

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2015-01399

Between
SURJNATH RAMSINGH

Claimant

AND

SURJEE CHOWBAY

Defendant

And by Ancillary Claim
SURJEE CHOWBAY

Defendant/
Ancillary Claimant

AND

RAMKARRAN RAMPARAS

Ancillary Defendant

**Before the Honourable Madame Justice Eleanor J. Donaldson-
Honeywell**

DECISION

Date of Delivery: 25th April, 2018

Appearances:

Mr. Omar Johkan and Ms. Vidya Jokhan Attorneys at Law for the Claimant

Mr. Haresh Ramnath Attorney at Law for the Defendant/Ancillary Claimant

Mr. Asaf Hosein Attorney at Law for the Ancillary Defendant

A. Introduction

1. This Claim concerns an aborted vehicle sale transaction. The claimant has lost the \$68,000.00 he paid down in April 2014 towards purchase of a Nissan Caravan motor vehicle ["the vehicle"] which was being sold by the Defendant at a full cost of \$100,000. The Defendant purported to act on behalf of the owner of the Vehicle, a religious organisation known as the Tarouba Shiva Mandir. The Claimant was allowed to use the vehicle after making his down payment. It was in his possession until it was seized in February 2015 by Mr. Ramparas, the Ancillary Defendant in this case.

2. Mr. Ramparas, a licensed Bailiff, had been hired by the Defendant. The Claim was filed for the Claimant to recover the vehicle and be allowed to pay the balance due to the Defendant. In the alternative he seeks recovery of the down payment as well as \$22,000.00 he spent on improvements to the vehicle. The Defendant seeks indemnification from the Ancillary Defendant for the alleged wrongful seizure of the vehicle.

3. There are three different versions of events as to what transpired in this vehicle sale transaction. In all the circumstances it is my view that only one version is believable. I have found that on a balance of probabilities

the case for the Claimant is the truthful version. The Claimant's case succeeds for reasons further explained.

B. Issues

4. As between the Claimant and the Defendant the main issue was whether the vehicle sale agreement between the parties, which was entered into orally on April 16, 2014, was breached by the Claimant or the Defendant. They each allege that the other breached the contract, based on their different assertions as to the date when the \$32,000.00 balance of the purchase price was to be paid. Accordingly, the decision turned on whether the balance was due to be paid either:
 - a. Into an account by the end of August 20, 2014, as alleged by the Defendant, in which event her seizure of the vehicle would have been justified or
 - b. On an unspecified date when a vehicle transfer would be arranged by the Defendant after the September 7, 2014 expiration of a restriction endorsed on the certified copy of the vehicle's registration certificate, as pleaded by the Claimant.

5. As between the Defendant /Ancillary Claimant and the Ancillary Defendant ["the Bailiff"] the main issue was whether the Bailiff's duty extended beyond mere sale of the

vehicle at a fixed price of \$32,000 to cover the amount owed by the Claimant to the Defendant. If so issues as to whether the vehicle was in fact sold for \$100,000.00 and whether the Bailiff was liable to indemnify the Defendant from the sale proceeds he retained, had to be determined.

C. Decision on pleaded case and CMC review of official records

Claimant v the Defendant

6. The Defendant, in response to the allegation that her seizure of the vehicle was in breach of contract, pleads that the Claimant took too long to pay the balance due to purchase the vehicle. As a result she hired the Bailiff to repossess it. She counterclaims against the Claimant, seeking payment of the \$32,000.00 unpaid by the Claimant. The Counterclaim omits to acknowledge however, that the Defendant had already received that amount from her Bailiff. The counterclaim therefore fails and costs would have been saved had it been withdrawn at an earlier stage of these proceedings.

7. The Defendant's pleaded response to the claim for recovery of the vehicle is that it was never in her possession after it was seized. This presents no viable answer to the alternative relief sought of repayment of the down-payment. Having received the down-payment and also seized the

vehicle the Defendant would also have saved costs herein by admitting liability to repay the down-payment.

