTRODUCTION:

- [1] The claimant is the owner of a 28' x 15' boat bearing the name "Blue Ocean" powered by two (2) 200 Yamaha engines.
- [2] Between the 27th and 28th February 2009 the said boat was moored at the Indian River in the Commonwealth of Dominica when it was stolen. The claimant made a report to the Dominican Police Force and later discovered that his boat was found on the Island of St. Vincent and the Grenadines and was in the custody of this country's Coast Guard.

- [3] The claimant journeyed to this State and visited the Coast Guard and also secured the services of a lawyer but was unable to effect the release of his boat. The claimant later discovered that his boat had been repainted and introduced into the fleet of the Coast Guard and later damaged whilst in their custody. The boat was taken out of active service and left in the elements where it subsequently deteriorated beyond repair.
- [4] As a result of the action of the Defendants, in the year 2011 the claimant filed the suit presently before this Court.
- [5] The claimant sought the following remedies: (i) a declaration that the Defendants were not entitled to detain his vessel (ii) An order for delivery to the claimant of his vessel; (iii) Damages for conversion; (iv) Damages for unlawful detention of property; (v) General Damages; (vi) Interest at such a rate as the Court deems fit; (vi) Costs and (vii) Further or other reliefs as the Court deems necessary and appropriate.
- [6] The Court is presently asked however to make a determination as it relates to liability only.
- [7] For ease of dealing with this matter, I therefore propose to address the case at bar under three distinct issues:
1. Firstly, what was the nature of the initial appropriation of the claimant's vessel?
 2. Secondly, whether the claimant has proven wrongful detention?
 3. Thirdly, whether the claimant has proven conversion?

What Was the Nature of the Initial Appropriation of the Claimant's Vessel?

- [8] The evidence led by the claimant in this regard is contained in paragraphs 5 to 7 of his witness statement which state as follows:

"5. On the 27th February 2009, I made another trip to Dominica. I left the boat at Indian River at about 4:00 p.m. and went to fill up the cooking gas bottles at Roseau.

6. On returning to Indian River on the 28th February 2009, I discovered that my boat was missing. I immediately made a report to the Dominican Police.

7. Sometime later I heard that my boat was found in St. Vincent and the Grenadines and was in police custody....."

[9] It was clear on cross examination that the claimant was unaware as to any more details as to how his vessel ended up in Vincentian waters or what transpired when it did.

[10] Thus, the reasons for the detention of the vessel were all given by the witnesses for the defendant.

[11] The defence called five (5) witnesses all either police officers or officers in the Coast Guard. Of those, only three assisted in this regard. There was Lieutenant Ralphie Ragguette who at paragraph 17 of his witness statement stated:

“... the “Blue Ocean” was kept at the Base in view of the fact that it was evidence of the offence committed on February 28, 2009 and that it was, among other things, an instrument of crime.”

There was Able Seaman Gareth Glasgow who said in his evidence in paragraphs 19 to 25 of his witness statement:

“19. That while in close proximity to Islet, all the Coast Guard personnel aboard the SVG 03 spotted a vessel in the distance. I do not exactly recall which of the Able Seaman saw it first.

20. That before the occupants of the vessel caught sight of the SVG 03, they appeared to be moving in the direction of the coastline of Chateaubelair.

21. That it appears that the occupants of the vessel recognised the presence of the COAST GUARD VESSEL SVG 03: it made a U turn altered its apparent original course and started to head towards the Petit Bordel coastline. It increased speed significantly, the fact of the increase being obvious due to the increased churning created in the wake of the vessel.

22. That I recall that warning shots were fired: I distinctly recall hearing gun shots being fired at the SVG 03 in response from the said vessel.

23. That upon the instructions of Leading Seaman Lewis, I fired disabling shots, my aim being to the engine of the same. I did not succeed in disabling the target.

24. That as the vessel approached the beach area, I ceased fire as there were persons on the beach and I did not want to run the risk of causing un-necessary injury to apparent by-standers.

25. That I saw when the occupants of the vessel steered the boat onto the beach at Petite Bordel, drove the vessel unto the sand of the beach so that the same was entirely out of the water and then jumped out of the same and ran up into the village.”

Finally there was Sargeant Elvis Thomas who stated at paragraph 48:

“That I had been in receipt of intelligence pertaining to the “Blue Ocean”, Intelligence reveals that February 28, 2009 was not the first occasion on which that vessel was seen in the Petit Bordel area in circumstances which cogently suggested the involvement of the vessel and its occupants in the trade of illegal narcotics.”

