

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

PORT OF SPAIN

Claim No. CV2020-01365

Between

**PIPE & WELDING INSPECTION CONSULTANTS**

**SERVICES LIMITED**

Claimant

And

**KEVIN BISSOONDATH**

Defendant

**Before the Honourable Mr. Justice R. Rahim**

Date of Delivery: September 04, 2020.

Appearances:

Claimant: Mr. M. George instructed by Ms. S. Lawrence

Defendant: Ms. A. Ajene

## DECISION ON APPLICATION FOR INJUNCTION

1. This is a decision on the application of the claimant company of June 16, 2020, for an injunction against the defendant, an Estate Constable of T&TEC in relation to the possession of a Mercedes Benz C Class C350e motor vehicle registration number PDT 128 (the car). The defendant is the son in law of the Managing Director of the claimant company, Rajan Singh, who is also the controlling mind of the company according to the pleadings. The claimant seeks an order that the defendant deliver up possession of the car for storage to preserve same until determination of the claim, that it be stored at the claimant's premises and that the defendant be restrained from interfering with, damaging or committing any acts of waste, despoil or destruction thereon.

### The claim

2. The claimant avers that it provided the money for the purchase of the car and the defendant agreed to facilitate same by being named as registered owner. The claimant avers that it paid not only the purchase price of the car from a company in the UK, but also all fees, expenses and costs associated with the import and purchase. It is its case that in 2017, it decided to purchase two vehicles, the car being one. The claimant was informed erroneously that the company would not be able to import both vehicles at the same time, hence the arrangement with the defendant in relation to the car. The claimant imported the other vehicle in its name. The full sum paid by the claimant was \$690,976.18 and the defendant was registered as owner.
3. The defendant and the daughter of Rajan Singh separated and the defendant left taking the car with him on July 10, 2019 and has refused to

return same. It is also alleged in the statement of case that the defendant offered to purchase the car but the offer was refused. The cause of action is therefore one of a resulting trust having been created, so that the claimant claims that the defendant holds the car on trust for the claimant.

#### The defence

4. The defendant has averred that his wife is in fact the corporate secretary of the claimant. He accepts that the car was purchased by the claimant company but avers that it was purchased for him as a gift because his former vehicle had been in a motor vehicle collision and was written off as a total loss around the end of August 2018. In relation to the other vehicle purchased by the claimant same was purchased for Rajan Singh, its Managing Director. He denies having entered into any arrangement with the claimant to circumvent the alleged policy set out above. At all times he understood the vehicle to have been bought for him as a gift as he and Rajan Singh enjoyed an excellent relationship. The claimant is therefore not the beneficial owner of the car. He has always been the sole driver. That after he separated from his wife, he was approached by Rajan Singh to reconcile on two occasions, one in November 2019 and one in December 2019 but he refused. It was only then that the request was made for the return of the car. He admitted receipt of the pre action letter and having replied. The vehicle is now kept at his new residence the address of which is known by his wife.

#### The law

5. The well-established and well-known principles for consideration of the court when treating with interim injunctions are set out in the cases of **American Cyanamid v Ethicon** (1975) AC 396, **Jetpak Services Ltd v BWIA**

**International Airways Ltd** (1998) 55 WIR 362, **East Coast Drilling and Workover Services Ltd v Petroleum Company of Trinidad and Tobago Ltd** (2000) 85 WIR 351, **National Commercial Bank Jamaica Ltd v Olint Corp Ltd (Jamaica)** [2009] UKPC 16 and **Chief Fire Officer and Others v Felix Phillip and Others** (7<sup>th</sup> December 2013)(Unreported). These principles are widely accepted and are not in issue so that the court does not propose to traverse them in these reasons but directs itself in terms of the cases.

### Serious issue to be tried

6. Both parties agree that there are serious issues to be tried in this case in relation to the true ownership of the car and whether a resulting trust does in fact arise and the court accepts this to be the clear and incontrovertible position. There is therefore no need for the court to interrogate this criteria for the grant of interim injunctive relief. The relative strengths of the cases must however be examined. On the one hand it is accepted by the defendant that the car was purchased by the claimant so that aspect of the case is not in issue. The crux of the claim lies therefore with the proof at trial of the circumstances surrounding the purchase. In examining the relative strengths of the cases the court is mindful not to make any findings of fact at this stage.

### *The law on resulting trusts*

7. The learned authors of **Halsbury's Laws of England** provide the following in relation to resulting trusts.

“A resulting trust may arise solely by operation of law, as where, upon a purchase of land, one person provides the purchase money and the conveyance is taken in the name of another; there is then a

presumption of a resulting trust in favour of the person providing the money, unless from the relation between the two, or from other circumstances, it appears that a gift was intended.”<sup>1</sup>

8. Where the person in whose name a purchase or transfer is taken is the spouse or civil partner, child or adopted child of the person paying the purchase money or making the transfer, there is a presumption that a gift was intended<sup>2</sup>.

