

## Li v Katoa

Supreme Court, Nuku'alofa

Lewis J

10 C.72/95

16 July, 16 August 1996

*Damages - bailee - breach of duties*

*Detinue - goods - writ for recovery - damages*

*Conversion - goods - damages for loss*

*Bailment - duties of bailee - damages*

20 The plaintiff sued for damages for breaches of contracts and as an alternative for the return of certain equipment. The matter is reported only as to certain aspects relating to the goods.

Held:

1. The claim for possession of goods derives from the Torts (Interference with Goods) Act 1977 (UK) which replaces the issue of a writ of detinue (which enabled a recovery of the goods themselves, or their value and consequential damages).
2. Loss or destruction of goods in breach of a duty by a bailee which did not constitute conversion at common law is made into a statutory conversion by the U.K. Act.
3. The nature of the bailment, whether gratuitous or for reward, or whether voluntary or involuntary, will determine the scope of the duty owed by the bailee.
4. Here the defendant was a voluntary bailee for reward and was liable for the value of the missing goods. His was a statutory conversion under the U.K. Act.
5. Judgments were made accordingly, for the plaintiff.

40 Statutes considered : Civil Law Act ss.3 & 4  
Torts (Interference with Goods) Act 1977 (UK)

Counsel for plaintiff : Mr W Edwards

Counsel for defendant : Mr Hoha

### Judgment

The Plaintiff in this action Kevin Li, claims damages for breaches of agreements which were made from time to time between himself and the defendant one Hava Katoa. As an alternative head of claim the plaintiff seeks an order for the return of certain identified equipment and/or damages in lieu thereof.

The alternative claim for "possession" derives now from the Torts (Interference With Goods) Act 1977 UK to which this court must resort as a statute of general application within the meaning of the Civil Law Act Cap. 25 ss. 3 and 4. The defendant has filed a defence and a counterclaim in which there is a general denial of liability pleaded in the defence and a counterclaim which pleads that the plaintiff has "unlawfully seized specified equipment and tools of the defendant. Formerly the actions on the claim and counterclaim would have arisen by the issue of a writ of detinue.

A person with a right to an immediate possession of goods could, by way of an action in detinue, recover the goods themselves or payment of their value and consequential damages upon evidence that the defendant had wrongfully refused to deliver up the goods on demand. Loss or destruction of goods in breach of duty by a bailee with did not constitute conversion at common law is "converted" into a statutory conversion by Section 2(2) of the Torts (Interference With Goods) Act 1977.

The nature of the bailment whether it be gratuitous or for reward or whether it is voluntary or involuntary will determine the scope of the duty owed by the Bailee.

In the present case the defendant did not appeal at trial. No defence witnesses were present nor did Mr. Holo of counsel for the defendant seek to call witnesses. Mr. Holo informed the court that his client was not present and that counsel had received information from the wife of the defendant that her husband was presently hospitalised in the United States of America, had been so hospitalised for about one month at that time and would not be appearing at trial. No more it seems was known by counsel in spite of counsel's best efforts. The plaintiff presented his case, gave evidence and applied for judgment on his claim and that the counterclaim be struck out in the absence of any evidence on the part of the defendant. Albeit that the defendant had filed proper pleadings by way of defence and counterclaim. (The facts were then set out).

From the evidence before me I am satisfied that the allegations in paras 3 and 4 of the statement of claim are proved. In my opinion Katoa became a voluntary bailee for reward at the moment of execution of the agreements and each of them in respect of which possession is sought and remains so and becomes liable for the value of the missing goods. The loss of the goods in the hands of the defendant becomes a statutory conversion pursuant to the provisions of the Torts Interference with Goods Act 1977 S.2(2).

Having succeeded in establishing right to the missing goods what evidence is there of the value of them in order to assess damages? There is no evidence before me of the value of the missing items. Since no value of the goods has been proved I am unable to assess loss. I award nothing under this head of claim.

### SUMMARY

1. Agreement 8.12.93

There being no evidence of the value of the goods converted by the defendant from the plaintiff it is ordered that the defendant return to the plaintiff those items of personalty listed at page . . . of this judgment.

2. Agreement 6.6.5.

It is ordered that the defendant pay to the plaintiff the sum of \$19,200.00 by way of damages for unpaid hire charges (vide page 8 of this judgment).

3. Agreement 11.7.94

It is ordered that the defendant pay to the plaintiff the sum of \$4208.00 by way of damages for unpaid hire charges. (vide page 7 of this judgment).

4. Agreement 10.10.94

It is ordered that the defendant pay to the plaintiff the sum of \$12,600.00 by way of damages for unpaid hire charges. (vide page 8 of this judgment).

5. Claims set out in paras.32 and 33 of the statement of claim

It is ordered that the defendant pay to the plaintiff the sum of \$1410.00 by way of damages for the assessed value of the missing items.

6. The truck

I allow the Plaintiff 15 loan repayment instalments at \$450 less the amount paid by Katoa namely \$1,350.00 = \$5,400.00.

7. Advances by the plaintiff to purchase Mokohunu

It is ordered the defendant pay to the plaintiff the sum of \$56,463.40.

It is further ordered that the defendant pay the costs of these proceedings to be taxed.