

IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 176 OF 2011

BETWEEN

(CLARITA PECH

CLAIMANT

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(AND

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(THE ATTORNEY GENERAL

FIRST DEFENDANT

(CUSTOMS AND EXCISE DEPARTMENT

SECOND DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mr. Dean Lindo, S.C., for the Claimant

Mr. Andrew Bennett for the Defendants

J U D G M E N T

The Facts

- 1. On June 15th, 2010, Customs Officers Adrian Gibson and Miguel Uk, acting as servants or agents of the Second Defendant, seized**

a vehicle bearing License Plate OW-C-01212 which was being driven by an unnamed person of Chinese descent. This person then took the two officers to the home of the Claimant, Ms. Clarita Pech. Ms. Pech, as the registered owner of the vehicle, was given a custody receipt by the two officers who then took the vehicle into the custody of the Customs and Excise Department pending proof of payment of Customs duties and taxes. On March 23rd, 2011, the Claimant filed this action in the Supreme Court claiming inter alia, that the Defendants illegally seized her vehicle and seeking the return of the vehicle, exemplary damages, damages for loss of use of the vehicle, costs. Mr. Gibson alleges that the Claimant has been invited by the Second Defendant to visit Customs and assist with their investigation but she has not done so. The Defendants on a procedural point also ask that the Claim be struck out for failure to disclose a reasonable cause of action. The Claimants allege that the Defendants have not taken any further steps to either bring the matter before a Magistrate, or make an offer to the Claimant to settle the dispute.

2. **The trial began before me on October 25th, 2011, was adjourned for and concluded on November 21st, 2011.**

The Issues

3. **There is only one issue in this case:**

(1) Was the seizure by Customs and Excise Department of the vehicle belonging to Ms. Pech an “illegal seizure” and was it necessary for the customs officers to have a writ of assistance or summons before seizing the vehicle?

4. **I will first address the preliminary issue of whether the claim should be struck out for failure to disclose a cause of action.**

This matter was brought to court by the Claimant by way of an ordinary claim form supported by a statement of claim. Mr. Bennett for the Defendant argues that the Claimant has failed to set out the nature of the Claim and discloses no reasonable cause of action. He further states that the Claimant

has made no effort to amend the Claim form and that Rule 8.6 of the Supreme Court (Civil Procedure) Rules require that the Claimant specify the remedy that is being sought and a short description of the nature of the claim.

Rule 8.6 of the Supreme Court (Civil Procedure) Rules state that:

“8.6 (1) The claimant must in the claim form –

(a) include a short description of the nature of the claim;

(b) specify any remedy that the claimant seeks(though this does not limit the power of the court to grant any other remedy to which the claimant may be entitled); and

(c) give an address for service in accordance with Rule 3.11.”

Looking at the Claim form it is very clear that Rule 8.6(1)(a) has not been complied with by the Claimant. While the Claimant seeks various types of relief, there is no indication as to the legal

basis on which such relief is being sought. As Mr. Bennett queries in his submissions, is it an administrative claim or is it a constitutional motion pursuant to Part 56? Is it a claim brought pursuant to a common law action? I agree. The Claim is very vague and even after hearing the sole witness called by the Claimant in the trial I still do not know what is the legal foundation for the Claim. On that basis alone it is sufficient to strike out the matter. But since evidence has been led, written submissions handed in and the trial has been completed, I will go on to determine the substantive issue in the case as I see it.

5. Having heard the witnesses for both sides in this matter at the trial, I can now determine the sole substantive legal issue in short order.

(1) Was the seizure of the vehicle by the Defendants a legal seizure?

The witness Adrian Gibson, Customs Examiner, with over ten years experience as a Customs Officer, testified that he conducted investigations on a customs entry which he suspected to be fraudulent because of certain discrepancies he discovered on the document. Following up on his suspicions he investigated further at the Traffic Department where he found that the registration numbers on the customs entry did not match the registration number on the Slip Print.

Mr. Gibson explained in great detail as follows:

“The slip print gives you the date when the duties and taxes have been paid. It gives you the year. It gives you the receipt number. It gives you the method of how the transaction was paid, if it was paid with cash, if it was paid with a cheque. It gives you who the cashier was, where the transaction was done, whether in Belize City, Corozal, Benque. It also gives you the Registration Number of the Customs entry which makes it a legal document and the date of the entry when it

was registered. It further gives you the Assessment number and the date of assessment.”

