IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO:21/1994

6-12-95

BETWEEN (1) AVALON TOURS LTD
(2) PETER SAVILL
(3) SOUND FINANCIAL MANAGEMENT LTD

PLAINTIFFS

AND (1) HER MAJESTY'S ATTORNEY GENERAL OF THE CAYMAN ISLANDS

(2) THE COLLECTOR/DEPARTMENT OF CUSTOMS

(3) THE PORT AUTHORITY OF THE CAYMAN ISLANDS

DEFENDANTS

APPEARANCES:

Mr. Ramon Alberga QC with Mr. Michael Parkinson for plaintiffs.
Mr. William Helfrecht for defendants.

Schofield J.

JUDGMENT

Lester Avalon Bush is the sole shareholder and director of Avalon Tours Ltd , ("Avalon Tours") the first plaintiff. The company runs coach tours on Grand Cayman for passengers from the cruise ships. Its main contract was with Do

Foster's (Subsee) Ltd (hereinafter called "Subsee") which in turn had contractual obligations directly with the cruise lines. Avalon Tours commenced business in 1992 and by April 1993 it became apparent that business was increasing and that Avalon Tours could increase its fleet of coaches to provide the extra transportation required by (Subsee). Peter David Savill the second defendant has extensive interest in the Caribbean providing excursions for cruise ship passengers on various islands. A company of which he is the President and of which he owns over 95% of the shares has an interest in Subsee. Mr. Savill discussed Subsee's requirements with Mr. Bush and helped Mr. Bush to negotiate the financing for the purchase of four further coaches with Barclays Bank. Mr. Savill visits England regularly and when he went over in September 1993 it was agreed that he would undertake to find suitable coaches for Avalon Tours.

Mr. Savill was aware, as well as Mr. Bush, that the law had been amended in July 1993 prohibiting the importation into these Islands of a coach which is over ten feet in height without the permission of the Governor in Council. He spent a great deal of time finding second-hand coaches which came up to their seating requirements and which did not exceed the height restriction. Eventually he located three companies which were prepared to sell a total of four vehicles. After receiving instructions from Mr. Bush, Mr. Savill inspected and purchased the coaches on behalf of Avalon Tours. In view

of the urgency of the matter it was agreed that Mr. Savill would pay for the coaches himself and recover the money from Avalon Tours on his return to Cayman and after Avalon Tours had received the advance from Barclays Bank. Mr. Savill paid for the coaches from an account of Sound Financial Management Ltd. (the third defendant) a company through which he condocts all his personal finances in the Cayman Islands. Mr. Savill purchased the three coaches which are the subject of this action after arranging for an expert to inspect them. There was a fourth coach purchased which never found its way to these Islands and which, after being shipped to Miami, was sold off to a company elsewhere in the Caribbean.

After Mr. Savill had committed himself to the purchase of the coaches he was made aware that they were not air conditioned, and as their windows did not open, they would be of no use in the tropical climate of the Cayman Islands. He was greatly embarrassed by this and determined to instal air conditioning in them at his own expense. He also determined not to tell Mr. Bush that he had done so because he and Mr. Bush had worked out a budget for the coaches and there was no point in making Mr. Bush feel guilty about his, Mr. Savill's, extra expenditure. The companies in which Mr. Savill has an interest stood to gain from Avalon Tours being able to provide this extra transportation. Mr. Savill had also not thought of the fact that the three coaches were painted with the names of the companies to which they formerly belonged.

He arranged to have the air conditioning installed, the coaches to be resprayed and fitted with Avalon Tours logos. Some minor repairs carried out and some adjustment made to the seating so as to accommodate extra seats in the place of luggage space which was not needed for the tours which Avalon Tours operated. In Mr. Savill's view the extra work did not increase the value of the coaches . This is not the view of the Cayman Islands Department of Customs, which will become apparent later in this judgment. I should add that the cost of the three coaches was L94000 which converted to US$141,470. Mr. Savill admitted that the extra work on the three coaches, in addition to that on the fourth bus which did not reach Cayman, cost him in the order of L40,750.

Mr. Savill arranged for the three coaches to be shipped from the United Kingson to Cayman via Jacksonville and Miami. The total freight charges were US$24091.20. Mr. Bush paid that amount in to Mr. Savill's Cayman Office and the staff there arranged for a money order to be sent to the carrier. The three coaches arrived on board the "North King" on the 26th November 1993.

