

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 36 OF 2010
BETWEEN:



HYON ELLIS

Claimant

AND

CONSTABLE ORANDY CHAPMAN
CONSTABLE KENNY JONES
INSPECTOR KENNETH JOHN
COMMISSIONER OF POLICE
THE ATTORNEY GENERAL

Defendants

Appearances: Mr. Ronald Marks and Ms. Patricia Marks for the Claimant
Ms. Ayanna Baptiste for the Defendants

2010: July 12
2011: August 17

JUDGMENT

- [1] **THOM, J:** During the year 2010 the Police required a number of vehicle owners mainly "minibuses" to have their vehicles inspected. Several vehicles were found to have rims and tyres larger and wider than the original rims and tyres supplied by the manufacturers. The owners were instructed to remove the larger rims and tyres.
- [2] The Claimant was one such owner. His vehicle was taken to the Police Station by his driver on the instructions of Assistant Superintendent John (ASP John) on the 19th January 2010 for inspection and it was returned to the Claimant the following day January 20, 2010. He was told to remove the larger and wider rims and tyres.

- [3] On January 23rd 2010 ASP John again ordered that the vehicle be taken to the Police Station to be inspected. The vehicle was inspected and ASP John informed the Claimant that the large rims and tyres must be replaced. The Claimant subsequently obtained a mandatory injunction for the return of the vehicle. The vehicle was returned to the Claimant on January 28, 2010.
- [4] The Claimant instituted these proceedings and at trial sought the following reliefs:
- (i) A declaration that the said vehicle is not in breach of Regulation 21(3) of the Motor Vehicle and Road Traffic Regulations Cap 355 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990.
 - (ii) Damages for conversion.
 - (iii) Special damages of \$2,800.
 - (iv) Aggravated and General Damages.
 - (vi) Interests and costs.
- [5] The Defendants in their defence alleged that the width of the tyre was likely to cause a danger to the public. Also the Defendants denied that they detained the vehicle as alleged by the Claimant. The Defendants alleged that it was the Claimant who walked away from his vehicle and did not return to the Police Station to collect it until he obtained the Court Order.
- [6] At the trial the Claimant testified on his own behalf and called no witnesses. ASP John testified on behalf of the Defendants and no witnesses were called.
- [7] The Claimant testified that his vehicle H1119 was detained by the Police on 19th January 2010. ASP John told him that the vehicle was in breach of Regulation 21(3) of the Motor Vehicle and Road Traffic Regulations, as the lateral overhang was more than six inches.

He was told he needed to change the rims and tyres. The vehicle was returned to him on 20th January 2010.

- [8] On the 23rd January 2010 the vehicle was again detained by the Police and he was informed by ASP John that it would only be released if he gave an undertaking to change the rims and tyres. He refused to give such an undertaking. The vehicle was returned to him on 28th January 2010 after he obtained an Order of Court for its release. His vehicle was inspected around September 2009 and at that time it had the same rims and tyres and he was not informed that he was in breach of any Regulation.
- [9] Under cross-examination the Claimant agreed that the rims and tyres were not the original rims and tyres. They were larger and wider than the original rims and tyres. He also agreed that the tyres were protruding from the body of the vehicle. In order to accommodate the larger rims and tyres he had to modify the sliding track of the door of the vehicle. He further testified that ASP John told him that he had to change the rims and tyres and he went away to consult with his Attorney.
- [10] ASP John testified that he has been a motor vehicle inspector for the past 12 years. On the 19th January 2010 while on patrol he observed the Claimant's vehicle H1119 a passenger van travelling in front of him. The four wheels of the motor vehicle were protruding and the rear wheels appeared to be sprawling. On his direction the vehicle was taken to the Police Station. On inspection he found there was "lateral overhang" but on further consideration since it was the wheels that were protruding from the body and not the body of the vehicle protruding over the wheels it did not constitute "lateral overhang".
- [11] The larger and wider rims and tyres were likely to cause danger to any person travelling in the vehicle or on the road. The oversized tyre placed a greater demand on the suspension, steering components and braking system of the vehicle.
- [12] ASP John also testified that he told the Claimant he needed to change the rims and tyres and the vehicle was handed back to him on January 20, 2011.

- [13] On 23rd January 2011 he again observed the vehicle with larger rims and tyres and he caused the vehicle to be taken to the Police Station where he further inspected the vehicle and found that indeed it had the larger rims and tyres. He informed the Claimant that he needed to change the rims and tyres. The Claimant was not in agreement of making the changes and he walked away leaving the vehicle at the station.
- [14] Initially Learned Counsel for the Claimant declined to cross-examine ASP John. Learned Counsel was subsequently given leave to cross-examine ASP John. Under cross-examination ASP John testified that he did not prevent the Claimant from taking his vehicle to change the rims and tyres. He confirmed that several vehicles which also had the larger rims and tyres were all released to the owners who subsequently changed the tyres and rims.

SUBMISSIONS

- [15] At the end of the trial the Court ordered that written submissions be filed on or before July 27, 2011. No submissions were received from the Claimant.
- [16] Learned Counsel for the Defendants submitted that while the Defendants agreed that there was no breach of Regulation 21(3) however they contend that there was a breach of Regulation 21(8) and ASP John was authorised under Regulation 20(4) to call up for examination any vehicle which he believed was not in a fit and proper state of repair or did not conform to the provisions of the Act and or the Regulations.
- [17] Learned Counsel also submitted that there was no conversion of the Claimant's vehicle by the Defendants. The Claimant did not lead any evidence to prove conversion. Learned Counsel referred the Court to the case of **Carlton Rattansingh (The Legal Personal Representative of the Estate of Joseph Rattansingh) and The Attorney General of Trinidad and Tobago and Kanahar Doopan (The Comptroller of Customs and Excise)** Civ. App. No. 105 of 2000.

