

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

CV NO. 2013-01630

BETWEEN

**ANDERSON      PADILLA**  
**(As Administrator of the Estate of**  
**Christino Padilla, Deceased)**

Claimant

AND

**DESMOND      BHARATH**

Defendant

**BEFORE THE HONOURABLE MADAM JUSTICE JONES**

Appearances:

Mr. F. Scoon instructed by Mr. R. Isaacs for the Claimant.

Ms. L. Bailey for the Defendant.

**Reasons (Oral)**

The Claimant's case is in conversion and detinue. The Claimant brings this action in his capacity as administrator of the estate of his father, Christino Padilla deceased who died on 13<sup>th</sup> May 2010. By his statement of case he alleges that the deceased was prior to his death the beneficial and registered owner of motor vehicle registration number PCP 4451 ('the vehicle'). He pleads that after the death of the deceased the Defendant took possession of the vehicle and illegally and wrongfully had the vehicle transferred to his name at the licensing division in Scarborough Tobago. In this regard he relies on the certified copy of ownership of the vehicle which he says

states that the transfer took place on the 17<sup>th</sup> May 2010 at offices of the licensing division, in Tobago. He also relies on an affidavit sworn to by the Defendant in other proceedings in which he, the Defendant, deposed that he was at the Port-of-Spain Licensing Division on Monday 17<sup>th</sup> May 2010.

By his pleading referred to as a defence and counterclaim the Defendant denies that the deceased was the beneficial and registered owner or entitled to the possession of the vehicle. He says that the deceased had agreed to purchase from him a foreign used motor vehicle for \$60,000. Pursuant to that agreement the deceased paid the sum of \$10,000 on the vehicle which was at that time unregistered. He says in accordance with the procedure followed with respect to the registration of foreign used vehicles the vehicle was subsequently registered on the 24<sup>th</sup> March 2010 by the Defendant in the name of the deceased.

The Defendant avers in his defence that on the morning of the 13<sup>th</sup> May 2010, the deceased, the Defendant and two other persons were present at the Licensing Department in Port-of-Spain, Trinidad for the purpose of the transfer of the vehicle to the Defendant. He says on that date the deceased signed the transfer form and the vehicle was inspected by a licensing officer. He pleads that on that morning the deceased came to the licensing office driving another vehicle PCL 7903. On 17<sup>th</sup> May 2010 the Defendant paid the transfer fee of \$6,000. He further avers that at all material times the vehicle was in his possession.

Despite the fact that the Defendant files a document which he calls a defence and counterclaim in truth and in fact the Defendant seeks no relief against the Claimant in these proceedings. The

onus of proof therefore on the issues for my determination, the conversion and detinue of the motor vehicle, is on the Claimant. The issues for my determination are factual.

The following facts are not in dispute: The deceased died on the 13<sup>th</sup> May 2010 in Tobago. The vehicle was a foreign used vehicle. The certified copy of ownership issued by the licensing department shows that the vehicle was first registered in Trinidad and Tobago in the name of the deceased and transferred to the Defendant on the 17<sup>th</sup> May, 4 days after the death of the deceased. The vehicle was subsequently sold by the Defendant.

In this regard therefore the Claimant has established a prima facie case against the Defendant in detinue and conversion. The question now is whether the evidence presented is sufficient to discharge the prima facie case presented against the Defendant.

Of relevance to the case adduced by the Claimant is the evidence of the licensing officer who gave evidence at a CMC pursuant to a witness summons issued for this purpose. With respect to the specific transaction he advised that the documents and in particular the actual transfer form could not be located. Of some assistance however was the following evidence given by him:

1. he confirmed that while the presence of both the purchaser and the seller was required for the transfer of a motor vehicle. What was in fact required was that they both attend for the inspection of the vehicle by a licensing officer, and that they both be present to present their driver's permit, identification card and the certificate of insurance of the vehicle. Once this is done, he says, there is no need for both parties to be present.

2. it is possible for the transaction to be conducted over more than one day;
3. he also confirmed that the procedure for the importation and registration of foreign used vehicles provides for the vehicle to be imported in and registered in the name of the purchaser not the importer.