- [12] It would therefore appear that the vessel so sighted, had been used as an instrument of crime and as such the police investigating the matter were entitled to retain the same pending the laying of charges that may have emanated from the circumstances.
- [13] In fact Counsel for the defendants eloquently argued that Section 27 of the Criminal Procedure Code allowed the police to ***“stop, search and detain any vessel “in which or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, or any other thing in respect of which an offence is being or has been committed is to be found, and also any person who may reasonably be suspected of having in his possession or conveying in any manner anything stolen or unlawfully obtained or in respect of which an offence is being or has been committed”.*”**
- [14] Indeed this Court has no difficulty in agreeing that the police are clothed with such powers in all the circumstances, but as Lord Denning MR in the case of **Ghani v. Jones**¹ stated at page 706 thereof the question that must be asked “is this a significant justification in law”.
- [15] In that case, during the investigation of a murder the police obtained and retained the passports and other documents of the claimants. There had been no arrest nor was there any evidence of the claimants being implicated in the crime. The police therefore sought to retain the said documents simply because they considered the same to be of “evidential value” and “potential evidential value”.²
- [16] Coming out of these circumstances Lord Denning produced a five-pronged approach in looking at the circumstances surrounding seizure of personal items by the police to determine whether they were entitled to do so. Lord Denning opined:

“What is the principle underlying these instances? We have to consider, on the one hand, the freedom of the individual, his privacy and his possessions are not to be invaded except for the most compelling reasons. On the other hand, we have to consider the interest of society at large in finding out wrongdoers and repressing crime. Honest citizens should help the police and not hinder them in their efforts to track down criminals. Balancing these interests, I should have thought that, in order to justify the taking of an article, when no man has been arrested or charged, these requisites must be satisfied:

¹ 1970 1QB 693

² Ghani Case at page 704

First: The police officers must have reasonable grounds for believing that a serious offence has been committed – so serious that it is of the first importance that the offenders should be caught and brought to justice.

Second: The police officers must have reasonable grounds for believing that the article in question is either the fruit of the crime (as in the case of stolen goods) or is the instrument by which the crime was committed (as in the case of the axe used by the murderer) or is material evidence to prove the commission of the crime (as in the case of the car used by a bank raider or the saucer used by a train robber).

Third: The police officers must have reasonable grounds to believe that the person in possession of it has himself committed the crime, or is implicated in it, or is accessory to it, or at any rate his refusal must be quite unreasonable.

Fourth: The police must not keep the article, nor prevent its removal, for any longer than is reasonably necessary to complete their investigations or preserve it for evidence. If a copy will suffice, it should be made and the original returned. As soon as the case is over, or it is decided not to go on with it, the article should be returned.

*Finally: The lawfulness of the conduct of the police must be judged at the time, and not by what happens afterwards.*³ (My emphasis added)

- [17] Counsel for the defendants although usefully identifying the pre-requisites, failed to go further and answer whether these pre-requisites all existed, in the case at bar to justify the continued retention of the claimant's vessel some 9 years later. I therefore shall endeavor to do so now.
- [18] Firstly, the police officers from the evidence did have reasonable grounds to believe that a serious offence had been committed. It is clear from the evidence, there was an exchange of gunfire between the occupants of the vessel and the authorities, and there was an abandonment of the vessel once it was run aground and additionally what seemed like a culture of drug trafficking in the area that had been noted by the police. In this court's mind this ground was satisfied. Secondly, I will agree there were reasonable grounds for believing at the time that the vessel was an instrument of crime when one considers the manner in which it had been operated and subsequently abandoned combined with the information as to what had been discovered in the area, namely drugs. Therefore the second ground was also made out in this court's mind. Thirdly, although there was no evidence that the claimant himself had been involved, nor were there any allegations made against him, I agree that his refusal to allow the police to retain the vessel during their

³ These were accepted by the Privy Council in case of *Thakur Persad Jaroo v. The Attorney General of Trinidad and Tobago* at [2002] UKPC 5 at Para 26

investigations would have been unreasonable. My concern is however with regard to the fourth prerequisite. The police must be, in order to fulfill their public functions of adequately investigating crime, have access to the items that may have been used in a crime or the fruits of a crime, however, the key words are **“reasonably necessary”**. In the case at bar this incident occurred in 2009. Even if we do not take the entire 9 years, this matter has taken to come to trial, at the very least by 2011, when no charge had been filed against anyone in relation to the use of the vessel, it was incumbent on the police to have taken a decision one way or another. However by 2012, with the filing of witness statements, the police still tried to justify their lack of movement and glibly stated that they were still investigating and thus this alone justified retention of the said vessel without more. The final point raised by Lord Denning was that the actions of the police must be judged at the time that the incident occurred and as indicated previously, I accept that the police in 2009 were entitled to detain and retain the vessel in all the circumstances.

