

IN THE SUPREME COURT OF BELIZE, A.D. 2019

CLAIM NO 757 OF 2019

BETWEEN

(VICTOR L BRYANT & CO. LTD

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(AND

(COMMISSIONER OF POLICE

(ATTORNEY GENERAL OF BELIZE

CLAIMANT

1ST DEFENDANT

2ND DEFENDANT

Before: The Honourable Justice Westmin R.A. James (Ag)

Date: March 2021

Appearances: Mr Darrell Bradley, Attorney-at-Law for the Claimant

Ms Kimberly Wallace, Crown Counsel and Mr Jorge Matus Crown Counsel
for the Defendants

JUDGMENT

1. The Claimant having received leave to file for Judicial Review on 12th November 2019 and filed Fixed Date Claim Form against the Defendants on 2nd March 2020 for the following reliefs:

(1) A declaration that the First Defendant breached the Claimant's right to natural justice and acted ultra vires when the First Defendant purported to indefinitely revoke or suspend the Claimant's gun dealer's license without due process, including without a fair hearing and by acting unfairly towards the Claimant, and by failing to properly conclude the matter of the revocation of the Claimant's gun dealer's license and acting with inexcusable delay to deal with the Claimant, including by failing to notify the Claimant of an actual revocation or cancellation and by failing to provide proper reasons or grounds for the Claimant's revocation and by failing to afford the Claimant a fair opportunity to exculpate itself so as to restore the gun dealer's license.

(2) A declaration that the First Defendant acted prematurely, unlawfully and in breach of natural justice by confiscating the Claimant's entire supply of firearms and ammunition, which included twenty-eight firearms of different calibres and forty-two thousand rounds of ammunition and thereby closing down the

Claimant's firearm business, without first determining the issue of the revocation of the Claimant's gun dealer's license and without giving due notice to the Claimant, and without properly hearing the Claimant, and that these actions constitute, inter alia, wrongful and tortious interference with business, for which the Claimant seeks damages.

(3) A declaration that the First Defendant acted unlawfully and in breach of natural justice by acting with inexcusable delay to deal with the revocation of the Claimant's gun dealer's license, including by not properly handling the revocation and by not actually making a decision to revoke the Claimant's gun dealer's license but nonetheless still confiscating the entire supply of the Claimant's firearms and ammunition and preventing the Claimant from operating as a gun dealer, thus leaving the Claimant in abeyance as to the status of his gun dealer's license.

(4) Certiorari quashing the decision or purported decision of the First Defendant to revoke the Claimant's gun dealer's license and to confiscate the entire supply of the Claimant's firearms and ammunition.

(5) A declaration that the Claimant has a legitimate expectation to the continuation of, or renewal of, the Claimant's gun dealer's license in force beyond the year 2019, including to have its gun dealer's license renewed, as it has been since 1985.

(6) An order of mandamus directing the First Defendant to restore or renew the Claimant's gun dealer's license, which is License No. 16/2019, and to permit the Claimant to continue in the business of a gun dealer under its license.

(7) Damages for the First Defendant's wrongful actions and damages for tortious interference with business.

(8) Costs.

2. At the time of hearing of this case the Claimant's gun licence was restored in March 2020 and so reliefs (6) was no longer relevant to these proceedings.

Factual Background

3. The Claimant was a gun dealer in Belize since 1984 and from 1984 to 2019 the Claimant applied for and successfully obtained a gun dealer's license issued by

the First Defendant under the Firearms Act, Chapter 143 of the Substantive Laws of Belize, Revised Edition 2011.

4. The Claimant's business, situated at No. 1509 Lake Independence Boulevard in Belize City, was burglarized at around 4:30 a.m. on 12 February, 2019, and nineteen firearms and 2,750 assorted rounds of ammunition were stolen. These items were recovered by police within a short time after the incident on the same day of the burglary.
5. On the following day, 13 February, 2019, the First Defendant wrote to the Claimant relative to the burglary which took place on the 12th February, 2019, the letter stated:

“...

Initial investigations revealed that three male persons entered the business premises where they granted access through a zinc wall located on the northern section of the said building, breaking the plywood door making an opening. Two of the male persons entered the building where they searched the store. The male persons then made their way to a warehouse located on the eastern side of the building, where they gained access to a safe that was secured by a metal door with one padlock.

They then made off with several firearms and ammunition towards the Holy Emmanuel Boulevard.

Information also revealed that on Friday February 8th 2019, an attempt was made to break in to your building, for which you made no improvement to your security mechanism.

On the 12th day of February, an inspection was conducted where it revealed that (19) assorted firearms were recovered by the police, along with (2,750) assorted rounds of ammunition as a result of the burglary at your establishment.

As a result of an investigation conducted, the Belize Police Department have decided to take custody of (28) twenty eight additional firearms of different caliber and (42,300) forty-two thousand, three hundred rounds of assorted ammunition until further notice.

In view of the above you are hereby required to give reason why your license should not be revoked in accordance with; Section 26 of the Firearms Act, Chapter 143 of

the Laws of Belize, Revised Edition 2000 where states "The Commissioner of Police may in his discretion revoke any license granted under this act...(g) In any other case, if there is some other fit and proper cause." In the interim, your firearm remains in police custody. (emphasis mine)

7. The letter advised the Claimant that he had 7 working days after the receipt of the letter and any failure to respond by the specified time may result in a decision taken without the benefit of his contribution in this regard.

