CITATION: AVS Transport Inc. v. van Ravenswaay et al., 2016 ONSC 3568
COURT FILE NO.: CV-10-3395-00SR
DATE: 2016 05 31

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: AVS Transport Inc. and Wim van Ravenswaay a.k.a. William van Ravenswaay, Trevor van Ravenswaay - and -1046854 Ontario Inc. c.o.b. as W.G. Equipment Enterprises - and - William Douglas Hill c.o.b. as Grizzly Equipment, Third Party.

BEFORE: Trimble J.

COUNSEL: J. Barry Eakins, Counsel for the Defendants

A. Sciacca, Counsel for the Plaintiff

REASONS FOR JUDGMENT

[1] This action, the plaintiff, AVS Transport Inc., sues Wim van Ravenswaay (a.k.a. William van Ravenswaay), Trevor van Ravenswaay and 1046854 Ontario Inc. (c.o.b. as W. G. Equipment Enterprises for conversion of AVS' 2005 Mack dump truck.

The Parties

[2] AVS transport Inc. is an Ontario corporation owned by Satnam Sound. It was the owner of 2005 Mack dump truck. It conducts trucking operations.

[3] 1046854 Ontario Inc. (c.o.b. W. G. Equipment Equipment) is an Ontario corporation in business since 1992, carrying on business out of 126 Highway 56, in Canfield, Ontario. By 2008 – 2009, 20 percent of its business was the purchase and sale of scrap metal, and 40% of its business was in each of a) salvage and sale of used truck parts, and b) repair and rebuilding trucks from used truck parts, and issuing safety certificates.

[4] At all relevant times, the defendant, Wim (William) van Ravenswaay was the sole officer and director of W.G. Equipment. He was also its directing mind. For 39 years he has been a licensed diesel mechanic both in small vehicles and in trucks and buses. He largely ran the business.

[5] Trevor van Ravenswaay is Wim van Ravenswaay's son. At all material times Trevor was an employee of WG equipment. He had no title with the company. He ran the yard in which trucks and parts were stored, and loaded and unloaded trucks and containers using a forklift. As is discussed later, in 2008 and 2009, he ran the business as its general manager while William concentrated on a new business venture.

[6] William Hill carries on business under the name of Grizzly Enterprises, was originally added as a Third Party to the action. For reasons explained later, the Third Party Action did not proceed before me. Hill/Grizzly sold to W.G. Equipment Equipment scrap metal and truck parts.

The Position of the Plaintiffs:

[7] AVS says that the court should conclude that the defendants are liable for conversion of AVS' Mack truck. There is no doubt that they possessed stolen the plaintiff's stolen property. AVS says that the court should conclude that the defendants are responsible for the theft of the truck, had the whole truck in their possession, disassembled or the deconstructed the truck, and sold the constituent parts.

[8] With respect to the defendant, William van Ravenswaay, personally, AVS says that he was the controlling mind of the company. The inference should personally be drawn that he knew, or ought to have known, or was willfully blind to the fact that the truck was stolen in his name or his company's name. Alternately, the inference should be drawn that he knew, ought to have known, or was willfully blind to the fact that he received stolen property from Mr. Hill, or at least that there was a significant risk the property he received from Mr. Hill was stolen.

[9] With respect to the defendant Trevor van Ravenswaay, AVS says that the court should draw the inference that he too knew, ought to have personally known, or was willfully blind to the fact that the truck was stolen. Alternately, the court should infer that he knew, ought to have known, or was willfully blind to the fact that he was receiving stolen property from Mr. Hill, or at least there was a significant risk the property receipt for Mr. Hill was stolen.

[10] The plaintiff says that I should discount, completely, the van Ravenswaays' evidence as not credible.

[11] The defendants concede that W.G. Equipment is liable to the Plaintiff for conversion. It received, possessed, and sold a front clip that was from the Plaintiff's stolen truck.

[12] With respect to the individual defendants, the defense says that there is no liability. At all times, William and Trevor were acting in their capacities as officers, directors or employees of W.G. Equipment. They say they have no liability unless they are found to have the intent to have acted fraudulently or illegally.

[13] There is no issue but that the front clip that W.G. Equipment purchased from Hill, sold to the Trinidadian client, and loaded in the container, was from the plaintiff's stolen truck.

The Issues:

[14] I am required to determine the following issues:

1. Is there a reverse onus of proof?
2. What property did W.G. Equipment have in his possession; the truck or just the front clip?
3. Is William van Ravenswaay and/or Trevor van Ravenswaay personally liable to the Plaintiff?

4. What are the damages?

Background:

[15] Many facts in this case were either admitted or undisputed. These facts include as follows:

a) At the end of the day on September 14, 2008, Satnam Sound, AVS' principle and directing mind, parked AVS' 2005 black Mack dump truck at its normal parking space at 57 Sun Pack Boulevard in Brampton. During the night of September 14 – 15, 2008, the dump truck was stolen. On September 15, 2008, Mr. Sound reported the theft both to the Ontario Provincial Police and to AVS' insurer, Markel. The insurer investigated, determined that the truck was stolen, and assigned an actual cash value of $92,880, inclusive of HST. It paid the Plaintiff $90,380, because of the $2500 deductible, and by doing so, became fully subrogated to the Plaintiff's rights in this action.

b) On February 25th or 26, 2009 Markel was notified that the dump box and other related parts to the Mack truck's dumping mechanism had been located. Markel instructed its agents to retrieve the parts and value them. The parts were put up as salvage and sold for $8,750. The adjuster, Jason Longpre, shared this information with the police.

