

**EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST. CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO.SKBHCV2016/0271

**In the Matter of Sections 8 (1), 8 (2) (a) (b) of the Constitution of St
Christopher and Nevis**

and

**In the Matter of an Application for Declaratory Relief and
Compensatory Relief by VAUGHN RICHARDS Pursuant to Section
18 (1) and (2) of the Constitution of St Christopher and Nevis**

BETWEEN:

VAUGHN RICHARDS

Claimant

and

**THE ATTORNEY GENERAL OF ST CHRISTOPHER
AND NEVIS**

Defendant

Appearances:

Ms Deidre Williams for the Claimant

Ms Eshe Hendrickson for the Defendant

.....
2017: September 25; October 10

2018; March 21
.....

JUDGMENT

Introductory and Brief Background

[1] **LANNS, J. [AG]:** The claimant, Vaughn Richards, is an entrepreneur and business operator of Sugar City Adventures Ltd, “also known as Segway Tours”, a company that offers tours to visitors

and locals of the scenic island of St Kitts, via computerized self-balancing wheeled Segway transporters.

- [2] By fixed date claim form filed on the 26th August 2016, together with affidavit in support, the claimant claims against the defendant, the Attorney General of St Kitts and Nevis in his capacity as representative of the State: (a) a declaration that his constitutional rights as a citizen of the Federation of St Kitts and Nevis were violated by members of the Royal St Christopher Police Force when, on or about the 28th January 2014, members of the said Royal St Christopher Police Force came to his business, and compulsorily took possession of his Dodge Caravan vehicle valued at \$20,000; (b) compensatory relief and damages for deprivation of property and breach of his constitutional right to just compensation pursuant to Section 8 (2) of the Constitution; (c) out of pocket business expenses in the sum of \$27,712.50 for transportation costs to his business; (d) exemplary damages; and (e) costs.
- [3] The claim arises from the confiscation by the police of the defendant's vehicle which he purchased from one, Sonia Sommersall. It is said that for 22 months prior to the institution of these proceedings, the vehicle had been parked at Camp Springfield and exposed to the elements. The claimant states that the police officer who confiscated the vehicle told him that the seller was a convicted person¹ who was liable to have certain of her assets seized. Despite a formal letter from the claimant's counsel to the Commissioner of Police, giving full details of the purchase of the vehicle, and denying that the seller was ever convicted of any offence, and despite a request that the vehicle be released to the claimant, the police never released the vehicle, forcing the claimant to devise other ways of keeping his business alive.
- [4] The claimant says that for over one year he had used his vehicle to transport Segways to and from his business in Basseterre to various points of drop off. He complains that by confiscating his vehicle, the police left him without means of transporting the Segways used in his business.
- [5] To keep Segway Tours in business, the claimant and his wife hired transportation operators namely, Reginald James, Ralph Richards and Phil Nisbett to transport the Segways to and from

¹ There is no evidence that the seller was convicted of any offence.

tour locations over the period January 2014 to 18th December 2015. For this service, he paid out \$42,500.00 to the transportation operators.

- [6] According to the claimant, prior to the confiscation of his vehicle, his monthly operating costs for its usage in the business would have been: \$650.00 for gas and general maintenance. During the period 29th January 2014 to 18th December 2015 his operating expenses would have been \$14,787.70. Therefore, he claims compensation in the amount of \$27,712.50, (being \$42,500.00 -- \$14,787.50), representing loss of income.
- [7] The claimant further complains that despite the fact that his vehicle was confiscated by the police, and his company no longer had the benefit of its use, he still had to honour his monthly payments to Development Bank who held a Bill of Sale in respect of the vehicle.
- [8] In December 2015, the claimant had no choice but to purchase a replacement vehicle (Nissan Pick-up) financed with a vehicular loan from S.L Horsford and Company Limited, who holds a Bill of Sale over same.
- [9] On the 28th October 2016, an acknowledgment of service was filed in which the defendant indicated an intention to defend the claim. However, on the 17th February 2017, when the matter came on for hearing before Ward J., counsel for the defendant indicated that the defendant was not contesting the facts of the case, but would wish to be heard on assessment. At a further hearing before me on the 30th May 2017, judgment was entered for the claimant for damages to be assessed, and directions for the assessment were given. This is the assessment.