When Mr. Bush learned that the coaches had arrived he contacted his employee Carlos Ebanks who has experience in clearing goods which have been imported . They collected the bill of lading and invoices from the office of Thompson Shipping and Mr. Bush then left Mr. Ebanks at the Customs Office in the Tower Building so that he could pay the customs

charges on the importation of the coaches. He left Mr. Ebanks with two cheques on the Avalon Tours account, one to cover customs charges and the other to cover Port handling charges. Mr. Bush went off to arrange insurance coverage for the vehicles and subsequently returned to the Tower Building. Meanwhile Mr. Ebanks completed the customs entry form by reference to the bill of lading. The evidence is that Mr. Bush played no part in the completion of the customs documentation. The value of the coaches was taken from the bill of lading. Unfortunately the freight charges on the bill of loading were only stated for the Miami-Cayman leg of the journey. For customs purposes the cost of freight from the United Kingdom to Cayman should have been stated and this led to an under-assessment of the customs duty. Furthermore the cost of the work on the coaches carried out at the behest of Mr. Savill and at his expense was not declared. I will say at once that I am satisfied that neither Mr. Ebanks nor Mr. Bush intended to mislead the Customs Department in this regard. I accept Mr. Ebanks' evidence that he was following the bill of lading and that he thought that the freight costs indicated therein were for the whole journey. This is supported by the fact that in the customs entry form he clearly declared that the goods were consigned from the United Kingdom. He stated the true facts as he knew them from the documents in his possession. I am satisfied from the evidence of Mr. Bush and Mr. Savill that Mr. Bush was not aware at that stage, and indeed until much later, that any

expense had been incurred on the coaches over and above their purchase price as stated in the invoices. Mr. Ebanks could not have that knowledge either. I am satisfied that Mr. Ebanks completed the customs entry form to the best of his ability and in good faith. The customs officer did make an adjustment to the figures computed by Mr. Ebanks and at the end of the day a total figure for customs duty of CI$34592.05 was arrived at and a cheque for that amount was duly paid over to the Customs Officer.

Armed with the relevant customs documents Messrs. Bush and Ebanks went to the office of the Port Authority where they paid the port handling charges with the second cheque which Mr. Bush had given to Mr. Ebanks. They then went to the Customs Officer on the dock, one Ronnie Miller, who inspected the coaches. Two were by then offloaded from the ship and one had not been offloaded. After inspecting the coaches Mr. Miller wrote "Ok to release by Customs" on the receipt which had been issued to Mr. Bush at the Customs Office in the Tower Building. That receipt is headed "AUTHORITY TO DELIVER". Mr. Bush was then told he was free to take the coaches. However, the two coaches which had been offloaded would not start so Mr. Bush went off to find someone who would help him to get the coaches started.

As Mr. Bush was trying to clear the coaches through Customs much else was happening in George Town in connection with

those coaches. Local taxi drivers, who had no doubt seen the coaches on the dock, demonstrated outside the Legislative Assembly building and then occupied the public gallery within the building. They were protesting against the Government allowing such large coaches to come in to the Islands to create what they considered to be unfair competition. Of course in his belief that the coaches were within the permissible dimensions Mr. Bush had not sought the Governor's permission to import the coaches and in a meeting with the Minister responsible the taxi drivers were told that no permission had been sought. Three members of the Legislative Assembly visited the docks to inspect the vehicles. The Solicitor-General, who was at that time acting Attorney-General, must have been contacted because he telephoned the Collector of Customs, John Carlon Powery, to tell him that the coaches were being imported and that he thought there was a height restriction, reminding Mr. Powery of section 12A of the Traffic Law. He also told Mr. Powery that there was " a question in the House" about the coaches. Mr. Powery in turn called the Customs Officer, Ronnie Miller, and asked him to examine the coaches to take their height measurement. When Mr. Miller called Mr. Powery back he was told that the coaches were slightly over ten feet in height. Mr. Powery received another call from the Solicitor- General and when he told him of Mr. Miller's inspection the Solicitor-General said that in his opinion the coaches were restricted under the Traffic Law and should not

be released from Customs. Mr. Powery then called the Port Director, Errol Bush, to direct him not to release the coaches.