c) In 2008 and 2009, the OPP was part of "Project Heist" a multi-jurisdictional investigation concerning stolen vehicles in Peel Region and the Greater Toronto Area. On December 3, 2008, the police received information that they were suspicious persons at W.G. Equipment property. The police attended and found three tractors with their doors ajar. The officers checked the VIN numbers on the vehicles. They determined that 2 of the three were stolen. Based on this information a warrant was obtained and W.G. Enterprise's premises were searched on December 4, 2008.

d) On January 8, 2009, the OPP received a warrant to observe W.G. Equipment for sea containers coming in and out. The Warrant allowed them to follow such sea containers to their final destination, and open them and search them. A sea container was observed to leave W.G. Equipment on January 9, 2009. The shipping container

was arranged by W.G. Equipment and was bound for one of W.G. Enterprise's customers in Trinidad.

e) The OPP opened and searched the container. It contained a large number of truck parts, and a "front clip" from a Mack truck.

f) A "front clip" is the front portion of a truck created by cutting the truck's frame just behind the cab or fuel tanks. In this case, the front clip comprised the cab, fuel tanks, engine, and other parts belonging to the front on the end of the truck. The front clip did not include the front or axles and tires, the drive shaft, dump box, or hydraulics related to the dump box. The container also included many other truck parts which were not related to the front clip. Many of those other parts were stolen or from stolen vehicles.

g) The front clip did not have attached to it any of the normal identifying stickers, labels or tags, including the VIN number plate or MOT certification sticker. From other identifying numbers on various truck parts the OPP, through the manufacturer, was able to determine the truck's VIN number which identified it as AVS' stolen Mack truck.

h) W.G. Enterprise had a standing order from its Trinidadian client, Reddy Mix, to buy parts for Mack trucks. It had purchased the front clip and parts contained in the shipping container. Trevor van Ravenswaay arranged for the shipping container, loaded it, arranged the freight forwarding company, and called that company once the container was loaded.

i) W.G. Equipment purchased the parts and the front clip from William Hill, who operated under the name of Grizzly Equipment. William van Ravenswaay who had known Mr. Hill for 20 years, had purchased truck parts from Hill/Grizzly for over 20 years. William van Ravenswaay was the primary contact with Mr. Hill. Mr. Hill died in 2014 and the third-party action has gone in default. Mr. van Ravenswaay was a pall bearer at Mr. Hill's funeral.

j) Based on its search of the container, the OPP obtained another warrant on February 24th 2009 to search W.G. Enterprise's premises again. The warrant was executed beginning on February 25, 2009 and ending on February 27. The OPP found on the property stolen trailers and trucks, trailers bearing MOT certification stickers and VIN tags not registered to them, some of which were taken from

other, and stolen trailers. They found a file in William van Ravenswaay's office which contained MOT certification stickers and VIN plates. The VIN plate was from stolen vehicles as were some of the stickers. In addition, they found an illegal weapon.

k) On April 12, 2009, the OPP laid 38 charges against William van Ravenswaay, and one against Trevor van Ravenswaay. Trevor van Ravenswaay pleaded guilty to the charge against him (possessing and selling a stolen vehicle). William van Ravenswaay pleaded guilty to two charges (possessing stolen vehicles and vehicle parts, and concealing stolen vehicles or vehicle parts).

l) The van Ravenswaays difficulties extended far beyond the OPP investigation. William van Ravenswaay said that not only was he being investigated and prosecuted by the police for the stolen property, he was also being investigated and prosecuted by them for the possessing the illegal weapon. He was charged with defrauding his insurer of insurance money. He was charged with intentionally setting fire to a tractor. He had five charges in respect to another stolen vehicle and kidnapping matter. With respect to the first two charges, he said that he "beat it". With respect to the five charges from the other stolen auto and kidnapping, he said that he was exonerated. CRA began pursuing him as well for taxes. That continues to haunt him as they obtained a significant judgment against him.

Conversion – legal principles:

[16] Conversion is an intentional tort committed when a defendant a) commits a wrongful act b) involving the Plaintiffs chattel, c) by handling or disposing of the chattel d) with the intention of denying or negating the Plaintiffs title or other possessory interest (see *Fridman, law of torts in Canada (third)*. Carswell; London, Ontario, 2010, page 118; *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, [1996] 3 S.C.R. 727 per Iacobucci, J., at para. 31; *2934752 Canada Inc. v. W. Pickett & Bros Customs Brokers Inc*., [1999] O.J. No 5435, para. 30, per Archibald, J.; *Pop N'Juice Inc. v. 1203891 Ontario Ltd.*, [2004] O.J. No. 3085 (Ontario S.C.J.) at para. 17 – 21, per Fedak,

J.; and *Daimler Chrysler Canada Inc. v. Associated Bailiffs & Co*. [2005] O.J. No. 2855 (Ont. S.C.J.) para. 9, per Perell, J.).

[17] A defendant, by using the Plaintiff's goods or by giving or selling them to a third person, indicates the assertion of rights over the goods necessary for conversion. (*Toronto Dominion Bank Ltd. v. Dearborn Motors Ltd.* (1968), 64 WWR 577 (B. C. S. C.) at 581 per Verchere, J.)

