

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2019-01128

BETWEEN

RABINATH SOODOOSINGH

Claimant

AND

DEVON GIBBINS

Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Shashtri Ramtahal

Defendant: Ebony Young

Delivery Date: October 13, 2023

## **JUDGEMENT**

[1] By Agreement in writing dated July 22, 2016 between the Claimant and the Defendant, it was agreed that the Claimant would rent to the Defendant a truck at a rental of one thousand five hundred dollars (\$1,500.00) per week commencing July 22, 2016. The following terms were also included in the written Agreement aforesaid:

- a. Upon payment of seventy thousand dollars (\$70,000.00) to the Claimant by the Defendant, the former would transfer the said truck to the Defendant.
- b. Should the Defendant default in the payment of rent for two (2) weeks then the truck would be returned to the Claimant; however, rent paid by the Defendant up to this point will not be returned.
- c. That all repairs to the truck would be undertaken by the Defendant at his cost.

[2] Pursuant to the Agreement aforesaid, the truck was delivered to the Defendant on July 22, 2016. The Defendant rented the truck, paying therefor the rent as agreed for two and a half (2 ½) years totalling forty-five thousand dollars (\$45,000.00). An outstanding balance of twenty-five thousand dollars (\$25,000.00) remained on the agreed purchase price of seventy thousand dollars (\$70,000.00). The Claimant pleaded that the Defendant repudiated the Agreement by returning the vehicle to the Claimant on January 11, 2019 in an unsatisfactory condition and in an unroadworthy state. The Claimant averred that the Defendant demanded the sum of ten thousand dollars (\$10,000.00) and he paid eight thousand dollars (\$8,000.00) in order to terminate the contract and settle all outstanding issues between them. Despite this the Defendant made further demands for payment from the Claimant which the latter refused to pay.

[3] The Claimant asserted that the Defendant has breached the terms of the written Agreement by failing to pay the purchase price of seventy thousand dollars (\$70,000.00) for the truck which he rented and returned in a dilapidated condition. As a result, the Claimant claimed the following Reliefs:

- i. The sum of twenty-six thousand dollars (\$26,000.00) the unpaid balance under the written Agreement between the parties made on July 22, 2016

- ii. The sum of eight thousand dollars (\$8,000.00) wrongly and illegally held by the Defendant.
- iii. The cost of repair to the vehicle is in the sum of seventy thousand dollars (\$70,000.00).
- iv. Damages for breach of contract.
- v. Interest on the above sums.
- vi. Costs.

#### **The Defence and Counterclaim**

[4] The Defendant admitted that he entered into an Agreement with the Claimant but asserted that he could not recall all its terms especially since he was never given a copy of this document. He pleaded however that he remembered the following terms:

- a. It was originally agreed that the purchase price for the truck was seventy thousand dollars (\$70,000.00) and that he would liquidate this sum by weekly payments of one thousand dollars (\$1,000.00).
- b. The payment term of the Agreement was varied to one thousand five hundred dollars (\$1,500.00) weekly by written Agreement on July 22, 2016.
- c. The parties agreed that all repairs to the truck while it was in the Defendant's possession would be borne by the Defendant.
- d. The parties agreed orally, subsequent to the written Agreement, that the Defendant would make weekly payments of one thousand dollars (\$1,000.00) toward the purchase price of the truck.
- e. It was admitted that the truck was returned to the Claimant while the balance of the purchase price remained unpaid; notwithstanding this fact the obligation under the contract to make further payments came to an end in the given circumstances.

[5] It was pleaded by this Defendant that in order to avoid incurring a five thousand-dollar (\$5,000.00) fine for failure to have the truck inspected and failing to display the Inspection Certificate, in or about November 2018 to January 2019 he asked the Claimant to furnish him with the Certified Copy of Ownership for the truck in order to have it inspected pursuant to the provisions of the **Motor Vehicles and Road Traffic Act (MVRTA)**<sup>1</sup>. The Defendant claimed that despite repeated requests to the Claimant to furnish him with the Certified Copy of Ownership the Claimant refused to do so. The latter eventually confessed that he did not have a Certified Copy of Ownership since the truck did not have a chassis number.

[6] The Defendant stated that in an attempt to settle this impasse he proposed that this truck be exchanged for another one with a chassis number; he also offered to pay any additional sum if the truck given in exchange was of a higher value. The Claimant refused this offer and the Defendant returned the truck in order to avoid running afoul of the law. The Defendant contended that the truck was returned to the Claimant in far better condition than when he received it since he had expended approximately fifty thousand dollars (\$50,000.00) on repairs to the truck; it was noted that some of the parts used to repair the truck were purchased from the Claimant's shop<sup>2</sup>.

