Buffalo Law Review

Volume 10 | Number 1 Article 97

10-1-1960

Property—Replevin Action: Measure of Damages

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REPLEVIN ACTION: MEASURE OF DAMAGES

The law affords two possible measures of damages in a replevin action. The measure of damages applied in a particular case depends on the purpose for which the plaintiff held the chattel. The first measure of damages applies to merchandise held for sale or consumption and gives the plaintiff interest on the value from the time of taking, plus the difference in value at the time of taking and the value at the time of the action if the value of the chattel has depreciated. The second measure of damages applies to chattels held for use and indemnifies the owner for the value of the lost use.[31]

In the case of *Michalowski v. Ey*,[32] plaintiffs automobile was impounded by the defendant, Property Custodian of Nassau County, on the suspicion that it was stolen property. Previously, the Court of Appeals had held that the plaintiff was entitled to recover possession of his car plus damages for its wrongful detention.[33] Plaintiff instituted the present action to recover these damages. The trial court found that the car was held by plaintiff for his use and not for sale. Normally, the measure of damages applicable would be the value of the lost use. However, since the parties stipulated only as to the loss of value, introducing no evidence whatever as to the value of the lost use, the Court deemed them to have abandoned the measure of damages for chattels held for use and to have agreed that the measure of damages applicable to chattels held for sale should be applied.

Although the background of this particular case appears to justify the manner in which it was settled,[34] it is unusual for a court to allow litigants to apply a technically incorrect rule of damages. Perhaps the Court reasoned that the burden of demanding and proving the maximum amount of damages fell on the plaintiff and accepted the stipulations of the parties as to the value involved, in the absence of other evidence.[35]

The provision of Section 479 of the Civil Practice Act that any relief consistent with the issues may be granted after an answer is interposed has not been construed to allow a money judgement in excess of the amount demanded in the complaint.[36] Therefore, the Court of Appeals affirmed the Appellate Division's modification of the judgment to conform to the amount demanded in the complaint.[37]

31. Allen v. Fox, 51 N.Y. 562 (1873).
32. 7 N.Y.2d 71, 195 N.Y.S.2d 633 (1959).
33. Michalowski v. Ey, 4 N.Y.2d 277, 174 N.Y.S.2d 6 (1958).
34. Plaintiff was in jail during a considerable portion of the time car was held. Case was previously before the Court of Appeals.
35. Hunt Aylmer Corp. v. Landy, 241 App. Div. 682, 269 N.Y. Supp. 465 (2d Dep't 1934).
36. Corning v. Corning, 6 N.Y. 97 (1849); Barbato v. Vollmer, 273 App. Div. 169, 76 N.Y.S.2d 528 (3d Dep't 1948).
37. 8 A.D.2d 854, 190 N.Y.S.2d 535 (2d Dep't 1959).

TAXATION

VOLUNTARY PURCHASE PRICE HELD INDICATIVE FOR DETERMINING REAL ESTATE TAX ASSESSMENT

860 Fifth Avenue Corporation v. Tax Commission of the City of New York[1] reviewed a real estate tax assessment. The real estate upon which the questionable assessment was made is a nineteen story penthouse co-operative apartment building located on Fifth Avenue in New York City and completed in 1950. In 1948, the promoters of the co-operative bought the land and subsequently sold it to the co-operative corporation which they had organized. The aggregate sale price of the property and the building was $6,500,000. The tax commission of the City of New York assessed the real estate at $4,800,000 for each of the taxable years 1954-1958.[2] The Supreme Court, Special Term, New York County, reduced the assessments to $4,375,000.[3] The Appellate Division in a memorandum decision reversed and reinstated the assessment as originally levied.[4] The taxpayer contends that the prices paid for the plots of land in contemplation of the erection and sale of a new co-operative building were under circumstances which obviously inflated the selling price above normal. It contends that the price paid was inflated by the prospect of a quick profit and that the consideration paid was not a true indication of fair market value, but was rather a speculative price and therefore distinguishable from fair value upon which the assessment should be based.

The fair market value of real estate, for assessment purposes has been defined as the price at which a sale would take place between a willing seller and a willing buyer, neither being under compulsion to trade and both having reasonable knowledge of the facts.[5] It has also been defined as the amount which one desiring but not compelled to purchase will pay under ordinary conditions to a seller who desires but is not compelled to sell.[6] The Court of Appeals decided six months earlier, in a memorandum case similar to the instant one, that there was no error in refusing to give weight to an earlier sale to the co-operative corporation, but that it was sufficient that the evidence of the original costs of the land and building plus evidence of the sharp increase in values since the time of the sale were enough to sustain the assessed evaluation.[7] The Court has also held that proof of sale prices of comparable parcels of land in the

1. 8 N.Y.2d 29, 200 N.Y.S.2d 817 (1960).
2. The following is a table showing the assessments as found by the lower courts and by the City's Expert and the Petitioner's Expert.

	1954-55	1955-56	1956-57	1957-58
App. Div.	$4,800,000	$4,800,000	$4,800,000	$4,800,000
Special Term	$4,375,000	$4,375,000	$4,375,000	$4,375,000
City's Expert	$5,300,000	$5,400,000	$5,450,000	$5,500,000
Petitioner's Exp.	$3,790,000	$3,710,000	$3,630,000	$3,560,000

3. Supra note 2.
4. 8 A.D.2d 605, 184 N.Y.S.2d 669 (1st Dep't 1959).
5. Phipps v. Commissioner 43 B.T.A. 1010 (1941).
6. In re Board of Water Supply of New York, 277 N.Y. 452, 14 N.E.2d 789 (1938).
7. In re 5 East 71st Street Inc. v. Boyland, 7 N.Y.2d 859, 196 N.Y.S.2d 944 (1959).