

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. Cv2007-01447

BETWEEN

SHAWN WILLIAMS

Claimant

AND

ROD BADALL

Defendant

Before the Honourable Justice P. Moosai

APPEARANCES:

Mr. Yaseen Ahmed for Claimant

Mr. Ravi Doodnath for Defendant

REASONS

1. Introduction

1. On May 4, 2007 the Claimant commenced proceedings against the Defendant for damages for breach of contract for the sale of a motor vehicle. By his Defence and Counterclaim the Defendant counterclaimed for the sum of \$4,000 representing part of the trade in fee paid by the Defendant on behalf of the Claimant.

2. Analysis of the facts

2. On February 12, 2008, pursuant to the Claimant's application filed on September 13, 2007, I gave the Claimant judgment on the partial admission contained at para 12 of the Defence. The said application was founded on the Defendant's communication with the Claimant's Attorney on two separate occasions that he was willing to return to the Claimant the deposit of \$15,000. I ordered the Defendant to pay the Claimant the sums of \$15,000 on the partial admission and \$2,000 costs.

3. In assessing the parties, the Defendant struck me as remarkably intelligent and well versed in business for one so young. Of course that has its drawbacks as he insisted on strict compliance with the terms of the agreement. The Claimant's admission with respect to the late payment on four occasions also drove me to the conclusion that it was inherently more probable that the Defendant was telling the truth in this matter. Additionally the documentary evidence provided some support for the Defendant's testimony. I therefore accepted the Defendant as a reliable witness and preferred his evidence over that of the Claimant.

4. In or about the month of November 2005 the Claimant, a forklift operator with Home Construction Ltd, orally agreed to purchase from the Defendant, a machine operator with the same company, motor vehicle registration number PBE 758, a Mitsubishi Lancer, for the sum of \$40,000. It was further agreed that the Claimant would pay a deposit of \$15,000 on account of the purchase price, \$13,000 of which was payable immediately and \$2000 payable upon receiving the said motor vehicle.

5. The said agreement was reduced into writing on March 5, 2006 and incorporated further provisions. One of the provisions catered for the fact that the Claimant did not have the balance of the purchase price (\$25,000), so that it was agreed that the Claimant would pay to the Defendant the sum of \$35,100 representing both principal and interest in 30 monthly instalments of \$1170 each. The relevant provisions are:

" WHEREAS

The owner has agreed to let the borrower use the vehicle for a maximum period of (30) months, from the agreement date and thereafter the ownership of the vehicle will be transferred to the borrower.

Terms and conditions apply

1. This agreement will continue for the specified period of time. It can be brought to an end by giving the owner notification and the vehicle returned to the owner in its rightful condition.
2. Agreement start date: 5th March, 2006. First payment start date: 5th April, 2006.
3. The owner shall receive [\$1170] on the 5th of each month from the borrower which consist of thirty (30) days into Scotia Bank TT, Arima branch, account no.81832.
4. The borrower makes a down payment of [\$15000].
5. The borrower has [48] hours late payment extension due to any inconvenience that may occur during the time of payment.
- ...
9. Failure to make payments could result in termination of this agreement without receiving any payments back and could be subjected to the court of law."

6. Pursuant to the said agreement the Claimant duly paid the said deposit of \$15,000 and received the said PBE 758 on March 5, 2006.

7. The Claimant made monthly payments of \$1170 from April 2006 to January 2007, totalling \$11,700. During that 10-month period, the claimant made late payments in the months of July, August, December 2006 and January 2007. This is evidenced by the agreed schedule of payments. While December 2006 reflects that payment was made on December 7, 2006, I accepted the Defendant's testimony that this instalment was paid outside the 48-hour grace period and that he provided the Claimant with a copy of that receipt. Moreover the Claimant himself accepted that he made about four late payments. I also accepted the Defendant's testimony that on each occasion he spoke to the Claimant and warned him not to be late again because that was in breach of clause 5 of the said agreement. Additionally I accepted the Defendant's testimony that upon late payment being made in January 2007, he gave the Claimant a final warning that he would not

accept any more late payments.

8. In January 2007 the Claimant complained to the Defendant about serious mechanical problems with the vehicle.

9. The Defendant told the Claimant that he would contact the dealer and see what could be done. Thereafter the Defendant told him that the dealer had another Lancer vehicle for sale and that if he wanted they could trade in the said vehicle. The trade in was that for the sum of \$5,000 the Claimant could get motor vehicle PBJ 2629 in exchange for the said vehicle.

10. On or about January 23, 2007 the parties inspected the second vehicle and agreed to the trade in. The said agreement but only to the extent set out at paras 10 to 13 and para 17 hereof was varied. Under the varied agreement it was agreed that the Claimant would now have the use and possession of the said PBJ 2629 upon payment of the trade in fee in the sum of \$5,000 and would continue paying the monthly instalments of \$1170 until completion. Further the Claimant was to pay the transfer fee of \$2010 to transfer ownership of the said vehicle in the name of the Defendant.

11. The Claimant was given possession of the said PBJ 2629 on January 23, 2007.

12. As the Claimant did not have the \$5,000 for the trade in fee, the Claimant requested the Defendant lend him the money and agreed to repay same in February 2007. While no date was stipulated for payment of the transfer and the trade in fee, I accepted the Department's testimony that the trade in fee would have been paid at the time the instalment was due, namely February 5, 2007. It seems to me that that makes perfect business sense.