[7] The Defendant contended further, that the Agreement was void *ab initio* since the Claimant could not show good title to the truck. While he admitted that he requested monies paid to the Claimant for the truck be refunded, he denied threatening the Claimant. Indeed, he asserted that it was during an occasion when the Claimant was making threats against his family that his wife came on the phone and stated that the Defendant would be refunded the sum of eight thousand dollars (\$8,000.00). It was however denied that this payment was made in settlement of his claims against the Claimant.

[8] The Defendant counterclaimed for the following Reliefs:

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<sup>1</sup> Chapter 48:50

<sup>2</sup> Paragraph 8 of the Defence and Counterclaim:

- i. The front end.
- ii. Back end.
- iii. Diesel conversion.
- iv. Brakes booster.
- v. Two gear boxes.
- vi. Rebuilt engine on three occasions.
- vii. Wheel hubs for front and back wheels.
- viii. Engine block.
- ix. Bundle spring.
- x. Miscellaneous other parts.

- i. A Declaration that the Agreement dated July 22, 2016 is void *ab initio* as the Claimant could not show good title.
- ii. A Declaration that the Claimant did not have good title contrary to the **Sale of Goods Act**<sup>3</sup>.
- iii. A Declaration that the truck was not fit for purpose contrary to the **Sale of Goods Act**.
- iv. A Declaration that the retention of the truck without refunding monies paid is unlawful according to the **Hire Purchase Act**<sup>4</sup>. A refund of fifty thousand dollars (\$50,000.00) representative of repairs made to the truck.
- v. A refund of thirty-seven thousand dollars (\$37,000.00) which represent the monies that has been paid to the Claimant to date less the initial refund of eight thousand dollars (\$8,000.00).
- vi. A Declaration that the contract terms were unfair and unreasonable according to the **Unfair Contract Terms Act**<sup>5</sup>.
- vii. A Declaration that the Claimant, a businessman, had an unfair advantage that resulted in unequal bargaining power.
- viii. Costs.
- ix. Interest.
- x. Damages for breach of contract.

#### **Defence to Counterclaim**

[9] The Claimant averred that the Defendant's obligation to pay the balance of the purchase price was not terminated upon the return of the truck since he had kept it beyond the two and a half (2 ½) years period originally agreed to.

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<sup>3</sup> Chapter 82:30

<sup>4</sup> Chapter 82:33

<sup>5</sup> Chapter 82:37

[10] It was denied that the truck was returned in better condition than when received by reason of its dilapidated condition upon receipt as outlined below:

- i. Damage to the left side front arising out of an accident.
- ii. Cracked windshield.
- iii. Damage to the left side door.
- iv. Front seats destroyed.
- v. Engine damaged.
- vi. Broken engine chassis.
- vii. Right side flooring rotten out.
- viii. Front bumper mashed up.
- ix. Bock truss washer area damaged.
- x. Crank shaft damaged.
- xi. Tray destroyed and totally mashed up.

[11] The Claimant pleaded that the fact that he did not have the title to the truck did not make the contract void; further, that the Defendant having purchased the truck in good faith with no notice of any defect in title, obtained good title to the truck pursuant to **Section 24 of the Sale of Goods Act.**

[12] It was denied that the Defendant was entitled to any Reliefs sought in his Counterclaim.

## **Evidence**

[13] The Claimant's Evidence in Chief mirrored the facts pleaded in his Statement of Case. In cross-examination, the Claimant acknowledged that the written Agreement did not provide that the

purchase price for the truck be paid within one (1) year; he also acknowledged that they varied the payment terms of the Agreement by reducing the payment for the vehicle from one thousand five hundred dollars (\$1,500.00) a week to one thousand dollars (\$1,000.00) a week. Mr. Soodoosingh admitted to Counsel that the vehicle was worth sixty thousand dollars (\$60,000.00) not seventy thousand dollars (\$70,000.00); he however stated that the Defendant 'wanted to pay seventy thousand dollars (\$70,000.00)'.