Issue

- [10] The main issue to be determined is what quantum of damages is the claimant entitled to recover.

Replacement Cost of Confiscated Vehicle

- [11] The claimant is entitled to recover the full replacement cost of his vehicle and be put back in the position he would have been in so far as is reasonably possible. It is unlikely that the vehicle can

be returned and the defendant has conceded on this issue. The defendant challenged the replacement cost claimed contending that consideration must be given to depreciation of the vehicle over the one year period before it was seized by the police. The claimant stated that he did substantial work on the vehicle after its purchase, so its value would have increased. He agreed however, that at the time of seizure, the vehicle was worth about \$17,800, to take into account overall depreciation by at least \$2,200.00. Counsel for the claimant and counsel for the defendants were content to accept the figure of \$17,800.00 as the replacement cost of the claimant's vehicle. I accept, based on the evidence, and based on counsel's concession that this figure is reasonable and thus, the claimant is awarded the sum of \$17, 800.00 as replacement cost of his Dodge Caravan, PA 2029,

Loss of Earnings/Out of Pocket Expenses/Loss of Use

- [12] The claimant has claimed the sum of \$27,712.50 for out of pocket expenses or loss of earnings which is a species of special damages. At the hearing, counsel for the defendant did not challenge the sum claimed as out of pocket expenses. In fact, counsel for the defendant indicated that they took no issue with the figure claimed and would go along with it. In their written submissions, however, counsel for the defendant seemed to have reneged and sought to contest the amount claimed on the basis that there was no documentary evidence in proof of the purported payments out to Segway operators employed by the claimant. At the same time, the defendant, at page 4 of the written submissions accepts that the sum of \$27,712.50 claimed is reasonable.
- [13] In **Cosmos Williams v The Comptroller of Customs and the Attorney General of St Lucia**², a case which involved the confiscation of a motor vessel, Mason J. had to deal with the issue as to whether the claimant was entitled to the sum of \$148,500.00 representing loss of income at the rate of \$900.00 per week for the wrongful detention of the claimant's vessel which was his source of income. The claimant failed to particularize his loss of income in his pleading. There was no evidence of actual pecuniary loss of income sustained by the claimant. What the claimant produced was an Appraisal Report dated since August 2000 with an analysis of the projected income.

² Claim No SLUHCv2006/0259

[14] Mason J. at paragraph [9] of the Judgment found it necessary to state:

“... Special damages are such as the law will not infer from the nature of the act because they are generally of substantially exact calculation. There is thus the obligation to particularize the claim for damages, since loss of the use of an income earning chattel is a species of special damages. The onus is therefore on a claimant to prove strictly not only his loss but the quantum of it....”

[15] On the authority of **Carlton Greer v Alston's Engineering Sales and Services Ltd**³ and McGregor on Damages 17th edition, paragraph 10-004, Mason J. awarded the claimant nominal damages for loss of income in the sum of \$50,000.00.

[16] The Trinidad case of **Sookoo v Ramdath**⁴ is also instructive. In that case, de la Bastide, CJ noted “It is common experience that items of special damage are sometimes not proved to the hilt and yet the Court may make an award in respect of them. It is a matter which depends on the circumstances and evidence in each case. The court has to decide, whether on the material before it, it can arrive at some acceptable conclusion as to the amount which it should award.”

[17] In the instant case, although there are no receipts in proof of payments to Segway operators, there is material before the court upon which it can make even a nominal award (which does not mean a small award or one which is out of scale). For example, there are the unchallenged witness statements of the payees, namely Reginald James, Phil Nisbett and Ralph Richards, before the court, and which the court accepts as proof of payments out to them for transporting Segways for the claimant. In my opinion, this is evidence upon which I can base an award for loss of earnings in respect of the confiscation of an income earning chattel and or loss of use, or out of pocket expenses, by whatever name it is called.

[18] In the premises, and in light of the approach taken by the courts in the cases cited above, and based on the evidence before the court, I assess the claimant's loss of earnings/out of pocket expenses/loss of use to be \$27,712.50.

