

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV. 2009-00296

H.C.A. No. 1903 of 2004

BETWEEN

TOTAL IMAGE INCORPORATED LIMITED

CLAIMANT

AND

VENTURE CREDIT UNION CO-OPERATIVE SOCIETY LIMITED

STEPHEN FULLERTON

DEFENDANTS

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES

Mr. V. Maharaj for the Claimant

Mr. A. Manwah for the Defendants

JUDGEMENT

Background

1. Mr. Giriraj Ramnanan is the managing director of Total Image (Total), the Claimant. He has deposed in his witness statement that Total Image authorized him to purchase a motor vehicle.
2. On December 18th 2002 he “caused to be issued an invoice” in the name of Total in respect of the motor vehicle that was eventually purchased from Automobile Sales. (See paragraph 7 witness statement)
3. On December 19th 2002 he “became a member of Venture” (a Credit Union) “for the **purpose of securing a loan for the purchase** by Total Image” of the said vehicle.
4. He claims that the claimant purchased the vehicle on **January 3rd 2003**. He claims that *pursuant to the invoice* Venture provided the purchase price for the vehicle. However this cannot be the commercial substance of the transaction. Venture would not have provided the purchase price solely “pursuant to an invoice”, but rather it must have done so pursuant to an **agreement**. **(See agreed fact number 2).**
5. On **January 3rd 2003** Automobile Sales registered the vehicle in the name of Total. The Certificate of Registration of Motor Vehicle TBO 2321 dated the 3rd January 2003 in the records of the Licensing Department is therefore in the name of **Total**.

6. On the **January 7th 2003** Mr. Ramnanan executed a mortgage bill of sale in favour of Venture. (See Agreed fact number 3).

7. Mr. Ramnanan purported to thereby provide security for a loan that he applied for, (whether a. on his own behalf of or b. on behalf of Venture), to finance the purchase of the vehicle. Nowhere does he claim that he was not authorized by Total to do so. He can hardly do so as even now he is the witness for Total and still authorized to act on its behalf in these proceedings 13 years later.

8. The Claimant, Total Image, contends that there is no evidence that Mr. Ramnanan owned the vehicle that he purported to assign.

9. However it is clear that:

- a. Mr. Ramnanan was authorised by the company Total Image to purchase that motor vehicle.
- b. That the company had to act through its agents.
- c. That Mr. Ramnanan was its agent.
- d. That Mr. Ramnanan is still its agent.
- e. That the registration of the vehicle in the name of Total was either done **at the instigation of Mr. Ramnanan**, the duly constituted agent of Total Image, or **with his consent or ratification**. In fact he states that he always made known to Automobile Sales that Total was the purchaser. (paragraph 10 of his witness statement)
- f. That he was representing Total (paragraph 6).

- g. That he signed documents for the purchase on behalf of Total. (paragraph 8)
- h. That he became a member of Venture for the purpose of securing a loan for the purchase by Total of the motor vehicle. (paragraph 11).
- i. That Total allegedly purchased the vehicle. (paragraph 12)
- j. That Automobile Sales DULY registered the vehicle in the name of Total. (paragraph 13) It is quite clear that Mr. Ramnanan was consciously and deliberately making every effort to ensure that the vehicle was placed in the name of Total. Clearly therefore the vehicle was registered in the name of Total at the instigation of Mr. Ramnanan and with his consent.
- k. That Mr. Ramnanan was cloaked with **actual authority** to purchase the vehicle, as he himself confirms in his witness statement.
- l. That Mr. Ramnanan was cloaked with **apparent authority** as its managing director to bind it.
- m. If, as is the case, Total had to secure financing for that purchase, Mr. Ramnanan would have had to have been equally authorized to obtain such financing. He must also therefore have been acting within the scope of such authority in securing that financing.

10. To contend that Mr. Ramnanan was not permitted to provide that vehicle as security requires an artificial distinction to be drawn between his authorized actions in purchasing the vehicle and having it registered, on the one hand, and, on the other, providing it as security under the Bill of Sale required for the purpose of financing its very acquisition.

11. On the 26th June 2004 the Second Defendant entered the compound of the Claimant and removed the vehicle, allegedly because of default in repayment of the loan taken by Mr. Ramnanan.

12. Total claimed against the Society, Venture, for trespass to **its property**, arising from alleged wrongful seizure of the motor vehicle.

