

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2018-00958

ANEESA BALROOP

Claimant

AND

KENNETH AMROW

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Mr. Haresh Ramnath

Defendant: Mr. Llewellyn Thompson

Date of Delivery: 10th September 2020

JUDGMENT

THE CLAIM

- [1] The Claimant claimed against the Defendant damages for fraudulent and/or negligent misrepresentation arising out of the sale to her of a motor vehicle in respect of which the Claimant alleged that the Defendant did not have title.
- [2] The Claimant pleaded that on or about the 12th June 2007, she purchased motor vehicle registration number PBS 9744 from the Defendant at and for the price of \$58,000.00. The Claimant signed the transfer form to transfer title from the Defendant to herself and returned same to the Defendant who effected the transfer of said vehicle to the Claimant at the Licensing Office of the Transfer Division.
- [3] The Claimant purchased the said car by means of a loan facility from Scotiabank Ltd.; this loan in the sum of \$56,000.00 was secured by a mortgage bill of sale. On the 2nd August 2007, the Claimant received a Certificate of Ownership of the said vehicle from the Defendant; this document indicated that the said vehicle had been transferred from the Defendant to the Claimant.
- [4] On the 13th August 2015, the Claimant attempted to transfer the said vehicle to one Jerome Johnson when it was discovered that the chassis number on the said vehicle differed from that on the certified copy of ownership. The Claimant reported this finding to the police who revealed that the said vehicle had been stolen from the Defendant in 2006 and that the problem can be solved by a 'chassis lift off' if the Defendant would reveal the registration number of the number plate on the vehicle when it was recovered.
- [5] The Claimant pleaded that despite several requests to the Defendant to furnish this information to her and/or to the police, he has failed and/or refused to do so.

- [6] The Claimant averred that the Defendant fraudulently and/or negligently misrepresented to her that he had proper title/ownership in the said vehicle and was lawfully capable of transferring such title and/or ownership to her. In support of this averment the Claimant relied upon the following particulars:
- a) The Defendant knew or ought to have known that the chassis number for the vehicle was tampered with.
 - b) The Defendant represented to the Claimant that he had a proper title to the said vehicle.
 - c) The Defendant failed to disclose to the Claimant that the chassis number for the said vehicle was tampered with.

DEFENCE

- [7] The Defendant denied the Claimant's case and in particular:
- a) that on the 12th June 2007 or at all that the Claimant purchased the said motor vehicle at and for the price of fifty eight thousand dollars(\$58,000.00) or at all;
 - b) that he attended the Claimant's workplace and signed forms in order to transfer the said vehicle from himself to the Claimant.
- [8] The Defendant put the Claimant to strict proof on the issue of the transfer of the said vehicle from himself to the Claimant by producing the transfer documents, agreement for sale and evidence of payment of the sum of \$58,000.00 to him.
- [9] The Defendant admitted that his vehicle had been stolen and the police had advised him that the chassis number of the said vehicle had been tampered with. He stated that the vehicle had been taken to the Licensing Office for adjustments to be made and for replacement of the

original licence plate. He however denied that the Claimant ever demanded that he give her information about the vehicle's number plate, when the police had recovered the said vehicle, or that he refused to deliver same.

[10] The Defendant annexed a certified copy of ownership of the said vehicle which revealed that it was registered in his name.

[11] The Claimant and Defendant filed one witness statement each and were cross-examined.

EVIDENCE FOR THE CLAIMANT

Anesa Balroop

[12] The Claimant testified that she had known the Defendant for over twenty years since he had been romantically involved with her aunt and they all lived together at the same address. The Claimant stated, for the first time, that after she agreed to purchase the said vehicle from the Defendant for the sum of \$58,000.00, he gave her a statement indicating the sale price and exhibited same. This fact was not pleaded.

[13] The Claimant gave details of the loan transaction for the purchase of the said vehicle which she had not provided by way of Reply or in her Statement of Case. She pleaded that the bank loaned her \$40,000.00 while her mother made up the difference by transferring \$20,000.00 to her account.

[14] The Claimant annexed a copy of the transfer form which the Defendant had given her, as well as a copy of the Mortgage Bill of Sale.

[15] Ms. Balroop testified that she had had possession of the subject motor vehicle from the 6th August 2007, however the vehicle was taken off the road after she was advised that the chassis number had been tampered with.

- [16] In cross-examination, the Claimant testified that she owned the vehicle from August and not June 2007 even though she purchased it on the 12th June 2007.
- [17] The certified copy of ownership relied on by the Claimant described a Nissan Sunny Sedan while the Mortgage Bill of Sale which the Claimant asserted that she entered into for the purchase of the subject vehicle referred to a Hyundai Trajet Sedan registration number PBS 9744.