³ (2003) 63 WIR, 388

⁴ Trinidad and Tobago Civil Appeal No 43 of 1998

Exemplary or vindictory damages

[19] Exemplary damages are awarded where the conduct of the defendant is oppressive or arbitrary or unconstitutional. Thus in the Jamaica case of **The Attorney General v Maurice Francis**⁵ Rattray P in discussing the basis for an award of exemplary damages indicated that ‘the conduct of the defendant must merit punishment and that the conduct should go beyond mere want of jurisdiction, and should be accompanied by arrogance, insolence, humiliation and brutality. The purpose of exemplary damages is to punish and deter conduct which could be classified as being oppressive, arbitrary and unconstitutional.’ The compensation is punitive in nature, as opposed to aggravated damages which are compensatory.

[20] In the Jamaica case of **Clayton Tyndale v Corporal Orville Clarke and the Attorney General**⁶ Jackson-Haisely J. [AG] quoted Lord Devlin in **Rookes v Barnard** as saying at page 1226 that:

“ ... where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other’s, he might perhaps, be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people, and the use of their power must always be subordinate to their duty of service.”

[21] Learned counsel for the claimant submitted that the claimant is entitled to exemplary damages. Counsel invited the court to consider that the seizure of the claimant’s vehicle was without valid legal authority and in direct breach of the claimant’s rights. Counsel pointed out that the State had a second opportunity to rectify the unlawful deprivation of the claimant’s vehicle when the claimant’s counsel wrote to the Commissioner of Police on 30th December 2014. Counsel submitted that the court should award the claimant the sum of \$70,000 to emphasise the importance of constitutional rights, and to deter further breaches of such rights. To bolster her case, counsel cited and quoted the provisions of section 8 (1) of the Constitution which deals with protection from deprivation of property; and passages from the cases of **Attorney General of**

⁵ SCCA 13/1995

⁶ [2017] JMSC Civ 41

Trinidad and Tobago v Ramnaroop⁷ and Randolph Truman Toussaint v The Attorney General of St Vincent and the Grenadines⁸

- [22] Learned counsel for the defendant has not seriously challenged the claim for exemplary damages. After quoting a paragraph said to be taken from **Maharaj v the Attorney General of Trinidad and Tobago**⁹ and a paragraph said to be taken from **Attorney General of Trinidad and Tobago v Ramnaroop**¹⁰ counsel submitted that vindictory damages should only be granted if the amount of compensation award is presumed to be insufficient to vindicate the right of the claimant.
- [23] The court is of the opinion that there are grounds for exemplary damages in this case. The fact that the officers seized the claimant's vehicle without affording the courtesy of showing him the court order and or allowing him to read the order for himself) which they claimed to have had in their possession, but decided instead to read it to the claimant (as Officer Denver Herbert acknowledged) and telling the claimant that they do not have to show the order to him; that they just needed the vehicle; the fact that there was no lawful right for the claimant's vehicle to be confiscated, was arrogant, arbitrary, oppressive and humiliating behaviour; and contrary to the claimant's constitutional rights of protection from deprivation of property..
- [24] This is a case where, having seized the claimant's vehicle (an income earning chattel) the police parked it up unprotected, without any proper investigation as to its ownership, or source of financing, thereby depriving the claimant of its use in his business operations and for his personal affairs. This is a case where the reason proffered by the police officers for seizing or confiscating the claimant's vehicle was that the seller was a convicted person, when in truth and in fact this was not so; and even if true, the claimant had no knowledge of the criminal record of the seller and will likely be deemed a bona fide purchaser for value without notice. This is a case where the claimant, despite not having the use of his vehicle, had to continue to meet the monthly payments to the Development Bank which financed the purchase of the vehicle.