I accept the evidence of the licensing officer. His evidence to some extent bolsters the Defendant's evidence in that he confirms that (a) the transfer could have happened in the manner stated by the Defendant and (b) that foreign used vehicles are registered in the name of the purchaser and not the importer. The difficulty here is that the transfer form the very document which would have resolved the issue cannot be found.

The evidence on behalf of the Claimant was given by the Claimant and his sister. According to the Claimant the deceased operated the business of purchasing and selling foreign used motor vehicles. He says immediately prior to its registration on the 23<sup>rd</sup> March 2010 the deceased was in possession of the vehicle in Trinidad and after its registration on the 25<sup>th</sup> March 2010 left their home in Trinidad with the vehicle.

The evidence of the deceased's daughter supports that of her brother given in his witness statement insofar as they both state that on the 24<sup>th</sup> March 2010 the deceased was driving the vehicle in Trinidad. According to her sometime in early April 2010 she was in Tobago and saw the vehicle parked at the home of the deceased. She says that this vehicle was used by the deceased to transport her from place to place while she was in Tobago. She says that around 4.45 pm on 13<sup>th</sup> May she spoke to the deceased on his cell.

The evidence of the Claimant and his sister reveals two relevant inconsistencies. The first is that while the Claimant admits that the deceased did in fact sell vehicles for the Defendant, his sister who in her witness statement professed to be the deceased's confidant with respect to his business and personal affairs, claims not to know of this arrangement. Similarly the Claimant gives evidence of a meeting with the Defendant in which the Defendant admits going to Tobago and taking the vehicle. According to the Claimant his sister Kandice was also at this meeting. Kandice makes no mention of this meeting.

According to the Defendant he is a used car dealer. He says the deceased worked as a mechanic in Trinidad and would repair vehicles for him. He says that in 2008 the deceased asked if he was interested in opening a new foreign used car outlet in Tobago and offered to work for him. He agreed and started sending vehicles to Tobago for the deceased to sell. He says the deceased would receive a commission of \$2000.00 for every vehicle he sold.

According to the Defendant in March 2010 he sent the vehicle to the deceased for him to sell. The deceased liked the vehicle and said he wanted to purchase it. They agreed on a price of \$60,000 and for the deceased to pay a non-refundable down-payment of \$10,000. On the 20<sup>th</sup> March the deceased came to Trinidad and made the \$10,000 dollars down payment.

On the 24<sup>th</sup> March, the Defendant says he went to Tobago and registered the vehicle in the deceased's name. On the same day he brought the vehicle to Trinidad. According to Defendant, after two months had passed, and the deceased could not pay the balance on the vehicle he made arrangements with the deceased to have the vehicle transferred to his, the Defendant's, name. On

13<sup>th</sup> May 2010 he went to licensing office in Port-of-Spain in the company of Ken Rajpaulsingh to have the vehicle transferred to his name. While there he met the deceased and his common law wife sitting on a bench at the back of the office. He gave the deceased the transfer form which he says was filled and signed by the deceased in his presence. He says he also filled in his information and signed the form. This was done in the presence of both the deceased's common law wife and Rajpaulsingh.

The deceased then left the others and went to conduct the rest of the transaction. He says he drove the car to the inspection pit and presented the transfer form and the receipt of sale to the licensing officer. The officer then inspected the vehicle in the presence of the deceased and kept the documents. They then went to the front of the licensing office. The Defendant says he heard the vehicle number being called over loudspeaker and both he and the deceased went to the counter handed over their drivers permit, identification card and certificate of insurance of the vehicle. At that point in time the Defendant says the deceased indicated that he was not feeling well and he left the licensing office. The Defendant remained at the licensing office to complete the transaction but the vehicle number was never called. He returned to the licensing office on the 17<sup>th</sup> May and paid the \$6000 transfer fee to have the transaction completed.