6. The Claimant wrote to the First Defendant the following day on 14 February, 2019, setting out reasons why the Claimant's license should not be revoked. The Claimant's Mr Phillip Gallaty Jr. in his letter outlined previous burglaries at his establishment in various locations where they were able to steal liquor, cigarettes and cosmetics. He said from 2003-2016 when he was at Northern Road attempts were made to enter that building but the burglars were only able to steal diesel fuel and battery for the generator. He said that that was the same security that was at the location. He went on to say that in burglary the day before the burglars succeeded in tearing out the fire escape, a metal door incorporated into the design of the building to blend with the aesthetics of the steel wall.

7. He then outlined the steps that the company was going to take to improve security at the premises. He indicated that he was currently building a heavy-duty solid steel door to replace the metal door. He also indicated that they were installing expanded steel panels in the interior of the warehouse that should prevent any penetration of the same, a laser screen motion detector connected to a siren and flashing emergency light was also to be installed. The concrete room where the guns are stored was to be reinforced with three in frame deadbolts and that the caretaker was then assigned as night watchman to patrol the premises at night. He indicated that the improvements should be fully functional within a week, at which time they would invite the police to inspect the premises. The Claimant seemingly believing that their licence was revoked/suspended ended the letter asking for a reinstalment pending approval of their security improvements.

8. Just about a month later on March 19th 2019 the Claimant wrote to the First Defendant relating to the security measure, inspection and inventory. The Claimant said

“We wish to inform you that we have added the security measures suggested to us and are ready for inspection. We really hope to get this done as soon as possible. The holding of our inventory has severely impacted our sales, cash flow and ability to pay our bulls. We are in some distress because of this. We would appreciate your prompt attention and the return of our inventory and our business.”

9. There was no reply by the First Defendant to this letter. On 9th August 2019 the Claimant’s Senior Counsel Mr Hubert E Elrington SC acting on its behalf wrote to the First Defendant. In that letter the Claimant’s Attorney indicated that the he and the First Defendant had an informal interview that morning. The Claimant’s Attorney stated:

“I have spoken with my client Mr Phil Gallaty. He understands fully how essential it is for a license holder to take absolute care to ensure that arms and ammunition are kept in a repository that cannot be breeched[sic] and he acknowledges that this facility was less than secure at the time it was breached. He asked that you accept his apology for this lapse and gives you his assurance that it will never recur. He has taken steps to make his business place breeched proof, but if on inspection the Police wants him to put in additional security features he will gladly do so. I have said to him that you are prepared to allow him to continue to hold his license and to continue to deal in Arms and Ammunition on the above conditions. He has asked me to express to you his gratitude and to give you his assurance that he will not let you down again.”

10. 29th October 2019 the Claimant’s new Attorney-at-Law wrote to the First Defendant. In that letter the Claimant’s Attorney-at-Law indicated that since the First Defendant’s initial letter, he has not resolved the matter and so the Claimant still had a valid gun dealer’s licence. He went on to deal with the confiscation of

the firearms. He stated that the Claimant has maintained the same or better standards than competitors in the market and the Claimant was being signalled out for targeting and this essentially closed that part of the Claimant's business resulting in financial loss. The Claimant's Attorney thereafter requested the return of the firearms and ammunition and restore his gun dealer's licence as soon as possible.

11. The Claimant's Attorney requested a meeting with the First Defendant and indicated that the Claimant was prepared to install other safety requirements that may be condition by the First Defendant to lift his suspension.
12. The First Defendant in his affidavit said that on 2nd November 2019 the Police Department and the Customs and Excise Department carried out an inspection at the Applicant's premises to verify the safety mechanisms put in place by the Claimant for the gun licence to be restored. He testified that upon the conclusion of the meeting it was agreed that the confiscated firearms and ammunition would be returned to the Applicant once the following conditions were met.

(1) The installation of cameras with night vision capabilities in and around the warehouse

(2) The installation of an alarm system with remote connection off compound

(3) The door to the warehouse must be changed from a single panel to a reinforced door

(4) The warehouse must be a fully concrete structure and not zinc as it is currently made of

(5) The lighting of the compound must be adequate so as to deter intruders

(6) Armed security guard must be in place at the premises at all times

13. The First Defendant in his affidavit said that the firearms and ammunition remained in the custody of the police department and the Applicant's license remained suspended until the Applicant is able to satisfy the conditions. The First Defendant indicated that there was a subsequent inspection on the 26th November 2019 at the Claimant's premises. The First Defendant testified that the "*Claimant did not inform of the implementation of the suggested recommendations*" and that it was

“up to the Claimant to ensure that all those conditions were satisfied before his license could have been reinstated.”

14. The Claimant applied for a renewal of his Gun Dealer’s Licence for 2020 and on 31st December 2019 the Claimant’s Gun Dealer’s licence would have expired. In letter dated 31st December 2019 to the Claimant the First Defendant wrote the Claimant relative to a renewal of the Gun Dealer’s Licence and the return of the confiscated firearms.
15. The First Defendant stated in the letter that it was agreed between the Police and Customs Departments personnel, that the firearms would not be returned until certain conditions are satisfied in respect to the security and storage of firearms and ammunition. The conditions were set out in the letter and it went on to state that *“[o]nce the conditions are put in place you may call on the Dangerous Goods Desk and this Headquarters so as to arrange a further inspection prior to the return of the firearms and the subsequent renewal of your Gun Dealer’s License.”*
16. By letter dated 16th January 2020, the Claimant’s Attorney-at-Law wrote to the First Defendant relative to the renewal. The letter indicated that the Claimant had no problem with complying with the conditions 1-6 in the letter dated 31st December 2019 and in relation to condition 6 which was 24 hr licensed and armed security. The Claimant’s Attorney indicated that they hired a soon to be licensed armed security guard that lives on premises, and he works from 5pm-8am. It was indicated that the person was live on premises guard and so satisfactorily comply with condition 6. The letter asked that would await communication regarding any follow-up inspection and asked to be advised in relation to condition 6.
17. The First Defendant testified that subsequent to that letter another inspection was done of the Claimant’s premises in which all conditions were satisfactorily met and the Claimant was informed that his application for renewal of his Gun Dealer’s License had been approved.