EVIDENCE FOR THE DEFENCE

Mr. Amrow

- [18] The Defendant testified that he had owned the subject vehicle since the 11th August 2004, when he bought it from Diaz Enterprises. The vehicle was bought to be used in his business which was managed by Zalina Mohammed, the Claimant's aunt. On or about August 2006, the said vehicle was stolen from his home and he and Zalina reported the theft at the Marabella Police Station.
- [19] One month later the subject vehicle was recovered and the Defendant and Zalina met with Superintendent Gay at Police Headquarters, who advised them that the number plates and chassis numbers of PBS 9744 had been tampered with. The investigating officer, one Cpl Dollar supervised their removal of the vehicle to the Licensing Office to facilitate the replacement of the number plates and 'to treat with the matter of the altered chassis numbers'.¹
- [20] Mr. Amrow stated that upon being served with these proceedings, he contacted both the police and Licensing Office and was advised that he could transfer the vehicle to the Claimant if they both attended with the

¹ Paragraph 6 of the Witness Statement of Kenneth Amrow filed on May 20th 2019

relevant documents; this advice was conveyed to the Claimant via letters to her attorney.

- [21] In cross-examination, the Defendant stated that Zalina Mohammed, the Claimant's aunt, dealt with all vehicles used in the business. He acknowledged that the Claimant had been in possession of the car since 2007 but he doubted that she had paid any money for it.
- [22] He denied ever having signed a document indicating that he wanted to sell the vehicle and that he first saw that document during the disclosure process in these proceedings. Mr. Amrow revealed that he had no difficulty transferring the vehicle to the Claimant at this time. When he had asked Zalina for the vehicle, she had told him that the Claimant had it, not that the latter had paid for it. He disclosed that the accounting records would reveal the sale/gift/transfer of any assets belonging to the business and that he still had those records. He further stated that if either he or Zalina had sold the car to the Claimant, a receipt would have been issued. Mr. Amrow admitted that he had the receipt books but had not checked for receipts from 2007.
- [23] The Defendant denied that the Claimant had told him that his assistance was required in order to transfer the vehicle to her even though he had not pleaded this denial in his Defence. Later during his cross-examination, the Defendant asserted that Zalina kept the records of purchase and disposal of vehicles and forwarded this information to the accountant of the business. He revealed that a removal of any asset of the business must be reflected in his taxes, whether such asset was sold or gifted to another person. Mr. Amrow admitted that he is in possession of these accounting records but had not disclosed them to the Court.
- [24] The Defendant asserted that he was unaware of the fact that the subject vehicle had been in the Claimant's possession since the 6th August 2007, although he could not state when it was last in his possession.

Further, that the police had told him and Zalina, at the time the car had been recovered, that its chassis number had been tampered with; however, since he had never had a conversation with the Claimant concerning the sale of the car, he had not told her this fact. He also denied ever having told the Claimant that he could not remember the false number plate for the subject vehicle.

ANALYSIS AND CONCLUSION

[25] The central issue to be determined in this case is whether the Defendant knowingly sold PBS 9744 to the Claimant, when he did not have proper title to the car and was thereby incapable of transferring title to her.

[26] There is an acute conflict between the respective cases of the Claimant and the Defendant on this material issue. In assessing the claim in order to determine the merits of each case, I had regard to the guidance provided in **Horace Reid v Dowling Charles and Percival Bain**². In determining the inherent probability or improbability of the rival contentions, the pleaded cases, evidence, matters of common ground or disputed only as an afterthought must be taken into account.

[27] After due consideration given to the pleadings and evidence, I found the following facts:

- a. The subject car has been in the Claimant's possession from 2007 to present. The defendant had purchased the car in 2004 and it was in his possession until June 2007 when the Claimant asserted that she bought it from it.
- b. He knew that the Claimant had had sole possession of this asset since 2007 and never objected.

² Privy Council Appeal No. 36 of 1987 p.6

- c. In 2005, the car had been stolen from him and subsequently recovered by the police. Upon such recovery, it was observed that the chassis number had been tampered with. Under police supervision, the Defendant took the car to the Licensing Department for adjustments to be made and replacement of the original license plate.
- d. When the car was transferred to the Claimant she was not informed about the theft of the car, or any issues relating to its title.
- e. The Defendant had in his possession, though he had not disclosed to this Court, the records relating to any transactions with the subject vehicle from the time that it came into his possession – whether it had been gifted, sold or transferred.
- f. Mr. Amrow was now willing to transfer the vehicle to the Claimant despite his consistent denial that he had sold it to her.
- g. Mr. Amrow sold the car to the Claimant and knew at the time of such sale that he could not pass proper title to her unless the number plate affixed to the car at the time of recovery was given to the police so a proper chassis 'lift off' could be affected.