Issue

13. The parties agreed that the following issue, which was filed as an agreed issue, would be determinative of the entire action - *whether on the facts in this matter* (presumably the statement of agreed facts); *the first defendant was entitled to seize the vehicle "by virtue of" the bill of sale.*

14. It is therefore necessary to determine whether the execution by Mr. Ramnanan of the Mortgage Bill of Sale, over the vehicle registered in the name of Total, was valid.

Findings and conclusion

15. It was contended that the vehicle was paid for by Total. In fact it was not. It was financed by the loan from Venture, and Mr. Ramnanan, if authorized to acquire the vehicle, must have been equally authorized to pay for it, or to take a loan to pay for it.

16. If a loan had to be taken, as it was, he had to be authorized to provide security for such loan, including the obvious security over the vehicle itself.

17. Either

a. Mr. Ramnanan was the beneficial owner – he having signed all documents and applied for the loan, and was therefore was entitled to pledge the vehicle as security and execute the bill of sale over it; Or

b. Total as owner authorized him to finance the purchase, and pledge the vehicle as security. It got the benefit of that purchase. It is estopped from denying that he was authorized to create a charge over the vehicle under the bill of sale as security, or that Venture was not entitled to enforce the charge.

Orders

18.

- i. The claimant's claim is dismissed.
- ii. The claimant is to pay to the defendant costs on the basis prescribed by the Civil Proceedings Rules for a claim in the amount of \$105,000.00.

Analysis and Reasoning

19. Venture did loan the sum of \$92,000.00 **to its member Mr. Ramnanan**. That loan was for the purchase of a motor vehicle. That purchase could either have been:-

- a. on behalf of Mr. Ramnanan; or
- b. on behalf of Total.

20. In fact the vehicle was registered in the name of Total. However Total only acquired registered ownership because of payment to Automotive Sales **from the loan taken by Mr. Ramnanan**. When Mr. Ramnanan defaulted in payment of the loan installments the Defendant took possession of the security for the loan – the vehicle.

21. It was contended that days after registration of TBO 2321 in the name of the Claimant a loan agreement was entered into between Venture and an alleged third party (Giriraj Ramnanan), who purported to execute a mortgage bill of sale over the vehicle TBO 2321 in favour of the Defendant.

22. However Mr. Ramnanan is not a third party. He is the agent of the Claimant. He says in his witness statement that he was authorized by it. He went to Automotive to purchase a vehicle for the Claimant. He was clearly authorized to do so. He sought financing from the first defendant. He did not purchase the vehicle by tendering cash.

23. He therefore must have been acting on its behalf when he went to take the necessary steps to finance the purchase. As the Claimant was not in a position to purchase the vehicle for cash or out of its own resources it follows that Mr. Ramnanan must have been authorized by it to finance the acquisition. That is in fact what he did. To describe him as “a third party” is highly disingenuous, when in fact he was a principal of the Claimant, or, at the very least, its duly authorized agent.

24. The company Total had to act through its agents. Mr. Ramnanan was used as its agent to acquire the vehicle. He must also have been its agent to finance the purchase, and therefore so acted in obtaining the loan.

25. The vehicle was registered in the name of the company, Total. If the loan was taken by Mr. Ramnanan in his own personal capacity as contended, then he must have paid for the vehicle out of a loan taken in his personal capacity. In that case despite the registration of the vehicle in the company name he would have had a personal claim to its ownership.

26. Mr. Ramnanan took the loan in his own name as a member of Venture. The obligation to repay that loan was that of Mr. Ramnanan. The beneficial ownership of that vehicle was therefore his. Despite the registration of the vehicle in the name of Total, registration is simply prima facie evidence of legal ownership, rebuttable, as in this case, by establishment of actual facts to the contrary.

27. In fact however Total complains about the seizure of **its** vehicle. The contention that Mr. Ramnanan could not have used the vehicle as security, simply because it was placed in the name of Total before the loan was taken, requires that registration in Total's name be taken at face value, despite the undisputed evidence that Mr. Ramnanan was the person taking the loan, and was the person/ party responsible for the repayment of the loan.

28. He was not a *third party* as now contended. He was actually more directly involved in acquiring the ownership of the vehicle than Total was, and had a greater claim to its ownership than Total, in whose name it was simply registered.