18. By letter dated 20th March, 2020, after the commencement of litigation, the Claimant was informed that *“his application for renewal of his gun dealer’s license had been approved.”*

19. The Claimant alleges that the action of the First Defendant caused a shutdown of his business and as a result he suffered serious financial damages.

Whether the First Defendant had the power to suspend/revoke the Claimant’s Gun Dealer’s Licence.

20. Section 26 of the Firearms Act

The Commissioner of Police may in his discretion revoke any licence, certificate or permit granted under this Act:

- (a) if, in the case of a licensed gun-dealer, he is convicted of an offence against this Act or of an offence against the Customs Regulation Act, Cap. 49;
- (b) if he is satisfied that the holder thereof is of intemperate habits or of unsound mind, or is otherwise unfit to be entrusted with such firearm or ammunition as may be mentioned in the licence, certificate or permit;
- (c) if the licence holder is convicted of any crime of violence to the person;
- (d) if the licence holder is convicted under any of the following provisions, namely, paragraphs (xvi), (xxii) and (xxiii) of subsection (1) of section 3, paragraph (xxviii) of subsection (1) of section 4 and section 14 of the Summary Jurisdiction (Offences) Act, Cap. 98;
- (e) for non-payment of fees;
- (f) if the licence holder is or becomes a prohibited immigrant for the purposes of the Immigration Act, Cap. 156; or
- (g) in any other case, if there is some other fit and proper cause.

21. The Claimant’s submission on liability was that there is no authority given to the First Defendant, by section 26 or any other part of the Firearms Act, to suspend a Gun Dealer’s Licence.

22. The absence of an express provision to suspend is not necessarily fatal to the existence of such a power. The First Defendant may be the recipient of an implied power to suspend.

23. The Interpretation Act section 31(3) states:

....

Where an Act confers a power to make any subsidiary legislation or do any act, the power shall, unless the contrary intention appears, be construed as including the power exercisable in the like manner and subject to the like conditions, if any, to amend, vary, rescind, revoke or suspend such subsidiary legislation, or to abstain from doing the act.

24. The section makes it very clear that where a power granted by statute to do an act that power includes the power to amend, vary, rescind, revoke or suspend or abstain from doing that act. I disagree with the argument by the Claimant that revoke or suspend only applies to subsidiary legislation. The section applies to both subsidiary legislation and a power conferred by legislation and abstain can only apply to an act and not subsidiary legislation.

25. In the licencing context it has been held that a power may be implied where the alleged implied power may properly and reasonably be regarded as incidental to the relevant express power: *AG v The Great Eastern Railway Company (1880) 5App Cas 473*. It has been held that concomitant with the power to grant the licence is to be the implied power to suspend: *R v Gambling Commission [2007] All ER (D) 392*.

26. The Claimant's submission however has some merit. In a recent decision of the Privy Council between *Minister of Energy and Energy Affairs v Maharaj and another [2020] UKPC 13*, the Privy Council evaluated whether suspension could be included in the Minister's right of revocation. The appellants each owned and operated a petrol service station business. In 2010, the respondent Minister decided that the terms and conditions of licences for retail marketing of petrol needed to be reviewed. From that time, the Minister ceased to issue new licence documents. However, service station operators, including the appellants,

continued to pay their annual licence fees to the Minister. The Minister issued receipts acknowledging the payments, continued to carry out inspections and allowed the operators to continue trading as before.

27. In November 2012, an unannounced inspection was conducted at the first station. At the end of the inspection, the officials ordered the close of the station and security guards were put in place to enforce the closure. In December, at the end of an inspection of the second station, the senior official present ordered the close the second station. Since then, the appellants had been denied access to their stations. The appellants commenced judicial review proceedings, claiming that the suspension of the operation of the stations had been tantamount to suspension of their licence or revocation of the licence. They claimed that the Minister had no power under the Petroleum Act (Act 46 of 1969; Chapter 62.01) (Petroleum Act) to suspend or revoke their licence. They sought relief, including a declaration that the decision to suspend or revoke their licence was illegal, void and of no effect, an order of certiorari to quash the decision, an order of mandamus to compel the Minister to reinstate the licence, and damages.

28. The Minister submitted that he had power to suspend the appellants' licences on four bases: (i) by implication from his general powers under the Petroleum Act, (ii) because section 45(3)(b) of the Interpretation Act imports such a power into the Petroleum Act, (iii) because the appellants' de facto licences are by virtue of section 17(1) and (2) of the Petroleum Act to be taken to include a power of revocation by the Minister for breach of their terms and conditions, and such power of revocation includes by necessary implication a power of suspension when a breach of the terms and conditions is suspected by the Minister on rational grounds, or (iv) because section 33(1) of the Petroleum Act confers a power of suspension on the Minister. The Privy Council upheld the reasoning of Gobin J at first instance in relation to her ruling that the Minister had no power to suspend their licences and overturned the Court of Appeal.

29. The Privy Council stated:

“51. As regards point (i), the general administrative power of the Minister under section 5(1) of the Act is stated to be subject to the other provisions of the Act.

*Sections 17 to 22 of the Act set out a special regime to deal with allegations of default in relation to a licence granted under the Act and how matters of dispute in relation to such allegations are to be addressed. This group of provisions constitutes a *lex specialis* for that subject matter which is incompatible with any general power of suspension for the Minister derived from section 5(1) or otherwise.*

...

