

THE EASTERN CARIBBEAN SUPREME COURT

TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2017/0191

BETWEEN:

ROYAL BANK OF CANADA

Claimant

and

GERALD QUINLAND

t/a QUINLAND REPOSSESSION AND COLLECTION AGENCY

Defendant

Appearances:

Ms. Kalisia Marks and Mr. Jomokie Philip, Counsel for the Claimant

Mr. Kendrickson Kentish and Mr. Kyle Kentish, Counsel for the Defendant

2020 February 12th;
March 13th

JUDGMENT

- [1] **KELSICK, J [Ag.]**: In early 2011 the Claimant entered into an oral agreement with the Defendant under which the Defendant was to provide repossession and storage services to the Claimant with respect to vehicles over which the Claimant held security for loan obligations of its customers. The process was that if its customer defaulted, the Claimant would instruct the Defendant to take possession of the vehicle and store it at his premises at Factory Road, St. John's ("Storage Area") until it was either sold by auction (conducted at the Storage Area) or private treaty, or the customer made satisfactory arrangements with the Bank. In either case, the Claimant would instruct the Defendant to whom to release the vehicle.
- [2] In return for his services, the Claimant agreed to pay the Defendant \$450.00 for the repossession of each vehicle and a storage fee of \$10.00 per vehicle per day until sale or redelivery.
- [3] The arrangement appears to have worked without hitch until early 2017.

- [4] In January 2017, the Defendant was storing 14 vehicles for the Claimant. The Claimant contracted its auctioneer, Mr. Leslie Emmanuel, to auction all of them. Mr. Emmanuel duly publicized the date of the auction in the newspaper and on notice boards in various supermarkets.
- [5] On or about 15th January 2017, the Defendant was informed by the Claimant that an auction was scheduled to be held at the Storage Area on 21st January. At that time, the Defendant did not indicate any opposition to the auction being held.
- [6] On 18th and 19th January, in preparation for the auction, Mr. Emmanuel and his landscaper went to the Storage Area to clean it. On 20th January, the day before the auction date, Mr. Emmanuel returned to the Storage Area at about 2pm with his assistant to perform the sequential numbering of the vehicles. When he arrived, the gate to the Storage Area was padlocked. Mr. Emmanuel made several calls to the Defendant who did not answer.
- [7] Later that afternoon, between 4:30 and 5:00, the Defendant called Mr. Emmanuel and told him that the Claimant owed him money and he was therefore not allowing anyone on the Storage Area for the auction the following day.
- [8] At about 8:30 the following morning, Mr. Emmanuel return to the Storage Area and again the gate was locked, and no one appeared to be on site. He once again made several calls to the Defendant who, again, did not answer. While Mr. Emmanuel was thereore several persons showed up for the auction which, of course, had to be put off.¹
- [9] On 23rd January 2017 (i.e. the Monday following the day of the scheduled auction) the Claimant's attorneys wrote to the Defendant to inform him that they intended to remove the 14 vehicles immediately and asked him to submit any outstanding invoices for settlement. The Claimant's attorneys again wrote by letter dated 1st February demanding the delivery of the 14 vehicles and the submission of the invoices.
- [10] It does not appear that the Defendant responded to these letters nor complied with the demands because on 10th April 2017, the Claimant filed an application for interim relief that the Defendant deliver up the vehicles. The Fixed Date Claim was filed on 21st June 2017.
- [11] Remarkably, the application for interim relief was not heard until 14th December 2017, due in large measure to the difficulty in securing the Defendant's attendance. On that date the Court ordered the Claimant to prepare a list of the cars held by the Defendant and when they were delivered to storage. The Bank was to calculate the amount owing up to 15th January 2018 and upon payment of that sum the Defendant was ordered to release the vehicles to the Claimant.
- [12] The next relevant milestone in the proceedings was an order made on 7th February 2019, paragraphs 2 to 4 of which state:

"2. The Parties have agreed that the sum due to January 15th 2018 is \$66,000.00 and to today, 7th February 2019, is \$123,500.00. The Court accepts the figure of

¹ The facts set out at paragraphs [4] to [8] are taken from the Witness Statements of Mr. Emmanuel and Mr. Nelson Ramroop whose evidence I accept.

\$123,500.00 as being the agreed sum owed at the 7th February 2019 and applies same.

3. The Bank is to pay the sum of \$123,500.00 into the Court within 24 hours and failing which the daily rate of \$150.00 continues to apply as long as motor vehicles continues (sic) to be present in the Defendant's parking lot.