8. The contention that the final payment was due from as early as the end of August could, if supported by evidence, have established that the Claimant was in breach of contract. However, it would not, without more, have justified retaining the \$68,000.00 paid down. A breach of contract by the Claimant, if supported by evidence, may on the other hand have justified non-payment of the amounts spent by the Claimant to improve the vehicle.

9. The Defendant does not in her pleadings deny that the improvements, supported by the Claimant's pleaded particulars of special damages, were done. She merely states that they were undertaken at the Claimant's risk since the sale had not been finalised. There is no issue on the pleadings as to whether the Claimant spent the amounts claimed on improving the vehicle. However, if the Defendant is to be believed as to the agreed method and due date for the final payment, the Claimant having failed to pay on time, would not be entitled to the \$22,000.00 he spent on improvements.

10. As it relates to the alleged breach of contract by the Claimant, the Defendant's pleadings focus on proving that there was an oral agreement that payment would be made before the end of August 2014, into an account the number for which she says was given to the Claimant. The Claimant's pleading in Reply is that there was no such agreement.

11. The only document attached to the Pleadings of the parties that was contemporaneous with the time the parties agreed on the sale is the Defendant's receipt acknowledging payment by the Claimant of \$68,000.00. The Defendant endorsed thereon that the balance was to be paid before transfer of the vehicle. However, she did not endorse on the receipt a date of transfer or her account number for payment of the balance.

12. Additional documents were examined by the Court during case management as presented by a Licensing Officer summoned to shed light on the restriction imposed as to the date when transfer of the vehicle would be lawful. It was confirmed in the presence of all parties that at the time of the sale there was a restriction endorsed on the vehicle certificate that no transfer could be effected within three years. The expiration date of the restriction was September 7, 2014.

13. Accordingly, the Defendant's main basis for saying the Claimant was in breach of the contract is without merit on the pleadings when seen in context of the official licensing office records reviewed during case management. The date for final payment could not have been before the end of August 2014 at a time when a transfer could not have been effected. It is clear from the pleadings that by seizing the vehicle before arranging for receipt of payment and the transfer, the Defendant breached the contract. Thus on the pleadings, the Defendant's defence to the Claim for special damages of \$22,000 for breach of contract also fails.

14. Though consideration of the Defendant's evidence was not necessary for a determination of this matter between herself and the Claimant, her testimony has been considered. She presented as a witness without credibility based on inconsistencies between what she said happened and the official licensing records as well as the documented chronology of events. Her Bailiff's pleadings and evidence were also diametrically opposed to hers. They both contradicted each other to an extent that their versions of events regarding lack of liability to the Claimant could not be considered truthful on a balance of probabilities.

Ancillary Claimant/ Defendant v the Bailiff

15. The Ancillary Claimant / Defendant [hereafter called "the Defendant"] added her Bailiff as an Ancillary Defendant, claiming against him indemnification against any liability to the Claimant. Further, she claimed a return of the vehicle. Incongruously, though she had counterclaimed against the Claimant for payment of the \$32,000.00 owing on the vehicle, she admitted in the Ancillary pleadings that she had received that sum from the Bailiff. That amount was from the Bailiffs sale of the vehicle, so her claim to have the vehicle returned by him to her defied logic.

16. She also in her Ancillary claim, demanded that the Bailiff produce the Sale Agreement based on which the vehicle was sold for \$32,000.00 and sought damages for "wrongful seizure" of the vehicle by her Bailiff. The proper function of a person performing the role of Bailiff is governed by **The Bailiffs Act, Act No. 58 of 2000**. Section 10 mandates that on entering premises "for the purposes of carrying out his functions" a Bailiff must show his licence and a signed copy of the document authorizing him to carry out his functions on that occasion." The functions of a Bailiff are specified at Section 9 as levying execution in accordance with Court Judgments, serving documents from a Court, levying goods for arrears of rent and repossessing

goods obtained pursuant to a hire purchase arrangement under the Hire Purchase Act.