*56. In the Board's judgment, similar reasoning provides the answer to the Minister's point (ii), based on section 45(3)(b) of the Interpretation Act. That provision sets out a general rule for implication of terms in any statute or other form of written law, which by virtue of section 2(1) of that Act is excluded where a contrary intention appears from the specific statute (ie the relevant "written law") in relation to which it is sought to be implied. The *lex specialis* nature of the regime in sections 17 to 22 of the Petroleum Act demonstrates such a contrary intention. It would be inconsistent with that regime to construe the Petroleum Act as including a general power for the Minister to suspend a licence for petroleum operations to operate alongside it.*

...

57. The Board cannot accept the Minister's contention (point (iii) above) that a power of revocation of a licence imports a power to suspend it as well. A power of suspension according to the discretion of the Minister is different in kind from a power of revocation pursuant to the Act. The former cannot be regarded simply as a lesser type of the latter in order to say (as Mr Roe seeks to do) that the greater necessarily includes the lesser. If the Minister exercises a power of revocation under section 17 for breach of the terms of a licence (ie a case within section 17(2)(c)), the licensee is entitled under section 18(1) to have recourse to arbitration to seek to establish that the revocation was not justified and to claim reparation pursuant to section 22(2). In such a case the licensee could show that the revocation was not justified by showing that there had not in fact been a breach of the terms and conditions of the licence, so that section 17(2)(c) did not apply. By contrast, the Minister's submission is that he has a power to suspend a licence, thereby depriving the licensee of the benefit of it for the period of the suspension, merely on the basis that the Minister suspects that there has been a breach of the terms and conditions without being able to prove that there has been, and without the licensee being able to have recourse to the remedial regime laid down in sections 18 and following of the Act. The general law of contract also provides an analogy which supports the appellants' submissions on this point: a right for an innocent party to rescind a contract on the grounds of repudiatory breach by the other party does not include a right to suspend the contract, which is a very different kind of right.

58. The Minister's submission based on section 33(1) of the Act (point (iv) above) was a last minute thought of Mr Roe, raised by him with Mr Knox on the evening

before the hearing before the Board. It had not been mentioned in the courts below. However, it is a pure point of law and the Board gives permission to the Minister to raise it.

59. The Board cannot accept this submission of the Minister. Section 33(1) draws a clear distinction between a licence, on the one hand, and any “permission, consent or authority granted under this Act” (which may include permission, consent or authority granted under a licence under the Act) on the other. It is only in relation to measures in this latter class of case that section 33(1)(b) provides that any of them may be revoked or varied by the Minister. It does not provide for a power of revocation, variation or suspension of the licence itself. The relevant provisions in respect of a licence are those in sections 17 to 22 of the Act. This interpretation is reinforced by the terms of section 33(4), which provide that some form of document may be issued as evidence of the giving of permission, consent, authority or direction, whereas the grant of a licence is dealt with elsewhere in the Act and the Regulations and is already assumed in the relevant provisions to have a documentary form. Section 33(4) would be redundant in relation to a licence, which indicates that section 33 is not concerned with licences at all, save for making it clear that the powers set out in section 33(1) may be excluded by the terms of a licence.”

30. There are serious differences between the legislative scheme for a Petroleum licence in Trinidad and Tobago and the legislative scheme of a gun licence in Belize that would make that authority not as persuasive in this situation.

31. Firstly, the legislative scheme in that case made it clear that the licence itself should stipulate appropriate sanctions in case of failure by a licensee to fulfil the obligations undertaken by him, including (if thought appropriate) a power of suspension. If the Minister did not include any power of suspension in the licence, there is no scope to imply a general power of suspension arising outside the licence. Secondly, section 17(6) sets out a single express power of suspension in relation to a licence, using the phrase “temporarily discontinued.” It was a power which only arises in a specific defined circumstances and power was exercisable by the President, not the Minister. Thirdly, section 18(1) of the Act, and the subsequent provisions which regulate arbitration, provide for a specific form of relief in closely defined circumstances in cases of revocation. It was therefore this carefully laid out remedial scheme that was not consistent with there existing alongside it a vague and essentially unregulated power for the Minister

to suspend a licence in undefined circumstances. Finally, the existence of avenues in the general law to take action in urgent cases where there is a perceived risk of harm means that it is not necessary to imply a wide power for the Minister to suspend licences into the Act.

32. There are no such limitations contained in the Firearms Act which restrict the grant of a gun licence or the revocation of it. The grant of a gun licence has been considered by the Court as a privilege not a right and a Commissioner of Police has a wide discretion over the grant of such a gun licence: see *Burroughs v Katwaroo (1985) 40 WIR 287 at 301; Claim No 312/2018 Darrel Usher v COP (Belize) per Arana J*. The Firearms Act gives the Commissioner of Police rather wide discretion and so distinguishable from case before the Privy Council in *Minister of Energy Affairs (supra)*.
33. I however do not believe that I have to decide that issue since I do not hold that the First Defendant suspended or revoke the licence in February 2019. The letter from the First Defendant never mentioned any suspension. The letter only asked the Claimant to provide reason why his licence should not be revoked under section 26(g). At this point the Claimant's gun dealer's licence was not revoked and I do not find there is enough evidence to suggest anything otherwise.
34. The Claimant argued that the removal of the guns by the police was evidence that the licence was suspended at that time. I do not agree, the letter specifically spoke to why the guns and ammunition was being detained. The First Defendant stated in his letter that it was a result of the investigation conducted by the Belize Police Department about the burglary and the attempted burglary that they decided to take custody of the additional firearms and ammunition until further notice. This was not as a result of any suspension or revocation but rather about security of the guns and ammunition as shown in the subsequent correspondence. The detention of the firearms and ammunition will be considered later on in this judgment but suffice to say at this stage that it was not as a result of any purported suspension or revocation of the Claimant's Licence.

