

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2010/1072

BETWEEN

1. VERNON JAMES
2. JAG MOTORS

Claimants

And

1. MINVIELLE & CHASTANET LTD
2. KAWASAKI KISEN KAISHA LT
(AKA K-LINE)
3. RAMA D.B.K LTD

Defendants

Appearances:

Mr. Gerard Williams for the Claimant/Respondent
Mr. Mark Maragh for the 1st and 2nd Defendant / Applicants

2011: October, 25
2011: November, 15

DECISION

- [1] **BELLE J.** On 10th December, 2010 the Claimants filed an application seeking various orders. Pursuant to that application the Court granted an order prohibiting the Respondents, now the 1st 2nd and 3rd Defendants, from dealing in any way with the 2007 Toyota Hiace, Commuter bus, Chassis number KDH222- 0030477 and 2007 Toyota RAV4 Sports Utility Vehicle, Chassis number ACA31-5028774, the subjects of this Claim, until further order of the court.

- [2] The Claimants were also ordered to issue and serve a Claim Form in the matter on the Defendants on or before 11th January 2011. This order was to remain in force until the inter parties hearing scheduled for 12th January 2011.
- [3] On 29th December 2010 the Claimants filed a Statement of Case naming the three Defendants in the matter, Minvielle & Chastanet Ltd , Kawasaki Kisen Kaisha Ltd, also known as K-Line and Rama D.B.K .Ltd. These documents were apparently served on the First and Second Defendants on 5th January 2011. The First Defendant was served personally and the Second Defendant was served by fax. The Claimant also attempted to serve the 3rd Defendant by email on the same date.
- [4] The order of 10th December 2010 was varied on 14th December 2010 to permit service on the 2nd and 3rd Defendants by fax and email.
- [5] The First Defendant filed an acknowledgment of service on 27th January 2011 in which it stated an intention to defend the Claim. The Claimants had stated in paragraph 3 of their Statement of Claim that the First Defendant is a registered shipping enterprise in Saint Lucia and the local agent for the Second Defendant, a sea carrier of goods out of Japan and whose address is Hiblya Central Building , 2-9 Nushi-Shinbashi 1 Chome , Minato –Ku, Tokyo Japan.
- [6] The Claimant also alleged that the Second Defendant is and was acting as the servant and or agent of the Third Defendant as principle. The Claimant named the third Defendant as a Japanese supplier of used vehicles out of Japan and whose address is at 201 Rama Head Office Building, 2-1-17 Shikoyasu, Kanagawa, Yokahama, Japan.
- [7] At paragraph 12 of the Statement of Claim the Claimant states that the original Bill of lading continues to remain in the possession of the Third Defendant who will only convey the same to the Second Claimant upon settlement of the Third Defendant's questionable claim. The vehicles continue to remain in the possession of the First Defendant who refuses to release same without the

production of the original Bill of Lading or other authorization from the Second or Third Defendants.

[8] The Claimants allege at paragraph 14 of their statement of claim that the Third Defendant was unreasonably withholding the Bill of Lading, and thus ultimately releasing the said vehicles. According to the Claimants the Third Defendant had breached the contract with the Second Claimant for which the Third Defendant has received payment in full.

[9] The Claimant claimed against the Defendants as follows:

1. The Claimant seeks a declaration that the Defendants' continued possession of the Claimants' vehicles is unlawful.
2. A mandatory injunction ordering the Third Defendant, acting through the First Defendant as its agent to release the said vehicles to the Second Claimant.
3. In the alternative the Claimants claim special damages against the Third Defendant in the sum of USD \$55,000.00 or ECD\$148,500.00
4. Any other order this Honourable Court deems fit in the circumstances.
5. No order as to costs.

[10] It should be stated at this juncture that Judgement had been entered against the Third Defendant for failing to file a Defence. This judgement was set aside and the Third Defendant was granted leave to file a Defence. That aspect of the matter has thereafter proceeded in an ordinary manner.

[11] In the interim, the Claimant filed an Amended Claim Form mainly to add to the sums being claimed, rent in the sum of thirteen thousand four hundred and fifty two dollars and eighty four cents (\$13, 452.84) for storage of the vehicles at the docks, payable to St Lucia Air and Sea Port Authority. The First and Second Defendants filed acknowledgments of Service of the Claim on 7th June 2011 in which both Defendants indicated their intention to defend the Claim. This was

followed by the Third Defendant's actual filing of a defence to the said amended Claimant's Statement of Case.