9. As this court noted in CV2010-004542 **Wayde Melville v Kathryn Duke**,

“25. The Defendant may rebut this presumption by, inter alia, leading evidence that the property was intended as a gift; see Underhill and Hayton Law of Trusts and Trustees 16th Edition, Article 31 page 349. It is therefore the Defendant’s burden to prove that the Claimant intended a benefit to her: Seldon v Davidson [1968] 2 All ER 755.”

10. In **Marlon Henry v Joel Sussman and Others**, H.C.1396/2005 Dean-Armorer J, as she then was, stated:

“40. In the recent House of Lords decision in **Westedutche v Islington B.C.**, Lord Browne-Wilkinson defined the boundaries of the resulting trust. In his judgment referred to supra, Lord Browne-Wilkinson limited the incidence of the resulting trust to only two situations: where A makes a voluntary payment to B, the law presumes that A did not intend to make a gift and will hold that B

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<sup>1</sup> Halsbury's Laws of England, Equitable Jurisdiction (Volume 47 (2014)), Resulting Trusts, para. 230.

<sup>2</sup> See Halsbury's Laws of England Volume 52 (2009) 5th edition para 244.

should hold the voluntary payment on trust for A. The second situation occurs where there has been an attempt to create an express trust but the trust declared fails to exhaust the whole of the beneficial interest as had transpired in *Re Vandervel*.”

“42. In *Westeddeutche*, the Learned Law Lord reiterated that equity operated on the conscience of the holder of legal estate. Lord Browne proceeded to state that a person cannot be trustee of property “if and so long as he is ignorant of the facts alleged to affect his conscience ...”

11. So that in the present circumstances there is a strong argument on the case for the claimant that there was a resulting trust by way of a presumption of same in that on the bare facts, the claimant has provided the purchase money and other related expenses and this is not disputed. The claimant has also provided what may, subject to cross examination, be seen to be at the lowest a reason for conducting the purchase transaction in such a manner. Issues of the appropriateness of the reason, ethical or otherwise, as raised by the defendant are matters of credibility for trial and are not for this court at this stage. Further, there is an equally strong argument that according to the law, the defendant does not benefit from a presumption of gift as he falls into none of the recognized categories of spouse, civil partner, child or adopted child of the person paying the purchase money. It means that on the face of it the defendant may bear the burden of proving that the car was in fact a gift so as to rebut the presumption of a resulting trust.

12. With the proper approach having been placed into context, an examination of the case for the defendant reveals the crux of his case on the issue of a gift to be as follows:

- a. His relationship with the Managing Director of the claimant, his father was very good until his separation from his (the defendant's) wife.
- b. He entered into no agreement with the claimant for the purchase of the car.
- c. He lived at premises owned by the father in law and constructed a matrimonial home on those premises (this falls to be considered with paragraph a above and goes towards the strength of the relationship)
- d. The car was at all times parked on the said communal compound while the defendant lived there.
- e. The demand for the car on the basis of a resulting trust was only made after he refused the advances by his father in law to reconcile with his wife. (This is disputed on the pleadings as the claimant has pleaded requests to the defendant to return the car as early as July 2019, months before the conversations alleged between the defendant and Singh in November and December 2019 as pleaded by the defendant so this is a matter for cross examination).
- f. The father in law admitted to having purchased the car for the defendant because he wanted him to look good for his daughter and the grandchildren and if he was no longer the son in law he could not keep the car. (although this is set out in the affidavit of the defendant it is not part of the pleaded case).

- g. The defendant has always been in sole possession of the car and is one of the two drivers, his said father in law being the other.

13. This is the case upon which evidence is to be led by the defendant of a gift in order to rebut the presumption of a resulting trust. It should be noted however that the claimant is a private limited company that carries its own corporate personality and whose decisions are made by a board of directors. The extent to which therefore the defendant can be successful in displacing the presumption in relation to ownership by the company is in the court's view somewhat more technical and will require submissions and evidence at trial. On the face of it as the information on affidavit before the court stands, the defendant appears to have a weaker case than the claimant bearing in mind the character of the corporate claimant, the law in relation to its personality, and the presumption he must displace.

#### Balance of Justice and adequacy of damages

14. The consequences that are likely to be suffered by the defendant should the injunction be granted and he be ultimately successful on the claim are;
- a. He would have been deprived of the use of the vehicle to travel to work and back and for general use otherwise.
  - b. The value of his gift may have depreciated by the date of determination of the claim. As to the measure of that devaluation, the court is none the wiser at this stage, suffice it to say that there may be several variables that determine such an issue including but not limited to usual annual devaluation in any event.



- c. It must be noted that the defendant may be deprived of the opportunity to sell the asset and invest the funds therefrom.