35. The first time the term suspension was mentioned was by the Claimant's Attorney-at-Law in its letter dated 29th October 2019. The Claimant's first Attorney's letter dated 9th August 2019 stated after meeting with the First Defendant he acknowledged that the First Defendant was prepared to allow him to continue to hold his license and to continue to deal in Arms and Ammunition. There was no evidence denying this. The letter of 29th October 2019, the Claimant's new Attorney-at-Law wrote to the First Defendant and indicated that since the First Defendant's initial letter, he has not resolved the matter and so the Claimant still had a valid gun dealer's licence. The Claimant's Attorney thereafter requested the return of the firearms and ammunition and restore the gun dealer's licence as soon as possible. The Claimant's Attorney at Law also requested a meeting with the First Defendant and indicated that the Claimant was prepared to install other safety requirements that may be condition by the First Defendant to lift his "*suspension.*"
36. The First Defendant only in his affidavit said that on 2nd November 2019 the Police Department and the Customs and Excise Department carried out an inspection at the Applicant's premises to verify the safety mechanisms put in place by the Claimant for the gun licence to be "*restored.*" He testified that upon the conclusion of the meeting it was agreed that the confiscated firearms and ammunition would be returned to the Applicant once the following conditions were met. The First Defendant in his affidavit then goes on to say that the firearms and ammunition remained in the custody of the police department and the Applicant's license remained suspended until the Applicant was able to satisfy the conditions agreed to.
37. In cross examination the First Defendant agreed with the Counsel for the Claimant that up until the expiration of the licence on 31st December 2019 he made no determination on the revocation. The First Defendant said that he was waiting on an Inspector's Report from Mr Ramirez. The First Defendant further in cross examination also said that he did not suspend the firearms licence, the firearms were removed because it was not safe to be left at the Claimant's premises.
38. The Defendant never informed the Claimant that there was any suspension or revocation of his licence. Further, as late as the 31st December 2019, the First

Defendant was writing about a renewal not applying for a new licence or reinstatement of a suspended licence.

39. I therefore have come to the conclusion that when the First Defendant wrote to the Claimant in February 2019 and thereafter there was no revocation or suspension of the Claimant's licence.

Whether the Claimant was given the right to be heard

40. The Claimant alleges that the First Defendant breached the Claimant's right to natural justice and acted ultra vires when the First Defendant revoked or suspend the Claimant's gun dealer's license without due process, including without a fair hearing and by acting unfairly towards the Claimant. As I held above there was no revocation or suspension of the Claimant's licence but I do hold that the Claimant was given an opportunity to be heard relative to whether a revocation should take place.

41. In *Narayansingh (Barl) v Commissioner of Police (2004) 64 WIR 392*, the Privy Council held that while there was no right of appeal against the decision of the Commissioner of Police to revoke the appellant's firearm licence, fairness required that the Commissioner adopt some procedure, whether in writing or by oral hearing, to enquire into the facts, and giving the appellant an opportunity to be heard.

42. The decision of the Court of Appeal of Trinidad and Tobago in *Burroughs and Another v Rampargat Katwaroo* (1985) 40 WIR 287, was approved by the Privy Council in *Naraysingh (supra)*. There, the Court of Appeal held that although there was no express or implied provision in the Firearms Act requiring the commissioner to allow a licence holder a formal hearing before revoking his licence, the exchange of correspondence between the applicant and the commissioner whereby the applicant 'appealed' to the Commissioner after revocation of the licence, was a sufficient hearing for the purposes of the Act. This was also held locally in Claim No 312 of 2018 *Darrel Usher v Commissioner of Police (supra)*.

43. The evidence is that on 13th February, 2019, the First Defendant wrote to the Claimant relative to the burglary which took place on the 12th February, 2019, and stated "*in view of the above you are hereby required to give reason why your license should not be revoked in accordance with; Section 26 of the Firearms Act, Chapter 143 of the Laws of Belize, Revised Edition 2000 where states "The Commissioner of Police may in his discretion revoke any license granted under this act...(g) In any other case, if there is some other fit and proper cause."* (emphasis mine)
44. It was the Claimant who in his response who outlined the steps that the company was going to take to improve security at the premises which the Claimant believed would have been fully functional within a week, at which time they would invite the police to inspect the premises. The Claimant never did invite the police to inspect within a week. The Claimant wrote to the First Defendant just over a month later on March 19th 2019 informing the First Defendant that they have added the security measures suggested and are ready for inspection. The Claimant asked for the return of the inventory. There was no mention of any revocation of any licence.
45. The First Defendant met with the Claimant's Attorney on 9th August 2019 and later inspected the Claimant's premises in November 2019 where again there was agreement between the parties that the Claimant was to make certain changes and the Defendant would return the firearms and ammunition.
46. I am satisfied that the Claimant was informed of the claims made against him in a timely manner, and the Commissioner gave the Applicant a chance to respond which the Claimant did and so the Claimant was given an opportunity to be heard before any decision on revocation was made.
47. As I have said previously there was no revocation of the Claimant's licence but the Claimant was given an opportunity to be heard.

