

IN THE EASTERN CARIBBEAN SUPREME COURT
HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

CLAIM NO. NEVHCV2004/0138

BETWEEN:

STRIKER'S LIMITED

Claimant

and

**DAVID WALWYN
MICKELL HOBBY**

Defendants

Appearances:

Mr Patrice Nisbett – *for the Claimant*

Mr Anthony Johnson and Miss Miselle O'Brien – *for the First Defendant*

No appearance by or on behalf of the Second Defendant

**2006: March 09;
2012: June 27.**

JUDGMENT

Introduction

- [1] **LEIGERTWOOD-OCTAVE J [AG]:** The Claimant Company [Strikers] which is in the business of hiring vehicles has brought this claim against the First Defendant [Mr. Walwyn] and the Second Defendant [Miss Hobby] for the loss and damage where one of their vehicles was involved in an collision with another vehicle, while it was hired out to Mr. Walwyn and driven by Miss Hobby. The Company's allegation is that the collision was caused by Miss Hobby's negligence. Strikers have claimed \$18,066.11 for the costs of repairs and loss of profits.
- [2] Mr. Walwyn has denied liability, alleging that at all material times, he was Ms. Hobby's agent and that Strikers in his transactions with the company, they were aware that he was acting in that capacity although they were not aware of the name of his principal.
- [3] Ms. Hobby did not file an Acknowledgement of Service or a Defence and has never taken any part in these proceedings in this case.
- [4] The pleadings raise three main questions for determination. The first one being whether the accident was caused by Miss Hobby negligence? Secondly, if the accident was caused by her negligence, is Mr. Walwyn exempted from any liability because he

was her agent? Thirdly, if either or both Mr. Walwyn and Miss Hobby are liable, at what amount should Strikers' damages be assessed?

- [5] Three witnesses were called on behalf of Strikers: Emeale Liburd, the Director of Strikers; Zephina Liburd [Miss Liburd] the secretary at the company, who dealt with Mr. Walwyn; and Sylvester Liburd the mechanic, who prepared the repair estimates. Mr. Walwyn gave evidence on his behalf.
- [6] On 24th May 2004, Mr. Walwyn went to Strikers' business premises to rent a vehicle. Miss Liburd was adamant that he had requested to rent a vehicle for himself. She told him the cost and he entered into agreement with Strikers. Before he left, she told him that he would be responsible for any damage done to the vehicle during the period of hire and he agreed. He told her that he would return later to pick up the vehicle and he did so that afternoon. At no time in his dealings with her had he indicated that he was acting as the agent for anyone.
- [7] Later that evening she was called to an accident scene in the vicinity of Mems Pizzeria. She observed the jeep that Mr. Walwyn had rented was extensively damaged. He explained to her that Ms. Hobby was supposed to follow him out of Mems Pizzeria and when doing so she had collided with an incoming vehicle. Mr. Walwyn asked her to write up a driver's licence for Miss Hobby because she did not have a temporary licence. She refused, telling him that she could not issue the licence because it was rented to him and not to Ms. Hobby. He told her that he would take full responsibility for the damage done to the vehicle.
- [8] What Mr. Emeale Liburd could say about the rented vehicle was that it was part of a fleet of vehicles which was used in Striker's rental business and that it had been extensively damaged. Mr. Sylvester Liburd stated that he had submitted an estimate to Strikers to effect repairs to one of their vehicles that had been involved in a motor vehicle collision.
- [9] That was the extent of the evidence presented by Strikers in relation to the rented vehicle and the collision.
- [10] This is an appropriate time to set out the law of negligence which is applicable to this case. I noted that in both closing addresses, counsel seemed focused on Mr. Walwyn's liability and whether or not he was a principal or agent in his transactions with Strikers. Both Mr. Nisbett and Mr. Johnson opened on that point and devoted a significant part of their addresses to it.
- [11] What appears to have been overlooked or at least given a lesser status in this case is that liability is directly related to Striker's allegation that Miss Hobby's negligent driving caused the accident where the rented jeep was damaged. The way in which the case was argued, it was as if it was not only assumed but accepted that Miss Hobby had been negligent.
- [12] To succeed in a negligence claim such as this one, a claimant must prove that: the defendant owed him a duty of care; that defendant breached that duty; the breach of that duty caused damage and the damage was not too remote¹.

¹ Donoghue v Stevenson [1932] AC 562

[13] In the Statement of Claim, Strikers particularized Ms. Hobby's negligence. They detailed that she:

- i. *Drove too fast in all the circumstances;*
- ii. *Failed to keep any or any proper look out;*
- iii. *Failed to adequately or at all in time or at all to see, heed or act upon the presence and position of P-2410;*
- iv. *Drove into the path of P-2410;*
- v. *Failed to apply her brakes in time or at all;*
- vi. *Failed to stop, to slow down, to swerve, or to otherwise so as to manage or to control her motor vehicle as to avoid the collision,*
- vii. *Drove on the wrong side of the road; and*
- viii. *Failed to take adequate care for the safety of Strikers vehicle.*

[14] The allegations are set out but Strikers have failed to adduce any evidence that supports or even relates to these allegations. When Zelphina Liburd stated that Mr. Walwyn had told her that Miss Hobby was supposed to follow him out of Mems and when doing so she had collided with an incoming car was the closest reference.

[15] It is difficult to see how Strikers could intend to succeed in this claim, where they have not presented any evidence on Miss Hobby's role in the accident. To rely on a conversation where Mr. Walwyn told Miss Liburd that she "collided with an incoming car" could not suffice. Their case would stand on a different footing if there was evidence from the other driver or any onlookers who might have seen what transpired leading up to the collision. The company's failure to adduce any evidence on which the court can consider whether Miss Hobby was negligent or not is fatal to their claim, it is for Strikers to prove its case on a balance of probabilities.

[16] There are certain cases where the proven facts raise a prima facie inference that an accident was caused by a Defendant's negligence and it puts an evidential burden on the Defendant to displace that prima facie inference², this case is not one of those cases because there is no evidence that the collision took place off Miss Hobby's side of the road or that it involved skidding. Mr. Walwyn and Miss Hobby therefore have nothing to prove or disprove.

[17] Strikers have only made a claim in negligence but not one in bailment. Bailment describes a legal relationship which is created when the property of one person [the bailor] is physically transferred to another [the bailee], who then assumes possession of that property³. A bailee's duty is to take due care of the bailed property and to return it at the end of the bailment⁴. If the property is damaged while in his possession, there is a presumption that it is the bailee's fault and the bailor can bring action against him in either contract or in tort⁵. This ancient common law concept might have assisted Strikers in this case but it was not pleaded.

² Henderson v Henry Jenkins and Sons [1970] AC 282

³ Coggs v Bernard [1703] 2 Ld Raym 909

⁴ Joseph Travers & Sons Ltd. v Cooper [1915] 1 K.B. 73

⁵ Clerk & Lindsell on Torts 16th ed. para. 10-102

[18] There is no basis for continuing the determination of the other issues raised on the pleadings. There is no evidence on which the court can find that Miss Hobby's negligence caused the collision. Without that finding there is no basis for determining whether or not Mr. Walwyn was liable. Once liability is not established there is no basis for an award of damages. The matter therefore ends at this point.

[19] For the reasons that I have stated, I make the following order:

1. NEVHCV2004/0138 is dismissed with costs to Mr. Walwyn.
2. Strikers is to pay Mr. Walwyn Prescribed Costs in the sum of \$5419.83. in accordance with **Part 65.5[2][b][i] of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.**

IANTHEA LEIGERTWOOD-OCTAVE
High Court Judge [Ag.]