13. While there was some dispute as to who paid the trade in fee, I accepted the testimony of the Defendant that he went the following day and paid the dealer \$4000 and handed over motor vehicle PBE 758. The dealer also agreed that the Defendant could give him the \$1000 on a later date.

14. A few days later, the Claimant paid the dealer the sum of \$1000 being the balance on the trade in.

15. The Claimant once again failed to pay his monthly instalment by February 7, 2007 in consequence whereof the Defendant reminded the Claimant of the final warning given to him in January 2007.

16. On February 10, 2007 the Defendant called the Claimant requesting that he provide a signed transfer form signed by the previous owner which was located in the glove compartment of the said vehicle for the purpose of transferring the vehicle into the Defendant's name. The Claimant however failed to accede to the Defendant's request. The Defendant repeated his request on February 11, 2007 but once again the Claimant failed to produce the said transfer form.

17. On February 12, 2007 the Defendant purported to take back possession of the said vehicle as a result of the failure of the Claimant to pay: (i) the monthly instalment; (ii) the \$4000 trade in fee paid to the dealer by the Defendant on behalf of the Claimant; (iii) the transfer fee of \$2010. I accepted the Defendant's testimony that on February 12, 2007 he told the Claimant that he (the Defendant) would have to use his money to transfer the motor vehicle the following day. The Claimant then said he had no problem with that as he himself had no money: para 16 Defendant's witness statement. It seems to me and I hold that there must be a term implied that the transfer fee would have to be paid by the Claimant to the Defendant at the time that the vehicle was going to be transferred.

18. Thereafter the Defendant dropped the Claimant off at his house. On arrival there

the Claimant told the Defendant that he did not have any money at that point and that the Defendant should keep the motor vehicle until the Claimant paid him off.

19. On February 12, 2007 the Defendant terminated the agreement as a result of the Claimant's default. On February 13, 2007 the Defendant refused to accept the Claimant's offer to pay him the sum of \$3180 representing the outstanding instalment and the transfer fee.

20. In or about April 2007, the Defendant sold the said vehicle for \$40,000.

3. Analysis of the law

21. It is manifest that this was an agreement for the sale of a motor vehicle, the Claimant paying a deposit and the balance of the purchase price to be made by instalments, the property not to pass until the price is fully and finally satisfied. **Chitty's on Contracts**¹ describes the nature of the conditional sale agreement:

“Conditional sale of goods. A contract of sale of goods may be absolute or conditional. An agreement to sell goods may therefore be made subject to a condition that the transfer of property from the seller to the buyer is to take place only when the total price of the goods has been paid and that, until that time, although possession of the goods is to be delivered to the buyer, they are to remain the property of the seller.”

In construing the agreement, a court would, in principle, look at all the circumstances surrounding the making of the contract which would assist in determining how the language of the document would have been understood by a reasonable man: **Chitty's on Contract**²

¹ *Vol.11 30th Edn. (2008) para. 38-422*

² *Vol. 1 ibid para. 12-043*

22. The conjoint effect of paragraphs 5 and 9 of the said agreement was that the Defendant could terminate the agreement as a result of the failure of the Claimant to make timely payments of his instalments. Further there was an implied term of the varied agreement that the transfer fee would have been paid at the time the vehicle was going to be transferred. Additionally the Claimant had agreed to repay that part of the trade in fee (\$4000) paid by the Defendant on behalf of the Claimant at the time that the monthly instalment was due. The evidence reveals that the Claimant was in persistent default of his contractual obligation to make timely payments of his instalments. Further the Claimant was unable to pay the transfer fee when called upon to do so by the Defendant. Finally the Claimant was unable to pay the trade in fee by February 5, 2007. In those circumstances I came to the conclusion that the Defendant was entitled to terminate the agreement when he did (February 12, 2007) and refuse the Claimant's offer to pay the sum of \$3180 on February 13, 2007.

4. Conclusion

23. In considering what was an appropriate order to make I considered that:

- (i) I had already awarded the Claimant judgment on the partial admission in the sum of \$15,000 and \$2,000 costs;
- (ii) The Claimant had had the exclusive use of a vehicle for the period March 2006 to February 2007 paying the monthly instalment of \$1170.
- (iii) The Claimant had paid the Defendant the sum of \$1000 for the insurance on the vehicle for the period November 2006 to October 2007.
- (iv) The Claimant had installed an alarm system in vehicle PBE 758.
- (v) While the Claimant claimed for the cost of maintaining the vehicle, it was an express term of

the said agreement (para 1) that the Claimant would be responsible for same.

- (vi) The Defendant resumed possession and sold the said PBJ 2629 for \$40,000.
- (vii) The Defendant had paid \$4,000 on account of the trade in fee (\$15,000) to the dealer on the Claimant's behalf, with the Claimant paying the balance of \$1000.

24. In all the circumstances I was of the view that it was appropriate to dismiss both the claim and counterclaim and order each party to bear his own costs.

DATED this 1st day of June 2010.

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PRAKASH MOOSAI
JUDGE