

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2007-04782

BETWEEN

BAVARIAN MOTORS LIMITED

CLAIMANT

AND

ROGER DERRY

DEFENDANT

SOUTHERN SALES & SERVICE COMPANY LIMITED

FIRST DEFENDANT TO THE COUNTERCLAIM/THIRD PARTY

IMTIAZ AHAMAD

SECOND DEFENDANT TO THE COUNTERCLAIM/THIRD PARTY

SHIRAZ AHAMAD

THIRD DEFENDANT TO THE COUNTERCLAIM/THIRD PARTY

Before The Honourable Mr Justice R. Boodoosingh

Appearances:

Mr R. Nanga instructed by Ms V. Mohammed for the Claimant / Defendants to the Counterclaim/Third Parties

Mr V. Furlonge-Kelly for the Defendant

Dated: 29 June 2012

REASONS

1. On 19 December 2007, the claimant filed a claim for specific performance of an oral contract for the sale of a car, or for damages for breach of contract.

2. The defendant filed a defence and counterclaim on 6 May 2008 and added the defendants to the counterclaim/third parties (third parties).

3. The claimant and third parties filed their defence on 25 June 2008.

4. The issues for decision were:
 - (i) Whether the claimant is entitled to specific performance for the sale of the motor vehicle, PBZ 4656 (the mini), or alternatively, damages for breach of contract. The mini is registered in the name of the defendant.

 - (ii) Whether there was an agreement between the second third party and the defendant to give the defendant a credit of \$225,000.00 towards the purchase of new vehicles. Accordingly, is anything owed to the claimant?

 - (iii) Whether the defendant is entitled to a refund of his deposit paid towards the mini or damages arising from the allegations in the counterclaim.

5. The claimant's claim is that the defendant agreed to buy the mini from it. He paid down. He completed the licence form. It was registered in his and his mother's name. He has refused to take delivery and to pay the outstanding balance.

6. The defendant alleges that the mini is not roadworthy and the credit agreement should be applied to it. He alleges that the second third party is the alter ego of the claimant and that this sum should be applied to the mini.

7. The first issue to be decided concerns the alleged credit agreement. The defendant says the second third party made this arrangement with him because of several instances of trouble he had with another vehicle, an Audi, which he had purchased from the first third party. He chronicled a list of problems he had with the Audi, suggesting the vehicle was in motor vehicle terms a "lemon".

8. The evidence on this point was set out at paragraph 16 of the defendant's witness statement. He essentially said that in December 2005, the second third party had spoken to him at a meeting with one Mr Motilal and Mr Khan. He says the second third party had calculated the defendant had a down time of 70 % with the leased Audi, that Motilal and Khan were making him look bad, and he would credit the defendant with \$225,000. But the defendant would have to look at either "a BMW series 1, or an Audi A3 or Mazda or whatever I

wanted..." The defendant does not set out how this figure was arrived at, but he did suggest he had significant losses with the Audi. That is the extent of the evidence on this point.

9. A significant fact, which the defendant does not properly explain, is if this agreement was struck, why did he then take a loan to pay a down payment on the mini and why did he pay a down payment on another vehicle, a BMW? The cost of the mini was \$168,000. Thus, this would have been covered by the credit arrangement. Yet he paid down \$95,000 on the mini. He took a loan for this incurring legal fees, interest and bank charges. This would make no sense in the context of a credit agreement exceeding the purchase price of the mini. The defendant would have been entitled to walk away with the mini for free.

10. This credit agreement was mentioned in a letter sent by the defendant's attorney in October 2006. However, another letter, Document 28 of the agreed bundle, was sent by the third 3rd party in October 2006, suggesting the defendant had agreed to take delivery of the mini. There was no response to this letter and the credit arrangement was not raised again until April 2007. This letter would have called for a response.

11. The second third party categorically denied the credit arrangement. I preferred his evidence on this issue.

12. The defendant called in aid the evidence of one Mr Soo Chan who said he had known of the arrangement. It is not clear who he heard about the arrangement from and it is quite possible that it was the defendant himself who told him of the arrangement. In any event, Mr Soo Chan was not stated by the defendant to be present at the meeting. His evidence had to be discounted. I thought it likely he was confused about who he heard it from.

13. In any event, the alleged oral agreement for the sale of the mini was made between an agent of the claimant and the defendant. The defendant has not shown that the second third party is the alter ego of the claimant to bind it so that the sale agreement for the mini is affected.

14. What has been proved in this case is that the defendant owes \$73,000.00 for the mini. It is licensed to him and his mother and he has not signified his consent to its transfer back to the claimant. I think it very unlikely that any credit arrangement was made with him, and that this was in the nature of an afterthought after he decided not to go through with the purchase of the mini. It may well be that having regard to his experience with the leased Audi and that the mini had some damage to it, which had to be repaired, he felt, to some extent, jaded, and he decided not to go through with the purchase. That, however, was not a justified reason for failing to make arrangements regarding his obligations, having paid down on the mini and having it licensed in his name.

15. The claimant is entitled to judgment for the sum of \$73,000.00 and prescribed costs. Interest is to run at the rate of 6% per annum from 19 December 2007 to the date of judgment. The defendant's counterclaim is dismissed. Having regard to the award of costs on the claim, I will award half costs on the counterclaim considered as a claim for \$50,000.00, that is, \$7,000.00. This is given the issues raised and their obvious connectedness.

Ronnie Boodoosingh

Judge