[18] The crux of the tort of conversion is the Defendant committing a wrongful act with respect to the property. Evidence must show or permit an inference to be drawn that the Defendant acted in such a way as to deny the Plaintiffs title or possessory right. (*Simpson v. Gowers* (1981), 32 OR (2d) 385 (C.A.) at 387, per MacKinnon A. C. J. O.).

[19] The "intent" to deny the Plaintiff's title or possessory interest has been given broad meaning. The most compelling at evidence by which a Defendant may deny Plaintiff's title or possessory right is by selling it without having any personal right to do so (see *Unisys Canada Inc. v. Imperial Optical Company* (1998) 43 C.C.L.T. (2d) 286 (Ont. Gen.Div.) at page 292 per Hoilett, J., aff'd 49 C.C.L.T. (2d) 237 (C.A.).

[20] Any time someone receives or disposes of a chattel without satisfying himself of its title, they acquire or dispose of the chattel at his/her own risk (see *Battleford's Credit Union LTD. v. Korpam Tractor and Tarts Ltd.* (1983), 28 SAS K. R. 215 (Q. B.) at (217, per Wimmer, J.).

[21] Some cases have held that intent must be proved and if the defendant had no intention of depriving plaintiff of the benefit of the property or if no such inference can be drawn from the evidence, no conversion occurs (see *Gasparetto V. Fizzard* (1989), 99 N. S. R. (2d) 29 TD, and *Robertson v. Stang* (1997), 38 C. C. L. T. (2d) 62 (B. C. S. C.). *Fridman* points out that in one case it has been held that the absence of fraud on the part of the defendant might excuse him (see *Waite, Reid and Company Ltd. v. Rodstrom* (1967), 62 D. L. R. (2d) 661 (B. C. S. C.) At 670 per Wilson C. J.).

[22] *Fridman* considers this case is an anomaly. The weight of authority is to the contrary holding that innocence or lack of specific intention to defraud the Plaintiff is no defence. Conversion is a strict liability tort (see *Boma*, supra., at para 31-32.). The fact that the Defendant acted in good faith or innocently will not excuse the defendant (see Boma, supra, at para. 31; *Mutungih v. Bokun* (2006), 40 C.C.L.T. (3d) 313 (Ont. S.C.) at p. 317 per Mungovin, J.). As *Fridman* points out, "In case after case the innocence of the defendant in accepting money or goods has been held to be irrelevant to liability. His good faith is immaterial. His lack of knowledge of the rights of the plaintiff is not assisted him to escape liability." (see: *Fridman*, supra at page 126, footnotes omitted). In *Westboro Flooring and Decor Inc. v. Bank of Nova Scotia*, [2004] O.J. No. 2464, the Court of Appeal confirmed that all that is required re intent is the Defendant acts in a manner that is inconsistent with the owner's title or possessory right, and any blameworthy conduct beyond that is not essential (at para. 14 – 16, per Simmons, J.A.).

[23] The philosophy behind strict liability is that a defendant cannot use or convey anything which is no title to use or convey (see *Fridman*, supra, at page 127). This is the practical expression of *nemo dat quod non habet* (one cannot give what one does not own).

[24] Similarly, absent a statutory right, not only is the innocence of the defendant no defence, the defendant cannot claim contributory negligence or some fault on the part of the plaintiff (see *Boma*, supra, at 476).

Issues:

1. Onus of Proof.

[25] The Plaintiff submits that in this case, the Defendants, by their wrongful acts, brought about the Plaintiff's loss. In such circumstances, there is a reverse onus of proof. It cites *Lamb v. Kincaid* (1907) 38 S.C.R. 516 for the proposition.

[26] I disagree. It has been clear since *Snell v. Farrell*, [1990] 2 S.C.R. 311 that the onus is on the plaintiffs throughout to prove liability and damages, and the standard of proof is the balance of probabilities.

[27] *Lamb* stands for the proposition that where the Defendant takes the Plaintiff's generic bulk goods and co-mingles them with other like bulk goods such that it is impossible to determine the purity, quantity and quality of the Plaintiffs bulk goods taken, the defendants are liable for "…as much of the mixed products of the two claims as they did not strictly prove to have come from their own [stores of the bulk product]" (see page 13). *Lamb* does not apply to this case.

2. Did WG Equipment have the whole of the Plaintiff's Mack truck in its possession?

[28] The Plaintiff says that the Defendants either a) stole the Plaintiff's truck or arranged for it to be stolen, or b) received the whole truck, dismembered it, and sold the parts. Therefore, the Defendants should be liable for the whole of the Plaintiff's loss.

[29] The Plaintiff says that I should reject all of the Defendants' evidence on this point, the van Ravenswaays being without any credibility. Wim van Ravenswaay was charged with 38 criminal offenses stemming from the search of the container and his business, and Trevor, one. Wim was convicted of possession of a stolen vehicle and vehicle parts, and for concealing stolen trailers and truck parts on his property. Trevor was convicted to possessing a stolen vehicle. They cannot be believed.

[30] Setting aside the convictions, the Plaintiff points to other evidence from which it says I should infer that the Defendants were dealing in stolen goods, and, in turn, that I should infer that the Defendants probably received the whole of the Mack Truck, dismantled it and sold its parts.

[31] The Defendants say that they never possessed the whole truck, merely the front clip.

[32] I cannot accept the Plaintiff's argument. I do not need to make credibility findings concerning the van Ravenswaays in respect of this issue. I find that the Plaintiff has failed to meet its burden to prove that the Defendants, any of them, or any combination of them, ever possessed the entire Mack truck. I find that the corporate defendant had only the front clip from the Plaintiff's stolen Mack truck.