I should say at once that I accept the evidence of Mr. Powery that he believed, when he issued the direction to Errol Bush, that the coaches were over ten feet in height and were restricted under the Traffic Law. I also accept his evidence that up to the time of that direction Mr. Powery had spoken to no politician about the coaches and that the reason for his direction was that he genuinely believed that he had no authority to release the coaches because they were restricted under the Law.

As a consequence of Mr. Powery's direction, when Mr. Bush returned to the Port the Port Director told him he could not take the coaches off the dock and that he should go to see the Collector of Customs, Mr. Powery. Messrs. Bush and Ebanks then went to see Mr. Powery in his office at the Tower Building and they were told that the coaches were too high and their importation contravened the Traffic Law. Mr. Powery told Mr. Bush that he would have to take the matter up with the Attorney-General or his office. Mr. Bush then instructed his attorneys in the matter.

There then took place a flurry of telephone calls and exchanges of letters between the attorneys for Mr. Bush and

the Solicitor-General. It is necessary to recite some of that correspondence in this judgment. The first letter came from the Solicitor-General dated the 29th November 1993, ie: the Monday following the attempt by Mr. Bush to import the coaches on the previous Friday, the 26th.

> "Following our telephone conversation on Friday, I am writing to confirm my instructions that the buses imported by Avalon Tours Ltd exceed the height restrictions in section 12(A) of the Traffic Law (revised). As your clients did not obtain the prior written approval of the Governor in Council, they imported the buses illegally.
>
> Your clients should now make immediate arrangements to return the buses to the United States. Until they do so, the buses must remain on the dock".

Mr. Parkinson of Messrs. Ritch and Conolly acting for Avalon Tours replied the next day seeking clarification of four points. The fourth point he mentioned bears repetition:-

> "Please let us know under what authority the buses are now being held: if they have been forfeited or are being held pending forfeiture please let us have the appropriate notices under the Customs Law and grounds thereof; if they are being detained by the police pending first registration of the vehicles please let us know and again please serve upon us,

> as Attorneys for Avalon Tours, the appropriate notices; if otherwise please let us have details of the jurisdiction under which the Crown is now acting in holding the vehicles and ordering the owners to return them to the U.S".

The concluding paragraph of that letter reads:-

> As you may be aware, without admission of any liability, the owners wish to make minor alterations to the fan compartment on the rear roof section of the buses so as to ensure that the height thereof does not exceed the statutory maximum. Would you therefore please consider allowing our client's workmen access to the vehicles to carry out what will be very minor work to the buses. In that way we can ensure there is no contravention of the Traffic Law (R) and the vehicles can be duly registered. It is the writer's view that an insistence that the work be carried out in Miami is both petty and unnecessary".

The Solicitor General replied to that letter on the same day, the 30th November 1993. The letter reads:

> "Thank you for your letter of 30th November. I am sorry but for the time being I am not prepared to add anything to my earlier letter to you: Your client's buses have been imported illegally and this is sufficient justification for the action taken. Your clients will not be permitted to make the alterations to use

the buses in Grand Cayman".

Further short letters were exchanged but for our purposes it is sufficient to repeat just this short paragraph from Mr. Parkinson's letter to the Solicitor-General of the 2nd December 1993.

> "Unless we hear from you by 4.00 p.m. this evening we shall assume that access to the vehicles is being denied and shall advise our client of its legal rights, options and remedies accordingly".

The last, and to my mind the most important, communication came from the Solicitor-General. It is dated the 6th December 1995 and reads:

> "Thank you for your letters of 1st and 6th December. The legal problems with Avalon Tours Ltd have now resolved themselves into three principal concerns-
> 1. The three new buses have been imported illegally in that they contravene the height restrictions in section 12A of the Customs Law (Revised). This is a criminal offence and the buses are subject to seizure under section 59(1)(b). No formal action has yet been taken under the Law.
>
> 2. Your clients have been operating their business illegally since at least 31st December 1992 without a trade and business licence. They are thus liable to prosecution under the Trade and Business Licensing Law (Revised).

3.It seems that your clients have also committed a criminal offence under Section 54 of the Customs Law (Revised) by failing to declare the costs of shipping the buses from the United Kingdom to Miami".

It seems that a meeting or meetings took place between Mr. Bush and Executive Council, at which Mr. Savill was present, in an endeavour to resolve the situation. On the 12th December 1993 Mr. Bush, through his attorneys, formally applied to the Governor in Council for permission to import the coaches without conceding that such permission was necessary. This application was rejected and such rejection was communicated in a letter dated 11th January 1994. This suit was filed on the 25th January, 1994.