[28] It should be stated at the outset that I found the Claimant to be believable and consistent witness and I accepted her evidence relative to the purchase of the car from the Defendant. The fact that the mortgage bill of sale adduced as evidence of purchase described the security as a Hyundai Trajet instead of a Nissan Sunny does not, in my view, undermine her case that she purchased the said vehicle for the Defendant.

[29] I note that the Defendant agreed that he had parted with possession of the car during the same period of time that the Claimant said that she purchased it from him. Even more significant, is the fact that the Defendant admitted that he had in his possession the records of his business for which the car was purchased, the information which would

disclose whether the car had been gifted or sold to the Claimant. He chose not to disclose this evidence to the Court and opted to simply deny that he had sold it in the face of the Claimant's claim that he had indeed sold the vehicle to her when he did not have title to do so. The Claimant having made out a prima facie case that the Defendant had sold the subject vehicle to her, the failure of the Defendant to adduce the material evidence which he had in his possession on this issue caused me to draw an adverse inference against him – that the evidence, if adduced, would not support his case. No explanation was given by the Defendant for failing to adduce this evidence in the circumstance where he admitted during cross-examination that he was still in possession of the relevant records. The Defendant's silence on this issue, in light of the records in his possession, served to strengthen the Claimant's evidence that he had sold her the car.³

[30] In coming to the conclusion that Mr. Amrow had sold the car to the Claimant, I also took into account the fact that he had made no objection or raised any alarm about the fact that the Claimant was in full possession of a vehicle that he had bought for use in his business a mere three years after said purchase. His silence, coupled with his failure to produce the business records relative to transactions involving the subject car after its purchase made it more probable than not that he had knowingly sold the Claimant the vehicle.

[31] Mr. Amrow's inconsistent statements regarding his knowledge of the fact that the Claimant was in possession of the said car since 2007, caused me to conclude that he was neither truthful nor reliable; I formed the view that the reason for his vacillation on this point was that the only credible explanation for parting with possession of the said vehicle in these circumstances was that he had sold it to the Claimant while falsely representing to her that he had prior title to do so. Given the Claimant's

³ Ian Sieunarine v Docs Engineering Works (1992) Ltd HCA 2387 of 2000 p. 10

unchallenged evidence that she shared his household with her aunt, with whom he was involved romantically, it is difficult to imagine that he could have been unaware of its transfer in any event.

[32] Both the Claimant and Defendant produced certified copies of ownership in respect of the said vehicle – the Defendant’s dated 27th June 2007 and the Claimant’s dated 2nd August 2007. This Claimant’s Certified Copy of Ownership supports her claim that the Defendant transferred the vehicle to her in August 2007 pursuant to her purchase of same.

[33] I accept the Claimant’s evidence that she paid to the Defendant the sum of \$58,000.00 for the purchase of the said vehicle and that pursuant to said sale he gave her possession of the vehicle and transferred same into her name. I also accept that at the time of such sale, the Defendant knew that he could not pass title to the Claimant having regard to the issues relating to the tampered chassis.

LAW

Chitty on Contracts, Volume 1, 30th Edition

Paragraph 6-006

(a) A false statement of fact

A misrepresentation must be a false statement of fact, past or present, as distinct from a statement of opinion, or of intention or mere commendatory statements. Mere “puffs” do not amount to representations: *Dimmock v Hallet (1866) L.R. 7 Ch. App. 21 at 27. A mere statement of opinion which proves to have been unfounded, will not be treated as a misrepresentation, Hummingbird Motors Limited v Hobbs [1986] R.T.R. 276.....as a general rule these cannot be regarded as representations of fact, except insofar as they show that the opinion or intention is held by the person expressing it. Moreover statements must be construed as they would reasonably be understood by the recipient in

the context in which the statement was made. Thus a statement as to the nature of a policy made to an experienced loss adjuster, who had a copy of the policy schedule that described it correctly, and was thought to have a copy of the policy itself, was regarded as “a contention, not as a representation” – in other words, it was merely an expression of opinion.

6-007

Statement of opinion may amount to statement of fact

However, in certain circumstances a statement of opinion or of intention may be regarded as a statement of fact, and therefore as a ground for avoiding a contract if the statement is false. Thus, if it can be proved that the person who expressed the opinion did not hold it, or could not, as a reasonable man having his knowledge of the facts, honestly have held it, the statement may be regarded as a statement of fact. *Connolly Limited v Bellway Homes Limited* [2007] EWCH 895.

6-008

Opinion not honestly held

If a person states as his opinion something which he does not in fact believe, or which given the facts known to him, he could not honestly hold, he makes a false statement of fact. So where at a sale of property, the vendor described the occupier as “a most desirable tenant”, while in fact he knew that the rent was considerably in arrear, this was held to entitle the purchaser to rescind the contract.