- [12] The First and Second Defendants subsequently on 29th June 2011 filed separate applications for Judgment to be entered in their favour because the Claimant had no real prospect of succeeding on the Amended Claim Form, or alternatively that the Claimant's Claim Form be struck out, pursuant to Part 26.3(10) (b) of the Civil Procedure Rules, 2000 in that, the Claimant's Claim Form and statement of Claim failed to disclose any reasonable ground for bringing the Claim against the Applicant/First and Second Defendants.
- [13] The Applicants argument is that the Statement of Claim is bare as regards any allegation of a cause of action against the Applicant/First and second Defendants whether in contract, tort or otherwise.
- [14] The First Defendant argued also that the sole obligation of the Applicant/First Defendant as shipping agents and the local agents for the carrier, K-Line, is to authorize the release of the subject vehicle from the Port of Entry, upon production by the Claimants of the original Bill of Lading.
- [15] The Second Defendant alleges that it entered into a contract of carriage with the First Claimant, for the carriage by sea of the subject, two vehicles, from Japan to St. Lucia. It continued that the Second Defendant fully discharged its contractual obligation to the First Claimant, which is not denied by the Claimants.
- [16] The Second Defendant argued further that the reason for the inability of the Claimants to obtain possession of the subject vehicles from the Third Defendant, is due to the refusal of the Third Defendant to release the original Bills of Lading for the two vehicles.
- [17] According to the Second Defendant without these Bills of Lading, the Applicant/Second Defendant is unable to facilitate the release of the vehicles from

the Port Authority as it is the Bill of Lading which indicates ownership/ possession of the vehicles.

- [18] This argument basically places the Claimants into direct conflict with the Third Defendant which is claiming that it has not been paid for the vehicles.
- [19] In paragraph 6 of its defence the 3rd Defendant stated that the Second Named Claimant has a debt owing to the Third Named Defendant in the amount of forty seven thousand two hundred and forty dollars US (USD\$47,240.00). But the Second Claimant claimed in its reply and Defence to Counter-Claim that the third Defendant had no history of previous dealings with the Second Claimant. Instead the Second Claimant argued, the Third Defendant demanded that all transactions were to be paid in full before the Bill of Lading was released to the Second Claimant. The Second Claimant therefore denied that there was any balance owing to the Third Defendant.
- [20] It appears based on the evidence that there can be no further case against the Second Defendant since that Defendant was a shipper and had delivered the vehicles according to its contractual obligation. However, the First Defendant seems to be in a different position. Since it is not accepting responsibility for the storage of the vehicles at the dock as its own, it must be aware that it is holding the vehicles for a beneficial owner.
- [21] The vehicles must have been imported into the country by someone, and if the First Defendant is aware of the importer then it would seem as the agent for the shipper, the vehicles should be handed over to the importer. The First Defendant has certain duties owed to the Second Claimant at least to ensure the safe custody of the vehicles until the Bill of Lading is produced. So where does this place the First Defendant?
- [22] It is evident that there are no real disputes of fact or law in relation to the First Defendant. The Claimant complains about the First and Second Defendants' initial posture. But that posture must have been a wait and see, position based

on legal advice. The Claimant complains that he has filed an application for judgment in Default of Defence against the Defendants and that this is merely a tactic to delay this process.

[23] In spite of these protestations it is usually the case that the court will hear an application for Summary Judgement where no judgment has been entered against the applicant and even if there is no defence filed. It should be noted that the Claimant had filed an amended Statement of Claim to which the First Defendant had a right to a defence.

[23] The Claimant does not argue that the Defendant is in any way in breach of the provisions of Part 15 of the CPR 2000. I have already stated that there was no dispute of substantive law or fact relating to the First Defendant. Therefore based on the aforesaid premises I hold that the Claimant has no real prospect of succeeding against the First and Second Defendants at trial since they act as agents of a principal who has made it impossible for them to do anything further. They are not responsible for his actions in this regard. At best the action against the First and Second Defendants is premature.

[24] I therefore enter summary judgment for the First and Second Defendants against the Claimants with costs pursuant to Part 65 of the CPR 2000 awarded to the Defendants.

**Francis H V Belle
High Court Judge**