[33] I say this for the following reasons:

a. The Plaintiff's argument presumes a reversal of the onus of proof; that the Defendants have the onus to prove that they did not have the whole truck. Since I should not believe them, the only possible inference from all the other evidence is that they did.
b. There is no evidence that among all of the other truck parts located on the company's property any of them came from or were associated with the Plaintiff's stolen Mack truck.
c. The plea arrangement that led to the convictions against the individual Defendants lead me to conclude that the individuals knew and intended to possess and hide stolen vehicles and parts. None of those convictions, on the facts admitted further conviction, on their face, however, related specifically to the stolen Mack truck.
d. Evidence, other than the convictions, also leads me to conclude that the individual Defendants knowingly possessed and hid stolen trucks, trailers and truck parts. This evidence included that there were stolen trailers on the premises, trailers were re-plated and labelled (some trailers were stolen, some plates and labels were from other trailers, some of which were stolen), there was a list of vehicles in the Defendants' office in an unidentified person's handwriting many of which were reported stolen, and there was a file containing VIN and MOT certificate stickers, all of which ought to have been affixed to the vehicles or trailers. None of these related to the stolen Mack truck. The Plaintiff submitted that the OPP did a very thorough search. If there were documents relating to the Mack, or other parts from the Mack other than the front clip, the presence of which might lead to the inference the Plaintiffs see, one would have expected the "thorough search" to have turned up such evidence.

e. A finding that the Defendants were involved in holding, hiding and selling stolen vehicles, trailers and parts does not lead, inexorably, to the conclusion that they stole the whole of the Mack truck then dismantled it.

3. Is William van Ravenswaay and/or Trevor van Ravenswaay personally liable to the Plaintiff?

[34] The Plaintiff says that all of the evidence leads to the inference that the van Ravenswaays knew or ought to have known that the front clip was stolen, and their denial of this fact should be discounted as they lack credibility.

[35] The Defendants say that the van Ravenswaays were bona fide purchasers for value and therefore knew nothing of the ownership of the front clip. They say that they bought the front clip from William Hill, with whom they had been leaving for 20 years, and assumed that he owned it or purchased it and sold it to them.

[36] Why is the van Ravenswaay's knowledge important?

[37] Generally, officer, director, or employee is not liable to people outside the Corporation for acts the officer director or employee commits in the course of his or her office or position with the Corporation. If, however, an officer, director, or employee of a company actually takes part in or authorizes such [intentional] torts as assault, trespass to property, nuisance, or the like, s/he may be liable in damages as a joint participant in one of the recognized heads of tortuous wrong (see *Said v. Butt*, [1920] 3K.B. 497 at page 504 per McCardie, J.). This rule was approved in Ontario most recently by the Ontario Court of Appeal in *ATGA Systems International Ltd v. Valcom Ltd.* [1999] O. J. No.27, at paragraphs 11 through 14, her Carthy, J. A.).

[38] While the Court of Appeal says that the consistent line of authority in Canada holds officers, directors, and employees of corporations are responsible for their tortious conduct even if directed in a bona fide manner (see *ADGA*, supra, paragraph 18), the torts the C.A. referred to were intentional torts or nuisance. In other words, the officer,

director, or employee of the Corporation must have knowledge of the wrong being committed.

[39] With respect to the torts of trespass and conversion, where the conduct of the officer the sole officer, director, and or employee of the corporate defendant is intentional, willful and deliberate, the individual and the company are joint tortfeasors (see *Craig v. North Shore Heli Logging Ltd*, [1997] B.C.J. No. 983 (B.C.S.C.) at paragraph 64 per Smith J).

[40] How does this law regarding the liability of officers, directors and employees of the Corporation intersect with the law of conversion?

[41] In this case, all of the evidence points to the conclusion that W.G. Equipment possessed the front clip and sold it to the Trinidadian client. The front clip was never in the possession of either of the van Ravenswaays, personally, or purchased by or sold by the van Ravenswaays except as in their capacity as officers directors and or employees of the Corporation. Therefore, the individual van Ravenswaays cannot be liable, individually, to the plaintiff for conversion without the van Ravenswaays having specific knowledge of the ownership of the front clip. If either of the van Ravenswaays knew or ought to have known that the front clip was stolen, then they fall within the *Said v. Butt* exception to an officer director or employees' immunity from liability for actions taken on behalf of the corporation within their scope of their office or employment.

Credibility

[42] The van Ravenswaays' credibility is paramount in this case.

[43] Both of the van Ravenswaays said that they did not did not know that the front clip was stolen. They assumed that the front clip was owned by with Hill and by that purchasing it from him, they acquired clear title to the front clip.

[44] The Plaintiff says that the Defendants' evidence cannot be accepted because the Defendants have no credibility. The Defendants' say that on all of the evidence the only conclusion I can reach is that the van Ravenswaays were receiving and dealing in stolen truck parts and therefore knew or ought to have known that the front clip was stolen. At minimum, they were willfully blind to the issue.

[45] "Credibility" of the witness is determined by addressing two questions: is the witness "credible", and is the witness "reliable". Trial judges, like juries, rely on many factors in assessing the weight to be given to the testimony of witnesses based on an assessment of that witness' reliability and ultimate credibility. Triers of fact can also believe some, none or all of the testimony of any particular witness.

