

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 334 OF 2008

BETWEEN:

MICHELE MORTHELY
Of Old Montrose, Kingstown

Claimant

AND

ADOLPHUS OLLIVIERRE
Of Prospect

First Defendant

And

LORESTON PRIMUS
Of Diamond

Second Defendant

Appearances:

Mr. Olin Dennie for the Claimant

Mrs. Kay Bacchus-Browne for the First-named Defendant

Mr. Ronald Marks for the Second-named Defendant

2009: September 30

2010: August 6

JUDGMENT

[1] **BRUCE-LYLE, J -:** This is a claim by the Claimant Michele Morthely against the two Defendants, Adolphus Ollivierre and Loreston Primus praying for certain reliefs in relation to a Toyota RAV 4 motor vehicle, registration number P 2811.

[2] The reliefs sought are as follows:-

(1) A declaration that motor vehicle P 2811, a RAV 4 Toyota vehicle, 4-door and blue in colour is the property of the Claimant.

- (2) Damages for false misrepresentation in respect of the ownership of the said vehicle which is valued at \$35,000.
- (3) Special damages for unlawfully depriving the Claimant of the use of her motor vehicle P 2811 as from 10th September 2008 as a consequence of the false misrepresentation made by the First Defendant in Suit Number 109 of 2008 which was not contested by the Second Defendant.
- (4) General Damages.
- (5) Costs
- (6) Such further or other reliefs as the Court may deem just.

THE EVIDENCE OF THE CLAIMANT

- [3] The Claimant and the Second Defendant lived together in a common law relationship at Mount Pleasant from the period 1998 up until the end of July 2009. According to her the Claimant, several vehicles were purchased by both herself and the Second Defendant and that three of these vehicles were registered in the name of the Claimant and the Second Defendant, that is, a Toyota Surf P 8989, a 1995 RAV 4 PK 95 and a Toyota Ceres PP 439.
- [4] This relationship between the Claimant and the Second Defendant ended on the 25th July 2007, when according to the Second Defendant, the Claimant packed her belongings and left the home at Mount Pleasant where they had both cohabited since 1998.
- [5] On the following day, as the evidence stated, the Second Defendant wrote to the Licensing Department claiming that the said vehicle was wrongfully registered in the Claimant's name, and that he had purchased the vehicle from Japan and requested therefore that the Licensing Department cancel the registration of the vehicle in the name of the Second Defendant and put same in the name of the Second Defendant's company Yankee Girl Investments Limited. This letter was exhibited by the Claimant in her list of documents filed in this matter.

[6] The Licensing Department, on reliance of Section 6 (7) of the Motor Vehicles and Road Traffic Act, Chapter 355 of the Laws of Saint Vincent and the Grenadines, amended the Registration of the said vehicle through its officer Colbert McDonald, according to paragraph 7 of an affidavit filed by the Claimant and dated 29th September 2008. The said Section reads:-

“The owner of a motor vehicle shall notify the Licensing Authority of all circumstances or events which affect the accuracy of the entries in the register, at the same time forwarding his certificate of registration for amendment. A licensing officer may call upon any owner of a motor vehicle at any time to furnish all information for the verification of the entries in the register relating to such vehicle.”

[7] Learned Counsel for the Claimant submits that Section 6 (7) of the Act does not give the authority to the Licensing Department to act as it did and the proper thing to do was to refer the matter to the Court. I do not agree with Counsel for stating that the matter should have been referred to the Court. It was within the Licensing Department’s purview to amend after all diligent enquiries had been made with regard to amending the registration of the vehicle. This to my mind the said Department did not do. In that regard, I consider their decision to amend the registration of the vehicle in issue just on the say-so of the Second Defendant to be arbitrary.

EVIDENCE OF THE DEFENDANTS

[8] I will take the evidence of the First Defendant first as this will throw a lot of light on the position of the Second Defendant in this matter. We first of all have to bear in mind that as a result of the situation or events leading to this trial, the First Defendant in Claim No. 109 of 2008 sued the Second Defendant for monies owed by him to the First Defendant in relation to the vehicle in issue in this matter.

[9] The First Defendant’s evidence is riddled with serious contradictions which I regard to be outright lies calculated to mislead this Court and also to assist the Second Defendant in his case against the Claimant. For someone holding the position of Chief Surveyor in this

country's Civil Service, to deliberately set out to mislead a Court of Law, leaves a lot to be desired. But more anon.

