

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHC VAP2015/0005

BETWEEN:

TARA ERMINE LEEVY

Appellant

and

ROSANNA ST. MARTIN

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE

Chief Justice

The Hon. Mde. Gertel Thom

Justice of Appeal

The Hon. Mr. Gerard Farara QC

Justice of Appeal [Ag.]

Appearances:

Mrs. Esther Greene-Ernest for the Appellant

Mr. Geoffrey DuBoulay with him Mrs. Sardia Cenac-Prosper
for the Respondent

2018: May 14.

Civil appeal – Damages for breach of contract – Title to property – Sale of goods – Bill of sale – Possession of goods – Entitlement to repossession – Quiet enjoyment of property – Article 296 of the Commercial Code Cap. 13:31 Revised Laws of Saint Lucia 2013 – Bona fide purchaser for value without notice of encumbrance– Whether 'seller' having to be owner if good title is to pass – Whether good title passed to the appellant – Equity of redemption – Whether title of motor vehicle assigned to bank

REASONS FOR DECISION

- [1] **PEREIRA CJ:** On 14th May 2018, the Court heard an appeal against the decision of the judge (Belle J) in the court below. He ordered the appellant, Ms. Tara Leevy, to pay damages to the respondent, Ms. Rosanna St. Martin, in the sum of \$70,639.02 with costs for breach of contract resulting from the sale of a motor vehicle by Ms. Leevy to

Ms. St. Martin. The motor vehicle turned out to be subject to a registered Bill of Sale in favour of the Bank of St. Lucia. The Court dismissed the appeal and stated that the reasons for its dismissal would follow. The reasons are now set out.

[2] The circumstances giving rise to the dispute may be shortly stated:

- (a) In February 2007 one Ms. Candice Francis executed a Bill of Sale in favour of Bank of Saint Lucia Limited (“the Bank”) for a motor vehicle (“the vehicle”).
- (b) In or about February or March 2010 Ms. Leevy purchased the vehicle from JAG Motors Ltd (“JAG”) or Ms. Francis.¹
- (c) In April 2010 Ms. Leevy agreed to sell the motor vehicle to Ms. St. Martin for the sum of \$42,000.00. Ms. St. Martin paid Ms. Leevy the agreed purchase price and took possession of the vehicle in May 2010.
- (d) In August 2010, pursuant to the Bill of Sale, the Bank seized the vehicle on account of Ms. Francis’ failure to service the loan secured by the vehicle.
- (e) As a consequence of the vehicle’s seizure, Ms. St. Martin filed a claim against Ms. Leevy for damages for breach of contract.

[3] Ms. Leevy challenged the judge’s finding that she breached the contract for sale of the vehicle on some 11 grounds. However, the central issue in this appeal is whether, in the circumstances of the case, Ms. Leevy had acquired title to the vehicle which she could have in turn passed to Ms. St. Martin, notwithstanding that the vehicle was subject to a Bill of Sale in favour of the Bank.

¹ Whether the vehicle was purchased from JAG or Ms. Francis is the only factual matter on which there appears to be some disagreement between the parties; however, this fact is of no consequence to the appeal.

- [4] As I understand it, the crux of the argument led by learned counsel for Ms. Leevy, Mrs. Esther Greene-Ernest, is that Ms. St. Martin was a bona fide purchaser who had obtained a proper title to the vehicle entitling her to quiet enjoyment and possession of same which title defeated the Bank's entitlement to repossession under a Bill of Sale.
- [5] In support of this argument, Mrs. Greene-Ernest in her written submissions sought to rely on the provisions of articles 293(1), 294 and 296(2) of the **Commercial Code**.² Article 293(1) codifies the principle of market overt which provides an exception to the general rule³ whereby a buyer acquires a good title to goods sold in market overt, according to the usage of the market, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller. Mrs. Greene-Ernest intended to rely on this article for the argument that Ms. St. Martin acquired good title to the vehicle as she was a purchaser in good faith without notice of any defect or want of title on the part of Ms. Leevy.
- [6] Article 294 provides that where a seller has voidable title to goods which has not been avoided at the time of the sale, a buyer acquires good title provided he acquires the goods in good faith and without notice of any defect or want of defect of the seller's title to the goods.
- [7] At the hearing of the appeal, Mrs. Greene-Ernest conceded that in light of this Court's decision in **Luann Shanel Amorsingh v Martina Labadie**⁴ articles 293(1) and 294 had no applicability to the case at bar.
- [8] In **Labadie**, a case which shares some factual similarity with the present case, this Court overturned the decision of the judge in the lower court who had dismissed the appellant's claim for breach of contract for the sale of a motor vehicle by the respondent, Ms. Martina Labadie, to the appellant, Ms. Luann Amorsingh, which had been subject to a Bill of Sale in favour of 1st National Bank Limited ("1st National"). The

² Cap. 13:31 Revised Laws of Saint Lucia 2013.