15. The consequences that are likely to be suffered by the claimant should the injunction be granted and it be ultimately successful on the claim are:

- a. The claimant will be deprived of the use of the car, an asset, for the period.
- b. The value of the asset would have diminished. Equally, normal annual devaluation and perhaps book devaluation would have to be factored in when determining the extent of the devaluation.
- c. It should be noted that the claimant will not in any event have been able to sell the asset during the period as the car is not registered in its name.
- d. The claimant has pleaded and has set out in its affidavit (which has been denied by the defendant) that it fears that the defendant will either damage or destroy the car as he has a history of reckless and dangerous driving, thereby destroying vehicles. This is dealt with in the next paragraph.

16. In relation to the damage or destruction of the car and the history of the defendant in that regard, the case for the claimant as set out in the affidavit in support of the application is that the defendant has previously destroyed his own vehicle, a white Suzuki Grand Vitara registration number PCK 272. The defendant denies the allegation in his affidavit and deposes that he has never owned such a vehicle. He does however admit that he was in fact the driver of a white Suzuki Grand Vitara with the said registration number but says that it was owned by the claimant. He also admitted that his own vehicle was written off after a motor vehicle

collision in which he was driving when he swerved to avoid hitting a vehicle which had made an extremely wide turn on the San Francique Road. It is his evidence that he has since seen that Suzuki vehicle in his father in law's yard in good condition<sup>3</sup>.

17. In the court's view, the issue of reckless or dangerous driving adds another dimension to the factors to be considered when balancing the competing likely consequences to the parties. For the avoidance of all doubt, it is not to say that the court has found that the defendant is in fact a dangerous or reckless driver and he has disputed those facts. However, the issue highlights the possibility of the car not only being damaged but being destroyed while in possession of the defendant. In fact, the same concern may be applied to possession of the car by the claimant however, in conducting the balancing exercise there is no evidence before the court that the claimant or Singh has been in similar collisions before whereas there is such evidence even on the admission of the defendant. This brings the need to preserve the subject of the claim squarely into focus.

18. In relation to the issue of adequacy of damages, while there is an arguable case that damages may be an adequate remedy in relation to loss of use of the asset on the part of the claimant, loss of use and destruction of the asset are two entirely different matters especially in the case where the court is empowered to make a suitable order to preserve the subject of the claim. In that regard the court finds that damages will not be an adequate remedy to the claimant in this case.

19. The court also notes that the defendant has stated that the car is his only means of transport to work from Philipine in the south of the island to

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<sup>3</sup> See paragraph 14 of the affidavit of the defendant filed July 21, 2020.

Arima in the east<sup>4</sup>. It follows that it is his intention to continue to use the car for such travel should the court dismiss the application for the injunction. This of course increases the risk of damage or destruction.

20. Further there are issues of maintenance of such a high end vehicle that are likely to arise in the interim.

21. The court is therefore of the view that that balance of justice lies with the claimant in all of the circumstances including the strength of the relative cases set out above. The court will therefore make a suitable interim order so that the car may be preserved. Both parties will also be prevented from regular usage of the vehicle in the interim so as to avoid any unforeseen consequences to the car.

22. It is therefore ordered in the interim until determination of the claim that:

- a. The defendant shall deliver up possession of Motor Vehicle Registration number PDT 128, a Mercedes Benz C Class C350e vehicle (the vehicle) to the claimant for the purpose of preservation pending the determination of the claim by 10:00 a.m on Saturday the 5<sup>th</sup> September 2020.
- b. The defendant is restrained from removing any non-personal items from the vehicle including but not limited to all parts and fittings of the vehicle whether contained internally or externally, prior to surrender.
- c. The vehicle shall be stored by the claimant, under cover and safe from any damage whatsoever at 79A Penal Rock Road, Penal.

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<sup>4</sup> See paragraph 15 of the affidavit of the defendant filed July21, 2020 and his address at the beginning thereof.

- d. The defendant is restrained whether on his own or through his servants and/or agents whosoever from entering upon the premises at 79A Penal Rock Road, Penal for the purpose of interfering with or removing the said vehicle.
- e. Upon surrender of the vehicle the claimant shall take comprehensive photographs of the interior and exterior of the vehicle and provide attorney for the defendant with copies of same within 48 hours thereafter through attorney at law for the claimant.
- f. The claimant shall not drive or use the said vehicle in any manner save and except as follows:
  - I. The claimant shall start the vehicle at least two times per week.
  - II. The claimant shall ensure that the vehicle is serviced by a reputable and experienced service agency regularly in keeping with recommended service schedules provided always that the claimant is permitted to drive the vehicle to the said service agent to be serviced and thereafter to be returned to storage only.
- g. The costs of the injunction proceedings shall be assessed upon determination of the claim by a Registrar and paid by the unsuccessful party to the claim to the successful party.

Ricky Rahim

Judge