29. While it may have used the vehicle as though it belonged to it, Total only enjoyed its use as a result of the purchase and its financing by Mr. Ramnanan. The effect of registering the vehicle in the name of Total, if his arguments in the instant proceedings are upheld, would be to put the vehicle beyond the reach of his creditors should he not have fulfilled his obligations under the mortgage bill of sale.

30. He was allegedly in default of loan payments to the credit union of which he was a member. Yet he wishes the court to take at face value the registration of the vehicle, at his instigation, in the name of the company Total, and uphold his argument that he could not have

executed a bill of sale in respect of a vehicle that was legally registered in the name of the company.

31. Clearly however he was aware, either at the time or subsequently, that the vehicle was so registered. In fact he was the one who was most likely to have been responsible for that registration in the name of Total, as he dealt with Automotive, and ensured that the invoice was in the name of Total. There simply was no one else who could have been responsible for the invoice being in the name of Total.

32. If the vehicle were registered in the name of Total, he could not claim to be surprised by this. It was either his deliberate intent that it be so registered, or a mistake in it not being registered instead in his own name. If the latter, then this case would not be before the court. He would have accepted that he had the beneficial ownership in the vehicle, and that therefore he could have executed a bill of sale over his own vehicle.

33. He has attested to the fact that he was authorized by Total to acquire the vehicle and the more probable inference is that he intended the invoice, and therefore the registered ownership, to be in the name of Total.

34. If it were his deliberate intention to have the vehicle registered in the name of Total, it is curious that he proceeded less than a week later to pledge that vehicle, registered in the name of Total with his active assistance, as security for the loan which financed its purchase.

35. The possibilities are either:

First Alternative

a. He was **fully authorized by Total** to purchase the vehicle and take steps to finance its purchase, including executing the Bill of sale on behalf of Total with its full authority, or

Second Alternative

b. Alternatively, that he was authorized to purchase the vehicle for the use of Total but was **not** authorized to pay for it or to finance its purchase by executing a bill of sale over it.

The second alternative is simply too ludicrous to contemplate. Yet that is the effect of the Claimant's contentions.

Third Alternative

c. Alternatively, that despite the registration of the vehicle in the name of Total, **Mr. Ramnanan was actually the beneficial owner**, as he was the person who financed the purchase by assuming personal liability under the loan from Venture. Total's connection to the vehicle in that event would be tenuous, and the presumption of ownership from registration of the vehicle in the name of Total would be rebutted.

36. In fact, Total's claim to ownership of the vehicle stands or falls based simply on registration of Total as actual owner. That presumption is rebuttable, and on the instant facts, has been rebutted.

37. On a balance of probabilities the first and third alternatives above are far more likely. In either case a court will decline to enforce a claim by the claimant.

38. This claim lacks credibility. The Claimant Total seeks to distance himself from Mr. Ramnanan when in fact its evidence by its witness statement is by the very same Mr. Ramnanan.

39. He is not an unconnected “third party”. He is in fact the alter ego of the Claimant, responsible for the acquisition of the vehicle AND its financing, without which there would be no vehicle registered in the name of Total.

40. It was submitted that at the date of the execution of the Mortgage Bill of sale by Giriraj Ramnanan he was not the *owner* of the vehicle TBO 2321 and could not have made a valid assignment of the vehicle to the First Defendant. In fact however I find that he was clearly the owner of the vehicle. No funds for the purchase of the vehicle came from Total. Total on its own case did not assume liability for repayment of the loan taken to finance its purchase.

Total contributed no value for the purchase. Its connection with the ownership of the vehicle was therefore more tenuous than that of Mr. Ramnanan.

41. As beneficial owner Mr. Ramnanan was in a position to create a charge over the vehicle. It is well established in this jurisdiction that registered ownership in the records of the Licensing Authority is rebuttable by the existence of facts to the contrary. There is ample material on the Claimant’s case alone to rebut that presumption. The society Venture had the right to seize the vehicle under that charge if neither Ramnarine nor Total saw it fit to comply with the obligation to repay the loan obtained to finance its purchase. See Halsbury’s Laws of England 4th edition, 2002 reissue vol 4(1) Bills of Sale paragraph 679 and section 7 of the Bills of Sale Act Chapter 82:32.