- [14] For the first time, Mr. Soodoosingh stated that he did not have a Certified Copy of Ownership for the vehicle and that the Defendant knew this; he also asserted that he had informed the Defendant that he had applied to the Licensing Office for said Certified Copy of Ownership but had been told that 'they would have to search the archives' before it could be issued to him. He testified that he was still not in possession of the Certified Copy of Ownership for the truck which was not registered in his name as at the date of this trial. Indeed, the Claimant admitted that at the time that the Defendant asked him for the Certified Copy of Ownership he did not have one. Mr. Soodoosingh stated that he was aware that it was his responsibility to provide the Defendant with a Certified Copy of Ownership in order to have the vehicle inspected.
- [15] Later on in cross-examination, the Claimant asserted that he obtained a Certified Copy of Ownership for the vehicle and gave it to his Attorney-at-Law; he later stated that he could not recall if he did so. Significantly, Mr. Soodoosingh admitted that he was aware of the penalty for non-inspection – a fine of five thousand dollars (\$5,000.00) for the driver of such a vehicle.
- [16] In answer to Counsel, the Claimant revealed that he scrapped the truck and sold the parts; he later stated that he had not sold said parts.
- [17] Mr. Soodoosingh insisted that the truck was in good condition despite the fact that it was over thirty (30) years old. He admitted that in order to sell a truck of that age for seventy thousand dollars (\$70,000.00) it had to be in a good state of repair and upgraded. He went on to testify that he had upgraded the truck although he had not disclosed this previously either in his pleadings or Evidence in Chief. This witness vacillated on the issue of whether the Defendant had to purchase parts for the truck within one (1) month of its purchase from him before admitting it was true. It was his testimony however, that the Defendant started to damage the truck within one (1) month of purchase.

## **Evidence for the Defendant**

[18] The Defendant testified that he had known the Claimant, before their transaction, as a dealer in foreign used trucks, vans and vehicle parts. He was aware that the Claimant, as part of his business ventures, entered into 'work to own' arrangements with persons whereby he sold vehicles to purchasers who, in exchange for monthly payments towards the purchase price were allowed to keep the vehicle.

[19] He testified that he entered into such a contract with the Claimant on terms as pleaded in the Statement of Case and outlined in the Agreed Facts filed herein. In other respects, his Evidence in Chief was consistent with his pleaded case.

[20] In answer to Counsel he insisted that he could not read or write. He revealed that he expected the Claimant to provide him with a copy of the Certified Copy of Ownership for the vehicle for renewal of the insurance coverage for the truck as well as its inspection; however, Mr. Soodoosingh gave him a Policy of Insurance for the truck upon his payment for the cost of same.

[21] The Defendant testified that the payment was lowered because he had to expend significant sums for repair of the truck upon receipt of same. He asserted that most of his earnings went to repairs to the truck which was in a bad state of disrepair and that as a result he could not maintain his family; he revealed that he spent over fifty thousand dollars (\$50,000.00) in repair costs but did not have receipts for all parts purchased from the Claimant who did not always give him receipts.

[22] Mr. Gibbins testified that he complained to the Claimant that the cost of repairing the truck was too high and he wanted to return same but the Claimant refused to entertain this proposal. He also refused to hand over the Certified Copy of Ownership so that Gibbins could purchase insurance for the vehicle and submit same for inspection.

## **Discussion**

[23] It is undisputed that the Claimant was not the registered owner of the vehicle at the time that he entered into the Agreement to sell the truck to the Defendant and thus unable to transfer property in the said truck at that date. The Agreement provided however, for that transfer to take place after the sum of seventy thousand dollars (\$70,000.00) the agreed purchase price was paid by the Defendant. As noted above, the full purchase price had not been paid at the time that the truck was returned to the Claimant by the Defendant. An issue that arises for

determination is whether the Defendant was entitled to repudiate the contract and treat it as voidable or void by returning the truck on the ground that the truck was in a dilapidated condition and had been in a state of disrepair since he had taken possession of it in July 2016.

[24] **Section 13(3) of the Sale of Goods Act** provides that:

*"Where the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as breach of warranty and not as a ground of repudiation of the contract. Importantly, a warranty is defined as 'an agreement with reference to goods which are the subject of a contract of sale but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated. Section 53(1 and 2)<sup>6</sup> also provide that where a breach of warranty occurs the remedy of the buyer is a claim for damages and not repudiation of the contract."*

[25] In this case, the Defendant having accepted the truck and used it to earn an income over a period of two and a half (2 ½) years, he could not lawfully repudiate the contract and return the vehicle on the ground that when he received the truck it was in a state of disrepair causing him to incur significant expense to make it roadworthy. His only recourse, if he could establish a breach of warranty, is a claim for damages.