- [18] Learned Counsel also made submissions in relation to damages, but only the issue of liability was dealt with at the trial.

FINDINGS

- [19] Having reviewed the evidence of ASP John and the Claimant Hyon Ellis, I find that their evidence varied only on one issue. The Claimant testified that ASP John wanted him to give an undertaking that he would change the rims and tyres before the vehicle was released to him. While ASP John testified that he told the Claimant that he needed to change the rims and tyres and he refused to do so and left the Police Station. Having seen and heard both ASP John and the Claimant I believe the testimony of ASP John. It is not disputed that the Claimant did not return for his vehicle until he obtained the Order of Court on January 28, 2010.

CONVERSION

- [20] In **Salmond on Torts** at p. 125 the Learned Author defined conversion in the following terms:

“A conversion is an act (or complex series of acts) of wilful interference without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. Two elements are combined in such interference: (i) a dealing with the chattel in a manner inconsistent with the right of person entitled to it, and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such right. But where the act done is necessarily a denial of the other's right or an assertion of a right inconsistent with it, the tort may have been committed. For conversion may consist in an act deliberately done inconsistent with another's right though the doer may not know or intend to challenge the property or possession of that other.”

- [21] Having regard to the Claimant's pleadings and evidence, the Claimant's case is based on conversion by detention.

- [22] In **Halsbury Laws of England** Vol. 45 4th Ed. the Learned Authors explained conversion by detention in the following manner:

“The mere keeping of another's goods does not amount to conversion. It is not conversion merely to be in possession of a chattel without title, as where a finder reduces goods into his possession or a bailee holds even after the period of the

bailment has expired. However a conversion may be committed where the goods are unjustifiably detained after a demand for their return.”

- [23] The Defendants relied on the provisions of Regulations 20(4) and 21(8) of the Motor Vehicle and Road Traffic Regulations Chapter 483 2009 Revised Edition which reads as follows:

“20.(4) Every licensing officer and every Police Officer shall have power to call up for examination by an inspector, at any time, any motor vehicle or trailer which he has reason to believe is not in a fit and proper state of repair or does not conform to the provisions of the Act and these Regulations as regards construction, equipment and maintenance.

21.(8) The motor vehicle or trailer, and all fittings thereof, shall be in such a condition as not to cause, or to be likely to cause, danger to any person on the motor vehicle or trailer or on any public road.”

- [24] ASP John’s testimony which was not contradicted is that he saw the wheels of the Claimant’s vehicle protruding from the body of the vehicle and required it to be examined. The larger rims and tyres placed a greater demand on the suspension, steering components and braking system and was likely to cause danger to any person or the motor vehicle or the public road. Also ASP John’s testimony that after he spoke to the Claimant about the vehicle the Claimant walked away was not contradicted. Indeed the Claimant agreed that he walked away and went to his Attorney.

- [25] Further there is no evidence from the Claimant that he made a demand for the return of the vehicle and the Defendants refused to return the vehicle.

- [26] In Halsbury Laws Vol. 45 at para. 1431 the Learned Authors explained what amounts to a demand in the following manner:

“The demand for the return of goods must be specific. An oral demand must be made by the owner of the goods or by some person in his name and with his authority. If the demand is made by some person on behalf of the owner, the person on whom the demand is made must have a reasonable opportunity to inquire into the authority of the person making the demand. The demand must be for delivery up of the goods; a failure by the Defendant to dispatch them at the owner’s demand is no evidence of a conversion.”

[27] The evidence of the Claimant is that he obtained an Order of Court for the return of his vehicle on 28th January 2010 and the vehicle was returned to him the said day. There is no evidence of unreasonable delay by the Defendants in returning the vehicle after the Order of Court was made. Also there is no evidence that a demand was made for the return of the vehicle on the first occasion when the vehicle was taken to the Police Station for inspection. Indeed the Claimant agreed that he collected the vehicle the very next day. It is not clear from the evidence when the inspection was done. In any event I find that there was no unreasonable delay in the vehicle being returned to the Claimant since it was returned the very next day after it was called up for examination.

[28] In view of the above, I find that the Claimant has failed to prove on a balance of probability that there was conversion of his vehicle by the Defendants.

DECLARATION

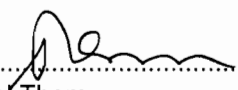
[29] Declaration is a discretionary remedy. The Court will not exercise its discretion to make a declaration where the question raised is purely academic such as where the issue is a dead issue - see **Rediffusion (Hong Kong) Ltd v A-G of Hong Kong** [1970] A.C. p. 1136.

[30] The Defendants from the inception in their defence at paragraph 11 acknowledged that a mistake may have been made in stating there was "lateral overhang". The Claimant was also told that the larger rims and tyres on the vehicle posed a danger to the public. This was repeated in ASP John's witness statement. He acknowledged there was no "lateral overhang" and explained why there was no "lateral overhang". In my opinion this is a dead issue. I would therefore in view of the circumstances not exercise my discretion to grant the declaration sought.

[31] In view of the above I find that the Claimant is not entitled to the reliefs sought.

[32] It is ordered that:

- (i) The claim is hereby dismissed.
- (ii) The Claimant shall pay the Respondents the prescribed costs.


Gertel Thom
HIGH COURT JUDGE