³ Article 292(1) outlines the general rule.

⁴ SLUHCVP2012/0022 (delivered 15th December 2017, unreported).

learned trial judge had applied article 294(2) in arriving at his decision holding that this article was designed to protect the innocent purchaser "in good faith" who could not have been aware of any defect in title or voidable title which up to the time of the sale, had not been voided. He accordingly held that Ms. Amorsingh had a right to insist that she purchased the vehicle in "good faith" and that she had good title which defeated 1st National's lien. The interference of her quiet enjoyment was therefore unlawful and could not be construed as a breach of the **Commercial Code** by the seller. She was therefore not entitled to sue Ms. Labadie for breach of contract because there was no breach and she had received good title to the vehicle.

[9] This Court, in allowing the appeal, found that article 294(2) on which the learned judge grounded his decision, had no application to the transaction. The Court stated that, "Voidable title by way of definition would be referring to a title which is defective. In this case, **we are not dealing with a defective title but rather one which was good, and which was the subject of a Bill of Sale by way of security over the vehicle**". (Emphasis mine).

[10] The guidance provided in **Benjamin's Sale of Goods**⁵ where section 23 of the UK's Sale of Goods Act 1979, an equivalent provision to article 294, was under consideration is also particularly helpful. The authors explained that an innocent buyer will acquire good title to goods where the title to the goods is voidable, but not where the seller has no title at all.

[11] In the present case, the title of the impugned vehicle remained good title which was subject to a Bill of Sale in favour of the Bank. Intrinsically, Ms. Francis transferred title to the Bank and retained an equitable right to redemption of her title exercisable upon fulfillment of her obligations under the Bill of Sale.⁶ Possession of the vehicle itself remains in the grantor (Ms. Francis) of the Bill of Sale unless circumstances arise

⁵ 8th edn, (Sweet & Maxwell, 2010) 7-023.

⁶ Ms. Francis' equitable right to redemption had not crystallised as her obligations to the Bank remained unfulfilled.

giving the grantee (the Bank) the power to seize the vehicle, such a circumstance being the default by the grantor in making payments of sums so secured.

[12] Such a circumstance did arise as Ms. Francis' obligations to the Bank remained unfulfilled. In those circumstances, the Bank retained its title to the vehicle and became entitled to repossess the vehicle the subject of the Bill of Sale. At no time did title pass to Ms. Francis which could then be considered at any point voidable title which could have the effect of being under the umbrella of article 294(2). The sale of the vehicle to Ms. Leevy in the first instance passed mere possession. Accordingly, counsel for Ms. Leevy could not pray in aid article 294(2).

[13] Returning to the Court of Appeal's decision in **Labadie** (as it related to the application of article 293), learned counsel for the respondent in that case accepted that as no evidence had been led to substantiate a finding that the vehicle was sold in market overt, article 293 was therefore inapplicable. No such evidence has been led in the present case either. I pause here to note the definition given to the ancient rule of market overt by Jervis CJ in **Lee v Bayes and Robinson**⁷ that, "It is an open, public, and legally constituted market".⁸ That is surely not the case here. In my view, counsel wisely did not proceed further on this point.

[14] Mrs. Greene-Ernest, having conceded on the non-applicability of articles 293 and 294 of the Commercial Code, sought recourse in article 296(2) of the Commercial Code. Article 296(2) states:

"Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him or her, of the goods or documents of title, under any sale, pledge, or other disposition, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect **as if** the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the **consent of the owner**." (My emphasis).

⁷ (1856) 18 CB 599.

⁸ Ibid 601.

Mrs. Greene-Ernest contended that this provision reinforces the position that Ms. St. Martin, as a buyer in good faith who has taken delivery of the vehicle, is under the protection of the law regarding her title. Unfortunately, in the circumstances of this case, a proper construction of the article 296(2) provision does not result in the effect that counsel has invited the Court to accept.

[15] Article 296 falls under the rubric “Seller or buyer in possession after sale”. The effect of article 296(2) is to facilitate the passing of title from the seller to a bona fide buyer without notice of any lien or right of the original seller. As against the original seller, the buyer is deemed as having good title *as if* the buyer received the goods from the owner even in circumstances where the original seller may have had a lien or other right capable of being asserted. Article 296(2) does not give the buyer the right to assert good title as against the owner of the goods.

