BARBADOS

[Unreported[

IN THE HIGH COURT OF JUDICATURE

HIGH COURT

CIVIL JURISDICTION

No. 525 of2002

BETWEEN:

CASWELL FRANKLYN

(Applicant)

AND

THE PERMANENT SECRETARY

MINISTRY OF FINANCE

(First Respondent)

CHIEF MARSHAL

(Second Respondent)

AND

THE ATTORNEY GENERAL

(Third Respondent)

Before the Honourable Madame Justice Margaret Reifer, Judge of the HighCourt.

2003: June 23, 24

July 30

Mr. Michael Beckles for the Applicant

Miss Beverley Gadsby and Mr. Andrew Willoughby for the Respondents.

DECISION

[1] On 7th March, 2002 at 6:15a.m. the Applicant Mr. Caswell Franklyn had his motor vehicle registrationnumber T. 677 seized by Marshals of the Supreme Court. These Marshals purported to act on theauthority of a letter received by the Court Process Office from the Ministry ofFinance. The Applicant was advised bythe Marshals that the said motor vehicle would be sold by Public Auction on the28th March, 2002 at the Court Process Office pursuant to a Bill ofSale between the Crown and the Applicant dated September 9, 1996.

[2] The Applicant filed an OriginatingNotice of Motion on the 15th March, 2002 seeking relief by way ofjudicial review under the Administrative Justice Act Cap. 109 B of the Laws ofBarbados as follows:

1. A declaration that the seizure of theApplicant's 1993 Toyota motor vehicle by the Marshals of the Court on 7th March 2002 was unlawful, unauthorised and /or contrary to the law.

2. A declaration that the decision by theChief Marshal to seize the 1993 Toyota motor vehicle was unreasonable and/orimproper

and/or irregular exercise of theChief Marshal's duties conferred on him under the Court Process Act, Cap. 111Aof the Laws of Barbados and was in the circumstances unauthorised by that Act.

3. A declaration that the decision by thePermanet Secretary, Ministry of Finance to order the seizure of the Applicant's1993 Toyota motor vehicle was an unreasonable and/or an improper exercise ofthe powers of the Permanent Secretary conferred on him by the Indenture dated 9th September 1996 between the Applicant and the Crown coming under the Bill ofSale Act, Cap. 306 of the Laws of Barbados.

4. A declaration that the PermanentSecretary, Ministry of Finance failed to observe procedures required by lawbefore directing the seizure of the Applicant's 1993 Toyota motor vehicle underthe Bill of Sale Act, Cap. 306 of the Laws of Barbados.

5. A declaration that the Chief Marshalacted in excess of jurisdiction and/or a failure to satisfy or observe the proceduresrequired by the law when he seized the Applicant's 1993 Toyota motor vehicle.

6. A declaration that there was bad faithon the part of the Permanent Secretary, Ministry of Finance in directing theseizure of the Applicant's 1993 Toyota motor vehicle under the Bill of SaleAct, Cap. 306 of the Laws of Barbados without further recourse to theApplicant.

7. A declaration that the PermanentSecretary, Ministry of Finance took into account irrelevant considerationsbefore directing the Chief Marshal to seize the Applicant's 1993 Toyota motorvehicle under the Bill of Sale Act, Cap. 306 of the Laws of Barbados.

8. An injunction to restrain the sale bythe Chief Marshal of the Applicant's 1993 Toyota motor vehicle.

9. An order for the Chief Marshal to returnthe property of the Applicant, namely, the 1993 Toyota motor vehicle.

10. An order for general and special damagesin money on the basis that the Applicant suffered inconvenience and loss as aresult of the decisions of the Chief Marshal and the Permanent Secretary,Ministry of Finance.

[3] The Applicant filed therewith on March15th, 2002 his Affidavit in support of Application Pursuant to Rule(2) (b) of the Judicial Review (Application) Rules 1983 and on March 30th,2002 a Statement Pursuant to Rule 2 of the said Rules.

[4] The parties appeared before this Courton the 28th March, 2002 the date of the purported sale) and byCONSENT it was ordered "that the motor vehicle registration number T. 776… be returned to the Applicant in the interim pending the hearing of thesubstantive application". This is thematter presently before this Court.

[5] The Applicant's Affidavit shows that in1996 he was the recipient of a car loan from the Crown, in consideration ofwhich the subject vehicle was assigned to the Crown by Bill of Sale dated the 9th September, 1996 registered on the 16th September, 1996. Monthly deductions in the sum of $416.61were made from the Applicant's salary and applied against the outstanding loan.On January 22nd, 1999 the Applicant's contract of employment came toan end. On the 25th January,1999 to August 2001 the Applicant continued in his employment as PersonalAssistant to the Attorney General and Minister of Home Affairs. On November 1st,2001 the Applicant was re-employed as a Research Assistant in the Ministry ofHome Affairs.