[46] Some of these factors are:

- Motivation – does the witness have an interest in the case such that s/he is motivated to lie? Motivation to win or lose the case is not sufficient. The interest must xx beyond that (*R. v. S.D*, 2007 ONCA 243, 218 C.C.C. (3d) 323). (*R. v. M.W.M*. [1998] O.J. No. 4847 at para. 3).
- The demeanor of the witnesses – this is an important factor, although not the only factor. Findings of credibility should not be made on demeanor, alone.
- Does the evidence make sense? - is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and condition? (*Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.).
- Internal Consistency – does the evidence have an internal consistency and logical flow*? (R. v. C.H*., [1999] N.J. No. 273 (Nfld C.A.).
- Prior inconsistencies – is the evidence consistent with prior statements (e.g. Discovery evidence)? How significant are the differences, and are they adequately explained? (*R. v. Dinardo*, 2008 SCC 24, [2008] 1 S.C.R. 788.)
- Is there independent confirming or contradicting evidence? (*R. v. Khan*, [1990] 2 S.C.R. 531. (S.C.C.)).

[47] This list is not exhaustive. None of these factors is determinative. In addressing the credibility and reliability of each of the van Ravenswaays I have considered all of these factors. They all inform my views as to the van Ravenswaays credibility.

William van Ravenswaay

[48] I do not find Mr. van Ravenswaay credible. I do not accept his evidence that he did not know that the front clip was stolen. Why do I say this?

[49] There are several reasons, including:

a) Mr. van Ravenswaay has been convicted of crimes of trust. As a result of the police investigation into his business affairs triggered by the discovery of the front clip from the stolen Mack truck in the container, he was convicted after pleading guilty to one charge of possession of stolen vehicles and parts, and one charge of concealing them. In addition, in 1986, he was also convicted of possession of stolen goods. He didn't remember what the goods were or where he had them, but admittedly conviction. He admitted that for the 1986 conviction, he was incarcerated, although he did not remember the length of the incarceration. For the convictions arising from the charges in 2009, he served three months concurrently with a three-year sentence concerning possession storage of a firearm which was discovered on the Corporation premises when they were doing the search for the stolen vehicles and parts.

b) His evidence before me was inconsistent with his other evidence, either sworn or given in circumstances where one would have expected him to tell the truth. In his evidence before me, he admitted that he made the arrangements with Mr. Hill purchase the front clip of the Mack truck. He says that it cost and $8000. He said that this was paid for by a check for $4000, and a further check after delivery for $8000. The total payment of

$12,000 was for the front clip but also other parts. He said the transaction with Mr. Hill completed. He also said that there was a purchase order or invoice in his records at the time of the search, which the police took, and never return to him. He said several times in his evidence and his examination is cross-examination that the documentation about the Mack truck was not return to him. Inferentially, he suggested that the police did shoddy investigation.

Mr. van Ravenswaay also said that he had a 20 year relationship with Mr. Hill but the back was a purely business relationship. He denied the enclosed Mr. Hill.

In cross-examination, his evidence changed. He didn't mention in his evidence in chief that he was close enough to the Hill family that he was asked to be a pallbearer at Mr. Hill's funeral.

c) Respect to the documentation with respect to the purchase of the Mack truck, he told police in his recorded statement that he knew nothing about the purchase of the front clip of the Mack. He told the police that he had no invoices or other paperwork with respect to the purchase of the front clip. He admitted in his cross-examination he lied to the police in this respect he said he lied because "… they were sticking a got my ass". He never explained what this meant.

As examination for discovery he gave a different story. He said that while he paid $8000 for the front clip, and identified the $4000 check as the down payment, he says that there was no invoices ever created and no further payment ever made in respect of the Mack because the trends action never completed. The transaction never completed because of the trouble that came up with the police after the Mack clip was found in the container.

I can only conclude from this that Mr. van Ravenswaay senior's approach to giving statements are evidence, is situational.

d) In pleading guilty to the charges of which he was convicted arising out of the search conducted by the police, the Mr. van Ravenswaay agreed to the truth of a number of facts. Among those was that he had on his property 14 stolen vehicles or trailers. These were identified as were their real owners. In his evidence before me, however, he sought to explain why he pleaded to and accepted a conviction on two charges. He admitted that the time he agreed to the facts and took the pleas he was represented by counsel and made the decision, himself, to accept the pleas.

Mr. van Ravenswaay explained that he took the plea by following his lawyer who gave him bad advice. He said it was "to get it over with." He said that he was forced, (presumably by the police and his counsel,) to agree to the facts and take the pleas. At another point in his examination in chief and in cross-examination he attempted to explain away the facts that he agreed to. For instance with respect to a vehicle identified as the Haig vehicle, he said that the stolen vehicle and/or parts were not his. An employee was working on his car and the allegedly stolen parts belonged to the employee who was merely using the shop and the tools. I was not directed to a transcript or other document suggesting that Mr. van Ravenswaay gave this explanation either to the police or at examinations for discovery.

e) In May, 2009, Mr. van Ravenswaay instituted a policy whereby all checks had to be accompanied by specific purchase orders and invoices, because of concerns of fraud. Where the transaction involved a truck or trailer, the documentation had to refer to the VIN number. There is no such paper work for the front clip. Mr. van Ravenswaay said that this policy did

not apply to the front clip because the front clip was merely a part of a truck and not a whole truck. This explanation, however, I do not accept. Buying a front clip of a truck (which includes the motor the steering mechanisms the exhaust, the fuel tanks, the front springs, and all other moving components of a truck other than the front axle, springs, rear axles and springs, driveshaft, and dumping mechanisms] is a different thing than a muffler.

