

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No: CV2017-00308

BETWEEN

LISA CHARLES

CLAIMANT

AND

KISHAL BASDEO

FIRST DEFENDANT

PRESCRIPTION HOUSE LIMITED

SECOND DEFENDANT

Before the Honourable Madame Justice Margaret Y. Mohammed

Date of Delivery 8 February 2019

APPEARANCES:

Ms. Ngozi Ihezue Attorney at Law for the Claimant.

Ms. Natasha Samuel Attorney at Law for the Defendants.

JUDGMENT

1. It is not in dispute that the Second Defendant through its authorised agent, the First Defendant agreed to sell and sold Nissan Caravan RHD 2di Japan 2002, Registration Number TCP 2373, Chassis #V WE 25003460 (“the said van”) to the Claimant for the sum of \$100,000.00; the Defendants provided the Claimant with proof of ownership of the said van in the form of the certified copy of ownership issued by the Licensing Authority; the purchase price was paid to the Defendants by two instalments of \$15,000.00 cash and by a cheque in the sum of \$85,000.00; the Claimant obtained a loan from Brimont Limited to pay the balance of the purchase price of \$85,000.00; and upon payment of the total purchase price the Claimant was given possession of the said van.

2. The Court is now asked to determine whether the Defendants are in breach of the oral agreement between the parties due to the inability of the Claimant to receive a certified copy for the said van from the Licensing Authority, and if so whether the Claimant is entitled to be reimbursed from the Defendants, the sum of \$100,000.00 which was the purchase price for the said van.

3. I have decided to dismiss the Claimant’s action since she failed to discharge her burden of proving that it was a term of the oral agreement that the Claimant would receive the certified copy of the said van on or before the end of 2014, since the evidence adduced on her behalf was self-serving; there was not a shred of documentary proof to support that this was a term of the agreement; and at the time of the agreement the parties were aware that the Licensing Authority was responsible for providing a certified copy for the said van.

4. In any event I have concluded that the Claimant is not entitled to be reimbursed the sum of \$100,000.00 which was the purchase price for the said van since the Defendants did all that was required of them to have the said van transferred to the Claimant after the payment of the purchase price, namely: they provided a certified copy of proof of ownership by the Second Defendant; the transfer application was signed and submitted to the Licensing Authority, which provided the details of the name and address of the Claimant along with the date of change of possession; and the Transfer Chit was issued from the Licensing Authority to the Claimant for an endorsement of the certificate of registration following completion of the transfer application by the parties.

THE AGREEMENT

5. According to the Claimant's case and her evidence, in 2014, the First Defendant orally contracted with the Claimant and her husband to sell the said van to the Claimant. The First Defendant informed the Claimant that there was no defect in title and no encumbrance on the said van, and a record of the said van was at the Port of Spain Licensing office.
6. In order to purchase the said van, the Claimant obtained a loan in the sum of \$85,000.00 from Brimont Limited by way of mortgage bill of sale over the said van in the sum of \$156,613.86 inclusive of interest and costs. The sum of \$85,000.00 was paid by way of cheque dated 31 January, 2014 and issued by Brimont Limited, and the remainder of \$15,000.00 was paid in cash. Both payments were made to the First Defendant on behalf of the Second Defendant.
7. According to the Claimant the terms of the agreement were that legal ownership of the said van would be transferred to the Claimant once final

payment was made and it was an express term between the parties that the Claimant would receive the certified copy for the said van before the end of 2014 (See paragraph 10 of the Amended Statement of Case; paragraph 10 of the Claimant's witness statement and paragraph 10 of the witness statement of Roger Michel Gregoire).

8. Both Defendants filed separate Amended Defences but in similar terms. Only the First Defendant gave evidence on behalf of the Defendants. According to the First Defendant's evidence which was consistent with the Defendants case, prior to the agreement with the Claimant, the Second Defendant was the owner of the said van which was so endorsed on the certified copy of ownership which the Defendants had obtained from the Licensing Authority.
9. According to the First Defendant, both the Claimant and her husband, Roger Gregoire approached the First Defendant to purchase the said van. The Claimant was aware that the Second Defendant was the legal owner of the said van since all relevant documents of the Second Defendant's ownership were provided to the Claimant upon request during the transaction.
10. The Defendants confirmed that the sum of \$85,000.00 was paid by Brimont Limited, and the Claimant via monthly instalments paid the balance of \$15,000.00 in full. She was issued a Tax Invoice for the sum of \$100,000.00.
11. The Defendants position was that it was not expressly agreed that the Claimant would receive a certified copy of the said van on or before the end of 2014 since it is for the Licensing Authority to provide the certified copy of ownership to the Claimant and not the Defendants.