On or aboutSeptember 2001 the sum of $1,596.91, being approximately one third of a paymentin lieu of vacation owed to the Respondent, was applied by the AccountantGeneral to the outstanding car loan balance. This sum represented the equivalent of almost four (4) months of themonthly installments.

[6] By letter dated 2001-10-29 from thePermanent Secretary of the Ministry of Finance, in spite of the above, theApplicant was informed that he was two months in arrears of his loan paymentsand directed that if he failed to respond within fourteen (14) days of thereceipt of this letter the subject vehicle would be seized and sold. The Applicant replied by letter datedNovember 2nd, 2001, making three very pertinent points, namely, (1)that in view of the above-mentioned deduction his loan payments were not inarrears; (2) that the Applicant was entitled to a gratuity and a disputedvacation payment and by implication there were funds owed to him capable ofset-off by the Crown; and (3) that the Bill of Sale referred to above was nolonger valid, it having become void as a result of non-renewal. He howeverexpressed an intention to settle his indebtedness in spite of this fact.

[7] The Affidavits do not make clear whetherthe Ministry, on renewal of the Applicant's employment in November 2001,continued the monthly deductions from the Applicant's salary and it is assumedthat they were not.

[8] The Permanent Secretary in the Ministryof Finance, Mr. William Layne on the 17th day of April, 2003 filedan Affidavit in this matter largely agreeing and confirming the chronology ofevents deposed to by the Applicant. Inaddition thereto, Mr. Layne deposes at paragraph 17 of his Affidavit that.

> "The Applicant was paid gratuity for theperiod January 21, 1999 to January 20th, 2000 and for the period January 21st,2000 to January 20th, 2001 in accordance with the contract ofappointment."

[9] He further deposed that since at October2001 the Applicant was no longer employed as a Personal Assistant, heinterpreted the Public Officers Loan and Travelling Allowances Regulations tomean that the loan balance became immediately payable and the vehicle liable toseizure. No reference was made thereinto the fact that the Applicant was re-employed on November 1st, 2001as a Research Assistant in the Ministry of Home Affairs. No further communication having beenreceived from the Applicant, and on information received that the Applicant hadbeen paid all his entitlements, and further, on the mistaken belief that theBill of Sale was valid and subsisting, the deponent issued instructions to theChief Marshal to seize the vehicle.

[10] At the date of hearing Counsel for theRespondents advised the Court, that the Crown had conceded that the order ofthe Permanent Secretary to the Chief Marshal to seize the vehicle on theauthority of the Bill of Sale of September 9th 2001 was wrongfuland/or unlawful in view of the fact that the Bill of Sale was void fornon-renewal, contrary to the provisions of section 11 of the Bill of SaleAct. The Crown conceded and the partiesagreed the payment of damages totalling $6,397.34 made up of (1) car rental for4 weeks (2) towing of the vehicle from the court yard to Nassco (3) checkingthe steering alignment (4) checking gas pedal and reconnecting same (5) removalof scratches on the door and (6) mechanical assessment comprising thereplacement of shocks and the stabilizing bar.

[11] Counsel for the Applicant argues that thisis insufficient. He asks the Court tomake the declarations sought in the Application of March 15th 2002and in addition thereto compensatory damages in respect of the wrongful andunfair acts of the Respondents. Heargues that there is sufficient evidence of bad faith on the part of thePermanent Secretary to warrant an award by the Court for (1) exemplary orpunitive damages and (2) aggravated damages. He cited Belfield Bolden v. The Attorney General and Keith Sandiford etal v. The Public Service Commission and the Attorney General in support of thisargument. He argued that where damagesare at large (as in this case), they cannot be precisely calculated as in theBelfield Bolden case and in these circumstances the Court is entitled to takeinto account the motives and conduct of the Respondents. Where this conduct aggravates injury to theApplicant, then damages in money accorded to the applicant will correspondinglyincrease.

[12] The Court finds that the evidence of theApplicant fails to establish on a balance of probabilities the 'bad faith' ofthe Respondents. There is evidence ofbad judgment in not obtaining legal opinion on the point raised by theApplicant that the Bill of Sale was not valid. This is not, on a balance of probability, bad faith. The Applicant's claim for an award ofexemplary or punitive damages is rejected for this reason but more importantlybecause it was not

pleaded by the Applicant and the provisions of Order 18 rule8 (3) are clear:

> "A claim forexemplary damages must be specifically pleaded together with the facts on whichthe party pleading relies."