f) Mr. van Ravenswaay was aware that his industry (dealing with srap metal, truck parts, truck repair and servicing, and truck rebuilding) was rife fraud. The search by police of Mr. van Ravenswaay's desk resulted in the police finding a file which contained Ministry of Transport truck certification labels and VIN tags that had been removed from trailers and trucks. Mr. van Ravenswaay admitted it was illegal to remove these tags. He said, however, that it was necessary to remove them when one is rebuilding a truck using parts from other trucks which parts would have had attached to them in labels and or certification tags. He also said an examination in chief that he removes them to prevent fraud. Trucks, truck parts and trailers are stored in an open yard although fenced and locked. It is common for people to steal tags plates and the VIN numbers from his yard and then use them for fraudulent purposes. During his cross examination, he became much more heated about the subject. He said that it was common knowledge that there was a lot of fraud in his industry and that is why he had to take certification tags in tags and plates off of vehicles. He was asked how he would know whether a front clip that he received was from a stolen vehicle went, at the time he bought it. His answer was "I don't".

[50] Finding that Mr. van Ravenswaay is not credible, and rejecting his evidence that he did not know that the front clip he received from Mr. Hill was stolen, does not equate

with a finding that he did know. That finding can only be made on the basis of evidence or inferences drawn from evidence.

[51] Based on the evidence discussed respect to credibility, I find that Mr. van Ravenswaay was aware of or was wilfully blind to the fact that the front clip he purchased from Mr. Hill either was stolen, or there was a probability or possibility that was stolen.

[52] Why do I say this?

[53] In my view, based on his own evidence, William van Ravenswaay at least ought to have made an inquiry of Mr. Hill with respect to the source of the front clip, and its ownership. He did not do so. While Mr. van Ravenswaay said that in the 20 years he dealt with Mr. Hill he never had any trouble with anything he purchased from Mr. Hill, he also never asked Mr. Hill about the source of the parts on material Mr. Hill brought in the GW Equipment yard and sold to them.

[54] Having found that William van Ravenswaay was willfully blind to the fact that there was a possibility if not likelihood that the front clip came from stolen vehicle, I find that he had the knowledge required to be liable for conversion, independent of the Corporation.

Trevor van Ravenswaay

[55] Trevor van Ravenswaay also said that he did not know that the front clip was stolen. The plaintiffs say, that Trevor van Ravenswaay cannot be believed.

[56] I agree that Trevor van Ravenswaay is not very credibile. I say this for a number of reasons including:

a) He pleaded guilty to possessing stolen property; namely a motor vehicle. This is a crime trust.

b) He portrayed himself as a mere employee, a forklift driver who simply loaded the simple he drove his forklift and loaded the material bound for the Trinidadian client into the container. He denied that he was the *de facto* manager of the business. In his statement to police, however, he identified himself as the "manager" of GW Equipment. He described himself as the second in command, whom employees approached with questions and which he answered. In his cross examination, he was forced to admit that he played a more involved role in the running of the business, and with respect to the container into which the stolen Mack front clip was placed. With respect to the business, he agreed under cross examination that he was second in command, but only with respect to the yard. He agreed employees in the yard were accountable to him.

The examination and cross examination of William van Ravenswaay also supported a finding of a more extensive role for Trevor van Ravenswaay .

During the period of 2008 and 2009, William van Ravenswaay was involved in another business called Waterdown Gardens. He was only able to devote two hours a day, maximum, to running GW Equipment. The day-to-day operation of GW Equipment was left to Trevor van Ravenswaay and another employee. In effect, Trevor van Ravenswaay was the general manager.

c) With respect to the specific container, Trevor van Ravenswaay wasn't nearly a forklift driver. He made arrangements for the container, selected the parts to go into the container, made

> arrangements with the freight forwarding company to ship the container, and called them to come and pick up the container.

[57] I find that Trevor van Ravenswaay attempted in his evidence in chief to minimize his role for the purposes of this civil action. Based on his evidence I find that his credibility is low and I do not accept his evidence that he did not know that the front clip from the Mack truck that he placed in the container was stolen.

[58] Finding that Trevor van Ravenswaay has little credibility, and rejecting his denial that he knew that the front clip was stolen, in and of itself, does not lead to the finding that he didn't know that the trip was stolen.

[59] There is no evidence from which I can infer Trevor van Ravenswaay knew that the front clip of the Mack truck was stolen or that he ought to have known this. He says, confirmed by William van Ravenswaay, that William van Ravenswaay arranged for the purchase of the front clip. Trevor van Ravenswaay did not give any evidence like his father's that he was aware that the industry in which he operated was rife with fraud or that fraud was common, or that one had to be worried about VIN and MOT tags being stolen. Therefore, I cannot conclude that Trevor van Ravenswaay knew or ought to have known that the front clip of Matt truck was stolen.

Conclusion on liability.

[60] The defendants admit that the corporate defendant is liable in conversion.

[61] William van Ravenswaay is liable in conversion. He knew that industry was rife with fraud. He knew or ought to know that there was a risk or probability that the front clip was stolen. A reasonable person in his position would have made inquiries of the vendor about the front clip's origin. Mr. van Ravenswaay did not do this. I conclude he was willfully blind to this. He satisfies the requirement of knowledge and intention such that he is no longer protected by the immunity offered to officers, directors and employees of corporations acting in the scope of their employment.