[10] Firstly, the Chief Surveyor, Mr. Adolphus Ollivierre, claimed in his witness statement that he had a bank statement evidencing that he purchased five vehicles from Japan including the vehicle which is the subject matter of this claim, but failed to produce same. Learned Counsel for the Claimant submits that this document does not exist, and that that is why it was only referred to but not exhibited. I cannot hazard an opinion on this issue, except to say that the absence of this document goes to the issue of credibility.

[11] Further in his evidence, the Chief Surveyor Mr. Adolphus Ollivierre (First Defendant) claimed that he delivered the vehicle in issue to the Second Defendant on 3rd July 2007 by having his driver Osbert George drive the vehicle to the Second Defendant's residence, but then in his statement of claim in Claim No. 109 of 2008 against the Second Defendant, he states that he delivered the said vehicle to the Second Defendant in October 2007. In paragraph 5 of his defence in this instant matter he goes further to state that the contents of Claim No. 109 of 2008 are true!! Coming from the same witness, which of the two versions and dates is this Court to believe?

[12] Further on in his evidence, the First Defendant contends in his witness statement that the Claimant had left the State after July 2008. But the Second Defendant in his defence pleaded that the Claimant left the State about the same time when he wrote to the Licensing Authority about the registration of the said vehicle which he stated to be the 26th July 2007.

[13] Again the First Defendant testified that he had purchased five vehicles from Japan and that Osbert George his driver drove all five vehicles to his residence at Prospect; but then Osbert George testified that he only drove three vehicles to the First Defendant's residence and that he did not examine the engine and chassis number of the RAV 4 which he drove to the residence of the First Defendant. The Claimant in her evidence testified

that she drove the said vehicle from the First Defendant's home in Prospect to the Second Defendant's home in Mount Pleasant.

[14] The main thrust of the Second Defendant's case is that he entered into contract with the First Defendant to import the vehicle in question from Japan. His evidence was to the effect that the First Defendant was at all times the Importer of the vehicle in question; and that he took possession of the said vehicle and promised to pay the purchase price of \$35,000.00 Eastern Caribbean Currency but failed to do so. His contention was that the First Defendant is entitled to possession of the vehicle in question.

[15] The main issue for the consideration of this Court is – Who was the purchaser of motor vehicle P 2811? Was it the First Defendant Adolphus Ollivierre, or the Second Defendant Loreston Primus who was at the material time the common law husband of the Claimant?

[16] Learned Counsel for the Claimant has submitted that in the absence of any documentary evidence to indicate that the First Defendant used his monies to purchase the said vehicle, this Court has to be guided by the Bill of Lading in respect of the said vehicle, and the Law as it relates to Bills of Lading. I am afraid I have to agree with Learned Counsel on that proposition. There is no other recourse.

[17] Halsbury's Laws of England, Third Edition, Volume 34 at page 179 states under the rubric "Meaning of Bill of Lading" –

"A bill of lading is a receipt for goods delivered to and received by:

- (a) a ship, signed by the person who contracts to carry them, or his agent, normally the Master of the ship, and stating the terms of the contract of carriage under which the goods have been so delivered and received;
- (b) During the period of transit and voyage the bill of lading is, by the land merchant, recognized as the symbol of the goods described in it, and the endorsement and delivery of the bill of lading described in symbolic delivery of the goods;
- (c) Property in the goods passed by such endorsement whenever it is the intention of the parties that the property should pass, just as in similar circumstances the property would pass by actual delivery of the goods;
- (d) The holder of the bill of lading is entitled as against the shipper to have the goods delivered to him to the exclusion of other persons;

- (e) He is thus in the same commercial position as if the goods were in his physical possession, subject to the qualification that he takes the risk of non-delivery of the goods by the ship owner, and that, in order to obtain actual delivery of the goods from the ship owner, he may be obliged to discharge the ship owner's lien for freight."

[18] Reference is also made to Saint Vincent and the Grenadines Act No. 15 of 2002, which is an act to amend the law with respect of Carriage of Goods by Sea. In Part I of the said Act a consignee is defined to mean the person entitled to take delivery of the goods. It provides as such – "Bill of Lading" – means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking."

[19] Broadly speaking, the law is that the property will normally pass on the shipment of the goods if the Bill of Lading is in the buyer's name. When goods are shipped, the ship owner or his agent delivers to the shipper a Bill of Lading and this document in law and in fact represents the goods. Possession of the Bill of Lading places the goods at the disposal of the purchaser – see page 62 of P.S. Atiyah, The Sale of Goods, Fifth Edition.