Removal of the guns and ammunition

48. The Claimant also challenges the removal of the guns and ammunition from the premises of the Claimant by the police.
49. The Claimant alleges that the First Defendant acted prematurely, unlawfully and in breach of natural justice by confiscating the Claimant's entire supply of firearms and ammunition, which included twenty-eight (28) firearms of different calibres and forty-two thousand (42,000) rounds of ammunition and thereby closing down the Claimant's firearm business, without first determining the issue of the revocation of the Claimant's gun dealer's license and without giving due notice to the Claimant, and without properly hearing the Claimant, and that these actions constitute, inter alia, wrongful and tortious interference with business, for which the Claimant seeks damages.
50. The Claimant submitted that no part of section 26 nor any other part of the Firearms Act gives authority to the First Defendant to forfeit or confiscate firearms and ammunition on a purported suspension or, for that matter, on any other basis. The Claimant further argues that while section 26 of the Firearms Act in the marginal notes says "cancellation and forfeiture", the operative parts of section 26 do not deal with forfeiture or confiscation of firearms and ammunition, and so section 26 does not give authority to do so. He argues that the Firearms Act only deals with forfeiture in sections 5, 7, 19, 32(5), 32(6) when used in the course of criminal activities.
51. The Defendants argued that the Firearms Act allows the Commissioner of Police to remove the guns and ammunition from the Claimant. They pointed to section 7(4) of the Act which provides:

(4) No gun-dealer's licence shall be issued to any person unless the Commissioner of Police is satisfied that the place in the premises where that person proposes to keep the firearms or ammunition is reasonably secure from theft or other crimes against property.

52. They also point to the strict responsibility on the Claimant to Part II, section 3(8) for the custody, safe keeping and use of the firearms and ammunition for which it is licensed. Section 3(8) of the Act provides:

“(8) A company which has been issued a Company Gun Licence shall be responsible for the proper custody, safe keeping and use of the firearms and ammunition for which it is licensed, and shall be liable for any improper or unauthorised use of any such firearm by any of its security guards. “

53. The Defendant submitted that both the First Defendant and the Claimant have distinct duties under the Act; the Commissioner to be responsible satisfied that the circumstances are safe whilst the Claimant is mandated to provide safe keeping and proper custody of the guns and ammunitions. They argued that since the Claimant did not comply with its duty, the actions of the First Defendant was warranted.

54. Seizure may be carried out of items used in contravention of the Firearms Act for any number of reasons which may vary from case to case. The Firearms Act permits the police to seize and detain any firearm and the ammunition in the possession of a person whose possession or use is in contravention of the provisions of the Act whether the person is being arrested or not. Section 22 provides

“22. Any police officer may arrest without warrant any person whom he believes to be in possession of, or to be using or carrying a firearm or ammunition in contravention of any of the provisions of this Act, and may search that person and, whether arresting him or not, may seize and detain any firearm or ammunition in his possession, or used or carried by him.”

55. It cannot be in dispute that the police can seize and detain the firearm and the ammunition that is necessary for the purpose of an examination, investigation, inquiries or legal proceedings. Therefore, the guns that were the subject of the theft were lawfully seized as evidence in criminal proceedings.

56. The effect of the *Burroughs* case is to establish that this right of possession and ownership of firearms is at all times subject to the discretion of the Commissioner of Police and the provisions of the Act. Therefore, any ability of the Claimant to possess firearms and ammunition is subject to the ability of the Commissioner of Police's ability to revoke the licence and seize same in accordance with the provisions of the Act. These are the conditions upon which a person or a gun dealer is permitted to have in her or his possession and/or own a firearm and ammunition. The Commissioner of Police and the police can only do so however in accordance with the provisions of the Act.
57. The provisions of the Firearms Act quoted by the Defendants are conditions for the grant of a licence or conditions upon which a licence is granted. I do not have any doubt that if one of the conditions upon which the Commissioner granted the licence is breached that it can be a basis for the Commissioner to revoke a licence. Therefore, if the premises where that person keeps the firearms or ammunition is no longer reasonably secure from theft or other crimes against property the Commissioner will be within his rights after the appropriate due process to revoke a gun dealer's licence. Without a licence any possession would be contrary to the Act and the First Defendant and the police is entitled to seize those items.
58. Based on my earlier finding that the First Defendant in February 2019 did not revoke/suspend the Claimant's Gun Dealer's Licence nor was the Claimant accused of any offence under the Act there would have been no basis for the seizure of the items that were not stolen. They were lawfully being held at the time by the Claimant.
59. Unlike other Firearm Acts across the Caribbean, the Belize Firearm's Act which is likely in need of reform does not make the loss or theft of a firearm or ammunition "through negligence" an offence. It is also not an offence if the premises where that person keeps the firearms or ammunition is no longer considered to be reasonably secure from theft or other crimes against property. Therefore, there can be no seizure unless it was authorized by the Act.
60. It was clear that the security of the property was of concern to the First Defendant and having a successful burglary and an attempted just one day before would raise

an issue of security for the First Defendant. The First Defendant unfortunately cannot have it both ways, he cannot give the Claimant an opportunity to be heard, rightfully so I might add, but at the same time take away the firearms which are lawfully in their possession without some lawful justification. Once the licence was revoked then the Claimant would have no right to possess the firearms. If the First Defendant had revoked/suspended the Claimant's Gun Dealer's licence then the possession of the firearms would be unlawful.

61. I therefore hold that the initial seizure of the weapons was without lawful authority.

Concluding the matter of revocation

62. The Claimant further alleges that the First Defendant failed to properly conclude the matter of the revocation of the Claimant's Gun Dealer's license and acting with inexcusable delay to deal with the Claimant, including by failing to notify the Claimant of an actual revocation or cancellation and by failing to provide proper reasons or grounds for the Claimant's revocation and by failing to afford the Claimant a fair opportunity to exculpate itself so as to restore the gun dealer's license.

