

THE HIGH COURT

2010 3230 P

BETWEEN

**THOMAS MURRAY, TRADING
AS TOM MURRAY GARDEN MACHINERY**

PLAINTIFF

AND

THE REVENUE COMMISSIONERS

DEFENDANTS

JUDGMENT of Mr. Justice Michael White delivered on the 7th day of February 2012

1. This is an action claiming damages for the detention and seizure of a Mercedes ML420 CDI vehicle 07 WX 2044. The vehicle was detained at Moone, Co. Kildare on 26th March, 2009 and seized on 15th April, 2009 pursuant to s. 140(4) and 141(1) of the Finance Act 2001.

2. The plaintiff claims damages for the value of the vehicle at date of seizure, which is agreed at €55,000. The defendants deny the claim and have counterclaimed for an order pursuant to s. 127 of the Finance Act 2001, for forfeiture. The action was heard on 8th and 9th December, 2011. The court permitted further written submissions up to 13th January, 2012. Further submissions were delivered by the plaintiff and defendants by that date.

Vehicle Registration Tax and the Legal Framework

3. Chapter IV of Part II of the Finance Act 1992, as amended, by the Finance (No. 2) Act 1992, established a new duty on motor vehicles known as vehicle registration tax, and provided for a new system of registration.

4. A mechanically propelled vehicle is defined in Section 130. It states:-

“mechanically propelled vehicle” means a vehicle intended or adapted for propulsion by a mechanical means, including –

(a) a bicycle, tricycle or quadricycle propelled by an engine or motor or with an attachment for propelling it by mechanical power, whether or not the attachment is being used, a moped, a scooter and an auticycle, and

(b) a vehicle the means of propulsion of which is electrical or partly electrical and partly mechanical,

but not including a tramcar or other vehicle running on permanent rails or a vehicle as respect which the Commissioners are satisfied that it is designed or constructed for off-road use (other than racing vehicles, scrambling vehicles or other sporting vehicles)”

5. The Act defines a number of categories of vehicle, category A is a passenger vehicle and category C is a commercial vehicle.

6. Section 131 of the Act provides for a register to be maintained by the Revenue Commissioners. Apart from a temporary exemption from registration specified in s.135 and authorisation to manufacturers, distributors and dealers set out in s. 136, all the vehicles in the State or imported into the State from 1st January, 1993 were subject to registration. On registration each vehicle is designated by category.

7. Pursuant to the provisions of Section 131(3) (a) and (b) the owner of a vehicle which was converted in accordance with the definition in s. 130 has a duty to deliver to the Revenue Commissioners a declaration in relation to the conversion.

8. Vehicle registration tax is payable on registration, a small amount for a commercial vehicle but a substantial amount for a category A vehicle.

9. Section 142(2)(a) and (b) permits an officer of the Revenue Commissioners to stop vehicles and request the person in charge of the vehicle to provide certain information.

10. Section 142(3)(b) allows an officer of the defendants on reasonable suspicion, of a vehicle being converted and a declaration not having been made pursuant to s. 131 to detain the vehicle for further examination.

11. Section 139(3)(ee) states:-

“(1) It shall be an offence under this subsection for a person, in respect of a vehicle in the State

“(ee) to be in possession of the vehicle if it is a converted vehicle in relation to which particulars of the conversion have not been declared in accordance with section 131 or a converted vehicle in relation to which particulars of the conversion have been so declared but vehicle registration tax has not been paid on the declaration unless he is an authorised person.”

12. Sections 140, 141, 142, and 143 of the Finance Act 2001 deals with the detention of goods and vehicles, their seizure, notice of seizure, and notice of claim.

The Facts

13. On 17th January, 2007 the plaintiff purchased from MC Import Export Services Limited, Crumlin, Co. Antrim, Northern Ireland a new Mercedes ML420 CDI.

14. It was a passenger vehicle for a driver and four passengers. It was converted from a passenger vehicle to a commercial vehicle by the company who charged €1,500 for this service. The vehicle was imported from Northern Ireland into the Republic of Ireland through the vehicle registration office at Monaghan. A declaration of 23rd January, 2007, signed by N. O'Mahony an official of the defendants certified that the vehicle had been converted to category C in accordance with s. 130 Finance Act 1992 and S.I. 318 of 1992. The vehicle was registered in the Republic of Ireland On import the rate of vehicle registration tax applicable to commercial vehicles was levied and the sum of €50 paid.

15. The vehicle was taxed as a private vehicle.

16. Within a period of four weeks the plaintiff decided to convert the vehicle back to carry passengers. MC Import Export Services Limited carried out the conversion and was paid €2,000.