[20] Learned Counsel for the Claimant, therefore submits based on the facts of this case, and the law posited above in this judgment that by virtue of the Bill of Lading dated the 12th May 2007, the property in 1997 Model RAV 4 vehicle had passed to the Second Defendant who was the consignee of the vehicle. I agree. He had therefore, in the eyes of the law paid for this vehicle and was entitled to take delivery of the vehicle and not the First Defendant. The vehicle as a matter of law is therefore the property of the Second Defendant. What has been presented to this Court by way of evidence, by the First and Second Defendants amount to a clear instance of false representation, that is by asserting that the First Defendant was the owner of the vehicle. Both Defendants have not been forthright and truthful to this Court, more so the First Defendant, who being a Senior Civil Servant, Chief Surveyor of this State ought to have known better than to contrive evidence calculated to mislead, and misleading the court.

[21] To assert that because the Second Defendant does not use the internet he could not have imported the vehicle via the internet is to say the least preposterous. A purchaser of a vehicle over the internet does not have to use the internet himself to have the vehicle consigned to him or her. Frankly, I am not convinced at all by the submissions made on behalf of the First Defendant and the Second Defendant by their respective Counsel and will have no regard to them, except to say this: It is unthinkable that Learned Counsel for the First Defendant will seek to introduce documentary evidence through attaching such documentary evidence to her written submissions, after the trial. I found such to be an insult to the Court as the Learned Counsel for the First Defendant knows too well that that is not allowable normal practice. I disregard her submissions on the law and the documents attached.

[22] This whole case came to trial as a result of a relationship gone sour. I believe the Claimant when she says the Second Defendant gave her the vehicle in issue as his common law wife, and only wrote to change the registration of the vehicle from her name on the 26th July 2007 because she had left him the day before on the 25th July 2007 when she packed her belongings and left the Second Defendant's home taking with her the said vehicle and her furniture which she brought to the home.

CONCLUSION

[23] The Claimant by way of her evidence has been at pains to establish that both defendants conspired to falsely misrepresent that it was the First Defendant who purchased the vehicle in issue when the Bill of Lading shows clearly that he was not the purchaser of the vehicle from Japan. It must be borne in mind that the Second Defendant did write the Licensing Department stating that he the Second Defendant purchased the said vehicle from Japan. By Law, the property according to the Bill of Lading passed to the Second Defendant who according to the Bill of Lading had paid for same.

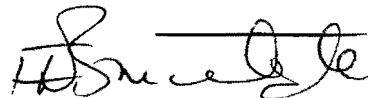
[24] The First Defendant has produced no evidence before this Court to contradict the legal effect of what is stated in the Bill of Lading. As a consequence, there is no evidence before this Court that the First Defendant, who claims that he imports vehicles as a hobby for his friends, is the owner of the said vehicle and therefore my finding is that he lied disgustingly to misrepresent the Court

[25] It is the view of this Court, that the misrepresentation on the part of the First Defendant, is compounded or facilitated by the Second Defendant who knew that the allegations made by the First Defendant were false, but failed to file a defence in Claim No. 109 of 2008 in answer to the First Defendant's allegations thereby conspiring with the First Defendant to mislead the Court, and in so doing, deprived the Claimant of the use of her vehicle as she had to suffer the embarrassment of having the vehicle seized from her workplace, as she was always in possession of the said vehicle. Quite interestingly, the Second Defendant at this trial beforehand or in his submissions did not pursue his counterclaim against the Claimant for the sum of \$49,000.00 Eastern Caribbean currency.

[26] The Claimant must prove her case on a balance of probabilities, having regard to all the circumstances of the case. I am totally convinced that the Claimant has established her case against the First and Second Defendants on a balance of probabilities.

ORDER

[27] I therefore enter judgment for the Claimant in the sum of \$35,000.00 against the First and the Second Defendants jointly. I accordingly dismiss the Second Defendant's counterclaim against the Claimant in its entirety. Costs to be paid jointly by the Defendants to the Claimant in the sum of \$8,000.00. I also declare motor vehicle P 2811, a RAV 4 Toyota vehicle is the property of the Claimant.



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Frederick V. Bruce-Lyle
HIGH COURT JUDGE