63. There was no evidence that showed that the First Defendant revoked or even suspended the Licence of the Claimant. As I have said before none of the correspondence from the First Defendant indicated such even the only correspondence from the First Defendant to the Claimant which was 31st December 2019 never indicated any such revocation or suspension. The Claimant in fact was writing in relation to a renewal. The First Defendant said that the firearms were going to be restored only when the conditions agreed to by the Claimant were met and an inspection was carried out by the police.

64. Under the Firearms Act, a person who is in possession of a firearm or ammunition without a licence is guilty of an offence for which stringent penalties are prescribed. Without a valid licence the Claimant cannot show that he is entitled to possession of the firearms in question. The Claimant had a valid Licence until it

had expired which was 31st December, 2019. Upon the expiration of the said licence until its renewal the Claimant was not entitled to hold the firearms.

65. As stated, a condition for the grant of a gun dealer's licence under section 7(4) of the Act which the Commissioner of Police must be satisfied that the place in the premises where that person proposes to keep the firearms or ammunition is reasonably secure from theft or other crimes against property. It was no secret that the First Defendant was not of the belief that the Claimant's premises were secure enough. The First Defendant in his letter dated 31st December 2019 indicated the conditions which was agreed between the parties were the conditions for renewal.
66. There was communication from the Claimant to the First Defendant in January 2020, inspection thereafter and grant of the renewal to the Claimant. Thereafter the firearms and ammunition were returned to the Claimant.

Damages

67. At paragraphs 5 to 7 in *Neil Bennett v The Defence Council and the Attorney General of Trinidad and Tobago*, the law with respect to the granting of damages in judicial review matters were stated as:

"5. It was common ground that the law with respect to the granting of damages in judicial review proceedings was articulated by de la Bastide CJ in Josephine Millette v Sherman McNichols2 as:

"Damages are only recoverable in judicial review proceedings if they would have been recoverable in an ordinary action brought either by writ or by some other form of originating process eg. Constitutional motion."

68. The Claimant pleaded damages for the Defendants wrongfully actions and tortious interference with his business.
69. The emergence of a non-abstentionist approach to the unlawful means tort (then termed unlawful interference with trade) is attributed to Lord Denning in *Torquay Hotel Co Ltd v Cousins [1969] 2 Ch 106, p 139* where he declared:

“I have always understood that if one person deliberately interferes with the trade or business of another, and does so by unlawful means ... then he is acting unlawfully, even though he does not procure or induce a breach of contract.”

70. Following *Torquay Hoteln (supra)*, a number of cases developed the hybrid tort of interference with contractual relations. That hybrid was eventually abolished in *OBG v Allan [2007] UKHL 31*.

71. The leading case on this tort of unlawful interference with economic interest is the House of Lords case of *OGB Ltd and another v. Allan and others [2007] UKHL 21, [2007] 4 All ER 545*. In *OBG Ltd* the House of Lords considered three appeals principally concerned with claims in tort for economic loss caused by intentional acts. In the first appeal, the defendants were receivers purportedly appointed under a floating charge which was admitted to have been invalid. In that capacity the defendants took control of the claimant company's assets and undertaking. The claimant brought proceedings contending, inter alia, that that was an unlawful interference with its contractual relations. The judge at first instance upheld that claim but the Court of Appeal allowed the defendants' appeal. The claimants appealed. In the second appeal, the magazine OK! contracted for the exclusive right to publish photographs of a celebrity wedding. A rival magazine, Hello!, published photographs which it knew were surreptitiously taken by an unauthorised photographer. It was contended, inter alia, that that was interference by unlawful means with its contractual or business relations. At first instance the judge, whilst allowing damages for loss of profit, rejected the claim for interference by unlawful means. The Court of Appeal dismissed OK!'s cross-appeal on the ground that Hello! had not had the requisite subjective intention to cause harm. OK! appealed. In the third appeal, two employees of a property company, in breach of their contracts, diverted a development opportunity to a joint venture in which they were interested. The defendant, knowing of their duties but wrongly thinking that they would not be in breach, facilitated the acquisition by providing finance. The company claimed that he was liable for the tort of wrongfully inducing breach of contract. The judge found that whilst the employees had been in breach of contract, the defendant had not intended to procure such a breach,

and therefore dismissed the claim. That finding was upheld by the Court of Appeal. The company appealed.

72. Lord Hoffman, who gave the leading opinion, of the court restricted the means that would satisfy this element to acts that (i) are against a third party (ii) are actionable by that party or would be if that party suffered loss and (iii) interfere with the freedom of the third party to deal with the plaintiff. In other words, the 'means' used by the defendant will be 'unlawful' for the purposes of the tort if the third party has suffered damage or been subject to a threat of what would have been an actionable [civil] wrong if it had been carried out.

73. Further, a Defendant will have the requisite intention if the loss suffered by the plaintiff is either the end he desired or the means to an end he desired:

"The concept of intention is in both cases the same. In both cases it is necessary to distinguish between end, means and consequences. One intends to cause loss even though it is the means by which one achieved the end of enriching oneself. On the other hand, one is not liable for loss which is neither a desired end nor a means of attaining it but merely a foreseeable consequence of one's actions." (per Lord Hoffman in OBG v. Allan, paragraph 62)

74. What the case establishes is that liability arises where the wrongful acts are against a third party and only where a person intends to do a wrongful act. The test is fundamentally subjective and depends on showing that the Defendant had the relevant intention. There is no question that the Claimant's place had a burglary and it was accepted by the Claimant that the premises at least no longer conformed to the conditions of the Gun Dealer's Licence. It is also plain from the evidence that the First Defendant refused to return the firearms due to safety concerns and required certain safety measures installed at the premises of the Claimant. I am satisfied that the First Defendant was acting in a good faith in attempt to uphold the safety of the public. He did not have the requisite intent to establish the tort. Further, the First Defendant's action in confiscating the firearms and ammunition was not intended to cause loss to the Claimant or any third party, i.e. the customers.