Although the Defendant's evidence on the material particulars was not shaken in cross-examination the Defendant did not present as a particularly credible witness. Noticeable was the absolute similarity between his evidence in a previous case as to the transaction with the deceased with respect to another vehicle. While this in itself is not necessarily detrimental to the Defendant since it could be supportive of the method in which the parties transacted their

business, what is noticeable is that in the previous proceedings despite a description of what supposedly occurred at the licensing office on the 13<sup>th</sup> there is no reference to the vehicle at issue in this case. Similarly there is no reference by the Defendant to the other vehicle in these proceedings. Also noticeable was the Defendant's evidence with respect to the manner of the initial registration of the vehicle.

His evidence is supported in part by his witness Rajpaulsingh. According to this witness he had known both the Defendant and the deceased for about 30 years. He says the deceased sold cars for the Defendant in Tobago and would travel between Trinidad and Tobago on a regular basis to conduct business with regard to the sale of vehicles. He says on 13<sup>th</sup> May 2010 he accompanied the Defendant to the licensing office, Port-of-Spain. On arrival, he saw the deceased and his common-law wife sitting on a bench at the back of the office. He says he saw the Defendant give the deceased a transfer form which the deceased filled out and signed. Thereafter the Defendant and the deceased left that area together. He gives no evidence in his witness statement of the deceased's death.

Attorney for the Claimant submits that I should not accept Rajpaulsingh's evidence as he is not a credible witness. The difficulty with coming to a conclusion as to Rajpaulsingh's lack of credibility is that he was not cross-examined on the actual events described by him in his witness statement but rather the fact of the date of death of the deceased and that those events did not happen on the date of the deceased's death. It was to me obvious from his evidence under cross-examination that he was genuinely confused as to the fact that both things occurred on the same date but not that both things actually happened. The effect of this is that it is open to me to find

that despite his claim to know of the date of the deceased's death the witness was in fact unaware that the deceased had died later on the same day of the transaction.

The first question for my determination is whether the evidence led by the Defendant and from the licensing officer has answered the prima facie case made out by the Claimant. I am satisfied that it has. It is clear from the evidence of the licensing officer that: (i) the date on the certified copy of ownership is not necessarily indicative of the date of the actual transfer; and (ii) in the case of a foreign used vehicle the vehicle is registered in the name of the purchaser and not the importer. In this regard therefore the presumptions raised by the certified copy of ownership are answered in the Defendant's favour.

At the end of the day given the evidence of the licensing officer the onus of proof shifts back to the Claimant. The Claimant's case is in the main circumstantial and is based on (a) my rejecting the evidence of the Defendant and his witness (b) the inferences to be drawn from such rejection; (c) from the inferences to be drawn from the Claimant's evidence that the vehicle was in the possession of the deceased; (d) from the fact that the vehicle was insured in the deceased's name and (e) the fact that there is evidence that there is no record of the deceased travelling to Tobago from Trinidad on the 13<sup>th</sup>.

In support of his case the certified copy of ownership apart the Claimant relies on the following documents:



1. A renewal notice for a third-party insurance with respect to the vehicle which shows that during the period the 27<sup>th</sup> March 2010 to the 26<sup>th</sup> March 2011 the vehicle was insured by the deceased;
2. a document made by him which he describes as a contemporaneous note of a meeting with the Defendant.
3. a letter from Caribbean Airlines Ltd which states that their records do not show any travel by the deceased on the 13<sup>th</sup> May 2010 from Trinidad to Tobago. This document was tendered into evidence as an agreed document;
4. a letter from the manager of the Trinidad and Tobago inter island ferry service stating that there was no record in their database of a Christino Padilla using the ferry service on 13<sup>th</sup> May 2010. The Claimant sought to rely on the truth of the contents of this document by way of the filing of a hearsay notice.

With respect to the insurance given the fact that the vehicle was registered in the name of the deceased and was required by law to be insured it is therefore not strange that the vehicle was insured in the name of the deceased as registered owner. In this regard therefore this fact is equally consistent with the Defendant's case.

With respect to the contemporaneous notes made by the Claimant I place no weight on this document it is self serving and in my opinion has no evidential value. In this regard I also note

the failure of the Claimant's witness to support the Claimant's evidence with respect to this meeting.