⁷ [2005] UKPC 15, paragraph 19

⁸ Randolph Trueman Toussaint v The Attorney General of Saint Vincent and the Grenadines, Claim No 423 of 2003, which sets out the objectives of awards for constitutional damages

⁹ No citation and case not produced

¹⁰ Supra. Case not produced

[25] The conduct, actions or inactions, of the police to my mind, warrant the court indicating, by a punitive award, that it will not tolerate such conduct, actions and or inactions, and to deter such actions from occurring in the future. Indeed, as claimant's counsel correctly pointed out, the defendant had an opportunity to make amends and or to rectify and discontinue the deprivation of use of the claimant's property, in circumstances where the Commissioner of Police received, and blatantly disregarded a letter addressed to him by the claimant's legal practitioner informing him as to the source of funds for purchase of the vehicle, and providing documentary evidence of such purchase, and informing him that the seller was never convicted, and requesting the vehicle be returned to the claimant. Clearly, the refusal to acknowledge the letter or release and return the vehicle compounded the situation.

[26] Notably, the claimant was never charged with any offence. Asked by Ms Hendrickson, during cross examination whether he was in any way humiliated during the confiscation, the claimant responded that he was not humiliated at the time of the actual confiscation, but he was humiliated in the sense that the police went to Porte Zante looking for him and he was alerted of this by persons who were at Port Zante at the time. Constable Denver Herbert did not deny that he and another police officer went to Porte Zante looking for the claimant. The claimant stated that when he learnt that the police went to his place of work to look for him, he was alarmed and appalled, and became very stressed about the entire situation. I believe him.

[27] One must not lose sight of the provisions of section 8 (1) of the Constitution which, in so far as is relevant, provides:

- (1) No property of **any description** shall be compulsorily taken possession of, and no interest or right over property ... shall be compulsorily acquired, except for a public purpose and except where provision is made by law applicable for the taking of possession or acquisition for the payment, within a reasonable time of adequate compensation. (Bold and underline mine).

[28] From a reading of section 8, it seems clear that a compulsory acquisition of property (including the claimant's vehicle) is forbidden by the Constitution unless 1) it is for a public purpose; 2) it is done under a law authorising the acquisition; 3) the law authorising the acquisition makes provision for

the payment of adequate compensation within a reasonable time; and 4) the acquisition is duly carried out in accordance with that law.

- [29] The defendant has not pointed to any public purpose, or any law authorising compulsory acquisition and or confiscation of the claimant's vehicle. In fact, the defendant has accepted that the claimant's constitutional right not to be deprived of his property was violated. For this unconstitutional breach alone, resulting in the inability to employ his income bearing chattel in his business and personal affairs, the oppressive manner in which the confiscation was carried out, the humiliation suffered, the claimant is entitled to an additional award as exemplary or vindictory damages as was granted by Ramdhani J. [Ag] in the case of **Everette Davis v The Attorney General of St Christopher and Nevis**¹¹. In the circumstances of this case, I think that an award of \$20,000 for exemplary damages is reasonable to vindicate the claimant's constitutional rights. In coming to my decision, I am guided not only by **Everette Davis v The Attorney General** but also by the case of **Fuller v The Attorney General**¹² which is authority for the view that an award made against the State for breach of constitutional rights must not amount to a windfall. In delivering the majority judgment of the Jamaica Court of Appeal, Patterson J.A. stated at page 402 (g):

"Where an award of monetary compensation is appropriate, the crucial question must be what is a reasonable amount in the circumstances of the particular case. The infringement should be viewed in its true perspective, an infringement of the sacrosanct fundamental rights and freedoms of the individual and a breach of the supreme law of the land by the State itself. But that does not mean that the infringement should be blown out of proportion to reality, nor does it mean that it should be trivialized. In like manner, the award should not be so large as to be a windfall, nor should it be so small as to be nugatory."

Conclusion

- [30] I assess damages against the defendant as follows:

General damages

Estimated value of the Dodge Caravan vehicle	\$ 17, 800.00
Loss of income	\$ 27, 712.50
Exemplary damages	<u>\$ 20, 000.00</u>
Total	<u>\$ 65, 512. 50</u>

¹¹ SKBHCV2013/0220 Consideration is given to the fact that the circumstances in Everette Davis' case were different; nonetheless, on its own facts, an additional award is appropriate to vindicate the claimant's constitutional rights.

¹² (1997) 56 WIR 337

[31] Costs are awarded to the claimant to be agreed or assessed in accordance with CPR 65.5, Appendices B and C as amended.

[32] For their helpful submissions, I am grateful to counsel on both sides.

Pearletta E. Lanns
High Court Judge [Ag]

By the Court

Registrar