I should add that Mr. Bush handed over to Mr. Savill two cheques to cover the purchase price of the coaches. Mr. Savill has not presented those cheques to the bank because he felt that Mr. Bush would go out of business if he were to do so.

The Customs Department retained Avalon Tours' payment of $34,592.05 in respect of duty. The coaches have not been returned to it and were removed, presumably by the Customs Department, from the docks to the cargo distribution centre on or about the 29th November 1993. It seems they are still

there. No notice has been served on Avalon Tours as to the grounds fro seizure or detention of the coaches. Criminal proceedings were launched against Avalon Tours on the 23rd May 1994 charging the company with evading the duty liable to be paid on the coaches by failing to declare the full dutiable value on the custom import entry form . By my order of the 9th November 1994 those proceedings have been stayed pending the outcome of the action.

It is common ground between the parties that the Collector of Customs seized or detained the three coaches, the subject matter of this suit, on the 26th November, 1993. The main question ,to my mind, for determination in this suit is whether that seizure or detention was lawful. The defence case is that the coaches were lawfully seized or detained under section 9(h) of the Customs Law, 1990 as being goods liable to forfeiture under section 59 (1) of that Law. Section 9 (h) of the Customs Law reads:-

> "9. Without prejudice to any other powers conferred upon them by this or any other Law, every officer or any person acting under the direction of an officer has power-
> (h) to seize and detain any vessel or goods which he believes to be liable to forfeiture under this Law and to hold such vessel or goods in the Queens' Warehouse subject to the right of appeal conferred by subsection (4) of section 64 or, in default of such appeal, for disposal under

the provisions (of) subsection (1) or (4) of Section 28."

I do not think it is a matter of dispute that the Collector of Customs is an "officer" for the purposes of section 9.

The relevant portions of section 59 (1) of the Customs Law reads:

> "59. (1) Where-
> (a) except with the permission of Customs, any imported goods being goods chargeable on their importation with Customs duty or package tax, are without payment of that duty or tax-
> (i) unshipped in any port;
> (ii)unloaded from any aircraft in the Islands; or
> (iii) removed from their place of importation or examination or any approved transit shed; or
>
> (b) any goods are imported, loaded or unloaded contrary to any prohibition or restriction for the time being in free with respect thereto under or by virtue of this or any other Law; or
>
> (e) any imported goods are found whether before or after delivery, not to correspond with the entry made thereof;
>
> those goods shall be liable to forfeiture."

The Collector of Customs believing as he did, that the coaches were over 10 feet in height and that Mr. Bush had not obtained the approval of the Governor in Council to bring the coaches into the Islands, had the power under section 59(1) (b) to seize and detain the coaches. It is not disputed

that the agent of Mr. Bush did not include the full cost of freight from the United Kingdom to Cayman in the Customs import entry form , upon which cost duty is chargeable. Even though that misrepresentation was an innocent misrepresentation it rendered the coaches liable to seizure and detention under section 59(1) (e) supra.

Did, then, the Collector of Customs seize or detain the coaches under either or both of those provisions? A careful perusal of the evidence of the Collector as read together with the exchange of correspondence between the attorneys for the plaintiff and the Solicitor-General leads me to the irresistible conclusion that he did not. From the evidence one cannot drive a wedge between the actions and words of the Collector of Customs and those of the Solicitor-General. The Collector, Mr. Powery, testified that he was advised by the Solicitor-General that the coaches should not be released and that he regarded that advise as advice that he should follow. He said he did not act independently outside that advise. Mr. Powery then told Mr. Bush that he would have to take the matter up with the Attorney General or his office. It cannot be said, therefore that Mr. Powery and the Solicitor-General spoke with separate voices. They conferred on the matter of seizure and detention and Mr. Powery referred Mr. Bush to the Attorney-General , who was at that time the Solicitor-General in an acting capacity, or his

office in relation to further action to be taken. The Collector of Customs cannot disown the Solicitor-General's subsequent correspondence in relation to the coaches.