75. The mere fact that a Claimant's business is adversely affected by an act of a Defendant is not sufficient to establish the tort and so Claimant claim for causing loss by unlawful means (or unlawful interference with business causing loss, per Nicholls, L.J.) on the ground that the First Defendant confiscated the Claimant's guns is not sustainable.

Damages

76. The Claimant claim for damages is more akin to an action for detinue and conversion. The claim would be maintainable by the person with the right to immediate possession of the goods as against the person who was in actual possession of the goods and refused or failed to deliver them up without lawful excuse, upon proper demand.

77. In *Gerard Mootoo v The Attorney General* Stollmeyer J (as he then was) stated the distinction between detinue and conversion as follows:

“Conversion is a purely personal action for pecuniary damages resulting in judgment for a single sum, generally measured by the value of the chattel at the date of judgment together with any consequential damage flowing from the conversion which is not too remote. Where conversion cannot be directly proved, it may be inferred from proof of a demand for the item and the refusal to hand it over. Detinue is more in the nature of an action in rem because the Plaintiff seeks the return of the item or payment of its value assessed at the date of judgment, together with damages for its detention. This effectively gives a defendant a choice of whether to return or pay for the item. It is immaterial whether a defendant obtained the item by lawful means because the injurious act is the wrongful detention, not the original taking or obtaining of possession. Detinue is usually evidenced by a failure to deliver an item when demanded. Damages for detinue are intended to compensate a plaintiff for his loss, not to punish a defendant. Consequently, the fall in value of an item subsequently recovered can be recovered only if the loss is proved. Otherwise, only nominal damages are recoverable. Loss of use is not generally regarded as a separate head of damage because the mere capacity for profitable use

is part of the value of the item, and loss of use would represent pro tanto recovery twice over (see Clerk & Lindsell on Torts 15th Ed. para. 21–104). Where the item is usually let out on hire by a plaintiff and is used by the defendant, the plaintiff is entitled to a reasonable sum for the hire of the chattel (see Clerk & Lindsell at para. 21- 105)...”

78. The fundamental basis of determining the measure of damages for a tort is: *restitutio in integrum*; It requires that the Claimant be placed in the position she would have been in had the tort not been committed.
79. Specifically for the tort of detinue as set out in *General and Finance Facilities Ltd. v. Cooks Cars (Romford) Ltd 1963 1 WLR 644* an action may result in a judgment in one of three (3) different forms: (i) for the value of the chattel as assessed and damages for its detention; or (ii) for return of the chattel or recovery of its value as assessed and damages for its detention; or (iii) for return of the chattel and damages for its detention.
80. In this case, the chattel – firearms – of the Claimant was returned to it and in any event could not be returned after the 31st December without a valid subsisting licence. The Claimant’s first demand for it, was on the 19th March, 2019. The evidence was that from November 2019, the Claimant’s themselves agreed with the holding of the firearms until certain safety measures were put in place and as I said the licence expired on the 31st December 2019 and so the Claimant was not entitled to possession thereafter until another licence was granted.
81. The unlawful detention of the firearms, from demand to date the parties consented, was some 8 months.
82. The fact of the the seizure was not disputed, so the Claimant was required to prove the actual loss (damages) suffered from the wrongful act. This meant that the Claimant must strictly prove not only its loss but the quantum of it. See: *Carlton Greer v Alstons Engineering Sales and Services PC Appeal No 61 of 2001*
83. The measure used to calculate damages for wrongful detention in detinue would generally be the value of the goods. However, as in this case, the goods were

returned and the compensation being sought by the Claimant was the loss of profit of the business sustained during the period of the detention.

84. The loss that would have occasioned not for the return would have been the value of the items. Having returned the items, the Claimant is able to sell those items and obtain the profit. If the items lost value, the Claimant would have been able to obtain the loss of the decreased value. There was no evidence by the Claimant or what was the costs of the specific items seized and if there was any loss in value.
85. The Claimant not having the items during the period meant that they would have lost some interest on the profit that would have obtained on the items seized. Since the items have been returned there has been no evidence or the any reduction in the value of those items and so the Claimant would be able to get the profit from it.
86. Further, the Claimant by the time of November agreed with First Defendant that he would return the firearms to the Claimant when the security measures to his satisfaction was made.
87. There was no evidence of the value of the guns that were detained, the profit that would have been made on those firearms and ammunition.
88. The Claimant gave evidence of gross sales in his evidence but not profits which he admitted in his cross examination. He further did not put before the court his expenses and tax liability to determine its true loss for the period. He said in his Affidavit that he ordered guns and ammunition and that there would have been 50% profit in one instance and 38% in another without any supporting documents for this calculation.
89. In the circumstances advanced above, this Court found that while the Claimant might have proved that it would have sustained some losses by the detention of its firearm; the exact amount of the losses, as claimed, was not proved. As the compensation amount could only be determined by the evidence proffered by the

Claimant, and it was insufficient, this court was constrained to deny the full sums as claimed and award nominal damages.

90. Having regard to all the matters as indicated above the Court is of the belief that nominal damages inclusive of costs in the sum of \$20,000.00 is sufficient to compensate the Claimant.

/s/ Westmin James

Westmin R.A. James

Justice of the Supreme Court (Ag)