[13] I have declined to grant the orders soughtby Counsel for the Applicant on the grounds that at this stage and in view ofthe admissions made by the Respondents' counsel such orders would be merelyacademic and of no practical value.

[14] The sole issue for determinationtherefore, is whether the Applicant is entitled to damages over and above hisparticularized financial loss namely, in the words of the Applicant's Attorney,compensatory damages in money.

[15] Counsel for the Respondents argues thatthe Applicant can claim damages for provable financial loss only, and thatpayment of the agreed sum of $6,397.34 is the extent of his entitlement to"damages in money". Alternatively, itis argued that the measure of damages should be the same as damages fortrespass to a chattel in torts, which is for loss of use and damage to thechattel only.

[16] The Law

The Caribbean is developing its ownjurisprudence in this area and the English authorities are not analagous. At common law damages or compensatorydamages, as presently claimed for the Applicant, were not awarded by the Courtas the prerogative writs were only intended to quash or correct state action,rather than compensate the victim. InBarbados the enactment of the Administrative Justice Act Cap. 109 B hasprovided that in addition to the traditional remedies of certiorari,prohibition and mandamus the Court may grant:

> "…(d) a declaratory judgment;
>
> (e) aninjunction;
>
> (f) restitution or damages inmoney; or
>
> (g) an order forthe return of property real or personal."

It has in effect, imported into the publiclaw the private law remedies.

[17] There are several examples of an award ofdamages by the Barbadian Courts under the Administrative Justice Act ofBarbados. In Belfield Bolden v. TheAttorney General Civil Suit No. 905 of 1989, the Plaintiff claimed and wasawarded damages for his particularized and proven financial loss caused as aresult of the unlawful act of the Respondent. It is significant here, I think, that financial loss only wasparticularized and claimed. This was similarly claimed and found in Bovell v.Commissioner of Police et al Civil Suit No. 1622 of 1993 where in a judgmentdelivered by Waterman J. in 1995 the applicant police officer was awarded thefull amount of salary which he would have received had he not been improperlysuspended.

[18] Subsequent cases have challenged theargument for the Respondents that the measure of damages is only provablefinancial loss. In Brathwaite v. Fordeet al No. 1663 of 1991 the applicant therein sought damages for deprivation ofpersonal liberty, degrading treatment, unlawful assault, deprivation of property,arbitrary search of his property and illegal entry onto his property. Waterman J. who delivered his judgment inNovember 1999, on a finding that the Applicant suffered embarrassment, distressand inconvenience as a result of the incident, found that an award of $5,000.00was fair and reasonable. In Abed v. TheAttorney General et al No. 1312 of 1993, an applicant was illegally detainedand searched at the airport while waiting to board his plane. In his judgment delivered in 1999 WatermanJ. found on the evidence that the Applicant must have suffered embarrassmentand humiliation as a result of the incident and ruled in the circumstances thatan award of $9,000.00 in damages was fair and reasonable.

[19] In the well known case of Keith Sandiford,Tennyson Springer, Neville Millington and David McAllister vs. The PublicService Commission and the Attorney General, judgment for which was deliveredby Waterman J in 1998, the Court found on the evidence that the Applicantssuffered significant public humiliation and embarrassment caused by the acts ofthe Respondents. For this the Courtawarded the plaintiff Millington the sum of $50,000, and the others the sum of$45,000 each.

[20] The case for the Applicant herein is setout in his Affidavit in Support of Application filed on the 15th March, 2002. In it he deposes atparagraph 17 as follows:

> "Since the 7th of March whenmy vehicle was seized I have experienced inconvenience, hardship and loss. Both my

work life and my family life havebeen disrupted. I was without a vehicleon the morning of the 7th March. I was unable to take my youngest daughter to the Doctor for herscheduled vaccination and the appointment had to be re-arranged. There wasadded inconvenience and embarrassment in that I had to borrow money to hire avehicle. I am accustomed to taking mydaughter to school and going to see my ailing mother religiously every morningbefore coming to work and these commitments must be kept up. My car is also directly related to mywork."

[21] The Applicant's claim relates primarily toinconvenience, hardship and loss occasioned by the loss of use of his vehicleand he has been compensated by agreed damages of $6,397.34 inclusive ofre-imbursement of four (4) weeks car rental. The Applicant's circumstances are in no way comparable to thecircumstances of the Sandiford case as alleged by his counsel and certainlyless significant than the circumstances of Abed v. the Attorney General andBrathwaite v. Forde et al. For hisinconvenience and embarrassment, it appears to me appropriate that an award ofdamages of $5,000, is fair and reasonable in addition to the agreed amountswith respect to provable financial loss.

[22] The Applicant will have his costs to beagreed or taxed.

MargaretReifer

Judge of the High Court(Ag.)