No one could take exception to the Solicitor-General's command in his letter of the 29th November 1993 that the coaches must remain on the dock. It was the belief of the Collector of Customs and no doubt the Solicitor General that the coaches had been brought to the Islands in contravention of section 12A of the Traffic Law. Even without consideration ofthe Customs Law for Avalon Tours to take the coaches from the dock would no doubt have put them in contravention of the Traffic Law. However, one can understand the bewilderment of the plaintiff. Neither the Collector of Customs nor the Solicitor-General had by then informed Mr. Bush of the statutory or other power under which the coaches were being held. His attorneys letter of the 30th November 1993 expresses that bewilderment. The letter contains a question that has never been satisfactorily answered. Under what authority were the coaches then being held? Had they been forfeited or were they being held pending forfeiture under the Customs Law? Were they being detained by the Police pending first registration? Or was there another power vested in the Crown under which the coaches were being held? The Solicitor-General's reply of even date was particularly unhelpful, stating as it did that the illegal importation of the coaches was sufficient

justification for the action taken. Perhaps it was: if the coaches had been imported illegally no one could give their owner permission to drive them on the roads of these Islands. However, to my mind it is of vital significance that in the same letter the Solicitor-General was denying Mr. Bush access to the coaches. By so doing he was keeping the plaintiff out of possession of his property. No indication is given as to the Crown's authority for so doing. The Solicitor-General's letter of the 6th December 1993 states that the coaches were subject to seizure under section 59(1)(b) of the Customs Law. The Solicitor-General went on to say that "No formal action has yet been taken under the Law". That can mean only one thing- that from 26th November to 6th December the coaches, although being liable to seizure had not been so seized. Of course section 59 (1)(b) refers to goods being "liable to forfeiture" and it is to section 9(h) that we go for the power to seize and detain goods which are liable to forfeiture. Be that as it may, the purport of the Solicitor-General's letter is clear. The coaches were liable to forfeiture and were thus liable to be seized , but no such formal seizure had taken place.

It is not possible to read the Solicitor-General's letter in any other way because once goods are seized under section 9 (h) of the Customs Law their forfeiture takes place as a matter of course, subject to a right of appeal. In other words, once a formal action of seizure is taken forfeiture is

automatic after lapse of time, unless that is an appeal. It is as well here to recite the relevant portions of section 64 of the Customs Law.

> "64. (1) The proper officer shall, except as provided in subsection (2) of this section give notice of the seizure of any thing as liable to forfeiture and of the grounds therefor to any person who to the officer's knowledge was at the time of the seizure the owner or one of the owners thereof.
>
> (2) Notice need not be given under this section if the seizure was made in the presence of-
> (a) the person whose offence or suspected offence occasioned the seizure; or
> (b) the owner or any of the owners of the thing seized or any servant or agent of his; or
> (c) in the case of anything seized in a ship or aircraft, the master or commander as the case may be.
>
> (3) Notice under subsection (1) shall be given in writing and shall be deemed to have been duly served on the person concerned-
> (4) Any person claiming that any thing seized as liable to forfeiture is not so liable, may within one month of the date of the notice of seizure or , where no such notice has been served on him, within one month of the date of the seizure, appeal to a summary court, which such seizure including any order for costs as may be considered appropriate.

> (6) If on the expiration of the relevant period under subsection (4) for the giving of notice of appeal in respect of any thing no such notice has been lodged with a summary court, or if, in the case of any such notice being given, any requirement of subsection (5) of this section is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.
> (7) Where any thing is, in accordance with subsection (6), condemned or deemed to have been condemned as forfeited, then, without prejudice to any delivery up for sale of the thing by the Collector under subsection (8), the forfeiture shall have effect as from the date when the liability to forfeiture arose".

Furthermore, Section 28 (4) of the Customs Laws says:

> "28. (4) All non- perishable goods brought to the Queen's Warehouse as forfeited under any other provision of this Law may be sold or otherwise disposed of at the discretion of the proper officer after the period of appeal, if any, against the forfeiture or seizure has expired."

From all this it is clear that once goods have been seized under section 9(h) of the Customs Law their forfeiture automatically follows in the absence of an appeal to the Summary Court under Section 64 (4). The Solicitor-General informed the plaintiff on the 6th December, 1993 that the

coaches had not been seized at that stage under Section 59(1)(b) of the Customs Law. He did not say under what provision he was holding the plaintiff out of access to the coaches. Certainly he could not give permission to the plaintiff to take the coaches on the public roads; but what power had he, acting on behalf of the Crown, to deny the plaintiff access to the coaches if the powers of the Collector of Customs were not being invoked at that point in time? We have been given no answer to that question.

