

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA
REGULAR JURISDICTION

2019-HC-BER-CIV-FDA-314

BETWEEN:

JOEL EDMOND

Claimant

-and-

THE COMMISSIONER GENERAL OF GUYANA
REVENUE AUTHORITY

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Messrs. C. A. Nigel Hughes and Arudranauth Gossai for the Claimant

Ms. Ornise Gordon for the Defendant

Delivered August 4th 2020

DECISION

The Claimant's vehicle, registration number PJJ5408 [hereinafter referred to as the vehicle], was seized by the Defendant on February 23rd 2018 at Springlands, Corentyne, Berbice on the assertion by the Defendant that the chassis number on the vehicle was tampered with.

The Defendant asserted that the chassis number on the vehicle differed from the chassis number on the certificate of registration for the vehicle. This is not disputed by the Claimant.

The Claimant explained to the Defendant that when he purchased the vehicle it was extensively damaged, particularly the chassis, however he had previously purchased a similar vehicle that was scrapped but had a good chassis. As a result

his mechanic put the good chassis on the vehicle, hence the reason the chassis number on the chassis attached to the vehicle is different from the chassis recorded on the certificate of registration.

Despite the Claimant's explanation, the Defendant refused to release the vehicle from seizure.

As a result the Claimant instituted this Application on November 15th 2019 on the cause of action of detinue. The Application was converted to a Claim on February 7th 2020 and a Case Management Conference [CMC] was conducted.

At the CMC the trial Judge ordered written submissions on the issues of the lawfulness of the detention and of any limitation with respect to the Defendant instituting criminal charges against the Claimant for the offences that they allege that he has committed.

In light of this order and the fact that Claimant is not disputing the fact that chassis on the vehicle differs from the chassis number on the certificate of registration for the vehicle, it seems that the matter ought not to have been converted to a Claim. The issues to be determined are issues of law.

The Defendant contends that the Claimant is in breach of **section 63 of the Motor Vehicle and Road Traffic Act; CAP 52:01** and **section 218 (d) of the Customs Act; CAP 82:01**.

Section 63 of the Motor Vehicle and Road Traffic Act; CAP 52:01 clearly addresses duties and liabilities of a person who uses his premises to effect repairs to vehicles.

The Defendant has not made any statement or allegation that the Claimant uses/used his premises to effect repairs to the vehicle or any vehicle.

In the absence of any averment or allegation that the Claimant used his premises to effect repairs to the vehicle, the Court fails to see how this section is relevant to the seizure of the vehicle.

Section 218 (d) of the Customs Act; CAP 82:01 indisputably provides for forfeiture after a conviction has been secured. It clearly does not provided for seizure or forfeiture prior to a conviction under that section.

This section did not permit the Defendant to seize the vehicle and it certainly does not permit the Defendant to continue to detain the vehicle.

The Defendant alleges that the Claimant indicated his willingness to settle the matter without Court proceedings under **section 271 of the Customs Act; CAP 82:01**. The Claimant has denied this, however, the Court finds that whether he did or not is immaterial to the issues before the Court, since that does not absolve the Defendant from showing that the vehicle was lawfully seized and remains in the custody of the Defendant some 30 months after seizure pursuant to some legal remit.

In any event, the letter from the Defendant offering the settlement is dated July 3rd 2018 and gave the Claimant seven days to act on the offer failing which proceedings would be instituted. That was more than two years ago.

This brings the final point raised by the Defendant up for consideration, that the vehicle is being held as evidence for the intended prosecution of the Claimant.

While the Court recognises the necessity for law enforcement to keep items of evidential value in their custody, this must be balanced with the Claimant's constitutional rights to not be deprived of his property without the due process of law and to have such process conducted within a reasonable time.

The Defendant argues that they have seven years within which to institute proceedings and therefore they can wait until 2025 to institute charges against the Claimant.

The Court certainly does not need to explain how unreasonable it would be for the Defendant to continue to detain the vehicle for seven years and then, maybe, institute proceedings against the Claimant.

It is unreasonable that the current situation has prevailed for thirty months.

Photographs of the chassis number engraved on the chassis of the vehicle ought to be sufficient preservation of the evidence to show that the number is different from the chassis number on the certificate of registration, which, in any event the Claimant is not disputing.

In the circumstances the Court grants paragraph 1 (a) of the FDA filed November 15th 2019.

The Court awards the Claimant the sum of \$500,000.00 as damages for detinue.

The Court awards the Claimant the sum of \$100,000.00 as costs.

Justice N. A. Singh