

SAMPLE RESPONDENT'S FACTUM

Jonnette Watson Hamilton

TITLE PAGE

No. 9601-12345

THE COURT OF APPEAL OF NEW ALTA

Between:

Philp Holton Gilbert Brock and June Alice Brock

Appellants
(Respondents)

and

Corporation of District of West Vancouver

Respondent
(Respondent)

Factum of the Respondent

Student Name

Counsel to the Respondent

PART I - Statement of Facts

1. The Respondent accepts as substantially accurate the Appellant's Statement of Facts, subject to the following additions and clarifications.
2. The \$US285,000 that the Respondent discovered in Mr. Brock's car consisted of uncirculated, consecutively numbered, \$100 and \$50 bills. The subsequent RCMP investigation found traces of cocaine on the money.
3. Although the RCMP investigation of the money as the proceeds of crime was inconclusive prior to Mr. Brock's death from a cocaine overdose, Mr. Brock was associated with a number of suspects in a cocaine conspiracy and used, as one of his many aliases, the name of one of those suspects.

PART II - Grounds of Appeal

4. The Respondent's position in regard to the grounds of appeal is:
 - (a) The learned British Columbia Court of Appeal correctly concluded from the facts that Brock did not have possession of the money discovered in his vehicle by virtue of his ownership and occupation of that vehicle.
 - (i) The learned British Columbia Court of Appeal correctly concluded that Brock did not have the required degree of possession of his vehicle to give him possession of the chattels in that vehicle, regardless of his knowledge of their existence.
 - (ii) The learned British Columbia Court of Appeal correctly determined that Brock did not manifest an intention to control the money discovered in his vehicle.
 - (b) In the alternative, if Brock had possession of the money when it was discovered, Brock abandoned that possession.
 - (c) In the alternative, if Brock had possession of the money when it was discovered by the police, the Appellant should not be awarded the money on the basis that wrongdoers should not benefit from their wrongdoing.

PART III - Points of Law

(a) The learned British Columbia Court of Appeal correctly concluded from the facts that Brock did not have possession of the money discovered in his vehicle by virtue of his ownership and occupation of that vehicle.

5. An occupier of premises has rights superior to a finder to possession of the chattels on those premises only if the occupier had control of those premises and had manifested an intention to control the chattels on those premises prior to the time the chattel is discovered.

Parker v. British Airways Board, [1982] Q.B. 1004, [1982] All E.R. 834 (C.A.) per Donaldson J. (concurring).

(i) The learned British Columbia Court of Appeal correctly concluded that Brock did not have the required degree of possession of his vehicle to give him possession of the chattels in that vehicle, regardless of his knowledge of their existence.

6. When an occupier's control of premises is firm and access to those premises is restricted, as is the case with most private homes and bank vaults, then there is little need to otherwise manifest an intention to possess chattels found on those premises.

Parker v. British Airways Board, [1982] Q.B. 1004, [1982] All E.R. 834 (C.A.) per Donaldson J. (concurring).

7. The learned British Columbia Court of Appeal correctly relied upon Brock's admission that he lent his vehicle to others on occasion and had lent his vehicle to a friend just two days before the police discovered the money to hold that Brock's control of his vehicle was not sufficiently firm, and access to it not sufficiently restricted, so as to entitle Brock to the money in the vehicle without any evidence of his intention to possess that money.

Reasons for judgment of Hinkson J.
Canada (Attorney General) v. Brock (1993), 82 B.C.L.R. (2d) 1 at 9.

8. Although many privately owned vehicles are analogizable to private homes, Brock's habit of loaning out his vehicle to other persons give it a character that resembles a rental vehicle. When Brock lent his vehicle to his friend, he did not accompany his friend in the vehicle and had no knowledge of who might have been in that vehicle with his friend or what they might have done during the time they had the vehicle.

9. It is submitted that Brock needed to manifest an intention to control the money in the vehicle as his control of the vehicle itself did not exclude all others.

(ii) The learned British Columbia Court of Appeal correctly determined that Brock did not manifest an intention to control the money discovered in his vehicle.

10. Whether or not the person in possession of a chattel possesses the contents of that chattel depends upon whether or not that person had knowledge of the contents and manifested an intention to control them.

Grafstein v. Holmes and Freeman, [1958] O.R. 296 (C.A.) per Lebel J.