If Mr. Bush had been given access to the coaches the evidence demonstrates that he would have brought the coaches within the height requirement of section 12A of the Traffic Law even if before that they had exceeded ten feet in height. The plaintiff's case is that, in any event, the coaches are not 10 feet in height. Ten feet is 3.048 metre. There is ample documentary evidence for me to find that if one does not include the added height of a small roof extractor the height of each one is 3 metre, ie: under 10 feet. The English Government inspecting officers regard this type of bus as 3 metre in height and do not include the roof extractor in their calculations . No reason is given for that. I should have thought that the height of an object is the distance from the ground to the top of its topmost appendage. We do not know the height of the bus to the top of the roof extractor: Avalon Tours has not proved that it is less than 10 feet or 3.048 meters. Be that as it may, had Mr. Bush

been allowed access to the coaches he could have readily brought them to a height of under 10 feet. He was not given that access. The coaches had not been seized or detained by 6th December 1993 pursuant to the provisions of section 59 (1)(b) of the Customs Law or for that matter under any other section of that law. We have that from the Solicitor-General of these Islands. By that date the Collector of Customs believed that the coaches were prohibited by reason of their height. In the letter of the 6th December it is clear that the Solicitor-General knew by then that the plaintiff had failed to declare the cost of shipping the coaches from the United Kingdom to Miami. As, from Mr. Powery's evidence, it was an officer in the Department of Customs who pointed out this failure on the part of the plaintiff one can take it that the Collector of Customs also knew of that fact by that date. So the Collector of Customs could by the 6th December 1993 have seized and detained the coaches for two reasons. But according to the Solicitor-General he had not done so. Were the coaches seized or detained after the 6th December 1993? The answer to that, by reference to section 64 of the Customs Law, must be that they were not. Any seizure or detention not being carried out on the 26th November 1993 pursuant to section 59(1)(b) in the presence of Avalon Tours or its agent required a notice to be served pursuant to section 64(1). No such notice has ever been served on Avalon Tours. It is the defendants' case that as seizure took place on 26th November 1993, in the presence of the "owner"

of the coaches or his agent or a person who committed an offence which occasioned seizure then even though further ground for detention and forfeiture came to light subsequently no notice need be given of those grounds. That argument does not find particular favour with me. However, I do not have to make a determination upon it, because I find as a fact that seizure did not take place on 26th November 1993. Nor did seizure and detention take place under section 59 of the Customs Law subsequent to that date. In this regard I have been referred to no letter from the Solicitor-General, or from the Collector of Customs, following the letter of the 6th December 1993, in which the Solicitor-General stated that no formal action had been taken under the Customs Law, in which it was conveyed to Avalon Tours what formal action, if any, had been taken under that Law or for that matter under any other Law. Nor do we have any evidence from the Collector of Customs that he seized or detained the coaches subsequent to the 26th November 1993.

The coaches were not seized or detained under the Customs Law. Yet Avalon Tours was denied access to them. That denial of access was unlawful. There being no notice served on the plaintiff pursuant to section 64 of the Customs Law Avalon Tours had no access to the Summary Court on appeal. Its only recourse was to this Court.

An issue which arose quite late in the day was whether the

true owner of the coaches is Mr. Savill or his company, through which he paid for the coaches, Sound Financial Management Ltd. This resulted in the addition of the second and third plaintiffs in to thses proceedings. It arose because of certain evidence which was given, which evidence was not within the knowledge of the defence. It is no criticism of counsel that the issue was raised, or that it was late in the day. I need not recite lengthy facts in this regard. It is clear that Mr. Savill went to great lengths to assist Mr. Bush in the purchase of these coaches and spent sums of his own money on the coaches without recourse to Mr. Bush or the Avalon Tours. However, after reviewing all the evidence and having seen Mr. Savill and Mr. Bush give evidence I am satisfied that companies in which Mr. Savill has an interest stood to gain by the importation of the coaches and that Mr. Savill had developed a relationship with Mr. Bush which was to the benefit of both of them. I believe Mr. Savill and Mr. Bush when they say that Mr. Savill was acting as the agent of Avalon Tours in the purchase of the three coaches. On the purchase of the coaches by its agent, Mr. Savill, Avalon Tours became the owner of the three coaches.