6-012 Reasonable reliance on statements of opinion or statements as to the future

...It is suggested that the fundamental principle which underlies all the cases of misrepresentation,... is not so much that statements as to the future, or statements of opinion, cannot be misrepresentations; but rather that statements are not to be treated as representations where,

having regard to all the circumstances, it is unreasonable of the representee to rely on the representor's statements rather than on his own judgment. In general this seems to be the reason why statements as to the future and statements of opinion have been held not to ground relief; in dealing with statements of this nature it has usually been felt that the representee ought not to have relied on the representor. It has been recognized that sometimes a statement which on its face a statement of fact was really only one of opinion because it was apparent that the maker had no real knowledge or was simply passing on information for what it was worth.

[34] In **Derry v Peek**, the leading case on fraudulent misrepresentation/deceit, Lord Herschell opined:

*“Fraud is proved when it is shown that a false representation has been made (1) knowingly or (2) without belief in its truth or (3) recklessly, careless whether it be true or false One who makes a statement under such circumstances can have no real belief in the truth of what he states to prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth.”*⁴

[35] On the facts of this case, I find that the sale of the car to the Claimant by the Defendant, knowing that the car could not legally be transferred because the chassis number had been tampered with, amounted to a fraudulent representation that his title to the said vehicle was good and capable of being transferred. After the vehicle was recovered by the police when it had been stolen, the officers must have advised Mr. Amrow that he could neither drive the car nor sell it until the issue with the chassis number was dealt with. The evidence suggests that he chose instead to offload the vehicle to the Claimant without revealing the issue about the damaged chassis to her. The Claimant paid a sum which amounted to

⁴ 1889 14 App Cas P 337 at p374.

the market value of the vehicle, having relied on the representation of the Defendant that he had proper title to it.

[36] It was perfectly reasonable for the Claimant to have relied upon the Defendant's representation that the car was capable of being transferred and that there was no problem with its title. She knew that he had bought it and that he and her aunt used it in the business that they both operated. There is no evidence before me that she was aware that the car had been stolen, its chassis tampered with or that the Defendant had to take steps to correct this problem before he could sell the said car.

[37] The fraudulent misrepresentation was only discovered some eight years later when the Claimant attempted to sell the car. She has sustained a loss by reason of the fact that not only can she not sell the car, but she has lost the use of it since the police have forbidden her from driving it on the roads. The Claimant is entitled to compensation by way of damages for her loss since time only began to run from the date of discovery of the fraudulent action of the Defendant – 2015.

[38] In **Attorney General of the Virgin Islands v Global Water Associates Ltd**⁵, Lorde Hodge, reviewing the authorities on remoteness of damages for breach of contract stated:

From this brief review of the main authorities, the position may be summarised as follows.

31. First, in principle the purpose of damages for breach of contract is to put the party whose rights have been breached in the same position, so far as money can do so, as if his or her rights had been observed.

⁵ UKPC 18 Privy Council Appeal No 0107 of 2018

32. *But secondly, the party in a breach of contract is entitled to recover only such part of the loss actually resulting as was, at the time the contract was made, reasonably contemplated as liable to result from the breach. To be recoverable, the type of loss must have been reasonably contemplated as a serious possibility, in the sense discussed in paras 27 and 28 above.*

33. *Thirdly, what was reasonably contemplated depends upon the knowledge which the parties possessed at that time or, in any event, which the party, who later commits the breach, then possessed.*

34. *Fourthly, the test to be applied is an objective one. One asks what the defendant must be taken to have had in his or her contemplation rather than only what he or she actually contemplated. In other words, one assumes that the defendant at the time the contract was made had thought about the consequences of its breach.*

35. *Fifthly, the criterion for deciding what the defendant must be taken to have had in his or her contemplation as the result of a breach of their contract is a factual one.*

[39] Applying the principles adumbrated above⁶ and taking into consideration my findings that the Defendant knew at the time of the sale of the car to the Claimant, that he did not have the power to legally transfer title in the said car to her, I hold that the Claimant is entitled to recover the monies paid to the Defendant to purchase the car and for loss of use of the vehicle.

[40] In the circumstances, I make the following Orders:

- a. Judgment for the Claimant against the Defendant;

⁶ UKPC 18 Privy Council Appeal No 0107 of 2018

- b. The Defendant to pay to the Claimant damages in the sum of ninety thousand dollars (\$90,000.00) for fraudulent misrepresentation;
- c. The Defendant to pay to the Claimant prescribed costs on the above damages in the sum of twenty two thousand dollars (\$22,000.00).

Joan Charles

Judge