11. The learned British Columbia Court of Appeal correctly concluded from the fact that Brock consented to the Respondent's search of his vehicle and from Brock's denial of knowledge and ownership of the money on the day that it was discovered by the Respondent that Brock had no knowledge of the existence of the money in his vehicle.

Reasons for judgment of Hinkson J.

Canada (Attorney General) v. Brock (1993), 82 B.C.L.R. (2d) 1 at 11.

12. In addition to denying ownership of the money when specifically asked about it, Brock also failed to name the money when asked to list the contents of his vehicle. He also denied that there was anything else of value in the vehicle, beyond the chattels he had listed.

13. Brock's ability to correctly identify the money the day after it was discovered by the Respondent does not indicate that he had knowledge of its existence at the time it was discovered. Brock made a telephone call while his vehicle was being searched. He also asked to make a telephone call after denying ownership of the money. From these facts, and the fact that it took him until the next day to be able to identify the money, one could reasonably infer that Mr. Brock acquired his knowledge of the money subsequent to the discovery of it by the respondent.

14. Brock did not manifest any intention to possess the money prior to it being discovered by the Respondent. Coupled with his lack of a sufficient degree of control over his vehicle, it is respectfully submitted that Brock did not have possession of the money prior to its discovery by the Respondent.

(b) In the alternative, if Brock had possession of the money when it was discovered, Brock abandoned that possession.

15. A finder of a chattel prevails over an occupier of the premises in which the chattel was found if the chattel was lost or abandoned.

Bird v. Fort Frances, [1949] O.R. 292, [1949] D.L.R. 791 (H.C.)

16. In the alternative, Brock's denial of knowledge and ownership of the money was an abandonment of any claim, including possession to the money. When told that the police had located a sum of money in his vehicle, Mr. Brock categorically denied that the money was his. Although he identified the money the next day and claimed it on behalf of "offshore investors," that claim was made too late.

17. It is submitted that, if this Honourable Court finds that Brock was in possession of the money at the time it was discovered by the Respondent, then Brock abandoned any claim to that money with his subsequent disavowal that his was his.

(c) In the alternative, if Brock had possession of the money when it was discovered by the police, the Appellant should not be awarded the money on the basis that wrongdoers should not benefit from their wrongdoing.

18. As the claims of an occupier and a finder are weighed against each other, the rights of a finder who is a wrongdoer, such as a trespasser or a thief, are less than the rights of a "true finder."

Parker v. British Airways Board, [1982] Q.B. 1004, [1982] All E.R. 834 (C.A.) per Donaldson J. (concurring).

R. v. Gombosh Estate, [1986] 1 S.C.R. 415 (*sub nom. R. v. Fleming*), 51 C.R. (3d) 337, 26 D.L.R. (4th) 641, 25 C.C.C. (3d) 297, 24 C.R.R. 66, 15 O.A.C. 159, 66 N.R. 133, per Wilson J.

19. The learned British Columbia Court of Appeal correctly awarded possession of the money to the respondent and stipulated that the Respondent must hold themselves accountable to the true owner of the money, if such person came forward. The Respondent is in a better position than the Appellant to advertise for and otherwise seek the true owner of the money.

Reasons for judgment of Hinkson J.

Canada (Attorney General) v. Brock (1993), 82 B.C.L.R. (2d) 1 at 14.

20. Although the RCMP could not prove that the money discovered by the Respondent were the proceeds of crime beyond a reasonable doubt, as required for criminal forfeiture proceedings, in the context of whether a true finder or a wrongdoing occupier has a better claim to found chattels, the true finder should prevail.

21. It is therefore submitted that the claim of the Respondent to the money discovered in Brock's vehicle is superior to the claim of the Appellant.

PART IV - Nature of the Relief Desired

22. The Respondent respectfully requests:

- (a) that the appeal be dismissed; and
- (b) that the costs of the appeal be awarded to the Respondent.
- (c) such further and other relief as this Honourable Court deems just.

All of which is respectfully submitted by

Student's Name
Counsel for the Respondent

TABLE OF AUTHORITIES

Parker v. British Airways Board, [1982] Q.B. 1004, [1982] All E.R. 834 (C.A.)

Grafstein v. Holmes and Freeman, [1958] O.R. 296 (C.A.)

Bird v. Fort Frances, [1949] O.R. 292, [1949] D.L.R. 791 (H.C.)

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