[19] I therefore find that the claimant is not entitled to the declaration as sought as the seizure of the vessel in this Court’s mind was lawful. However, the fact that the same has now been retained by the defendants in excess of 8 years, I do accept that the period of “reasonableness” has long expired. In those circumstances I therefore find that the claimant is entitled to have the said vessel returned. There appears on this aspect of this Court’s finding that the vessel may no longer be in a state to be returned, however the evidence on this issue was less than clear. I therefore order that the vessel is to be returned to the claimant (if it is still in a state to be returned) failing which the claimant would be entitled to the value of the vessel at the time of seizure. These sums are to be assessed by the Master upon application by the claimant.

[20] Having so determined that although the initial detention may have in fact been lawful and necessary in all the circumstances, this Court must now address its mind to the subsequent events as it is entirely possible for an initially lawful seizure over time to become unlawful and for which the state may be made liable.

Has The Claimant Proven Wrongful Detention?

[21] In the Submissions of the claimant it would appear that the claim for wrongful detention and conversion were subsumed into each other, but it is clear from the authorities that in order to establish a claim on either one, there are specific and individual criteria which must be met.

[22] An action for wrongful detention historically was called “Detinue”. Indeed, the tort of detinue was abolished in the United Kingdom by the Torts (Interference with Goods) Act 1977 but this did not disturb the common law availability to claim in this jurisdiction where there is no such similar legislation.

[23] In the case, from the jurisdiction of Jamaica, **Carol Campbell v. The Transport Authority of Jamaica**⁴, McDonald J gave a helpful exposition of the law of detainee or wrongful detention. The Learned Judge had this to say at paragraph 22 and continuing:

*“22. In Trevor Wright v Det. Sgt. Yates et. al. [2012] JMSC Civ. 52, my brother, Campbell J at paragraph [18] helpfully referred to a judicial definition of detainee from the Court of Appeal decision in **George and Brandy Ltd. v Lee** (1964) 7 WIR 275,*

*[18] Waddington JA, in **George and Brandy Ltd.**, defines detainee, at page 278, letter e, as follows;*

“The gist of the cause of action in detainee is the wrongful detention, and in order to establish that, it is necessary to prove a demand for the return of the property detained and a refusal after a reasonable time, to comply with such demand. The authorities establish that a demand must be unconditional and specific.”

*23. The learned author, John G. Flemming 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 detainee 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)...

⁴ (2016) JMSC Civ. 148

24. In other words, if the Claimant's motor vehicle was lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep it adversely or in defiance of the Claimant's rights." (My emphasis)

[24] Thus it would appear that to maintain an action for wrongful detention, the claimant must prove:

1. that there was demand for the return of the chattel and
2. that Defendant refused to so hand it over.

[25] As stated in the words of Ollennu, J. in the case of **S. A. Turqui & Bros. V. Lamptey**⁵ out of Ghana, *"if the Defendant came into possession of [the vessel] lawfully, if there has been a demand for its return the continued possession would as of the date of refusal to return it, be unlawful"*.

[26] The evidence of the claimant in this regard is encapsulated in his witness summary upon which he relied at trial. Paragraphs 8 and 9 state as follows:

"8. I journeyed to St. Vincent and the Grenadines and met with Counsel Ronald Marks who I retained to assist in having my boat returned to me.

9. I am aware that my Counsel made various visits to the Coast Guard Base and the Commissioner of Police in relation to this matter. He confirmed that my boat was at the Coast Guard base and was being held in custody after being involved in a chase with the Coast Guard. I was also informed that the occupants who had fired shots at the officers had ditched my boat on the beach."

[27] There was no further evidence, documentary or otherwise of any demand having been made.

[28] On a balance of probabilities, I therefore do not accept that this evidence satisfies that in fact there had been an unconditional demand for the vessel.

[29] There having been no demand, there is no need to determine whether there was a categorical refusal to return the vessel. However, for completeness, the defendants having led evidence that the vessel had been retained for the purpose of ongoing investigations, I do not accept that there was a categorical refusal to return the same.

