

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

EL JOHN,	)	
	)	CASE NO.: ST-12-SM-568
	)	
Plaintiff/Respondent,	)	ACTION FOR DEBT
vs.	)	
	)	
DERRICK M. BRYAN,	)	
	)	
Defendant/Petitioner.	)	
	)	

MEMORANDUM OPINION

I. INTRODUCTION

Before the Court is the appeal filed on December 14, 2012¹ of the Judgment of the Magistrate dated December 19, 2012, which ruled in favor of the Plaintiff El John and against Defendant Derrick M. Bryan.² Upon consideration of the record, the parties' pleadings, and the applicable law, the Court concludes that the Magistrate's Judgment should be affirmed.

II. BACKGROUND

On or about October 20 2010, El John's 2001 Ford Taurus was stolen from the Miller Manor area in St. Thomas, Virgin Islands after he mistakenly left his keys inside the car door. After discovering that his car was missing, John went to the police station and made a report.³ On or about October 21, 2010, Derrick Bryan, the owner of Bailey Towing, received a call from a property owner in the Frenchtown area of St. Thomas to remove an abandoned car, which had been left unattended on the property for three days. The abandoned car was the 2001 Ford Taurus. Bryan called 911 and was informed by an operator that the owner of the car was El John.⁴ No other information was given to Bryan about the location of John. Bryan did not notify the operator or the Virgin Islands Police Department that the car was found abandoned. Bryan towed the car to his storage area. In May 2012, John located his car after it was sighted in the area of Lindberg Bay by a friend. John also made contact with Bryan, whom neighbors identified

¹ In accordance with Superior Court Rule 322.1(b), Petitioner's notice of appeal is considered a petition for review in this matter.

² On December 12, 2012 the Magistrate issued an oral ruling against Derrick Bryan, which was later memorialized on December 19, 2012.

³ In December 2010, El John contacted the police to receive an update on the investigation and was informed that no report was filed regarding his missing car. El John filed a second police report. Small Claims Hr'g. Tr. 44 (December 12, 2012).

⁴ According to the testimony of Carolyn Watley, District Manager of VITEMA 911 call center, there are no records that indicate that Bryan made a call to 911 regarding a 2001 Ford Taurus. Small Claims Hr'g. Tr. 8 and 57 (December 12, 2012, 2012). However, the 911 records system had problems in 2010, so the record of Bryan's call may have been deleted. Small Claims Hr'g. Tr. 58 (December, 12 2012).

as the person who parked the car. John was informed by Bryan that the car was towed in October 2010 and that John owed him approximately \$21,000.00 in storage fees for the car. When Bryan refused to release the car without payment, John called the police. After an investigation by the police, John was told that since the car was towed from private property and he refused to pay Bryan for fees that were owed, the police could not take action against Bryan for keeping the car. Based on the officers' directive, John left the car in Bryan's storage area in Lindberg Bay.

On November 14, 2012, John filed a complaint against Bryan in the Small Claims Division of the Superior Court. At trial on December 12, 2012, John argued that his car was stolen and he was entitled to either \$3,000.00 plus the return of his car, or \$6,000.00 in damages from Bryan. Bryan denied the allegations of the Complaint and argued that John owed him for storage fees in the amount of \$21,125.00, or \$8,000.00 if the parties agreed to settle.

After hearing sworn testimony of the parties and reviewing all admitted evidence, the Magistrate found that both parties were negligent in the handling of the car. John was negligent in misplacing his keys, which contributed to the taking of his car. Bryan was negligent in towing the car without properly notifying the 911 operator or the police that the car was found abandoned. The Magistrate found that the car's windshield was damaged while the car was parked in Bryan's storage facility. Because there was sufficient evidence as to the car's ownership and the window damage, John was awarded judgment, which included the return of the car and \$125.00 in damages. All other requested damages by John lacked sufficient evidentiary support and were rejected by the Magistrate. The Magistrate also found that the storage fee set by Bryan was an arbitrary and uncertain amount. Bryan provided no evidence to support the basis and/or calculation for the storage fees for the car. Therefore, the Magistrate rejected Bryan's counterclaim damage request. In sum, the Magistrate awarded judgment in favor of John in the amount of \$125.00 for the replacement of the car's windshield and dismissed Bryan's counterclaim. The Magistrate memorialized his decision on December 19, 2012. Bryan filed his petition for review on December 14, 2012.⁵

III. DISCUSSION

A. The Magistrate's determination that Bryan was not entitled to a storage fee for the car is proper, since he did not obtain proper permission from VIPD to take custody of the car.

An abandoned vehicle is defined as a "vehicle that has remained on private property without the consent of the owner or person in control of such property."⁶ Under 20 VIC §472, the Virgin Islands Police Department has legal authority to take possession of any motor vehicle found on public or private property.⁷ If a person discovers an abandoned vehicle on their private

⁵ Petitioner Derrick Bryan has not filed a brief in this matter. However pursuant to Superior Court rule 322.1(b)(i)(B), the court will waive this requirement since the issues in this matter may be determined by the record.

⁶ V.I. CODE ANN. tit. 20, §741 (1961).