17. The Bailiff's pleadings in response to the Claim against him made patent the lack of merit in the Defendant's case. Her version of events was rendered improbable based on documents she had signed. It was clear from documents attached to the Bailiff's pleadings, the Defendant's signature to which is not denied, that the Defendant knew since February 27, 2015 that the vehicle would be sold. She authorised the Bailiff to sell it by signing a letter of that date. She included in the letter her account number for the Bailiff to deposit the sale proceeds. A copy of a Manager's cheque dated April 15, 2015 for \$32,000 paid to her is attached to the Bailiff's pleadings. Receipt is not denied by the Defendant.

18. The fact that the Defendant's position, in answer to the Claimant's case, disclosed no Defence on the pleadings was solidified by the disclosures in the Bailiff's pleadings. It is clear from letters attached thereto that she seized the vehicle without any basis for considering the Claimant to be in breach of contract. The letters reveal that both she and the Bailiff were aware **before the vehicle was sold by the Bailiff** that the Claimant was going to great lengths,

having hired an Attorney, to recover the vehicle and complete the sale transaction.

19. The Defendant admits in her pleadings to having received in March 2015 a letter dated 9th March, 2015 written by Mr. Omar C. Jokhan, Attorney-at-Law, addressed on behalf of the Claimant to her Bailiff. The letter made clear that the Claimant was challenging the basis for the seizure of the vehicle. Despite this, there is no pleading that either the Defendant or the Bailiff took steps to halt any action towards sale of the vehicle.

20. The position of the Bailiff is similar to that of the Defendant in that his pleadings do not address all alleged shortcomings in his conduct. He claimed that the Defendant having authorised sale of the vehicle at a fixed price of \$32,000 was only entitled to be paid that amount.

21. This premise ignores the fact that the Bailiff was aware of the Defendant's potential liability to the Claimant for an additional \$68,000.00. He was aware of this since receiving the letter dated March 9th 2015. That he had this knowledge is evident from the pleadings. There is no dispute that an Attorney representing the Bailiff wrote to counsel for the Claimant on March 21, 2014 advising that

one option for the Claimant was to have the down-payment repaid.

22. By letter dated March 29, 2015, attached to the Claimant's pleadings, the Claimant's Attorney provided the Bailiff with correspondence wherein he gave the Defendant three options to resolve the issues concerning the vehicle sale.

- One option was that the Defendant make arrangements to allow him to make the final payment and transfer the vehicle to him.
- An alternate option, in the event that the Defendant was not yet authorised to effect the transfer, was to return the vehicle to the Claimant pending the transfer.
- A third option was that the Defendant should repay the Claimant's down payment and his improvement costs thereby bringing an end to the transaction.

23. It was with full knowledge that far more than \$32,000 was at stake in the pending transaction that the Bailiff sold the vehicle for \$100,000 in April 2015. The documentation disclosed by the licensing office during case management indicated a sale for \$100,000.

24. The Bailiff's pleading is ineffective to negate allegations of misconduct and lack of candour on his part. This is so because despite having received the signed authorisation from the Defendant to sell for \$32,000 in February, he sold the vehicle for \$100,000. He retained part proceeds of sale, knowing that repayment of a \$68,000.00 down payment for the previously agreed sale of the vehicle had been demanded by the Claimant to be repaid to him by the Defendant.

25. The documents relied upon by the Bailiff as attached to his pleadings also bore out that he was purporting to act as a Bailiff when he seized the vehicle. This was done without a Court order so there is no answer to the allegation that he conducted a wrongful seizure of the vehicle. The sale of the vehicle at \$100,000 and the Bailiff keeping \$68,000 of the proceeds was not authorized by the Defendant.

D. Consideration of Evidence

26. During Case Management and Pre Trial Review conferences parties were urged to negotiate a resolution to this matter to save costs. Although there was no viable Defence to the Claim, the parties pursued full Trial for a determination of the matter. The evidence heard at Trial reinforced the position of lack of merit in the case for the Defendant and the Ancillary Defendant as against the Claimant's case.

