

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2016 - 01973

Between

JAINARINE KISSOONSINGH

Claimant

And

HANIFF MOHAMMED AND SON LIMITED

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Mark Seepersad and Mr Terrence Davis for the Claimant

Mr Nizam Mohammed and Mr Feraaz Mohammed for the Defendant

Date: 28 November 2018

JUDGMENT

1. This case concerns a garbage truck which was converted to a concrete mixer. It was purchased in the claimant's name. The claimant worked for the defendant. There was a falling out between the claimant and the managers of the defendant. There was a court case about it. The claimant was given a settlement arising from that court matter and they parted ways.

2. The claimant says he used his money to buy the truck. In good times he gave it to the defendant to use. The defendant does construction work and road works on a large and small scale. He later made a demand for the truck. This was not acceded to. He brought this claim in detinue for the truck.

3. The defendant says the truck is theirs. They paid the money for it. It was only purchased in the claimant's name so they would get a better price from the used vehicle salesman. This is why they say they have it. They claim that it should be transferred to the defendant.

4. The issue for the court is who really owns the truck. It is registered at the Licensing Office in the claimant's name. However, that is not determinative of ownership. The court has to decide based on the evidence what was the arrangement for purchase and who actually paid for it.

5. To prove detinue the claimant must show ownership of the truck; that he has a right to possession of it; that there was a proper and formal demand for it; the

defendant has refused to deliver it up: **Singh v Ali [1960] 1 All ER 269 at 272** and **Lynette Reid v Wayne Reid CV 2012 – 01193** per R. Mohammed J.

6. There is no dispute that a formal demand was made for the truck in 2012 through a letter sent by an attorney on behalf of the claimant. It is also not in dispute that there has been a refusal to turn the truck over. Ownership is the critical issue.

7. There were two preliminary matters raised by the defendant. The first that this was a matter that could properly have been litigated by the claimant in the previous matter. It was not litigated and the submission is that the claim should be dismissed on this ground. This the defendant suggests is an abuse of process. The second issue raised is delay by the claimant in bringing the claim. The claim was brought approximately after 8 years of the truck being in the defendant's possession and three years after the claimant was terminated from his employment.

8. I found these matters did not bar the claimant from bringing the claim for detinue since the demand was only made in 2012. However, these two matters did substantially affect the credibility of the claimant and the believability of the claimant's version of events.

9. The first claim brought (CV 2010 – 00972) was for breach of contract. However other matters were raised in that matter. In that claim he had claimed for

different pieces of equipment including a welding plant, grinding machines, cutting saws, work benches, tools etc. These were items he said he had owned but which were being used or in the possession of the defendant. He did not, however, claim for the truck which at that time was outstanding. It seems odd that he did not include a claim for the truck in such circumstances since it is reasonable to expect he would have wanted a clean break from his past employer having brought a claim against them.

10. The next point is that the substantial delay does throw some doubt on the claim. The claimant has not satisfactorily explained why he took so long to bring the claim for the truck. His explanations include that his previous lawyer told him the truck was a separate matter; that a detinue claim only arises after a demand; he had no place to store the truck; and a price was not agreed for it. His then lawyer had told him it was “not definite money”. I did not accept these explanations.

11. As to the need for it to be a separate matter from the breach of contract claim, the claimant in that matter sued for the defendant’s use of various pieces of equipment. The truck was the most substantial of all of the equipment the claimant said he owned and which was being used by the defendant company. Thus, it is not as the claimant contends that before he could bring a claim for the truck there had to be a formal demand. He could have formally demanded the truck at the same time he demanded compensation for the other pieces of equipment which he claimed in that previous matter.

