

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

**HIGH COURT
Civil Division**

No. 290 of 2002

Between

HAYWOOD HAMBRICK

PLAINTIFF

-AND-

WOODSIDE PROPERTY MANAGEMENT LTD

DEFENDANT

**Before The Hon. Madam Justice Jacqueline A. R. Cornelius, Judge of
the High Court**

2013: December 04, 05 and 06

2014: November 04

Mr. Deighton Rawlins for the Plaintiff

Mr. Francis Depeiza of Messrs Carrington & Sealy for the Defendant

DECISION

Introduction:

- [1] This matter, one of some antiquity, first came before me on an application for case management in April 2013. It is not a case of any great complexity, so the delay in coming to trial is of some concern to me. It is a claim by the plaintiff, (“Dr. Hambrick”) an orthodontist, against the company which owned the building (“Woodside”) in

which he carried on his dental practice as a licensee. On 7th July 2000 after sixteen years of occupation, he was served a Notice to Quit by the Defendant. His claim is for damages for the removal, detention and conversion of various tools and items which it is alleged the defendant removed from the premises and has failed to return, or return of the items.

THE PLEADINGS

[2] The writ and statement of claim were filed on 18th February 2002. In it, Dr. Hambrick alleged that he was granted a licence in or about February 1986, in order to carry on his dental practice. He refurbished the premises at his expense, and outfitted it with with tools and items which included amongst other things patient records, ledger books, one high speed hand piece, one low speed hand piece, one pan x-ray machine, one sterilizer, one film processing machine and eight reception room chairs. It is alleged that all of these items were unlawfully removed on or about the 7th July 2000, the date of the termination of the licence, by the representatives of Woodside. He claims damages for the value of the said equipment, tools and/or items as at the date of their detention and or conversion and which approximate value was to be set out in the schedule to the writ and statement of claim. It was not.

[3] Woodside filed its defence on 4th December 2002. It admitted that from 1986 up to 7th July 2000, it permitted Dr. Hambrick to carry on his dental practice in their building under the name of **Hope Dental Clinic**. They denied that save for painting the building, Dr. Hambrick did any repairs, and that if he did so it was without their consent. They denied the removal, detention and conversion of any of the goods as claimed by Dr. Hambrick.

THE PLAINTIFF'S EVIDENCE

[4] In his two filed affidavits, the plaintiff deponed that he was a Doctor of Dental Surgery for 37 years. He specialized in orthodontics and his offices were located in Kansas City in the United States of America. He extended his practice to Barbados, Grenada, Dominica, Antigua and St. Lucia for more than 25 years. He stated that he furnished the office which he occupied as a licensee, with the items mentioned

above, by way of a loan from Barclays Bank. He submitted an exhibit of a handwritten list which he had submitted to the bank. He also submitted two invoices for equipment and a notarized letter from one Alex Rideaux who confirmed that he installed the X-Ray equipment on his behalf.

- [5] On cross examination, Dr. Hambrick was able to flesh out his story with some detail. He revealed that he came to Barbados in 1986 after meeting Dr. Norman Hope, a dentist, at an international conference. They became friends and Dr. Hope invited him to Barbados on holiday. When he visited, Dr. Hope was ill and he left contact details offering him help. Dr. Hope eventually contacted him and asked him to help with the practice. He realized that a number of patients had not been seen in years and he registered and came to help. He took over a great deal of Dr. Hope's orthodontic practice, including the practice in Antigua. Dr. Hope eventually died in May of that year.
- [6] Dr. Hambrick deponed that he found a pediatric chair, a hairdresser's chair and a regular chair when he came to the practice in 1986. This equipment was replaced.
- [7] In 1995, Dr. Hope's daughter, Camille, had finished dental school and the two of them agreed that they would purchase new orthodontic and dentistry equipment for the practice. They obtained a loan from Barclays Bank for \$150,000.00 for the purchase of the equipment to be used by both of them in the practice. Of the \$150,000.00 worth of equipment, he had none of the items.
- [8] Under re-examination, Dr. Hambrick deponed that between the period 1986 and when they received the loan, he never received compensation for his practice. Monies received were used to pay for the Hotel and for the Hope's (maintenance).

Evidence of Lynne Hambrick

- [9] Mrs. Hambrick is the plaintiff's wife. She stated that when they entered the building it was practically empty with the exception of chairs. She was present when the loan was discussed and also when the plaintiff was served with the Notice to Quit at home around 5pm on 7th July 2000. After being served, she felt the best thing to do was to go to the office and collect their items. They were only able to take

- 3 dental chairs and she denies removing any personal items belonging to Dr. Hope or the Assistant.
- [10] Mrs. Hambrick's affidavit evidence was much fuller than her oral testimony. She stated that the arrangement between the plaintiff and Dr. Camille Hope was that they were to jointly obtain a loan to purchase the equipment for the practice from Barclays Bank. The plaintiff was to pay installments for six months, then they would jointly pay until the last six months and thereafter Dr. Camille Hope would pay the final six months installments. The plaintiff repaid the entire loan. Dr. Camille Hope had relinquished her interest in owing the supplies and equipment in writing and this was presented to and accepted by the bank.
- [11] Mrs. Hambrick stated that on the date the notice was served they went to the practice and realized that almost everything had been removed and the locks were being changed. The only items which remained were an X-Ray machine, 3 Dentals Chairs, 3 chair side dental stools and 8 reception chairs. All of the items as recorded by the plaintiff had been removed along with all documents pertaining to the purchase of equipment.
- [12] A week after the incident, the parties agreed to meet at an office on the premises along with their then respective Attorneys. Mrs. Hambrick stated that the Hopes' verbally acknowledged that they had Dr. Hambrick's equipment and records and agreed to hand everything over if the plaintiff replaced one of the dental chairs. The chairs they removed were new so the plaintiff agreed to ship one of his used chairs from his offices in Kansas. The chair was shipped but the Hopes reneged on their verbal agreement.

Evidence of Lucy Pierre Corbin

- [13] Lucy Corbin deposed that she worked as a Chair Side Assistant for the plaintiff in Barbados and a number of other Islands. She was employed from 1987 through to 2000. On 7th July 2000, she left the office after 5 p.m. and left the plaintiff in the office. When she returned the following Monday, the office was empty save for the X-ray machine and the Developer.

- [14] Under cross examination by Mr. Rawlins, she stated that she was employed as an Orthodontic Assistant for thirteen years. After travelling around different Islands, she was the one who would put out the bills for the plaintiff to pay on the final day of work. She deposed further that the claimant would write a cheque to Barclays Bank monthly and the loan was to pay for the equipment in the office.
- [15] When Dr. Hope joined the office in 1996, the office had already been refurbished and new equipment installed. She had been back to the office last year (2012) and stated further that the 2 X-ray machines and the Developer were still there.
- [16] In her affidavit she stated that on the Monday morning when she returned to work the medical notes and equipment, chairs and other office essentials related to orthodontic treatment were removed save for the X-ray machine which was bolted to the walls. The filing cabinets which contained patient records and notes were empty.

Evidence of Pamela Hope

- [17] Pamela Hope is a Director of the company and was married to Dr. Norman Hope (deceased). She is the mother of Dr. Camille Hope. She deposed that she was familiar with the pre-1996 equipment and that the chairs at that time were her husband's. She stated that the plaintiff replaced the chairs and some other equipment but that her husband owned a compressor, a central suction, spatulator and autoclave, an X-ray machine and an Inter-oral X-ray. All of the new equipment was replacement equipment. She was present for the refurbishment and she assisted the plaintiff and Mrs. Corbin during the nine years they went through the Caribbean leading up to 1996-1997 when she left.
- [18] Mrs. Hope said that the plaintiff was never a tenant. The plaintiff came to assist her husband and took over the workings of the practice. No rent was discussed but he occupied the space that was there.
- [19] Under cross examination, she deposed that it was one of the other Directors of the company that made the decision to terminate the tenancy on the basis that no rent had been paid. The decision was not made by the Board of Directors but when she was informed the Notice had already been served.

- [20] Mrs. Hope gave further evidence that it was not agreed that her daughter Camille and the plaintiff would practice together; the office belonged to her father and she came back to practice in it. The assumption was that she (Camille) would work in her father's office as Dr. Hambrick came down every two months. Mrs. Hope stated that her daughter and the plaintiff got together and decided what chairs and equipment were needed and the plaintiff went and got the loan.
- [21] When questioned about who obtained the loan, Mrs. Hope said that she was not aware of the amount but was told that *they* were going to get a loan. She denied removing all of the personal files or anything else and stated that it was not correct that when she went to the office on 7th July, there was nothing there other than the X-Ray machine.
- [22] In her affidavit evidence, Mrs. Hope said that on the evening of 7th July 2000, it was reported to her that the plaintiff was at the premises with a mover and a van and was in the process of removing items from the property. She did not go to the premises but on the morning of 8th July 2000, she received a call from Mrs. Corbin informing her that the premises were empty. She had no knowledge of the whereabouts of any of the missing items of equipment or materials.

Evidence of Dr. Camille Hope

- [23] Dr. Hope is the deceased's daughter and a dentist by profession. She stated that she joined the practice in 1997 or 1998. She could not recall the amount of the loan but admits that she and the plaintiff did approach Barclays Bank for a loan. The loan was granted to both of them but she did not repay any. She stated that her father had equipment and the loan was used to purchase an X-Ray machine and not two X-Ray machines and a developer.
- [24] The X-Ray and developing machines were still there but she deposed that on 7th July 2000, whilst driving up the gap to her home, she saw a white truck loaded with office equipment leaving the premises. When she went into the office, it was completely empty and some of her personal things like her computer were gone.
- [25] In her affidavit she stated that she immediately telephoned her mother (Pamela Hope) and alerted her of the development. She had to refurnish the office for the continuity of her practice.

Issues

- [26] The task of this court is to determine whether there was any conversion of the items as alleged, and if so, what is the measure of damages and loss suffered by the plaintiff?

The Law on Conversion

- [27] Both Attorneys-at-Law have been singularly unhelpful to the Court in setting out the relevant law. It may be summarized in the following principles. Firstly, conversion is an act of deliberate dealing with a chattel in a manner inconsistent with another's right whereby that other is deprived of the use and possession of it. This was accepted in *Kuwait Airways Corp v Iraqi Airways Co (Nos. 4 & 5 [2002] UKHL 19; [2002] 2 A.C. 883 at 425*. Of the principle ways in which a conversion can be made, those relevant here are (a) when property is wrongfully taken or received by someone not entitled to do so (b) when it is wrongfully detained (c) when it is wrongfully misused or destroyed; and (d) when the defendant, without physically interfering with it, wrongfully denies access to it by the plaintiff.
- [28] Secondly, the Plaintiff must have a right to possession or immediate possession. It is not necessary to prove ownership, and indeed even an owner may not sue unless he either possesses or has the immediate right to possess.
- [29] Detinue, now abolished by the *Torts (Interference with Goods) Act 1977* in the United Kingdom (UK) but remaining in Barbados, lies at the suit of a Plaintiff having a right to immediate possession for a wrongful detention of his chattel. The wrongful detention is normally evidenced by the defendant's refusal to deliver it up on demand; the redress claimed is the return of the chattel or payment of its value, together with damages for its retention. Technically, conversion includes all the forms of detinue except that of a bailee who has lost the goods, and therein lay the reason for the 1977 abolition of detinue to remedy that omission. Barbados retains the old distinction.
- [30] Thirdly, the remedy for conversion lies only in damages, normally the value of the goods plus consequential loss (see *General & Finance*

- Facilities v Cooks Cars (Romford)* [1963] 1. W.L.R 644 at 649 per **Lord Diplock**. The remedy for detinue yields a judgment either for specific restitution, or delivery up of the chattel, or payment of its value as assessed at the date of judgment together with damages for its detention.
- [31] How then are the damages to be calculated? In theory, admits the learned textbook writers of the seminal text **Clerk and Lindsell on Torts 20th Ed.** (2010), conversion is no different from any other tort: the measure of damages is simply the loss suffered by the plaintiff. However, in practice, the measure of damages for deprivation of his goods is nearly always their market value. Normally, this market value is the market value of the goods at the time the defendant expropriated them. **Clerk and Linsell** (supra) points out that this is an arbitrary rule, not dependant on the plaintiff's loss.
- [32] In detinue however, the value of the goods is assessed at the date of judgment, when their return would have been ordered and not at the earlier time of refusal. If the goods decline in value between the dates of conversion and of judgment, the plaintiff may recover damages assessed by reference to the date of conversion, so preventing the defendant from profiting from his own wrongdoing (*Kuwait Corp v Iraqi* (supra)).
- [33] How is the value assessed? If there is a market price, the value of the goods is to be taken as that of the market price at the relevant time (*J. Hall Ltd v Barclay* [1937] 3 All E.R. 620). Where there is some doubt about the value of the chattel which has passed wrongfully into the hands of a defendant, there is authority in that he must either produce it or account for its non-production, otherwise it will be assumed against him that it was of the highest possible value. However, the learned textbook writers note, and I absolutely agree, that the courts are more likely to insist on proper proof by the plaintiff.
- Conclusions and findings on the evidence and law**
- [34] A number of issues must first be settled before this matter can be properly disposed of. Having seen and heard the witnesses, I prefer and accept the evidence of Dr. and Mrs. Hambrick. It is clear, coherent and without significant gaps or inconsistencies, except in

- relation to one major area, that of the quantification of his loss, which I shall deal with below. It is clear on the evidence that Dr. Hambrick came to practice here to help out an ailing friend and the informality of the agreement in my view showed a level of profound professional trust between the plaintiff and Dr. Norman Hope. The evidence of his wife and himself lucidly sets out the chain of events from the time he took over the practice, until the time he left the offices somewhat ignominiously.
- [35] His inability to prove precisely what tools and equipment existed in the practice at the time and what their value was at the time of the expropriation, is as I mentioned, a major failing. Contrary to Counsel for the plaintiff's suggestion, the law requires and thus the Court must insist on proper proof to aid in its determinations.
- [36] The evidence in support of the defendant left a lot to be desired. It was not very helpful in determining what exactly happened. The evidence of Dr. Camille Hope was simply that she saw a white truck leaving with equipment but no determination could be made as to who was driving the truck or indeed under whose authority the equipment and supplies were being removed. Mrs. Hope says she was not there at the time of the move and was informed by her daughter of what occurred. Indeed she had no idea that the plaintiff was served with a Notice to Quit until after service. The evidence of Mrs. Corbin was also not particularly helpful in determining what occurred.
- [37] The evidence of Mrs. Hambrick has remained unchallenged and in my view is very important in distilling the events as occurred. She deposed that the Hopes admitted they had the plaintiff's equipment and no witness has denied this statement, in fact, it has been soundly avoided. There is some credence that must be given to her assertion that Dr. Camille Hope relinquished her rights to any equipment purchased under the loan agreement with the plaintiff because Dr. Hope has admitted that she did not repay the loan.
- [38] In the circumstances, given the quality of her evidence I prefer the evidence of Mrs. Hambrick to that of the defendants.
- [39] It is noteworthy however that the defendant's director who was responsible for the issuance and subsequent service of the Notice to

- Quit was not called to give evidence. The person who changed the locks on the door was not called either and both of these parties might have been able to provide additional evidence to assist the court in its final determination.
- [40] In all circumstances therefore I find for the plaintiff in this matter.
- [41] Despite the obvious shortcomings of the presentation of his case, it has been proved on the balance of probabilities to the satisfaction of the court that the items described in the statement of claim were wrongfully detained and converted by the Defendants.
- [42] It remains to determine the damages awarded. The evidence with regard to the value of the items has not been forthcoming in a manner in which this court can accept. The Court is unable to agree with Mr. Rawlins that it can "estimate" the value, because although some mention has been made of the purchase price of some of the items of furniture and equipment, there has been no evidence properly presented of either the market value of the items, or the value of the items at the date of conversion or at the date of this judgment.
- [43] Where there is a finding that loss has been proved, but the actual amount of the loss has not been proved, it is open to the Court to make an award of nominal damages. In this jurisdiction, nominal damages in contract and tort range between \$1500.00 and \$5000.00, for example, in *Alleyne v the Attorney-General (unreported) High Court of Barbados Suit No. 1144 of 1998, Decision of 22 April 2005* the plaintiffs had instituted an action in negligence upon the accidental incineration of the bodies of their children, who had died in child-birth. In this case, the Court held that although the Plaintiffs had been unable to establish the quantum of psychiatric loss resulting from the Defendant's negligence, they were nonetheless entitled to the sum of \$5,000.00 as nominal damages. This case indicates the possibility and range of nominal damages in tort claims.
- [44] In the circumstances therefore, I make an award of damages in the amount of \$5000.00. The Claimant shall have his costs to be agreed or assessed.

Jacqueline AR Cornelius
Judge of the High Court