17. The plaintiff stated that he spoke to an individual, who advised him it was legitimate to convert the vehicle from commercial, once the vehicle was being used off-road.

18. No new declaration was made to the defendants.

19. The vehicle was used in the course of the plaintiff's business on construction sites and landscaping projects and also on public roads.

20. On 26th March, 2009 at a routine Garda /customs checkpoint at Moone, Co. Kildare the vehicle was stopped and a computer check of its registration particulars was carried out by Roderick O'Connor, customs officer who suspected that the vehicle may have been converted but the owner failed to pay the correct vehicle registration tax. It was established that the vehicle was registered as a commercial vehicle. Roderick O'Connor informed another customs officer Sarah Joyce of this suspicion and she spoke to the driver, Mr. Pat Stafford, who was a friend of the plaintiff. He stated the vehicle was owned by M & T Plant Hire and Mr. Thomas Murray was the managing director of the company. He had been driving the vehicle since January Miss Joyce decided to detain the vehicle and a notice of detention was issued. The grounds of detention were that the goods were registered as a category C (commercial) while used as a category A (private).

21 On 15th April, 2009, Miss Joyce along with Jennifer Behan another customs officer met the plaintiff, Thomas Murray who was accompanied at the interview by Mark Keller, solicitor of M.W. Keller & Son, solicitors. The plaintiff was informed that the vehicle was being seized pursuant to s. 141 of the Finance Act 2001 and a notice of seizure was issued. The grounds were that the goods were registered as a category C (commercial vehicle) while being used as a category A (passenger vehicle). Miss Joyce was informed by Mr. Keller, solicitor that the vehicle was not liable for vehicle registration tax as it did not come within the definition of a vehicle under the 1992 Finance Act.

22. On 20th April, 2009, M.W. Keller & Son, solicitors wrote to the defendants alleging the vehicle had been improperly seized. The grounds relied on were, the vehicle was designed and constructed for off road use and in accordance with s. 130 of the Finance Act 1992, at the time of its conversion from commercial to passenger use was not subject to vehicle registration tax. A reminder was sent on 29th April, 2009. The defendants on 30th April, 2009, acknowledged the solicitor's letters and accepted them as a valid claim for the purpose of s. 143 of the Finance Act 2001.

23. The letter stated that the defendants intended to institute High Court proceedings for the condemnation of the vehicle in accordance with s. 127 of the Finance Act 2009. The letter went on to state, "It is not accepted that your clients vehicle was at any time a vehicle as respects which the Commissioners are satisfied that it is designed and constructed for off road use within the meaning of s. 130 of the Finance Act 1992"

24. The defendants did not institute proceedings before the plaintiff issued proceedings, but claimed they intended to do so.

25. Colm O'Connell, a motor engineer, gave evidence on behalf of the plaintiff and Julian Happian Smith, consulting engineer, gave evidence on behalf of the defendants.

Pleadings

26. Counsel for the plaintiff has alleged trial by ambush in that the defendants have made submissions on a case not pleaded. The submission being that the definition of mechanically propelled vehicle must be read as a whole, and the defendants' satisfaction is at the date of import and registration rather than the date of detention or seizure.

27. An extract from O.19, r. 3 of the Superior Court Rules states:-

"Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved..."

28. Bullen & Leake & Jacob's *Precedents of Pleadings*, 12th Edition, and Chapter 4 at p. 34 states:-

"every pleading must state material facts, and not law".

At p.38 states:-

"A necessary corollary of the first principle of pleading that material facts only are to be stated is that matters of law or mere inferences of law should not be stated as facts or pleaded at all. The pleader must plead facts and not law."

29. In *Karsales (Harrow) Ltd v. Wallis*, [1956] 1 WLR 936 Denning L.J. said:-

"I have always understood in modern times that it is sufficient for a pleader to plead the material facts. He need not plead the legal consequences which flow from them. Even although he has stated the legal consequences inaccurately or incompletely, that does not shut him out from arguing points of law which arise from the facts pleaded."

30. The defendants have not chosen the ground on which this case has been contested, the plaintiff has. The plaintiff has contended for a particular interpretation of the definition of a mechanically propelled vehicle in s. 130 of the Finance Act 1992. Counsel for the defendant has done no more than argue for a different interpretation of the relevant definition in the section, and to rely on the evidence of Noel O'Mahony adduced in the course of the hearing.

31. The defendants were entitled to defend the case in the manner of their choosing and if the phrase stands alone, were prudent in adducing expert evidence on the capabilities of the vehicle.