4. Upon payment of the \$123,500.00 within 24 hours into Court, the Defendant is to release to the Claimant the 15 (sic) motor vehicles."

- [13] A photocopy of a cheque dated 8th February 2019 for \$123,500.00 made out to the Registrar is stamped as filed on 11th February 2019. This appears to be the time, although there is no direct evidence on the matter, when the vehicles were finally released by the Defendant.
- [14] I am constrained to point out one unfortunate consequence this delay. The time which elapsed between 18th January 2018 and 7th February 2019 was apparently used by the parties to try to negotiate a settlement, which obviously led nowhere. In the meantime, an additional \$57,500.00 in storage fees, if the Defendant ultimately prevailed, accrued. Attached to Mr. Ramroop's witness statement is a valuation of the vehicles which showed their total value to be \$313,950.00. The storage fees at 7th February 2019 was therefore 40% of this value.
- [15] It is even worse when 5 of these vehicles are considered. Three were valued at nil, and the other two at \$3000 and \$7000. The storage cost for these vehicles between 15th January 2018 and 7th February 2019 (388 days) was therefore \$19,400.00, nearly twice their aggregate value. This is an affront to commercial sense.
- [16] The order made on 7th February 2019 does not identify in its body the application mentioned in paragraph [10] above. But there is a trail of references, in prior orders, to this application showing that it was adjourned from time to time. By an order dated 12th December 2017 the hearing of this application was adjourned to 13th March 2018. This order included the issuing a bench warrant against the Defendant.
- [17] The Defendant apparently surrendered himself on it coming to his attention that a bench warrant was issued. A hearing was then held on 14th December 2017, two days later. The order made pursuant to this hearing referred only to the Fixed Date Claim filed on 7th June 2017 and not to the application filed in April 2017. The order adjourned "all other issues pending for hearings" to 19th April 2018. There can be no doubt but that the application of 10th April 2017 was included in this order. In each order made in respect of each subsequent hearing, only the Fixed Date Claim is referred to.
- [18] I set out this history to place in context the wording of the order of 7th February 2019 that that sum of \$123,500.00 was "an agreed sum owed". In this context, this order can only be construed as the imposition of a condition to the grant of the Claimant's application for interim relief on 10th April 2017 and not as establishing any liability of the Claimant. Otherwise, there would have been no need for a trial. The sum "agreed to be owed" must have been a reference to the amount the parties agreed would be owed if the Defendant's case was successful.

- [19] But for a statement made in an affidavit of the Defendant, this might have been thought to be obvious. On 29th April 2019, the Defendant applied for summary judgment or for an interim payment of \$60,000.00. In the grounds, reference was made to the order of 7th February 2019. In paragraph 7 of his affidavit in support of this application, the Defendant said that “it would be unjust to delay, until after trial, payment of the money to which the parties have agreed is owed to me”. This is a complete misapprehension of the scope of the order.

The Issues

- [20] The central issue is whether the Defendant was entitled, on and after 23rd January 2017, to refuse to deliver the vehicles to the Claimant. This in turn involves the determination of two sub-issues:
- (i) Did the Defendant have a lien on the vehicles unless and until payment of all fees which were due and payable?
 - (ii) Were the Defendant's fees due and payable only upon submission of an invoice by the Defendant?
- [21] It was common ground between the parties that there was an oral agreement between them governing their relationship. There was no pleading, nor evidence, by either party that there was any express term as to when the Defendant's fees became due and payable or whether the Defendant had a lien.
- [22] Resort was therefore necessarily had to implication. The Defendant pleaded in paragraph 5 of his Defence that it was an implied term that the Claimant would pay the amounts due on each vehicle before the said vehicles were released and that this arrangement was carried on for over 6 years without incident.
- [23] The Claimant did not deny this pleading in its Reply. In paragraph one it simply joined issue with the Defence and referred to an affidavit of Efiar Charlemagne-Norbert filed on 18th April 2018² in response to the allegations. There is nothing in this affidavit which denies the existence of the implied term. No evidence was proffered by the Claimant on this issue.
- [24] The existence of the lien must therefore be taken as established.
- [25] The real dispute between the parties was whether it was necessary for the Defendant to submit an invoice before any sums became due.
- [26] Mr. Ramroop gave the following evidence:³
- (i) The usual method of payment between the parties over the six-year period was that the Defendant would submit monthly invoices for services rendered and payment would be made by the Bank upon the said invoices being produced;