⁷ *Id.* at §742

property or the vehicle is in their possession, they may apply for a petition with VIPD for the abandoned vehicle's custody and disposal.⁸ An abandoned vehicle petition must include: the name and address of the applicant; a description of the vehicle; the facts surrounding its abandonment; and an affidavit attesting that the facts contained in the statement are true.⁹ Once VIPD verifies the petition and determines that the vehicle has been abandoned, the vehicle will be delivered by VIPD to the Department of Property and Procurement for storage pending the investigation of the vehicle and notification of the last registered owner.¹⁰

In this case, Bryan testified at trial that he called VITEMA 911 to locate the owner of the 2001 Ford Taurus. Bryan admitted that he did not notify the 911 operator that the car was found abandoned nor did he contact the VIPD.¹¹ According to Bryan, he assumed that the 911 operator would notify the VIPD that he had towed the car.¹² There is no evidence of any 911 calls, reports, or petitions to the police during October 2010 by Bryan or anyone else requesting custody or disposal of the abandoned 2001 Ford Taurus.¹³ The only record VITEMA and VIPD have for the car is El John's police report.¹⁴ Because there is no evidence that shows that Bryan notified VIPD regarding the abandoned car and petitioned VIPD for permission to take custody of the 2001 Ford Taurus, he had no legal authority to move and store the vehicle. Given these facts, Bryan is not entitled to damages for storage fees.

B. The Magistrate's determination that John was entitled to damages for the cost of the replacement of the car windshield was proper.

At trial, Bryan also admitted that the windshield of the 2001 Ford Taurus was damaged while the car was parked at his storage area on Lindberg Bay. According to Bryan, a rock hit the windshield of the car during the mowing of the lawn surrounding the vehicle.¹⁵ Since Bryan admitted to liability, the only remaining issue for determination by the Magistrate was the calculation of damages.

When a plaintiff seeks to recover damages for injury to a motor vehicle, they must provide a reasonable estimate of their damages.¹⁶ Damages need not be proven with exact precision since there is no single test for determining the value of injured property.¹⁷ However, Plaintiff must establish the value of the loss he suffered. For example, "plaintiff could provide evidence of the property before it was harmed, and after, and the difference would constitute her

⁸ *Id.* §745

⁹ *Id.* §745(b)

¹⁰ *Id.* §§745(b), 743, 746

¹¹ Small Claims Hr'g. Tr. 20, 19, 43, and 44 (December 12, 2012).

¹² *Id.* at 43.

¹³ *Id.* at 57.

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 63.

¹⁶ Restatement (Second) of Torts § 928 (1979).

¹⁷ *Id.*

damages award.”¹⁸ Alternatively, plaintiff could provide several repair estimates of the injured motor vehicle as evidence of damages. However, if the repair estimate is unsupported or inaccurate, a court may reject Plaintiff’s requested amount for damages and determine another reasonable means of estimating damages, which may reduce or eliminate the award of the damages.

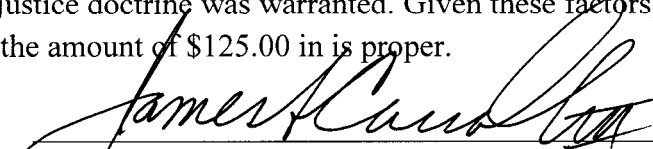
In this case, John did not provide any evidence of the cost of repair or replacement for the damaged windshield. John also did not provide evidence of the value of the windshield prior to the accident. However, according to Bryan’s testimony, the estimate he was quoted to fix the car windshield was \$125.00.

Given that Bryan received a repair quote of \$125.00 and John failed to produce evidence to support his damages for the windshield, \$125.00 is a fair amount and would meet the substantial justice standard. Accordingly, the Court finds that the Magistrate’s factual determination that the car window was damaged while in Bryan’s storage area was proper and that the Magistrate’s conclusion that Bryan must pay John \$125.00 in damage is not erroneous.

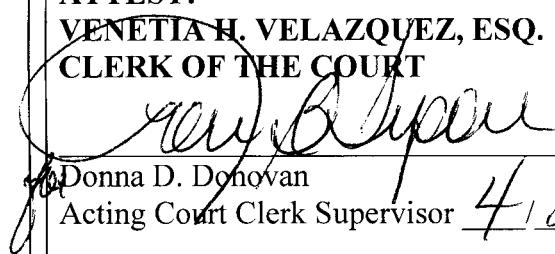
IV. CONCLUSION

The Magistrate’s ruling is affirmed since (1) Bryan had no legal authority or permission from VIPD to take custody of the 2001 Ford Taurus; (2) there is sufficient evidence to support that the wind shield of the car was injured while in Bryan’s custody; and (3) a determination of reasonable damages under the substantial justice doctrine was warranted. Given these factors, the Magistrate’s award of damages to John in the amount of \$125.00 in is proper.

Dated: April 4, 2013


James S. Carroll III
Judge of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT


Donna D. Donovan
Acting Court Clerk Supervisor 4/8/13

¹⁸ *Maso v. Morales*, S. Ct. Civ. No. 2011–0068, 2012 WL 5935417 at *3 (V.I., October 9, 2012).