# VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on* Friday *the* 3rd *day of* June, 2011.

Kenneth D. Pittkin, et al., Appellants,

against Record No. 100486
Circuit Court No. CL97-000876

Loddon (U.S.), Ltd., Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Augusta County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no error in the judgment of the circuit court.

The question for decision in this appeal is whether the circuit court erred in awarding judgment against Kenneth D. Pittkin for a wrongful attachment he "sued out" against personal property owned and held for sale by Loddon (U.S.), Ltd., consisting of parts used in the construction of horse stalls. Judgment was also entered against Kilbride International Leasing and Investment Company, Ltd. (Kilbride) because its real property was used to secure Pittkin's bond on the attachment. This Court awarded Pittkin and Kilbride (collectively, Pittkin) this appeal.

In a wrongful attachment case, the measure of damages is the difference between the market value of the property at the time of attachment and the market value of the property at the time it is released from levy. See Rosenberg v. Stone, 160 Va. 381, 391, 168 S.E. 436, 439 (1933); see also Carr v. Citizens Bank & Trust Company, 228 Va. 644, 651-52, 325 S.E.2d 86, 90 (1985). Pittkin

contends that Loddon (U.S.), Ltd. did not prove the value of the attached property at the time of the attachment or at the time of its release from levy.

At the time the attachment was levied, Loddon (U.S.), Ltd. was a Virginia corporation wholly owned by Loddon Livestock Equipment Limited (or Loddon (UK)) of London, England.[1] The parts for the horse stalls were manufactured in England using tubes of galvanized steel for the grill work and a wood infill made from "Balau" wood shipped from Indonesia.

Starting about 1994, Loddon (UK) delivered parts for horse stalls to Loddon (U.S.), Ltd. that were stored in a warehouse in Augusta County. The parts were attached while in the warehouse on July 30, 1996, and remained under attachment until released by order of the circuit court dated November 3, 2004, more than eight years later.

In its November 3, 2004 order releasing the attachment, the circuit court retained jurisdiction of the case for the limited purpose of determining the costs and damages to be paid by Pittkin to Loddon (U.S.), Ltd. and Loddon (UK).

On September 13, 2005, the circuit court held an evidentiary hearing for the assessment of such costs and damages. Robert Jeans, an employee of Loddon (UK), was the only witness to testify at the hearing. He had been Loddon (UK)'s director of sales in the

[1]It is not clear from the record, but at some point during the pendency of this case, Loddon Limited became the successor in interest to Loddon (U.S.), Ltd. and Loddon (UK). This order will continue to use the names Loddon (U.S.), Ltd. and Loddon (UK).

United States for about ten years at the time of trial. He was familiar with the manufacturing, sales, and installation of horse stalls as well as the identification of inventory.

Jeans testified that he had twice visited the warehouse where the attached property was stored. The first visit was about five years prior to the hearing in 2005. He said that he inspected both the galvanized steel and the wood components.

Jeans testified further that neither type of component was usable by Loddon (U.S.), Ltd. for sale to its customers. He said of the components that "[a] lot had been damaged by movement and being left outside." The steel components were covered with "sort of a red kind of mud," and some of the posts and panels were "damaged beyond repair." For a damaged item of steel to be made reusable, Jeans said, it would have to be sent back to England where it would be stripped, regalvanized, and dipped in a tank of acid at a cost making it "cheaper to just remake it." In conclusion, Jeans stated that the value of the steel components was what they were "worth as scrap metal."

With respect to the timber component, Jeans testified that "[i]t looked like it had been left outside for some time and probably moved about for a time." Jeans said that the timber was packaged and that "until you break the pack open, you won't know what damage is inside . . . [b]ecause if it lies out in the rain . . . the water runs through and that stains the wood." The stained boards "would have to be planed down to get it back" to a usable condition, Jeans said, but the planing would make the wood components "too thin to use" in horse stalls.

Jeans' second visit to the warehouse came on September 12, 2005, the day before the hearing in the circuit court. He was unable to obtain access to the interior of the warehouse but he discovered "[f]our piles of steel" outside and a few, less than ten, pieces of wood. When asked the value of what he saw, he replied, "[s]crap value." And, importantly, he testified that "[i]t was representative to what was seen before."[2]

In argument before the circuit court, Pittkin moved for a "direct verdict." He argued that while "Loddon may very well be entitled to recover some damages," there was not "sufficient evidence for [the circuit court] to make a finding as to market value at the time of the attachment or anywhere close to the market value at the time the property was turned over to Loddon."[3]

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[2]In his cross-examination of Robert Jeans, Pittkin extensively questioned the witness about the fact that, at some time, someone in the Loddon organization, without charge, gave some of the timber to someone. Jeans stated that this was done "to help someone out with a problem," that it was "[a] temporary arrangement," and that the "[e]xact pieces" would be returned. Pittkin pursues the matter in his argument on brief, but without more specific information, the incident will be disregarded.

[3]Pittkin suggests on brief that the attached property could have been damaged in the ten-month period between November 2004 when the levy was released and September 2005 when Jeans visited the warehouse the day before the hearing in the circuit court and, thus, there was no proof of the condition of the property at the time of the release. But there is nothing in the record to indicate that any damage was suffered in the ten-month period. Besides, if the property was unusable in the year 2000 when Jeans first visited the warehouse, it would still have been unusable in November 2004 because there was no evidence that any steel was regalvanized or that any timber was planed-down during the ten-month period.

Responding, the circuit court stated that it would use as the "starting point" a bond for $100,000.00 Pittkin posted to obtain the attachment in the first place, reciting in an affidavit filed with his petition for attachment that $100,000.00 was the fair market value of the property to be attached. The circuit said that it had "never heard any objection at all to the bond," declared that $100,000.00 was the fair market value of the property at the time of attachment, ruled that the property was "not worth anything," and proceeded to award "Loddon, Ltd" a judgment against Pittkin and Kilbride for $100,000.00, with interest, less a credit to Pittkin in the amount of $17,050.00 for the salvage value of the attached property.

We must now consider cross-error assigned by Loddon (U.S.), Ltd., which alleges that the circuit court "erred by limiting recovery of compensatory damages for wrongful attachment to the recited value of the attached goods at the time the attachment was issued instead of awarding damages [in the amount of $322,530.10] based upon the undisputed evidence of the higher fair market value of the attached goods at the time the attachment was released." However, as stated earlier in this order, citing Rosenberg, the measure of damages in a wrongful attachment case is the difference between the market value of the property at the time of attachment and the market value of the property at the time it is released from levy rather than on the sole basis of the value at the time of release. Loddon (U.S.), Ltd. offers no valid reason why this Court should depart from precedent, and the cross-assignment of error is rejected.

The judgment of the circuit court will not be reversed unless it is plainly wrong or without evidence to support it. Code § 8.01-680; Suntrust Bank v. Farrar, 277 Va. 544, 554, 675 S.E.2d 187, 190 (2009). The judgment of the circuit court is not plainly wrong and there is evidence to support it. Accordingly, it is affirmed. The appellants shall pay to the appellee damages according to law.

This order shall be certified to the said circuit court.

A Copy,

Teste: Patricia L Harrington

Clerk