Based on his discovery of these inconsistencies Mr. Gibson then proceeded to the Customs Investigation Unit Data Base and to the Transport Department in Orange Walk. He said that as a result of these checks he concluded that the customs entry was fictitious and this led him to seize the Claimant’s vehicle. He said that he explained his investigation to the Claimant gave her a custody receipt and told her that the vehicle was being held by Customs pending proof that duty had been paid on it. Under effective cross examination by Counsel for the Defence Mr. Bennett, Ms. Pech retracted her earlier statement that Mr.Gibson had not explained the reason for the seizure of the vehicle to her and she agreed that he had in fact explained the reason for the seizure.

6. Despite lengthy cross examination by Counsel for the Claimant Mr. Lindo regarding whether Customs had found out who was responsible for the fraudulent customs entry and whether Customs had brought Ms. Pech before a Magistrate, I find that Mr. Gibson came across as a forthright, competent and credible witness. He conducted an investigation which led him to believe that the duties and taxes on the vehicle belonging to Ms. Pech had not been paid so he took the vehicle into custody. When pressed by learned counsel as to why no one had yet been charged with offences under the Customs Act, Mr. Gibson stressed that he was still investigating the matter and that he had repeatedly invited Ms. Pech to come and discuss the case and if possible assist with the investigation, but to date she has not done so.

7. Mr. Lindo arguing for the Claimant submits that the seizure of the vehicle was illegal and amounted to an unlawful deprivation of the Claimant's property because the Customs officers acted without a writ of assistance or a warrant. However I find that

the Customs Department seizure of the Claimant's vehicle on suspicion that the vehicle being uncustomed was a lawful seizure carried out pursuant to the powers of seizure of the Customs Officers under the Customs Act. As Conteh CJ stated in the Jitendra Chawla (Jack Charles) case Action No. 208 of 2002, the protection from arbitrary search and seizure protected in the Constitution is not an absolute right, and the Constitution itself expressly recognizes exceptions to that right, as in section 9(2) (c) of the Belize Constitution:

9(2) *“ Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision -*

(c) that authorizes an officer or agent of the Government, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due...”

8. I find that Mr. Gibson's seizure of the vehicle was legal. Under section 84 of Chapter 49 of the Customs Regulation Act of the Laws of Belize Revised Edition 2000, Customs Officers are empowered to seize goods that are liable to forfeiture under any customs law:

84 *“All ships, boats and goods whatever liable to forfeiture under any customs law may be seized in any place, either on land or water, by any appropriate officer of the Belize Defence Force Maritime Wing, Port Authority, Fisheries Unit, Customs, or by any person having authority from the Minister to seize, and any ships, boats and goods seized shall, as soon as conveniently may be, be delivered into the care of the proper officer appointed to receive same.” (emphasis mine)*

9. In this case there was no need for a writ of assistance or a warrant as Ms. Pech's vehicle was seized on a public road, and as

such, no entry was made into the private residence of the Claimant. This case must be distinguished from the Jitendra Chawla (Jack Charles) where the writ of assistance by Customs Officers was used because it was necessary for the officers to gain access to the private business place of Mr. Chawla. Section 87 of the Customs Regulation Act Chapter 49 specifically sets out the requirements and circumstances for obtaining a writ of assistance or warrant and is clearly entitled "Searching Houses."

10. Having seized the vehicle since June 15th, 2010, it has been almost two years since this vehicle was taken into custody by Customs. That is inexcusable and unreasonable delay and I therefore urge the Customs Department to complete its investigations of this matter promptly and either assess the duty payable to the Comptroller as an out of court settlement pursuant to Section 113 of the Customs Regulation Act Chapter 49 of the Laws of Belize, or bring the Claimant before the Magistrate for the offence to be tried and duty assessed

**pursuant to Section 112(3) of the Customs Regulation
(Amendment) Act No. 44 of 2005.**

**11. I therefore rule that the matter is struck out for failure to
disclose a cause of action.**

12. All relief sought by the Claimant is denied.

**13. Costs awarded to the Defendants by the Claimants to be agreed
or assessed.**

MICHELLE ARANA

SUPREME COURT JUDGE

Dated this 2nd day of April, 2012