² This was a typographical error for 16th April 2018

³ In his Witness Statement

- (ii) In October 2016 the Bank held an auction of vehicles in the Defendant's possession. Subsequent to this auction the Defendant did not submit any further invoices despite the Claimant's repeated requests. The Defendant told the Claimant that his computer was not functioning and requested the Claimant to create invoices for him. The Claimant refused (as they thought this inappropriate and it was also contrary to their internal policy) and following this the Defendant did not submit any invoices from October 2016 to January 2017 despite the Claimant's requests;
- (iii) On 8th February 2017, the Defendant submitted an invoice for the period August 2016 to October 2016 which the Claimant promptly settled; and
- (iv) The Defendant did not indicate that access to his premises for the purpose of carrying out the auction would be contingent upon the Claimant settling outstanding sums for which he did not produce an invoice.

[27] The Defendant gave the following evidence:⁴

- (i) It was an implied term that the Claimant would pay the amounts due on each vehicle in a timely manner before any vehicle would be released;
- (ii) At some point prior to December 2016 he was informed by persons⁵ that the Claimant intended to give the storage and repossession business to another business;
- (iii) In January 2017, the Claimant informed him that they wished him to release the vehicles in his possession to "the very business [he] had been informed were taking over [his] business";
- (iv) They gave him no notice or explanation after 6 years of unblemished service and the Claimant knew that this would effectively close down his business as they were his only client; and
- (v) On 15th January 2017 he informed the Claimant that the vehicles would be released as soon as all outstanding fees had been paid.

[28] In cross-examination, one critical question was put to the Defendant. The Claimant's Counsel asked him whether, throughout his history with the Claimant, it was usual for him to present invoices and then the Claimant would pay him. The Claimant answered yes, that is how he got paid.

[29] He then said that he did in fact produce the invoices to a Ms. Bradshaw who the Claimant subsequently fired. This is a theme to which he referred several times in his cross-examination. That the Defendant delivered invoices to a Ms. Bradshaw is stated nowhere in his Witness Statement nor is it presaged in his Defence.

[30] I do not accept the Defendant's evidence in this respect. My findings on this issue are:

⁴ In his Witness Statement

⁵ Whom he did not identify

- (i) The course of dealings between the Claimant and Defendant was that the Defendant would tender invoices before the Claimant would be required to pay any sums. This is corroborated by the invoices disclosed by the Claimant and the Defendant's own evidence. This makes commercial sense. Even if it could be calculated how much was owing to a service provider, it cannot be unusual for businesses to nonetheless require invoices, against which payments would be made, for auditing and other purposes;
- (ii) The Defendant suspected that the Claimant was minded to terminate its contract with him. He therefore demanded that he be paid for all outstanding amounts before releasing the vehicles not because this was their normal practice but because he thought these 14 vehicles were the last he would store on the Claimant's behalf. He did so also because he was upset with the Claimant. He felt they would close down his business.
- (iii) In January 2017, there were no invoices which were submitted by the Defendant that the Claimant had not paid and therefore there were no monies which were due and payable by the Claimant to the Defendant;
- (iv) The Defendant therefore had no legal right to refuse to deliver possession of the vehicles to the Claimant.

[31] The result of these findings is that the Defendant acted unlawfully in refusing to deliver the vehicles to the Claimant in January 2017 and in keeping possession of the vehicle until February 2019.

The Counterclaim

- [32] The Defendant Counterclaimed for damages for breach of contract. He did not, however, state in what respect the Claimant is alleged to have breached the contract. He merely repeated paragraphs 1 to 11 of his Defence.
- [33] The only possible allegation in those paragraphs of a breach of contract is in paragraph 7 where the Defendant pleaded that he was informed by person that the Claimant was giving the storage business to another person. There is no suggestion by the Claimant actually did anything, prior to January 2017, to terminate its contract with him.
- [34] Rather, the Defendant acted pursuant to his information by unlawfully detaining the vehicles and this no doubt led to the Claimant terminating its arrangement with him. The Counterclaim therefore fails.

Orders

[35] In the result, I order as follows:

- (i) Judgment is entered for the Claimant for damages to be assessed.
- (ii) The Defendant shall pay prescribed costs on the damages as assessed.

- (iii) The Counterclaim is dismissed.
- (iv) There is no order as to costs on the Counterclaim.
- (v) The Registrar shall pay out to the Claimant the sum of \$123,500.00 plus any accrued interest which was paid into Court on or about 10th February 2019.

Damian Kelsick
High Court Judge (Ag.)

By the Court

Registrar