Granting of Loans by First Defendant

42. The following provisions of the Co-operative Societies Act govern the granting of a loan by a society. A society can make loans to its members. On his own case Mr. Ramnanan was a member.

29.(1) *A member to whom money has been lent by a society or who is otherwise indebted to the society may be required to **create a charge** in favour of the society in such **form** as may be prescribed.*

(2) *A charge shall so long as it continues in force confer on the society the following rights and impose on the society the following obligations, that is to say:*

(a) *the right upon the happening of any **event specified in the charge** as being an event authorising the chargee to **seize the property subject to the charge** to take possession of any property so subject;*

(b) *after an interval of five clear days or such less time as may be specified in the charge from the date of taking possession of any property subject to the charge to sell such property either by auction or if the charge so provides by private treaty and either for a lump sum or payment by installments;*

(c) *to apply the proceeds of sale in or towards the discharge of the debt secured by the charge and the costs of seizure and sale and to pay any surplus of such proceeds to the member whose property was sold.*

43. (1) *A society may not, save with the consent of the Commissioner, make a loan to any person other than a member.*

43. Venture loaned to their member Mr. Ramnanan. He executed the equivalent of a charge over the property. The registration of the vehicle in a company's name, while prima facie evidence of legal ownership, was rebuttable by the actual undisputed facts in this case that Mr. Ramnanan was the beneficial owner who arranged the financing, and assumed responsibility for the repayment of the loan.

44. He now chooses to pretend that he was a stranger to the transaction and adopt the stance that when he pledged the vehicle as security for a loan that he took to purchase the vehicle it was actually the Claimant company that was the legal and beneficial owner, and in effect that he, Mr. Ramnanan, was on a frolic of his own, unknown to or unauthorized by the company, Total, (of which he was and is, 13 long years later¹, the managing director). This is not consistent with the evidence and is rejected.

45. In fact that contention comes close to suggesting that the intention of **placing the vehicle in the company name**, while almost simultaneously taking a loan from Venture in his personal name, was for the purpose of placing the security that he willingly provided – (the charge over

¹ (This matter entered the docket of this court in October 2013. The further delay was largely attributable to the prolonged efforts of the parties in attempting to arrive at the agreed statement of issues and the agreed statement of facts on which this decision is based).

the vehicle), beyond the reach of his personal creditors, especially the first defendant. This is a matter that would have needed to be explored at trial were it to have taken that route.

s. 40 *Where a loan is made the borrower and his sureties, if any, shall execute an instrument in writing containing the terms of repayment of the loan and such other terms and conditions as the Board or committee may consider necessary, but if he is required to provide security for the loan he shall execute an **instrument of charge in the form set out as Form 2 in the Second Schedule.***

46. The form of the instrument of charge is irrelevant once it satisfies the requirements of the Act. If it describes itself as a bill of sale this is a matter of form not substance.

47. It has not been alleged, far less demonstrated in what way that the “bill of sale” is deficient and incompatible with the requirements of an instrument of charge under the Act.

48. In so far as it was contended that the charge in favour of Venture was made by a person, Mr. Ramnanan, who did not own the vehicle, and was therefore not a valid assignment, it is clear that in fact the actual beneficial owner was clearly Mr. Ramnanan. This contention therefore must fail.

Findings and conclusion

49. It was contended that the vehicle was paid for by Total. In fact it was not. It was financed by the loan from Venture, and Mr. Ramnanan, if authorized to acquire the vehicle, must have been equally authorized to pay for it, or to take a loan to pay for it.

50. If a loan had to be taken, as it was, he had to be authorized to provide security for such loan, including the obvious security of the vehicle itself.

51. Either

a. **Mr. Ramnanan was the beneficial owner** – he having signed all documents and applied for the loan, and was therefore was entitled to pledge the vehicle as security and execute the bill of sale over it; Or

b. **Total** as owner authorized him to finance purchase, and pledge the vehicle as security. It got the benefit of that purchase. It **is estopped** from denying that he was authorized to create a charge over the vehicle under the bill of sale as security or that Venture not entitled to enforce the charge.

Orders

52.

- i. The claimant's claim is dismissed.
- ii. The claimant is to pay to the defendant costs on the basis prescribed by the Civil Proceedings Rules for a claim in the amount of \$105,000.00.

Dated the 20th day of March, 2015

Peter A. Rajkumar

Judge