Avalon Tours has proved that the three coaches were unlawfully interfered with. It is therefore entitled to damages for that unlawful interference. No point has been taken that the Department of Customs should not have been

made a defendant to the suit on the ground that all proceedings against the Crown must be instituted against the Attorney-General (see section 11 Crown proceeding's Law). However the Port Authority of the Cayman Islands has been added as a third defendant. Avalon Tours was not to know that it was not at the instance of the Port Authority that the coaches were seized or detained until the suit was filed and the defence position made clear. The only action taken in the whole matter by the Port Authority was the action of its Director, Errol Bush, in informing Mr. Bush that the Collector of Customs had directed that the coaches be not released. In those circumstances I dismiss the suit as against the third defendant.

I shall deal later with the question of damages. Let me first deal with the other claims made by Avalon Tours. First is sought a declaration that the coaches which were imported into the jurisdiction do not exceed the height restriction set out in Section 12A of the Traffic Law as amended by the Traffic 9 (Amendment) Law 1993. I am not satisfied by the evidence that such was the case. If the roof extractor is included in the overall height of the coaches then the coaches may well have exceeded 10 feet in height. We do not know by how much, but it would not be by a great deal. Avalon Tours would have me apply the maxim de minimis non curat lex to find that even if the height restriction was exceeded by a fraction it should be ignored. First of all we

do not know from the evidence by what fraction the height restriction was exceeded. Was it de minimis? Second, we are here dealing with a statutory height restriction and as Mr. Powery so rightly stated, the line has to be drawn somewhere. The declaration I am prepared to make is that had the roof extractors been removed from the coaches they would have come within the height restriction set out in Section 12A of the Traffic Law as amended by the Traffic (Amendment) Law 1993 which was the relevant legislation at the time of importation.

Avalon Tours also seeks a declaration that the coaches were lawfully imported into the jurisdiction and that the provisions of the Customs (Amendment) Law 1993 do not or should not apply to them. Following my findings above I am not prepared to make that declaration. I am prepared to, and I do, declare that if the roof extractors had been removed from the coaches they would have been lawfully imported into the jurisdiction.

A declaration is sought that the second and third defendants unlawfully seized the coaches on or about the 26th November 1993 and that they were thereafter unlawfully detained by one or other of them. The declaration I make is that the second defendant unlawfully seized the coaches on the 26th November 1993 and thereafter unlawfully detained them.

I make an order for delivering up of the coaches to Avalon Tours.

Included in the statement of claim is a praper for a declaration that Avalon Tours is entitled to an indemity from the defendants in respect of any claim for breach of contrct which may be brought against it by Subsee. I have heard no evidence in that regard and no addresses have been made. I am not prepared to make the declaration sought on the material before me.

On my finding that the coaches were unlawfully interfered with Avalon Tours is entitled to damages. Evidence was given by one Benjamin Mark Hudson Mr. Savill's assistant, as to his calculations of the loss of profits suffered by Avalon Tours in being held out of its coaches from 26th November 1993 to 2nd October 1995. He computed the total number of passengers which would have been taken on excursions by Avalon Tours had it had the three coaches in operation and deducted the number of passengers it actually took on excursions in its present fleet of coaches. The number of passengers was then multiplied by the fare paid per passenger to achieve the figure for loss of revenue. From this figure an amount is deducted for operating expenses computed from the records of Avalon Tours. The net amount of lost profits was calculated at US$134960. To this figure the plaintiff asks the Court to add a figure from 2nd October 1995 to the date of

judgment.

I do not think the defendants question those figures. What they do say is that the evidence shows that Avalon Tours had to negotiate a bank loan with which to buy the coaches. Any interest paid on that loan is part of the operating expenses and should be deducted from the total damages awarded. If, as seems to be common ground,it is not open to the Avalon Tours to claim as damages interest on any loan it would have to take out to purchase the coaches, I cannot see how such interest can be put on the other side of the equation so as to reduce the amount awardable. I am satisfied that the plaintiff, Avalon Tours, is entitled to damages up to 2nd October 1995 in the sum of US$134,960. together with an amount to be computed on the same basis as that figure from 2nd October 1995 to date.

Costs will follow the event.

Dated this 6th day of December, 1995

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D. Schofield

Judge of the Grand Court