

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **NEVHCV2018/0105**

Between

Rosamund Mills

Claimant

-and-

Spencer Elliott

Defendant

Before: His Lordship Justice Ermin Moise

Appearances:

Mr. Eustace Nisbett of counsel for the claimant

Ms. Kurlyn Merchant of counsel for the defendant

2020: September, 22nd
2021: March, 1st

JUDGMENT

- [1] **Moise, J:** The parties in this case were involved in a motor vehicular accident on 25th May, 2018. The matter came to trial and on 22nd September, 2020, the court gave an oral ruling in which the claimant was found to have been at fault. However, the defendant had pleaded a counterclaim for the cost of repairs to the vehicle he was driving at the time as well as loss of use. He is however, not the owner of the vehicle, having come into possession by virtue of a rental contract with the owner. The court therefore invited submissions on the question of whether the defendant is entitled to a judgment for the amount claimed in his favor, despite him having not actually suffered any direct loss. These submissions were duly filed by counsel. From the onset I wish to apologize for the delay in delivering this decision. Though the point is not a rather complicated one, it may have some implication for the general culture within which road traffic cases are litigated here in Nevis.

The court therefore took some more time than is customary to carefully consider the issue before delivering its ruling. I express my hope that this has not caused a great inconvenience to the parties.

Brief Summary of the Relevant Facts and Issues

[2] This claim was lodged by the claimant and no attempt was made to add the owner of the vehicle as a party to the proceedings. This is not the normal approach to litigation of this nature. The convention has been that both owner and driver of the motor vehicle are added as parties to the claim. The owner's liability is normally contingent upon proof that the driver was operating with his consent and as his agent. Normally, if there is a counterclaim in which compensation is being sought for damage to the motor vehicle from the claimant on the pleading of his own negligence, this is prosecuted by the owner of the motor vehicle. In the circumstances of this case, the defendant's counterclaim pleaded no personal injury arising out of the accident, but rather damages to the motor vehicle and loss of use. Although the court found that the accident was not caused due to his negligence but rather that of the claimant, some doubt was expressed as to whether he was entitled to the compensation which he seeks in his own name, given that he had no title to the motor vehicle and therefore suffered no direct loss.

[3] Before addressing the law on this issue, I wish to state that, whatever the outcome of this case, the general approach to litigation in road traffic cases should not change. The approach taken in this case to exclude the owner of the motor vehicle is not a practice which the court wishes to endorse as one would not have to be generally imaginative to conclude that this may lead to some measure of confusion and unnecessary litigation in the future.

The Law

[4] It is a long standing principle in law, that an individual can only maintain a cause of action for damages which he has suffered directly. In the case of ***HSBC Rail (UK) Ltd. v Network Rail Infrastructure Ltd. (Formerly Railtrack Plc)***¹ Lord Justice Longmore put it this way; ***“[i]t is trite law that a claimant cannot sue in negligence unless he has suffered damage and can then***

¹ [2005] EWCA Civ 1437

only recover to the extent that he has been damnified". There are generally few exceptions to this rule. According to Longmore LJ, one such exception is the right of the bailee to sue for the recovery of goods in his possession. It is on this proposition counsel for the defendant hinges her submissions.

[5] Counsel submits that at the time of the accident the defendant was a bailee in possession of the motor vehicle. The pleading, which is uncontested, is that at the time of the accident the defendant had rented the vehicle from its owner. The evidence as to the extent of the damages claimed at trial emanated directly from the owner of the vehicle; who merely appeared as a witness. Counsel for the defendant therefore argues that the relationship of bailor and bailee entitles the defendant to seek damages in the manner in which he has claimed it. The two issues for consideration are therefore:

- (a) Was the defendant a bailee in possession of the car? And
- (b) Can he therefore sue as Bailee for the damages to the goods belonging to the bailor?

Was the defendant in fact a Bailee?

[6] Halsbury's Laws of England has outlined the broad definition of bailment in the following manner:

"... a bailment arises whenever one person (the bailee) is voluntarily in possession of goods belonging to another person (the bailor). The legal relationship of bailor and bailee can exist independently of any contract and is created by the voluntary taking into custody of goods which are property of another... The element common to all types of bailment is the imposition of an obligation, because the taking of possession in the circumstances involves an assumption of responsibility for the safe keeping of the goods. A claim against a bailee can be regarded as a claim on its own, sui generis, arising out of the possession had by the bailee of goods."

[7] The authorities seem to suggest that in the case of a driver of the motor vehicle, he may find himself in the place of a bailee. The case of ***O'Sullivan et al v. Williams***², was one such case. Despite the fact that the court could find no authority which seemed to suggest otherwise, I express some doubt

² Court of Appeal Transcript, 6th March 1992

as to whether this is the case in all circumstances. Surely there must be some distinction between one who is merely driving and one who is in possession according to law, sufficient to place him in the position of a bailee. It would, in my view depend on the circumstances of the case, as one must give some consideration to the extent to which the driver is entitled to exercise the right of ownership over the vehicle at the time in question, and the extent to which he can be said to be in possession of the motor vehicle to the exclusion of the owner. Be that as it may, in this case, the defendant was not merely the driver of the motor vehicle. He had in fact leased it from the owner. Upon taking possession of the vehicle he is deemed, in my view, to have assumed the responsibility of its safekeeping. I am satisfied that this relationship is sufficient to place him in the position of a bailee.