[26] The Defendant also contended that the contract was void ab initio because the Claimant did not have good title in accordance with provisions of the **Sale of Goods Act**. **Section 14(1)<sup>7</sup>** of the **Sale of Goods Act** provides that there is an implied condition on the part of the seller that in case of a sale he has the right to sell the goods; in the case of an Agreement to sell, as in this case, the implied condition is that he would have such right at the time the property in the goods is to pass. The Claimant and the Defendant agreed that the truck would be transferred when the Defendant had paid the purchase price of seventy thousand dollars (\$70,000.00). The Defendant

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<sup>6</sup> **Section 53:**

- (1) Where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty, entitled to reject the goods; but he may—
  - (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
  - (b) maintain an action against the seller for damages for the breach of warranty.
- (2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

<sup>7</sup> **Section 14:**

- (1) In a contract of sale, other than one to which subsection (3) applies, there is an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and in the case of an agreement to sell he will have such a right at the time when the property is to pass.

having only paid forty-five thousand dollars (\$45,000.00), the time for the transfer of the truck or the property in the truck to be transferred had not yet arrived. In the circumstances, the Claimant had not breached the implied condition that he had the right to sell because the agreed time of sale had not yet arrived and the contract was not voided thereby.

- [27] The Claimant has claimed the unpaid balance of the purchase price for the truck in the sum of twenty-six thousand dollars (\$26,000.00), the cost of repairing same in the sum of seventy thousand dollars (\$70,000.00) and damages for breach of contract. The Defendant has also claimed damages for breach of contract based on the failure of the Claimant to provide him with a Certified Copy of Ownership of the vehicle in order that it be inspected and certified roadworthy in accordance with the **MVRTA**.
- [28] The **MVRTA** requires that every vehicle over five (5) years old must be presented for examination by a person designated to conduct such an inspection in order to ensure that the vehicle is roadworthy<sup>8</sup>. The information to be provided to the Transport Officer for registration is usually provided in the Certified Copy of Ownership of the vehicle<sup>9</sup>. There is a clear requirement that a Certified Copy of Ownership of the vehicle must be produced to the examiner before a vehicle can be inspected; failure to do so will result in the vehicle not being inspected<sup>10</sup>. The Claimant testified that he was aware of his obligation to produce the Certified Copy of Ownership in order to have the vehicle inspected; he could not comply because he did not have in his possession said Certified Copy of Ownership. Important to the discussion on the consequence of the Claimant failing to produce the Certified Copy of Ownership is the statutory penalty for such failure. In the case of a breach of any of the **Regulations** under the **MVRTA**, a person committing such breach is liable to a fine of three thousand dollars (\$3,000.00) or to imprisonment for six (6) months<sup>11</sup>. Significantly, a driver can be held liable for a motor vehicle used in contravention of any **Regulations** of the **MVRTA**. By failing to produce this document when asked by the Defendant, the Claimant was clearly in breach of the contract; he knew that the truck was being used to transport material on the roads and had to be inspected. From his testimony at trial it is clear to this Court that he must have been aware that the Defendant could not use the truck without incurring a fine or a custodial sentence if he could not pay such fine. Withholding the document in such circumstances amount to a breach of contract for which the Defendant is entitled to receive damages.

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<sup>8</sup> Regulation 27(1) of the **MVRTA**

<sup>9</sup> Regulation 27(a-g) of the **MVRTA**

<sup>10</sup> Regulation 27(g)(a) of the **MVRTA**

<sup>11</sup> Section 91(2,4)

[29] I am of the view that the Claimant is not entitled to the balance of the purchase price for the truck since the Defendant was no longer able to legally operate it on the roads without an Inspection Certificate which he could not obtain due to the Claimant's fault. Given his testimony that he has since scrapped the truck, he is not entitled to any sum for repairs to the truck. It is clear from the evidence in this case that the Claimant sold to the Defendant a thirty-five (35) – year old truck that was in a state of disrepair and the latter had perforce to expend significant sums of money in repairs. As indicated earlier, the Claimant accepted the vehicle in this condition and cannot raise the issue of the dilapidated condition of the vehicle after the fact in order to seek compensation therefore.

[30] The Claimant did not lead any evidence before this Court with respect to his earnings from the truck; he did say that he was not able to make a profit due to the high cost of repairs. In the circumstances, I award a nominal sum for damages for breach of contract in the sum of thirty thousand dollars (\$30,000.00).

[31] In conclusion, I make the following Orders:

- i. The Claimant's case is dismissed.
- ii. Judgement for the Defendant on his Counterclaim for damages for breach of contract.
- iii. The Claimant to pay to the Defendant costs of the Claim and Counterclaim in the sum of twenty-four thousand dollars (\$24,000.00).
- iv. The Claimant to pay the Defendant interest in the above sums at the rate of three percent (3%) per annum from January 11, 2019 to the date of judgement.

**Joan Charles**

**Judge**