[30] The vessel was detained in 2009, however by 2011 (two years later), the investigation not having been completed, the defendant continued to justify the retention of the same. In my mind, in order for that

⁵ 1961-04-073 High Court GLR 190-191

detention to have become unlawful to entitle the claimant to claim damages for the same, the claimant needed to take specific pointed actions. The claimant failed to do so. Indeed, Master Cenac-Phulgence⁶ as she then was, in examining a similar issue, stated *"if the demand is unclear or equivocal because it is merely a request ... it may not be enough"*.

[31] I therefore find that the claim for wrongful detention has not been made out in all the circumstances.

Has the Claimant Proven the Claim for Conversion?

[32] In **Halsbury's Laws of England** the tort of conversion was 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".⁷

[33] 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**⁸ quoted in the case of **Eric Conliffe v. Sergeant Jeffrey Laborde**⁹ by Thom J. as she then was at paragraph 53 thereof noted *"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."*

[34] In the case at bar, this Court already has made the finding that there was no demand by the claimant to satisfy the precondition for wrongful detention. There was therefore no demand at all made by the claimant

⁶ **Allan Smith v. The Attorney General** SLUHCv2010/0665 at Para 20

⁷ Vol. 97 2015 Ed. Para 64

⁸ 1993 2 AER P 195 at 199

⁹ SVGHCv2009/0331

that could satisfy the stringent nature of what that demand must entail. In the authorities it is clear that any such demand must be in writing and in such words that the intent is clear.

[35] Conversion however unlike wrongful detention does not require a demand and as such this claim cannot be dismissed out of hand merely because of the finding made with regard to wrongful detention.

[36] In the Jamaican Court of Appeal case of the **Commissioner of Police and the Attorney General v. Vassell Lowe**¹⁰, McIntosh JA pointed out that two elements combine to constitute the requirement of willful interference: (1) dealing with the chattel in a manner inconsistent with the right of the person entitled to it and (2) an intention in so doing to deny the person's right or to assert a right which is in fact inconsistent with such right¹¹.

[37] In the case at bar, the claimant stated at paragraph 10 of his witness summary: *"I made several trips to St. Vincent hoping to get my boat released. I later discovered that the St. Vincent Coast Guard had repainted my boat and was using it as part of their fleet. After this discovery, I instructed my legal Counsel to file a Claim in the High Court for the return of my boat."*

[38] The Defendants witness Lt. Ragquette at paragraphs 25 and 27 of his witness statement confirms this:

"25. That during the beginning of the year 2010, the Coast Guard found itself in extremity due to the fact that the SVG 03 was down. As a consequence, the Coast Guard requested permission from the Ministry of National Security to use the "Blue Ocean" in its operations. It received the consent of said Ministry.

27. That the Coast Guard used the vessel in law enforcement very briefly from February 2010 until August of the year. To my knowledge, the vessel was only used for short trips."

[39] And in cross examination Lt. Ragquette further said *"within two months of the vessel being in possession of the Coast Guard, it was repaired, painted grey which is the Coast Guard's color and given the number 09"*.

[40] On cross examination, Gareth Glasgow of the Coast Guard said that the boat was repaired, painted in colours of the Coast Guard and given the number 09.

[41] Elvis Thomas on cross examination said he has been a police officer for 23 years and was aware that vehicles have been taken into custody but they have never been repaired, colour changed, painted with the insignia of the police force or used for operations.

¹⁰ (2012) JMCA GV55

¹¹ Para 36 Vassell Howe Case Op Ch

- [42] Given this evidence, it was bewildering to the court that the defendant still persisted in its argument that there was never any intention on the part of the defendant to deny the claimant's right to his vessel or to have asserted a right inconsistent with the claimant's right.
- [43] In this court's mind, I am not sure what further act could have been done to evince a clear intention to deprive the claimant of his rights or to be considered an act inconsistent with the rights of the claimant.
- [44] It matters not in the opinion of this court that the usage was short lived.
- [45] I am therefore satisfied that the defendant's actions in taking the claimant's vessel as part of its fleet met the requirements to amount to conversion and I am satisfied that the claimant is entitled to damages for the same.

I THEREFORE FIND AS FOLLOWS:

1. The Declaration regarding the detention of the claimant's vessel is denied.
2. The order for delivery is granted. If delivery cannot be effected, the value of the said vessel is to be duly paid. Such value is to be determined if necessary upon application being made to the Master of the High Court.
3. Damages for conversion are awarded to the claimant to be assessed by a Master of the High Court. Such application to be filed within 21 days of today's date.
4. Damages for unlawful detention are denied.
5. Costs to the claimant to be determined upon assessment.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar