

**IN THE SUPREME COURT OF BELIZE A.D. 2018  
(CIVIL)**

**CLAIM NO. 383 of 2018**

**BETWEEN:-**

**BELIZE MARINE & SANDS CO. LTD.**

**CLAIMANT**

**AND**

**DAMIEN CHAMBERLAIN**

**1<sup>st</sup> DEFENDANT**

**KURT AUGUST**

**2<sup>nd</sup> DEFENDANT**

**Date:** 21<sup>st</sup> January, 2019 (oral judgment).

**Before:** The Hon. Madame Justice Griffith

**Appearances:** Mr. Andrew Marshellek S.C., Barrow & Co. LLP for the Defendants/Applicants;  
Mrs. Ashanti Arthurs-Martin, Balderamos Arthurs LLP for the Claimant/Respondent

Judgment in Short Form – Reasons upon oral delivery of judgment.

**The Claim**

1. The Claim is for a declaration of ownership and for damages, in respect of a fusing machine and its accessories/component parts which was allegedly removed from the Claimant's possession on February 15<sup>th</sup>, 2017. The machine was removed by the 2<sup>nd</sup> defendant as agent or on behalf of the 1<sup>st</sup> defendant. The Claimant made a demand for the return of the machine in March, 2018 via its attorneys. There was no response to the demand letter nor was the machine returned thus the Claimant instituted this claim in June, 2018. The defendants acknowledged the claim but failed to file a defence. The Claimant sought default judgment in terms to be determined by the Court. The Defendants had applied for an extension of time within which to file a defence, but were refused such permission on the 13<sup>th</sup> November, 2018.
2. With respect to the default judgment, this Court has recently ruled in **Arthur Saldivar vs John Briceno et al**<sup>1</sup>, that in a claim classified as one for 'any other remedy' under CPR Rule 12.10(4), the correct mechanism to seek default judgment is by way of an application supported by affidavit, for judgment in such terms as the Court may determine.

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<sup>1</sup> Belize High Court Claim No. 362.2018 para. 17

Given that the claim was firstly for a declaration of ownership of the machine and thereafter various remedies for damages, the claim was classified as one 'for any other remedy', thereby necessitating adjudication of the default judgment by the Court according to the statement of claim.

3. In addition to the declaration for ownership, the Claim in effect sought the following:-
  - (i) delivery up of the machine;
  - (ii) damages for 'wrongful interference' by the detention of the machine and for conversion of the machine to the defendants' own use;
  - (iii) In the alternative, damages for trespass from the date of removal on 15 February, 2017;
  - (iv) Interest and costs.

#### **Background** - Facts Pleaded in Statement of Claim

4. The 1<sup>st</sup> defendant is the former general manager of the claimant company, which carries out marine construction services. The 2<sup>nd</sup> defendant is a former employee of the claimant. The 1<sup>st</sup> defendant resigned from the claimant company in January, 2017, whilst the 2<sup>nd</sup> defendant was terminated in February, 2017 and is now employed by the 1<sup>st</sup> defendant. In April, 2015 the 1<sup>st</sup> defendant entered into an oral agreement with one William Lindo for the purchase of the machine in question, for the price of \$35,000. There was an initial deposit paid towards the purchase of the machine on 26<sup>th</sup> June, 2015 in the sum of \$3,500. Between September and December, 2015 the machine was transported to Orange Walk for repair. The claimant incurred a cost of \$4,315.90 for loading and transporting the machine to Orange Walk as well as repair costs.
5. In June, 2016 having not been paid the balance of the purchase price of the machine, the seller Mr. Lindo, instituted a claim against the claimant and 1<sup>st</sup> defendant jointly. The claim was for payment of the sum of \$31,500 being the balance owed for the machine with interest and costs. It was whilst the claim for payment of the balance of the purchase price of the machine was pending, that the defendants left the employ of the claimant. During that time also, the 2<sup>nd</sup> defendant on the 5<sup>th</sup> February, 2017, removed the machine from the marina without the knowledge or consent of the claimant. The machine has been in the custody of the 1<sup>st</sup> defendant since the time of its removal in February, 2017.

6. On 3<sup>rd</sup> November, 2017 judgment (in default) in that claim, was entered against the claimant herein, for payment of the sum of \$34,825 with interest thereon, in favour of William Lindo. Upon entry of judgment in therein, that claim in that matter was at the same time discontinued against the 1<sup>st</sup> defendant herein. In January, 2018 the claimant paid the sum of \$42,854 to Mr. Lindo's attorneys, representing the balance of the purchase price of the machine, interest and costs. On 27<sup>th</sup> March, 2018 by lawyer's letter, the claimant demanded the return of the machine along with damages for its unlawful retention and use. The letter threatened legal action without further notice for failure to comply with the demand. There was no response to the demand letter, the machine was not returned and the claimant instituted this claim in June, 2018.

### **Submissions**

7. Senior Counsel for the Defendants was present at the hearing of the application for default judgment and acknowledged that the Claimant was entitled to judgment as determined by the court on the face of the statement of claim. On the statement of claim however, Senior Counsel contended that the Claimant was entitled to ownership of the machine but to a value less the sum of \$3,500, as it was not clear from the statement of claim, who the parties to the contract for purchase were, or in what capacity the 1<sup>st</sup> defendant paid the deposit for the machine. Counsel for the Claimant accepted this contention and acknowledged that the deposit of \$3,500 would have to be credited to the 1<sup>st</sup> defendant. In relation to the damages recoverable, Senior Counsel adverted to the fact that the tort of 'wrongful interference with goods' for which damages was claimed, was not applicable to Belize, as it was statutorily created in the UK by the Torts (Interference With Goods) Act, 1977.
8. He further submitted (referring to Clerk & Lindsell on Torts),<sup>2</sup> that the tort of wrongful interference with goods covered an umbrella of specific common law torts against goods, which included detinue, conversion, and trespass. As this Act has not been enacted in Belize, Senior Counsel submitted that the claim had to establish one of those common law torts as opposed to wrongful interference with goods.

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<sup>2</sup> Clerk & Lindsell on Torts, 16<sup>th</sup> Ed. Cap. 22

Senior Counsel asserted that the claim sought remedies in respect of several of those varying torts against goods, and not all of them could be supported on the statement of claim, and more so, the claimant was obliged to make an election as to which one it was pursuing to judgment.

9. With specific reference to the statement of claim, insofar as the Claimant sought delivery up of the machine, senior counsel concluded that the claimant was alleging a cause of action in detinue, as such a remedy was only available on a claim for detinue. In this regard, senior counsel noted that the claim also sought damages for conversion of the machine and contended that a claim could not be maintained for both delivery up of the machine and damages for conversion. These observations notwithstanding, it was also submitted that of the three torts raised on the claim – trespass, detinue and conversion - the only one that could be established from the statement of claim was trespass; and even in relation to trespass, the damages claimed could not relate back to the removal of the machine, as the Claimant's ownership could not be established as at that date. Instead, the date from which any trespass could be found, would have to be from the date at which the Court declared the Claimant's ownership of the machine to have been established.
10. Senior counsel asserted that neither detinue nor conversion could not be established on the statement of claim, as both required the specific element of an unconditional refusal to return the goods to be proven; or in the case of conversion, proof that the actual use of the machine had been converted to the Defendants' benefit. Finally, it was submitted that the Claimant could not elect to recover the value of the machine if it still existed – the remedy was restricted to delivery up of the machine, or on the statement of claim, damages for trespass only. Counsel for the Claimant indicated that upon her application for judgment, she had abandoned the claim for delivery up of the machine and now sought only its value and damages for its wrongful detention. With respect to the submission that neither detinue nor conversion could be established on the statement of claim, Counsel for the claimant submitted that given the express written demand and failure to respond thereto, the Court was at liberty to infer the required unconditional refusal from the statement of claim and so ground the claim of conversion of the machine.

## Discussion and Analysis

### *Findings of fact*

11. The following findings of fact are made as arising from the statement of claim:-
- (i) The statement of claim does not establish the entitlement to ownership of the machine with reference to the contract for its acquisition made in February, 2015. This is because it is stated that the 1<sup>st</sup> Defendant paid the initial deposit of \$3,500 whilst the invoice generated upon payment of the deposit is in the name of the Claimant. It is found that the entitlement to ownership of the machine arising from execution of the contract is not attributable solely to the claimant. This conclusion is also assisted by an inference drawn from the fact that the claim by the seller for the recovery of the purchase price of the machine, was instituted against both the claimant and the 1<sup>st</sup> defendant (Annex 2 to statement of claim, Court Order Claim No. 343 of 2016 – Lake I Development Co. Ltd & William Lindo v Belize Marine & Sand Co. Ltd & Damien Chamberlain);
  - (ii) By reference to the attachment of the court order in claim no. 343 of 2016 however, it is found that the Claimant became entitled to ownership of the machine as at the date of judgment in that court order – being the 3<sup>rd</sup> November, 2017. This was the date on which the Claimant was adjudged liable for payment of the machine, and that fact, coupled with the agreement, thereby entitled to its ownership;
  - (iii) The terms of the court order in claim no. 343 of 2016 reveal that judgment against the claimant (the 1<sup>st</sup> defendant therein), was accompanied by a discontinuance of that claim against the 1<sup>st</sup> defendant Mr. Chamberlain (the 2<sup>nd</sup> defendant therein). Given that the claim for recovery of the purchase price was withdrawn against Mr. Chamberlain upon judgment being entered against this claimant, the Court finds that the 1<sup>st</sup> Defendant herein is to be imputed with knowledge of the claimant's ownership of the machine from the date of that judgment.
  - (iv) The claimant made a demand by lawyer's letter in March, 2018. The letter asserted the claimant's ownership of the machine and specifically demanded a return of the machine with 7 days, failing which the institution of legal proceedings for its return and damages. There was no response to that letter and no return of the machine.

## *Law and Application*

12. The Court acknowledges the creation of the tort of 'wrongful interference with goods' by the UK Torts (Wrongful Interference with Goods) Act, 1977. In Belize the underlying torts still exist, in addition to which detinue has not been abolished, as it has been in the UK. On the statement of claim, the court finds that the Claimant can establish a claim in trespass by reason of a wrongful retention of the machine. The operative date for the finding of the trespass however, would be the date from which the Claimant's ownership of the machine is established. This date is the date of judgment against him in claim no. 343 of 2016, which is the 3<sup>rd</sup> November, 2017. Additionally, as from the date of the demand for return of the machine in March, 2018, according to their respective elements, both torts of detinue and conversion could arguably be maintained. The written demand was specific and unconditional, the machine was in possession of the defendant at the time of the demand and the Defendant's refusal to return is properly inferred from the lack of response to the lawyer's letter and failure to return the machine.
13. The Court would however hesitate to find conversion, as there is no evidence of what the defendants' intention was in taking the machine nor the true reason for its retention. In relation to detinue, the tort is established by a clear refusal to return the machine being inferred, in the face of the express written demand by lawyer's letter, coupled with specified legal consequences for failing to return the machine within a specified time. Unlike conversion, the court need not concern itself as to the reason for the refusal, therefore the claim for detinue is considered properly established from the statement of claim. The Court has relied upon the two authorities of **General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd**<sup>3</sup> - and **Rosenthal v Alderton and Sons Ltd**<sup>4</sup> which provide useful guidance on the difference between the two torts as well as their historical development. Both of these cases were decided prior to the Torts (Wrongful Interference with Goods) Act, 1977.

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<sup>3</sup> [1963] 2 All ER 314

<sup>4</sup> [1946] 1 All ER 583

## Remedies

14. The claimant is firstly entitled to damages for the trespass found for wrongful retention of the machine, operative from the 3<sup>rd</sup> November, 2017, being the date the claimant became entitled to ownership of the machine. The measure of damages for such trespass is firstly premised on the fact that trespass is actionable per se, but where loss can be proven, for example, loss of use, the claimant is entitled to be compensated accordingly. Such damages will have to be assessed by the Court. The authorities cited above, (**General and Finance Facilities Ltd v Cooks Cars and Rosenthal v Alderton & Sons**) also provide guidance for the Court in respect of the remedy to which the claimant is entitled in respect of detinue, which is usually for the return of the goods or their value, to be assessed, plus damages for their detention. There is some degree of election that takes place in respect of whether a claimant seeks and/or is awarded the return of the goods plus damages for detention, or the value of the goods plus damages for their detention.
15. Counsel for the parties disagreed on how or rather at whose instance, that election is made. Counsel for the Claimant contends that as evidenced by Rule 10.10(1(c), a claimant has a choice as to which remedy to elect. Counsel for the defendants on the other hand contends that as a rule of procedure, the Claimant is not given a substantive right to elect any of the three remedies therein stated. The entitlement to the remedies therein is dependent upon the particular cause of action that the claim in respect of goods was based on. Therefore, this being a claim for detinue, the claimant is obliged to accept the return of the machine, as the machine still exists and is not entitled unless the defendant elects to so offer, to claim for the value of the machine in lieu of its return. On this issue, the Court finds the manner in which the Rule is set out, to be reflective of the legal principles applicable to the remedies for respective torts against goods.<sup>5</sup> For example, the action for conversion entitles a claimant for pecuniary damages only, whilst the action in detinue entitles a claimant to a return of the goods or their assessed value, and additionally in either case, damages for the wrongful detention of the goods.
16. With respect to the remedy for detinue however, it is found from the dictum in **General & Finance Motors**<sup>6</sup>, that it is the defendant who is entitled to elect whether to return the goods or to pay their assessed value and this stems from the historical development of

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<sup>5</sup> General and Finance Facilities Ltd v Cooks Cars (Romford) Ltd supra per Diplock LJ @ 318-19.

<sup>6</sup> Ibid

the law whereby it was not until the enactment of the Common Law Procedure Act, 1854, that a claimant was afforded a right to seek a return of his goods. In light of those principles, the choice of remedy in Rule 12.10(1)(c) is really not based upon the claimant's preference, but upon the particular cause of action being pursued and its available remedy. The torts of conversion and detinue do overlap, and a claimant can be faced with a choice of being entitled to pursue either. However, if as is the instant case, the Court has found that the cause of action proved on the statement of claim is detinue as opposed to conversion, the remedy lies in the delivery up of the goods, or payment of their assessed value, in addition to damages for their wrongful detention. However it is the Defendants in this case, who have the right to elect whether to return the machine, or to pay its assessed value. The damages for wrongful detention are payable regardless of which of those two options is selected by the Defendants.

### **Disposition**

17. Judgment in default of defence is granted to the Claimant against the Defendants, in the following terms:-
  - (i) The claimant is declared the owner of the fusing machine (with component parts) with effect from the 3<sup>rd</sup> November, 2017;
  - (ii) The Claimant is awarded damages for trespass by means of the wrongful retention of the machine, such damages to be assessed for the period 3<sup>rd</sup> November, 2017 to the 2<sup>nd</sup> April, 2018;
  - (iii) The Claimant is entitled to the return of the machine or its value to be assessed, as well as damages for its detention, for the period 2<sup>nd</sup> April, 2018 to the date of assessment;
  - (iv) Prescribed costs are awarded to the Claimant in accordance with Schedule C of Rule 64, being the rate of 60% of the damages as assessed.
  - (v) Statutory interest upon the award of damages and costs.

**Dated the 28<sup>th</sup> day of January, 2019**

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**Shona O. Griffith**  
**Supreme Court Judge.**