12. A contract may be validly made either orally or in writing, or partly orally and partly in writing.¹ It was not in dispute that there was an oral agreement by the parties for the sale of the said van. Toulson LJ observed in [Durham Tees Valley Airport v bmibaby](#)² at paragraph 88:

"Where parties intend to create a contractual obligation, the court will try to give it legal effect. The court will only hold that the contract, or some part of it, is void for uncertainty if it is legally or practically impossible to give to the agreement (or that part of it) any sensible content." (citing [Scammell v Dicker \[2005\] EWCA Civ 405](#) , para 30, Rix LJ)."

13. The burden was therefore on the Claimant to provide sufficient evidence to demonstrate that it was a term of the agreement that the Defendant agreed with the Claimant that she would receive the certified copy for the said van before the end of 2014. The burden on the Claimant was greater since the agreement she sought to prove was oral.
14. In my opinion, the Claimant has failed to discharge this burden for the following reasons. Firstly, there was no documentary evidence to support the Claimant's assertion of such a term. The Claimant attached several documents to her witness statement and her supplemental witness statement in support of her claim, however none of the documents made reference to the Defendants promising or agreeing with the Claimant that she would receive the certified copy of the said van before the end of 2014. The only evidence that this was a term of the agreement, was from the Claimant and her husband, Mr. Roger Gregoire, which is self-serving in the absence of such documentary evidence. On the other hand, the First

¹ Halsbury's Laws of England Volume 22 (2012) at 220

² [2010] EWCA Civ 485, [2011] 1 Lloyd's Rep 68

Defendant maintained that this was not a term of the oral agreement which was consistent with the Defendants case throughout the instant action.

15. Secondly, at the time of the entering into the agreement, both parties were aware that the only entity which is capable of issuing the certified copy of any motor vehicle in Trinidad and Tobago is the Licensing Authority and not the Defendants. Both the Claimant and the First Defendant exhibited to their respective witness statements the certified copy of the said van showing that in 2010 the Licensing Authority had issued the said certified copy showing that the Second Defendant was the owner of the said van. Further, the Claimant admitted in cross-examination that a copy of the said certified copy was provided to her by the Defendants which was forwarded to Brimont Limited, and which was used in processing the loan.
16. Having found that it was not a term of the oral agreement that the Claimant would receive the certified copy of the said van before the end of 2014 it follows that there was no such breach as alleged by the Claimant. I will still examine if the Defendants did all that was within their power to comply with the terms of the agreement.

THE ALLEGED BREACH BY THE DEFENDANTS AND THE RIGHT TO TERMINATE BY THE CLAIMANT

17. According to **Halsbury's Laws of England** there is a right to terminate for repudiatory breach in the following situations: (1) a substantial, or serious, failure to perform; (2) breach of 'condition'; and (3) repudiation.³

³ Halsbury's Laws of England Volume 22 (2012) at 553

18. Among the factors which the court may take into account are the following:
 - (1) the extent of the failure to perform when assessed against the performance undertaken;
 - (2) where a failure to perform has created uncertainty as to future performance;
 - (3) whether, if the innocent party is confined to damages, that would be an adequate remedy;
 - (4) the fact that a breach is deliberate is not of itself sufficient but it is a factor which may taken into account as evidence of an intention no longer to be bound by the contract, and support a claim of repudiation.
19. The Claimant's case and her evidence is that the Defendants have breached the Agreement since she did not receive the certified copy of ownership of the said van before the end of 2014 and that as a result of the Defendants actions she is entitled to terminate the agreement and recover the purchase price for the said van.
20. The Claimant testified that two years after she paid the Defendants for the said van she has not been registered as the legal owner of the said van nor has she obtained the certified copy as agreed. She visited the Licensing Authority in Port of Spain on several occasions during the two-year period to have the said van transferred to her name, but she has been unsuccessful. She informed the Defendants of the problem she was encountering but the First Defendant informed her that he was unaware of the reason for the Claimant's problem.
21. On 29 August, 2016, the Claimant and her husband visited the Licensing Authority in Port of Spain with the First Defendant to meet with the

Commissioner of Transport, Mr. Wayne Richards to enquire the reason for the delay in having the Claimant being issued the certified copy of ownership of the said van. They were informed that an investigation was conducted and it was discovered that the said van was tampered with and it could not be sold. The Claimant was informed in the presence of the First Defendant that there was no record of the said van in the Licensing Authority and that the said van would be impounded if found in the Claimant's possession.