4. *What are the damages?*

[62] Evidence on damages is very poor.

[63] The Plaintiff bears the onus of proving the quantum of his or her damages on a balance of probabilities. The Court of Appeal instructs trial judges in *TMS Lighting Ltd. v. KJS Transport Inc.*, 2014 ONCA 1 that where the evidence on damages is poor, the trial judge must still assess the damages based on the available evidence even where difficulties in the quantification of damages render a precise mathematical calculation of a plaintiff's loss uncertain or impossible. Mathematical exactitude in the calculation of damages is neither necessary nor realistic in many cases. The controlling principles were clearly expressed by Finlayson J.A. of this court in *Martin v. Goldfarb*, [1998] O.J. No. 3403, 112 O.A.C. 138, at para. 75, leave to appeal to S.C.C. refused, [1998] S.C.C.A. No. 516:

> I have concluded that it is a well-established principle that where damages in a particular case are by their inherent nature difficult to assess, the court must do the best it can in the circumstances. That is not to say, however, that a litigant is relieved of his or her duty to prove the facts upon which the damages are estimated. The distinction drawn in the various authorities, as I see it, is that where the assessment is difficult because of the nature of the damage proved, the difficulty of assessment is no ground for refusing substantial damages even to the point of resorting to guess work. However, where the absence of evidence makes it impossible to assess damages, the litigant is entitled to nominal damages at best.
>
> (See also Cadbury Schweppes Inc. v. FBI Foods Ltd., [1999] 1 S.C.R. 142, at para. 99; *100 Main Street East Ltd. v. W.B. Construction Ltd.* (1978), 20 O.R. (2d) 401 (C.A.), 88 D.L.R. (3d) 1, at para. 80; Penvidic Contracting Co. v. International Nickel Co. of Canada, [1976] 1 S.C.R. 267, at pp. 278-79).

[64] What is the evidence on damages in this case?

[65] The Defendant says that based on the evidence of the adjuster, the actual cash value of the Mack truck at the time of the theft was $92,880. According to Jason Longpre, the insurance adjustor on file, this represents an actual cash value of $82,600, before HST. In addition, the plaintiff paid the sum of $4,500 for loss of use and incurred

investigation expenses $1802.17. The defendant admits the actual cash value of the Mack truck but does not admit the loss of use or investigation expenses. They led no evidence, however, on this point and therefore I find that the loss of use expenses of $4500 and be adjusting fees of $1802.17 were incurred and reasonable.

[66] No one led any evidence, directly, addressing the issue of the value of the front clip from the Mack truck. Therefore, I am left to draw inferences from the evidence and find the value for the front clip.

[67] How I do this?

[68] One approach to finding of value for the front clip is its salvage value. Salvage value is that price the market will pay for the damaged item in its damaged state. Jason Longpre testified that the front clip was put out to tender and was sold to the highest bidder for $8750.

[69] Another approach to determining the value of the front clip is to pro rate the actual cash value of the truck at the time of the theft, in some manner. Mr. Longpre testified that based on information he received from Barrie Appraisals, the value of the rest of the parts required to make up a full 2005 Mack dump truck (in addition to the front clip) is $34,804. This evidence, however, is very fragile. No one was call from Barrie appraisals to give evidence. No report was submitted from Barrie Appraisals. It is unclear whether the estimate includes HST. The information from Barrie appraisals is not fact evidence; it is opinion evidence, and not properly before the court. However, the defendant argued damage calculations based on this information. Therefore, I accept Mr. Longpre's evidence of the advice he received from Barrie Appraisals notwithstanding the problems with it. I also hold that the value of $34,804 does not include HST. If the value of the remaining parts required to turn the front clip back into a functioning 2005 Mack dump truck is $34,804 the front clip, as a part, would be valued at $54,009.48 ($82,600 – 34,804 = $47,796 + HST of $6,213.48).

[70] Trevor van Ravenswaay testified that the front clip represented 30% of the parts of the complete 2005 Mack dump truck. In order to restore the front clip to the full dump truck one would have to buy a new frame which would cost between $10,000 and $15,000 if used, or $20,000 if purchased new. A new a dump box lifting mechanism (including hydraulics), tires, rims and axles would have to be purchased. Based on his evidence of the cost of these additional items necessary to make a full dump truck the, the total would be between 45,000 and $48,000. It in his evidence, in chief, Trevor van Ravenswaay was not asked whether the sums were inclusive of HST. I assume they were not.

[71] This evidence, too, is fragile. Mr. van Ravenswaay was not qualified as an expert. He prepared and submitted no report. The Rules on experts were not complied with. However, the plaintiff did not object to Mr. van Ravenswaays' evidence in this respect. Mr. van Ravenswaay is a qualified diesel mechanic qualified with a 30.10 T whole truck license. He has been so licensed for about 17 years. He is been involved in the repair and selling of trucks and the sale of used parts for trucks since he began working with WG Equipment. I accept that he has some expertise which allows him to give the estimates that he gave. I also note that he was not cross examined on his estimates. I temper my view of Mr. van Ravenswaay's evidence in that since Barrie Appraisals estimates were not put into evidence, because they were not properly proved, I did not allow him to be cross examined on them.

[72] Accepting Mr. van Ravenswaay's estimates, notwithstanding the fragility of the evidence, and using the midpoint value of $46,500 for these additional parts, the value of the front clip is $40,793 ($82,600 - $46,500 = $36,100 + HST of $4693).