32. There has been no trial by ambush and the defendants have been entitled to make the submission to the court.

Statutory Interpretation

33. The method of statutory interpretation is the literal approach which has the object of giving effect to the intention of the legislature.

34. In adopting this approach, the court is entitled to examine the definition of mechanically propelled vehicle in s. 130 of the Finance Act 1992, and relevant sections of the act imposing the vehicle registration tax.

35. In *McGrath v. McDermott* [1988] I.R. 258 at 275 Finlay C.J. stated:-

"the function of the Courts interpreting a statute of the Oireachtas is, however, strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to a consideration of the purpose and intention of the legislature to be inferred from other provisions of the statute involved, or even other statutes expressed to be construed with it."

Conclusion

36. The notice of detention and seizure of the vehicle by the defendants has always been based on the allegation that the plaintiff converted a category C vehicle to a category A vehicle without declaring it to the defendants and paying the relevant vehicle registration tax. The plaintiff contends that the Mercedes ML420 CDI seized is not a vehicle pursuant to the definition in s. 130 of the Finance Act 1992, because it is designed or constructed for off road use.

37. In interpreting the definition of a mechanically propelled vehicle in s. 130 of the Finance Act 1992, the court looks at the definition as a whole.

38. On 23rd January, 2007 when a declaration was submitted by the plaintiff's agent and on examination by an official of the defendants the vehicle was determined to be a category C vehicle converted in accordance with s. 130 of the Finance Act 1992 and Statutory Instrument 318 of 1992.

39. This Court accepts that the vehicle is capable of off road use and is capable of being considered to have been designed or constructed for off road use.

40. To be given an identification mark and procure road tax, the vehicle had to be registered.

41. The plaintiff accepted the category C designation but proceeded to tax it as a private vehicle, and then convert it from a category C vehicle to a category A vehicle, but did not give the defendants an opportunity to test the proposition that it was not a mechanically propelled vehicle at all. The plaintiff chose to rely on the advice of a member of the public and after detention of the vehicle on the public road, sought to argue that the defendants should accept the definition of a mechanically propelled vehicle, which is completely at odds with chapter IV of the Act and is illogical.

42. The plaintiff cannot have it both ways, proceed to have his agent complete a declaration to import the vehicle, have it designated as a category C vehicle and pay a low amount of vehicle registration tax proceed to tax it as a private vehicle and have it converted again to a category A vehicle but not make a declaration to the defendants. The vehicle was used two-thirds of the time on the public roadway and had road tyres unsuitable for off-road use.

43. The plaintiff would have had no difficulty carrying on his business and using the vehicle either off road or on road if he had maintained its category C designation. By changing it back to a category A designation he fell foul of the law and was in breach of the Act.

44. At the time of the registration of the vehicle the contention of the plaintiff was unknown to the defendants, but that does not mean that the court examines the situation at 15th April, 2009, when this issue was raised on behalf of the plaintiff for the first time.

45. If you look at s. 131(8) of the Finance Act 1992, which states:-

"(8) The Roads Act, 1920, is hereby amended, with effect from the 1st day of January, 1993, by the substitution of the following section for section 6:-

'(1) On the first application to a licensing authority for a licence in respect of a vehicle under section 1 of the Finance (Excise Duties) (Vehicles) Act, 1952, the authority shall not issue the licence unless and until the authority is satisfied that the vehicle has been registered in the register maintained under section 131 of the Finance Act, 1992 .

(2) For the purposes of this section, a certificate of registration under the said section 131 or such other (if any) evidence as the Minister for the Environment may, with the consent of the Minister for Finance, direct shall be sufficient evidence of the registration of the vehicle in the register aforesaid."

46. The vehicle could not have been taxed without it being registered in the register maintained pursuant to the provisions of s. 131

of the Finance Act 1992.

47. The opinion of the defendants was expressed when the vehicle was entered in the register as a category C vehicle. It had to be a mechanically propelled vehicle.

48. The defendants were entitled to change their minds on receipt of the submissions to them after the seizure of the vehicle but chose not to do so and in my opinion were correct.

49. The Carltona principle approved in Irish law in *Devanney v. Shields* [1998] 1 I.R. 251-254 allows the defendants to rely on the actions of its official Noel O'Mahony as the opinion of the corporate body.

50. I reject the plaintiff's claim and dismiss the proceedings.

51. I direct forfeiture of the mechanically propelled vehicle Mercedes ML 420 CDI auto registration number 07 WX 2044, and grant an order pursuant to Section 127(2) of the Finance Act 2001.