22. According to the Claimant, the First Defendant on hearing that there was no record of the said van in the Port of Spain Licensing Office promised her that on behalf of the Second Defendant, he would give her the \$100,000.00, however, the Defendants have failed, refused and/or neglected to refund her the said sum.
23. The Claimant testified that the said van has been parked at her home and she has been paying monthly instalments of \$2500.00 towards the loan to Brimont. She said that subsequent to her taking possession of the said van she changed the battery in the said van for \$775.00; purchased a new engine for \$12,000.00 and installed additional seating.
24. According to the First Defendant, the Defendants have not breached the agreement with the Claimant since they have done all that they could in order to comply with the terms of the agreement. The First Defendant testified that the Defendants gave the Claimant possession of the said van upon receipt of the purchase price, and they provided the Claimant with the relevant documents to have the said van transferred to her, namely: the Second Defendant's certified copy of ownership issued by the Licensing Office; the transfer application was signed and submitted to the Licensing

Authority; and the Transfer Chit was issued from the Licensing Authority to the Claimant.

25. The First Defendant also testified that the Defendants cannot provide a certified copy of ownership to the Claimant since only the Licensing Authority can do so and the Licensing Authority has not cancelled the registration of the said van which remains in the possession of the Claimant.
26. The Defendants case was, and this was also testified by the First Defendant, that the said van was approved and registered by the Licensing Authority for carrying 4 passengers and goods. The said van was not designed for transporting children as it was not registered as a "hire" vehicle and has a "T" stated on the number plate classifying it as a transport vehicle. The said van was inspected every year after the Second Defendant purchased it. The First Defendant stated that subsequently to the said van being handed over to the Claimant, she installed additional seats and they are unaware of whether an application for Change of Use was made by the Claimant.
27. The First Defendant confirmed that he attended the meeting with the Commissioner of Transport, and indicated that the certified copy was issued by the Licensing Office, and that the said van has never been impounded and/or de-registered when inspections were completed on a yearly basis.
28. The First Defendant denied making any representations regarding rescinding the contract. He stated that he contacted Adesh Mano trading

as Mano's Trading (the agent) to obtain the relevant documents during the registration including the Bill of Lading and the Invoice of the said van.

29. Section 19 of the **Motor Vehicles and Road Traffic Act**⁴ provides:

“On the change of possession of a motor vehicle otherwise than by death—

(a) the motor vehicle shall not be used for more than seven days after such change of possession unless the new owner is registered as the owner thereof;

(b) the registered owner and the new owner shall, within seven days after such change of possession, make application in writing signed by both of them to the Licensing Authority giving the name and address of the new owner and the date of change of possession and such application shall be accompanied by the certificate of registration and the prescribed fee. The Transport Officer shall thereupon by endorsement of the certificate of registration and entry in the register substitute the name of the new owner for that of the registered owner and shall date and initial the substitution and from such date the new owner shall for all purposes be deemed to be the registered owner of the motor vehicle described in the relevant entry in the register and in such certificate of registration;

(c) the registered owner and the person seeking registration as the registered owner shall both be present before the

⁴ Chapter 48:50

Licensing Authority together with the used motor vehicle that is the subject of the transfer at the time that transfer of registration occurs.”

30. Section 19B of **The Motor Vehicles and Road Traffic Act** states:

“(1) The transfer tax shall be paid to the Licensing Authority by the person seeking registration as the registered owner (hereinafter referred to as “the transferee”) at the time of the registration of the change of possession of the motor vehicle.

(2) A transferee shall not be registered as the new owner in respect of the transfer of a used motor vehicle unless the transfer tax is paid.”

31. In my opinion, there was no basis for the Claimant to terminate the agreement since the Defendants have done all that was required of them to complete their responsibilities under the agreement, since they provided the Claimant with the relevant documents as stated above, to have the said van transferred to her.

32. In any event, there was no evidence adduced by the Claimant from the Licensing Authority to state that a certified copy was never issued to the Second Defendant for the said van. Both the Claimant’s and the First Defendant’s evidence was that the Defendants provided the Claimant with a certified copy issued by the Licensing Authority as proof of ownership of the said van. The Claimant also testified that the said certified copy was provided to Brimont Ltd, the company which loaned her the sum of \$85,000.00 to purchase the said van. She also testified that Brimont Ltd has a mortgage Bill of Sale over the said van as security for the said loan.

In my opinion, it is highly plausible that there was a certified copy issued by the Licensing Authority for the said van since Brimont Ltd. would only have lent the sum of \$85,000.00 to purchase the said van from the Second Defendant if it was satisfied that the latter was the owner of it from the certified copy which was provided to it at the time of the loan.

33. Having found that the Defendants did not breach the agreement the issue of the Claimant's damages does not arise.

ORDER

34. The Claimant's action is dismissed.
35. The Claimant to pay the Defendants' prescribed costs in the sum of \$24,000.00 pursuant to Rule 67.5 Civil Proceedings Rules 1998 (as amended).

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Margaret Y Mohammed

Judge