[16] To achieve the overarching protection of this subsection as against the true owner of the goods, the subsection must be read in conjunction with article 292(1) which provides:

“Subject to the provision of this Title, where goods are sold by a person who is not the owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his or her conduct precluded from denying the seller’s authority to sell.”

[17] The paradigm case of the conjoint operation of these sections is **National Employers Mutual General Insurance Association Ltd. v Jones**.⁹ In that case, the appellant purchased, in good faith and without notice of the original owner’s rights, a car which had been stolen and, after two resales, sold on to a car dealer, A Ltd, which sold it to another car dealer, M Ltd, who sold it to the appellant. The respondents, who were the insurers of the original owner, claimed possession of the car from the appellant and when the appellant refused to return the car the respondents brought proceedings

⁹ [1988] 2 All ER 425.

in the county court in which they were awarded damages equivalent to the value of the car.

[18] The appellant appealed contending that he had derived a good title from M Ltd under section 9 of the UK's Factors Act 1889, a section which is in pari materia with article 296(2). The appellant submitted that "the seller" in section 9 referred to the person currently in possession and not to the true owner; that accordingly M Ltd had bought and obtained possession of the car with the consent of the seller, A Ltd, and that therefore the transfer from M Ltd to the appellant had the same effect as if M Ltd were a mercantile agent in possession of the car with the consent of the original owner. The Court of Appeal dismissed the appeal on the ground that although the "seller" in section 9 did not have to be the "owner" he had at least to be a person who had the general property in the goods and a good title could not be passed under section 9 where the seller's own possession was derived from the unlawful possession of a thief, since the defect in title derived from a thief passed down the chain of any further purported sales.

[19] The appellant appealed to the House of Lords which held, having regard to section 2 of the UK's Factors Act 1889, which went no further than divesting the title of an owner if he entrusted the goods or documents of title to a mercantile agent who sold them, that section 9 of that Act could not have the effect of divesting the owner's title if the goods were stolen and they had not been entrusted to the person who sold them to the purchaser. Accordingly, on its true construction section 9 provided that the delivery or transfer of goods or documents of title by an intermediate transferor had the same effect as if he was a mercantile agent only if he was in possession of the goods or documents of title with the consent of the owner who had entrusted them to him. It followed that section 9 did not confer title on a purchaser if the mercantile agent from whom the goods had been purchased and come into possession of the goods from a thief or a person deriving title from a thief, since the goods would not have been entrusted to the thief by the owner. Since the appellant's title derived from a thief he could not claim good title under section 9. The appeal was therefore dismissed.

[20] Applying the principles from this case to the present one, article 292(1) of the **Commercial Code** only divests an owner (the Bank) of title and vests such title in a buyer (Ms. St. Martin) if the owner (the Bank) of the vehicle is, or by its conduct, precluded from denying the seller's (Ms. Francis') authority to sell. There was never any question as to the Bank's conduct or any authority given to Ms. Francis which would preclude the Bank from denying Ms. Francis' authority to sell. As such Article 292(1) does not apply and is therefore of no assistance to Ms. Leevy. Article 294(2) provides that the delivery or transfer of *the vehicle by an intermediate transferor (Ms. Leevy) had the same effect as if* she was a mercantile agent **only** if she was in possession of the vehicle with the consent of the owner (the Bank). (My emphasis). This element was never present. One must keep in mind that the vehicle in question is subject to a Bill of Sale in favour of the Bank whereby title to the vehicle was transferred to the Bank, subject to the right to an equity of redemption in favour of Ms. Francis, which right never crystalized as her obligations under the Bill of Sale to the Bank remained unfulfilled. This is not disputed by either party. Ms. Francis' equitable right to redemption had not yet manifested; the encumbrance on the vehicle vested the Bank with title.

[21] Ms. Leevy therefore had no title which she could in turn pass to Ms. St. Martin. To read into this article the interpretation urged by Ms. Greene-Ernest would result in absurdity of the article as it can result in a thief being able to pass title.

[22] For the above reasons the appeal was dismissed with the further order that Ms. Leevy bears the costs of the appeal to Ms. St. Martin agreed in the sum of \$1,500.00, to be paid within six (6) weeks.

I concur
Gertel Thom
Justice of Appeal

I concur
Gerard Farara
Justice of Appeal [Ag.]

By the Court

Chief Registrar