27. The Claimant presented evidence which supported his case in all respects. I accepted him as a witness of truth as to the fact that no specific time frame for final payment was agreed, save that it had to be before the transfer, which could not take place until after mid- September 2015. This evidence was more probable than the Defendant's case that payment had to be made at a time when transfer was unlawful.
28. There was logic in the Claimant's evidence that he also wanted assurance from the Defendant that she had authority to sell the vehicle since her name was not indicated as registered owner of it. This need to be assured lends credence to his position that the understanding between them was to wait until the day of transfer to pay the balance and then have the vehicle transferred.
29. His evidence that there was no agreement that he was to pay that amount into a bank account is believable. The documentation disclosed, including the receipt he got for the down payment with the Defendant's handwritten endorsement of the only known terms, did not specify an account for payment.

30. His evidence that the Defendant said she was traveling abroad just after the sale, was corroborated by her. He said he was told she would arrange the transfer on her return. It is logical that he would be expected to pay only before an arranged transfer. As a result the Claimant's evidence as to trying to reach the Defendant without success from around September 8, 2014, was credible as he would have been checking then to see whether she returned to transfer the vehicle.

31. His evidence as to phone calls made and visits to places where he believed the Defendant may have been found, including her home, the Mandir and an address he found out about from enquiries, was consistent with his pleadings, even under cross-examination. From these efforts, as well as the fact that he retained an Attorney to recover the vehicle after its seizure and make known his desire to have the sale concluded, I accept that there was no intention on his part to breach the contract. He sought at all times to find the Defendant, pay her and have her meet her end of the bargain by transferring the vehicle to him.

32. His evidence that he paid for improvements to the vehicle was supported by documents attached to his witness statement. I do not agree with the submission of counsel

for the Defendant that there was a discrepancy regarding the date when the work was done. The Claimant did not specify in his Statement of case the exact dates when improvements were done. At paragraph 6 he pleaded that improvements were done in anticipation of completion of the sale after September 8, 2014. Accordingly, improvements done any time around that date and up to February 2015 when the Claimant was waiting for the Defendant to contact him to arrange the transfer would be consistent with his pleadings.

33. Of the three documents produced by the Claimant to prove he improved the vehicle, two are dated in the month of September 2014. The first for rims and tyres is dated September 1, 2014. The second, a Bill for parts from an Electronics Store is dated September 15, 2014. The third is an undated handwritten document stamped by an Auto Parts business, listing costs for installation of air conditioning. The Claimant said this document was a receipt for payment for work done in October 2014. There was no inconsistency between his pleadings and his evidence as to when the vehicle improvements were done.

34. The Defendant's testimony lacked credibility as to the date when the final payment for the vehicle was due. Initially her position was that the copy of the vehicle registration

which she gave to the Claimant did not include an endorsement of the three year restriction. To prove this she attached such a certificate to her pleadings. However, that certificate was stamped on February 22, 2015, long after the date of the sale and after the restriction had expired. There was a printed endorsement at the end that this certificate was not valid without a scanned copy of the original record attached. So clearly it could not have been a copy of the original given to the Claimant as alleged at paragraph 2 of the Defence.

35. The reliance on this invalid certificate, obtained as an afterthought as part of the Defence's case, undermined the credibility of the contention that the Defendant could have believed there was no endorsement restricting transfer before September 8, 2014 and that payment was due in August 2014.

36. The Defendant's accounts as to trying to contact the Claimant to request payment of the balance due before she hired the Bailiff were bereft of any details as to times or methods of attempted contact. She admitted that while traveling and on her return to Trinidad she changed her cell phone. This lent credence to the Claimant's case as to his difficulty contacting her when he was trying to locate her to conclude the vehicle sale.

37. An adverse inference as to the Defendant's credibility overall was drawn from the fact that in counterclaiming against the Claimant for the \$32,000 she feigned ignorance of the fact that she had already collected it from the Bailiff. From the Case Management Stage it was clear that the Defendant had not disclosed a viable Defence. The matter thereafter proceeded to Trial and I preferred the Claimant's evidence to the Defendant's as presenting a credible account of the transaction.
38. The Bailiff also failed to support his Defence to allegations of wrong doing made against him, by any credible evidence. In contending that he did not conduct a wrongful seizure he attempted to prove that he acted not as a Bailiff but as a Servant or Agent of the Defendant. This was contradicted by the seizure/sale authorization documents he attached to his own pleadings and by the words of his Attorney in the March 21, 2015 letter to the Claimant's Attorney.
39. The Attorney wrote that the Bailiff's licence was shown upon entry in accordance with law, thus clearly indicating that he was purporting to act as a Bailiff. The Attorney also underscored in the letter that his client the Bailiff remained "*confidently fearless in the face of good and*

proper practice and work ethic that has been in total adherence to the Bailiff Act and regulations contained therein".