12. There being no price agreed for the truck did not affect a claim being brought. The defendant was in possession of it. Whether a price had been agreed for it would not have stopped him from bringing a claim for possession of it or a claim for a reasonable sum for him being kept out of possession.
13. I also found it unbelievable that he would just leave the truck there as if he was not yet ready for it. That strains credulity in the context of the breakdown of the relationship among the principals of the defendant and the claimant. Good friends when they part sometimes become bitter foes. This can be said of the relations between these parties.
14. I think it more likely that realising the truck remained registered in his name he decided to bring this claim to see what may happen with it. He also said he kept the truck at the defendant's after he had been made "redundant" by the defendant because he did not have funds at his disposal and he thought it would be a "saving" with the defendant. I find it strange that he would want to be in an arrangement where the defendant would hold his equipment as a form of savings for him while he was engaged in litigation with the company and had obviously left on not good terms.
15. The next matter was that insurance was acquired for the truck in the name of the defendant. The claimant does say that he allowed the defendant the use of the truck for which he was to be paid, but it does seem odd that since it was his truck being rented out that he would not ensure the insurance was put in his name. This tends to suggest to me that the arrangement was more likely what

the defendant's witnesses said it was, which was that the truck was bought in the claimant's name but on behalf of the defendant.

16. The claimant speaks of \$50,000.00 which he got from the defendant. At paragraph 28 he seems to be saying it was not a loan arrangement to purchase the truck. However, in a letter sent by a previous attorney, Mr Mc Nicholls (who has since passed away), to the defendant, this sum of money was described as a loan and the parties had not discussed repayment of this loan. The claimant sought to retreat from this position as stated in the letter. This was the second occasion when he seemed to be casting some sort of blame on previous lawyers to justify either an inconsistency in his version or his failure to act. The defendant's witnesses said he was given the money to buy the truck on their behalf. It was not a loan arrangement. Hence they had the receipt for the down-payment which the claimant handed over. The claimant's explanation is that he somehow left the receipt in the truck and the defendant must have gotten it from there.

17. The claimant put in cheques he said he paid to one Margaret Roberts which he paid to her on the instructions of the seller Mr Byam or Byan. The precise connection between Roberts and Byan is not clear or why in such a transaction the payment would be done that way. I conclude that those cheques must have been for a different matter unrelated to the purchase of the truck.

18. The defendant's explanation for the truck was quite different. Mr Kelly Mohammed, a director, stated the defendant wanted to acquire a small concrete

mixer truck. The claimant was their employee who was well integrated into the operations of the company. The claimant told them at a meeting that he could get a small truck from one "Mr Byam", a used vehicle salesman. Mr Byam he later found out was S. Alladin, the person who sold the truck. The claimant told him later on that he could get the truck for a reduced price of \$130,000.00 but only if it was purchased in his name. If it were the defendant company the price would be higher and full payment would be demanded immediately. He issued a cheque for \$50,000.00 to the claimant. The claimant paid Alladin and returned the original receipt to the defendant showing \$50,000.00 was paid and a balance of \$80,000.00 was payable. In April 2004 the claimant came to the office and requested payment of the balance. Since they needed cash for operational purposes he issued the claimant with a cheque of \$190,000.00.

19. He returned \$110,000.00 to the defendant's office. The balance of \$80,000.00 he handed over to Alladin in the claimant's presence. The truck was later delivered to the office about August 2014. It was first a garbage truck and had to be converted to a cement mixer. The truck was painted over in the colours of the defendant company. The claimant never made a claim for the truck until 2012. The defendant knew the truck was theirs. It was in the defendant's possession. The company paid the insurance for it. They used it as the company's. When the previous matter was brought there was no claim for the truck even though all other kinds of claims were made. The claim was settled on the basis that the final settlement figure was on the basis of all outstanding matters between the parties.

20. Both sides gave evidence of the good relations between the parties before. The arrangement described by Mr Kelly Mohammed that a cheque was written to the claimant and he returned the cash out of which the balance for the truck was paid is not implausible in the circumstances. It appears, even from the claimant's evidence, that there was this kind of dealings before. The claimant was a trusted employee who did various types of transactions for the defendant company. So while other businesses may not operate in this kind of way, I find nothing implausible about what the defendant's witnesses described in relation to the parties.