The other documents reflect the Claimant's attempt to prove that the deceased could not have been in Trinidad on the 13<sup>th</sup> May. In this regard in accordance with the submission of Counsel I am prepared to take judicial notice that persons are required to be registered on the flight manifest and present identification to travel to and from Tobago. I am satisfied therefore that the deceased did not travel to Tobago by air on the 13<sup>th</sup> May. With respect to the information from the inter island ferry however while I allowed the application with respect to its admissibility of the document I place no weight on the statements made in the document since I have no evidence as to the accuracy of the computer records, nor do I have any evidence that the names of all passengers travelling on the ferry are in fact recorded on their database. Even if I accept the accuracy of the information given by the letter it may be for example that in some circumstances what is recorded is a vehicle number only when a passenger is transporting a vehicle to or from Tobago or that what is recorded on the database are the names of passengers who have pre-booked or purchased tickets in advance. I just do not know.

If I accept the evidence of the Defendant with respect to the arrangement between the deceased and himself for the purchase of the car and the circumstances of the transfer the Claimant is out of court. If I reject the Defendant's evidence of the circumstances of the transfer but I accept his evidence with respect to the failure by the deceased to complete purchase of the car the Claimant is also out of court.

At the end of the day the Claimant must satisfy me on a balance of probabilities that (a) the deceased was the beneficial owner of the vehicle at the time of his death and (b) he did not transfer the vehicle to the Defendant on 13<sup>th</sup> May 2010. At the end of the day therefore the Claimant is left with the lack of credibility of the Defendant and his witness to prove his case. The problem is that even if I do not accept the Defendant to be a credible witnesses it is open to me to accept some parts of his evidence while rejecting other parts.

In this regard therefore I am faced with the evidence of Rajpaulsingh and the licensing officer. Rajpaulsingh confirms the transaction at the licensing office and the licensing officer confirms that it is possible given the procedure followed by the department for the transaction to have been validly completed over the four day period and that in fact the registration of the vehicle in the name of the deceased is not necessarily referable to the deceased's beneficial ownership of the vehicle.

With respect to Rajpaulsingh I accept his evidence as to what occurred at the licensing office. I find that what he was unsure of what was the date of the deceased's death.

In any event even if I reject all the evidence led on behalf of the Defendant the Claimant's case is dependent not only on my rejecting in totality the evidence of the Defendant but, given the existence of a certified copy showing the registration of the vehicle in the Defendant's name and the evidence of the licensing officer, for the Claimant to succeed I must also find that the vehicle was transferred in circumstances which could only amount to a fraud implicating the licensing department.

In other words I must find that (i) the vehicle was transferred to the Defendant by the licensing department without their following the procedure established by them in this regard and (ii) that someone in the department deliberately endorsed the Defendant's name in the relevant register as owner without proof of an actual transfer of the ownership from the deceased to the Defendant.

Despite the Claimant's urging that I take judicial notice of "the situation" in the licensing office I cannot make such a finding. There is in my opinion not sufficient evidence for me to come to this conclusion. The fact that the actual transfer form cannot be located is one thing and suggests at best carelessness or a lack of proper record keeping but for the Claimant to succeed I would have to find that the document produced is not reflective of a transaction but was in fact fabricated at the licensing office.

It would seem to me therefore that for the Claimant to succeed in these circumstances I will have to presume an irregularity amounting to a fraud on the part of the licensing authority. On the evidence before me I cannot make such a finding. There is no evidence before me to suggest fraud on the part of the licensing office. The reality therefore is that in part the Defendant's evidence is supported by the unchallenged evidence of the procedure followed with respect to foreign used vehicles and the registration of the transfer of the vehicles at the licensing office. In all the circumstances therefore, despite the lack of credibility of the Defendant, on the state of the evidence it would seem to be to be more probable than not that a transfer of the vehicle was effected by the deceased at the licensing authority prior to his death.

In the circumstances the Claimant has in my opinion not discharged the burden of proof on him to prove on a balance of probabilities that the deceased was the beneficial owner of the vehicle at the time of his death. In the circumstances the Claimant's case is dismissed.

Dated this 24<sup>th</sup> February, 2014.

**Judith Jones**  
**Judge**