[73] A third approach to assessing the value of the clip is its market value. William van Ravenswaay testified, and nobody questioned, that he sold the front clip to the Trinidadian client for $20,000. This evidence, too, is fragile. It is given by a witness with no credibility, in my view. Documents exist or ought to exist with respect to this dollar

value. Well Mr. van Ravenswaay says that the police took all the documents and returned them, it was within his power to obtain documents. He could have inquired of his client in Trinidad but did not.

[74] The plaintiff submits that there are no documents about the purchase of the Mack front clip because they do not exist. It is not a legal transaction. The reason why purchase documents were not returned plaintiff is that they do not exist. In any event, the proof of the value of the truck or rather the front clip is subject to reverse onus.

[75] Notwithstanding the fragility of the evidence behind the three methods of calculating the loss, what value do I use?

[76] In conversion, where there is doubt as to the value of a chattel converted the onus is on the liable defendant to either produce the converted chattel or account for its nonproduction. If he does not do so it is presumed against him that it was of the highest possible value based on the principle *omia praesumuntur contra spoliatorem* (*Adler v. Jackson* [1988] B. C. J. No. 2756 (B.C.Co.Ct.) citing Salmond on Torts (1987).

[77] Where the trespass or conversion occurs inadvertently, under a bona fide belief of title as to what was removed, costs of determining the value are deducted from the loss. (*Shewish v. Macmillan Bloedel Ltd.* (1990) 40 8B. C. L. R. (2-D) 290 (B.C.C.A.) at 279 per Hollinrake, J.A.). In *Shewish*, the defendant converted the plaintiff's logs and mixed them with its own logs, which the defendant then sold. The plaintiffs claimed as damages the costs incurred to separate its logs from the defendants logs. The comments of the Court of Appeal concerning recovery of those costs must be seen in light of the facts of the case. However, the logical extension of the legal principle that Hollinrake, J.A. discusses in *Shewish* apply equally to other losses the plaintiff sustains as a result of intentional conversion by the defendant.

[78] Further, the degree of negligence and culpability must be looked at determining the assessment of damages. Where the convertor is guilty of willful trespass or action, it

attracts the more severe rule for the assessment of damages, including the costs of repair and investigation. (See *Craig*, *supra*, paragraphs 66 through 69).

[79] In this case, I have found that William van Ravenswaay, the sole officer and director of G.W. Equipment knew, at minimum, (because of willful blindness) that the front clip of the Mack truck was taken from a stolen truck. Based on the legal principles of damages for conversion described above, the highest valuation of damages should be used. In addition, where the conversion is intentional or willful, the most severe rule for the assessment of damages should be applied (see *Craig*, supra, paragraph 69) and other damages incurred such as adjusting expenses and loss of these expenses should be recovered.

Judgment to issue

[80] Based on the foregoing the plaintiff shall have judgment against the defendants Wim van Ravenswaay a.k.a. William Van Ravenswaay and 1046854 Ontario Inc. c.o.b. as W.G. Equipment Equipment.

Damages for conversion	$54,009.48
Loss of use	4,500.00
Investigation costs	1,802.17
Total	$60,311.65

[81] The plaintiff seeks prejudgment interest, and is entitled to it. The applicable prejudgment interest rate under section 128 of the *Courts of Justice Act* is 5% per annum. The question is from when does it run? The plaintiff submits, implicitly, that it should run from the date of the theft. However, in this case, since I have made no finding that any of the defendants stole the Mack truck, that is not the correct date. Since I found that William van Ravenswaay and WG Equipment converted only the stolen clip, interest runs from the date of the conversion. The exact date of conversion of the clip is uncertain.

[82] William van Ravenswaay said that he ordered the clip from Mr. Hill and it was delivered to the three weeks before it was placed on the container.

[83] When was the front clip delivered to WG Equipment? I conclude that it was delivered to the WG Equipment on December 8, 2008. The police note that they observed the container holding the front clip leave WG's premises on January 8, 2009 accepting that the clip was delivered to WG up to three were weeks before it was loaded and assuming it sat in the yard for a time period, it is reasonable to conclude that WG was in possession of the front clip for four weeks before the container left the yard of at WG or December 8, 2008.

[84] The plaintiff shall have judgment against the liable defendants for prejudgment interest of $2,262.10 for the time period of December 1, 2008 to and including May 1, 2016 ($60,311.65 damages x .005% for seven years, 183 days). The plaintiff shall also have the intent to post judgment interest.

Costs

[85] The plaintiffs are presumptively entitled to their costs from the libel defendants. Trevor van Ravenswaay is presumptively entitled to his costs.

[86] If counsel cannot agree on liability for and quantum of costs, appointment may be made for a conference call with me to discuss of the procedure for making costs submissions.

Trimble J.

Date: May 31, 2016

CITATION: AVS Transport Inc. v. van Ravenswaay et al., 2016 ONSC 3568
COURT FILE NO.: CV-10-3395-00SR
DATE: 2016 05 31

ONTARIO

SUPERIOR COURT OF JUSTICE

AVS Transport Inc. and Wim van Ravenswaay a.k.a. William van Ravenswaay, Trevor van Ravenswaay - and -1046854 Ontario Inc. c.o.b. as W.G. Equipment Enterprises - and - William Douglas Hill c.o.b. as Grizzly Equipment

---

REASONS FOR JUDGMENT

Trimble J.

Released: May 31, 2016