40. In these circumstances the case of **CV2012-02080 Shanazar Persaud v Ashmed Tajmool and Ors and CV 2012-04126 Zahara Ali v Shazard Ali and Ors** in which Mr. Ramparas, the Bailiff was a Defendant, is not appropriately relied upon by his Counsel in this case. In that case the Bailiff was not acting pursuant to the Bailiff's Act but was assisting as a servant or agent hired to remove a gate.

41. The Court held that *"with respect to acts outside the ambit of section 9 a Bailiff, whether licensed or not, has no special protection or immunity. Section 10 of the Act merely provides the procedure by which a licensed bailiff is to carry out the functions under the Act. A failure to comply with section 10 with respect to these functions may render the Bailiff liable to lose his licence as well as to summary conviction."*

42. Since the Bailiff was not hired to perform any functions under the Bailiff's act in that case the Court held that he had no special immunity above that which may be afforded to a servant or agent. He was found liable for trespass and ordered to pay damages, not to the person who hired him but to the owner of the gate being removed.

43. There is nothing in the said decision that supports the Bailiff's case here that he is not liable to the person who hired him for actions that she did not authorize, namely the sale of the vehicle for more than \$32,000 and retaining the balance of \$68,000.00 without providing any documents regarding the sale. It is correct, as the Bailiff contends, that the Defendant as his employer is vicariously liable for the actions she authorized including the seizure of the vehicle. It is for that reason that I hold the Defendant liable to pay damages to the Claimant for the seizure which amounted to a breach of contract.

44. Unfortunately, although the Bailiff appears to have made a secret as is evident from information arising out of these proceedings, the Defendant's Ancillary Claim made no mention of this extra profit and instead sought an indemnity for its actions. In my view, the conduct of the Bailiff in selling the Defendant's property for more than agreed is not justified and may indeed give rise to a claim in restitution or in breach of trust. However, such claims would have to be fully aired in another action as the ancillary claim at hand is insufficient for these causes of action to be implied.

45. Regarding the indemnity sought, the Bailiff cannot indemnify the Defendant's actions in repossessing and in

the act of selling as it is clear that he acted upon the Defendant's instructions. "When an act is done by one person at the request of another, and the act is not in itself manifestly tortious to the knowledge of the person doing it, and it turns out to be injurious to the rights of a third party, the person doing it is entitled to an indemnity from the person who requested that it should be done." - **Halsbury's Laws of England (2015) Financial Instruments and Transactions (Vol 49).**

46. The Defendant has failed to prove that she acted on any representation by the Bailiff and therefore the claim for an indemnity must fail. The Defendant also failed to submit any further supporting authority in submissions for the basis for implying an indemnity in this case. However, based on the conduct of the Bailiff in failing to candidly provide an account to the Defendant and the Court for sale proceeds from the Defendant's vehicle costs will not be awarded in his favour.

E. Decision

47. IT IS HEREBY ORDERED:

- i. Judgment for the Claimant against the Defendant on the Claim and the Counterclaim.

- ii. The Defendant shall pay to the Claimant forthwith, damages for breach of contract in the sum of \$90,000.00 together with interest at the rate of 2.5% per annum from the date of filing of the Claim.

- iii. The Defendant is to pay the Claimant's costs of the Claim on the prescribed basis in the amount of \$22,000 and of the Counterclaim in the amount of \$9,500.00.

- iv. The Ancillary Claim is dismissed with no order as to costs.

Dated this 25th day of April, 2018.

.....
Eleanor Joye Donaldson-Honeywell
Judge

Assisted by:
Christie Borely JRC 1