Can a Bailee sue for damages to goods belonging to the Bailor?

[8] Counsel for the defendant argues that he is well within his right to sue for the damages caused to the motor vehicle and for the loss of use thereof, despite him not being the owner and therefore suffering no direct loss of this nature. For that proposition counsel relies on the 1902 case of *The Winkfield*³. In that case, the English Court of Appeal determined that ***“in an action against a stranger for loss of goods caused by his negligence, the bailee in possession can recover the value of the goods, although he would have had a good answer to an action by the bailor for damages for the loss of the thing bailed.”*** The submission here is that although the defendant was not at fault in the accident and therefore not liable to the owner of the car, he is nonetheless entitled to claim such damages from the claimant as a third party whose negligence is directly responsible for the loss. The rationale for such a principle was described in *The Winkfield* as being based on the general rule that possession of a chattel by a bailee is as good against a wrongdoer to whom ***“it is not open... to inquire into the nature or limitation of the possessor’s right.”***

[9] The court went on to note that ***“as between a bailee and a stranger, possession gives title- that is not a limited interest, but absolute and complete ownership, and he is entitled to receive back a complete equivalent for the whole loss or deterioration of the thing itself.”*** Whilst the

³ [1902] P 42

judgment goes on to recognize that the bailee is accountable to the bailor for any amount recovered in damages from the wrongdoer, it establishes that this duty is of no concern of the wrongdoer. The only effect on him is that his payment of damages to the bailee absolves him from his obligation to the bailor as owner of the good.

[10] ***The Winkfield*** decision has not gone without its criticism; and for my part I express much trepidation as to whether it is a proper approach to take in road traffic cases in general. In fact, there may be some rationale for the principle espoused in ***The Winkfield*** which is worth some analysis in this general discussion. In ***HSBC Rail (UK) Ltd. v Network Rail Infrastructure Ltd. (Formerly Railtrack Plc)*** Longmore LJ noted that “***the bailor who does not have possession (or the immediate right to possession) does only have a limited interest and he has no other quality which can give him absolute and complete ownership. It would thus be anomalous to give a bailor with a limited interest the right to recover the full value of the goods.***” While I appreciate the distinguishing elements between that case and the present, my view is that there may be circumstances where the bailor as owner of the good has no right to sue, as damage to the good is suffered by the one in possession and not the true owner. The issue may very well be one of the extent to which the possessory right of the bailee is affected by the damages to the good as opposed to the title of the bailor being so affected.

[11] However, despite this, the criticism of ***The Winkfield*** has for the most part been academic as more recent decisions in the UK have cited this case with some measure of approval. In ***O’Sullivan et al v. Williams*** it was confirmed that “***the bailee can sue a wrongdoer simply by reason of the bailee’s possession. Such possession is, as against the wrongdoer, full and complete ownership. It enables the bailee to recover the full value of the chattel. He must however, account to the bailor for the amount recovered. As between the bailor and the bailee, their respective rights in the amounts recovered will depend upon the value of their enforceable interests respectively in the chattel.***” That case also cited the case of ***Nichols v. Bastard***⁴ in which Parke B stated that “***I think you will find that the rule is, that either the bailor or the bailee may sue, and which first obtains damages it is full satisfaction.***” In the present case, where the defendant had in fact rented the motor vehicle, I am persuaded that he had a right to sue as a bailee in possession. He has assumed the responsibility for the safekeeping of the car and, as

⁴ (1835) 2 CrM & R

the authorities have established, the claimant is not entitled to enquire into the extent of his contractual relationship with the owner.

[12] I note that counsel for the claimant argues that the defendant has no right to sue for damages to the motor vehicle as he has suffered no financial loss. He has referred the court to a number of authorities on the relationship between the owner and the driver of a vehicle. He seeks to persuade the court that the defendant cannot claim damages in the manner pleaded in this case on the basis of the authorities he has referred to. However, without referencing any of these cases in any detail, I am of the view that they do not assist the court in addressing the issues at stake. The cases all refer to the question of whether the driver was acting as an agent of the owner at the time of the accident. This is not what is in issue here. With all respect to counsel, I do not find any of these cases to be particularly helpful.

Conclusion

[13] After considering these authorities I am satisfied that counsel for the defendant is correct in her submission as to the state of the common law on this issue. Despite my concerns about the effect of such a decision on litigation of cases of this nature, the law must none the less be followed. I would therefore award the defendant the damages which he seeks with the one caveat that this court does not wish to sanction the approach taken in this case as one which is proper; given that it runs contrary to what is the established convention of simply adding the owner of the vehicle as a party to the proceedings. There is much merit in ensuring that the conventional approach is not undermined in anyway. Perhaps the court can also accept some blame for not flagging this as an issue during the case management phase.

[14] In the circumstances I make the following orders:

- (a) Judgment is entered for the defendant on his counterclaim;
- (b) The claimant will pay the sum of \$21,795.14 in damages as the costs of repairs to the motor vehicle;
- (c) The claimant will pay the sum of \$15,300.00 in loss of use to the defendant;
- (d) The claimant will pay interest at the statutory rate from the date of the filing of the claim until the judgment debt is paid in full;

(e) The claimant will pay prescribed costs in accordance with the provisions of the CPR2000

**Ermin Moise
High Court Judge**

By the Court

Registrar