21. As noted there was no claim for the truck in the prior proceedings. However, when a settlement was arrived at it does seem to me to be more plausible that the settlement would be a global one to close off all relations between the parties whether or not the truck was claimed for. These are parties who wanted to go separate ways. Further, it seems very odd that if the settlement was not to cover the truck that the attorneys for the claimant would not see it fit to at least indicate in some form of communication that a substantial claim would remain in respect of the truck. This is a substantial claim being brought by the claimant here. The price of the truck as agreed was \$130,000.00. The claim was made for approximately \$19,200.00 per month for use of the truck. This is a claim that could potentially exceed the previous claim between the parties. It is unbelievable that all of the claimant's energies, and that of his attorney, would be focused on claims including for welding plants, a water tank and a heavy duty drill, but that no mention would be made of one of the highest potential income earners, a concrete mixing truck.

22. I also find it highly implausible that one of the explanations given by the claimant for not keeping the truck was that he had no where to store the truck at the time. He noted he had a yard and his place was always being used by the defendant to do work and they kept a workshop there. His yard, he said, was full of form work, steel and materials. I find it unlikely that amidst all of the things there he could not carve out a small space to keep his own vehicle.

23. The fact that the defendant had almost exclusive possession of the truck, taking responsibility for its insurance and used it as and when they wanted, lead to the conclusion that the defendant was the true owner of the truck. The defendant exercised all aspects of ownership including use, maintenance, insurance, possession and storage of the truck. The matters raised by the claimant were that he paid for it and the certificate of ownership was in his name. I have found that the defendant paid for the truck. The certificate was in the claimant's name.

24. Between the two versions in this matter I find the defendant's version is more plausible, reasonable, accords with their business practices given the relationship between the parties at the time, and more believable. The defendant's witnesses essentially supported the main contentions of the pleaded case and they pieced together the different aspects of the claim. I found it unlikely that all of these witnesses would be untruthful as contended by the claimant. Each witness' evidence was narrow to the aspect of recollection he was concerned with.

25. I found the claimant shifting ground. He has not satisfactorily explained why he did not bring this claim earlier. While there were some inconsistencies in the defendant's case such as the time insurance was paid for, I nonetheless preferred the defendant's version to the claimant's.

26. There were two other matters which I considered important to make a finding on. Reference was made by the defendant to a "without prejudice" communication sent by the then attorney for the claimant to the defendant in the previous matter. I considered it inappropriate in the circumstances to have regard to that communication in resolving this claim. That letter was sent for the exclusive purpose of trying to work out a settlement of the previous claim. That claim was settled and the court ought not to look to that communication to make findings without the agreement of the parties. In any event, I have been able to come to clear conclusions in this matter without the need to have recourse to that letter.

27. The second matter was the consent order entered into in the previous matter. The court can have regard to the fact of the consent order and the terms but it would be inappropriate to delve into the circumstances that led to it including any matters considered during the Judicial Settlement Conference stage. It would not be conducive to the disposition of claims and the openness that is required for a settlement conference to take place if the court were to authorise the use of the positions taken by the parties in the discussions on the settlement of the claim. I have therefore been careful in this judgment to arrive at conclusions without regard to this matter and what the parties may have expressed during the process.

28. The claimant' claim is dismissed. The defendant has proved that they paid for the truck and always had possession of it and insured it. They are the true owners of it. There is a declaration in terms of paragraph 2 of the reliefs set out in the Defence and Counterclaim. An order is made in terms of paragraph 3 of the reliefs claimed.

29. The claim concerned the truck which was purchased for \$130,000.00. We have no evidence of the present value of the claim. In all of the circumstances a fair and reasonable costs order would be for the claimant to pay the costs of the claim and the counterclaim together in the sum of \$28,500.00 which represents prescribed costs for the sum of \$130,000.00.

Ronnie Boodoosingh

Judge