SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV2004/0396

BETWEEN:

EDMUND BICAR

Claimant

AND

1. NYLE MONROSE
2. JOHN NOEL

Defendants

Consolidated with
Claim No. SLUHCV2004/0117

BETWEEN:

EASTERN CARIBBEAN INSURANCE

Claimants

AND

JOHN NOEL

Defendant

Appearances:
Mark Maragh for Mr Bicar
Esther Greene-Ernest for Mr Noel
No appearance by Mr Monrose
Patricia Augustin for Eastern Caribbean Insurance Company

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2005: JUNE 27, 28
JULY 1

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JUDGMENT

Introduction

[1] SHANKS J: These two cases were tried together and I allowed all the parties to cross-examine and make submissions as they wished. Edmund Bicar, the Claimant in case 396/2004, was involved in a road accident at about 2 am on Saturday 22 September 2001 in which he was seriously injured and his vehicle was damaged. Based on his undisputed evidence and that of Officer Larry Philip it is clear that the accident was the fault of the other driver involved, Nyle Monrose, who is the First Defendant in case 396/2004. There is an issue whether at the time of the accident the vehicle being driven by Mr Monrose belonged to the Second Defendant in case 396/2004, John Noel or whether title had been transferred to Mr. Monrose on 21 September 2001. If the vehicle did still belong to Mr Noel there is also an issue as to whether he is vicariously liable for Mr Monrose's careless driving.

[2] A claim was made on Mr Noel's insurance policy with the Eastern Caribbean Insurance Company shortly after the accident and the company paid Mr Bicar for the damage to his vehicle. Subsequently they decided that they were not liable after all and in case 117/2004 they seek from Mr Noel the return of the money they paid to Mr Bicar and a declaration that they are entitled to avoid the policy. The basis of the claim by insurers was that Mr Noel was in breach of the policy because he had rented the vehicle to Mr Monrose. This position was abandoned at trial and instead the claim was put forward on the basis that if Mr Noel no longer owned the vehicle at the time of the accident he had no insurable interest and insurers cannot be liable under the policy. It was not in dispute that if indeed Mr Noel had no insurable interest in the vehicle at the time of the accident insurers would not be liable.

Claim against Mr Monrose

[3] Service of the claim on Mr Monrose in case no 396/2004 was effected by advertisement under an order of Master Cottle dated 7 June 2004. No acknowledgement of service was filed and a request for judgment in default was made on 12 August 2004. I am told that this was not dealt with by the court office because of the claim against Mr Noel and it was therefore left to be dealt with by me under CPR 12.9(2)(b)(ii). I will therefore enter judgment in default for damages to be assessed against Mr Monrose. He has not of course been notified in any way about this hearing but, as I understand CPR 12.13, he has no right to be heard on an assessment of damages. In any event Ms Greene-Ernest for Mr Noel and Ms Augustin for insurers were able to take any points on damages they saw fit and I therefore see no injustice in proceeding with the assessment without Mr Monrose having been notified.

Remaining issues

[4] The remaining issues for resolution are therefore as follows:

(1) was Mr Noel still the owner of the vehicle driven by Mr Monrose on 22 September 2001?

(2) was he vicariously liable for the careless driving of Mr Monrose?

(3) what damages is Mr Bicar entitled to?

(4) did Mr Noel have any insurable interest in the vehicle?

(5) if not, are insurers entitled to reclaim from Mr Noel the money which they paid to Mr Bicar in respect of the damage to his vehicle?

Ownership of vehicle

[5] Mr Noel stated in his witness statements in each of the two cases that in September 2001 he negotiated with Mr Monrose for him to purchase the vehicle for $8,000. Mr Monrose took delivery of the vehicle on Friday 21 September and promised to pay the price on Monday 24 September by way of a cheque from his employer. In his witness statement in case 396/2004 he also stated that he fully intended to transfer ownership to Mr Monrose upon receipt of the purchase price (see para 8).

[6] In cross-examination he told me that he and Mr Monrose were good friends who played dominoes every night. Mr Monrose was a sales representative. He told Mr Noel that his employers had asked him to get a car and to bring it in to them and that they would pay for it. Mr Noel agreed to this proposal and gave the car to Mr Monrose on the Friday evening so that Mr Monrose could take it to his employers for them to see it and give him the cheque which he would bring to Mr Noel on the Monday. Mr Noel also told me that if Mr Monrose had failed to bring the cheque on the Monday or had said that his employers did not like the vehicle he (Noel) would have taken the vehicle back. Although the full story was not set out very clearly in his witness statements I accept that account of the transaction. I must now consider its legal effect.

[7] It seems clear to me that there was a contract between Mr Noel and Mr Monrose for the sale of specific goods, namely Mr Noel's Toyota Sprinter. In such a case property in the goods is transferred to the buyer at such time as the parties intend it to be transferred and in ascertaining that intention regard must be had to the terms of the contract, the conduct of the parties and the circumstances of the case (see: Art 288 of St Lucian Commercial Code). Art 289 of the Commercial Code provides that unless a

different intention appears various rules apply for ascertaining the intention of the parties. Rule 1 is that where there is an unconditional contract for sale of specific goods in a deliverable state property passes when the contract is made and it is immaterial whether time of payment or delivery is postponed. Rule 4 provides that when goods are delivered on approval or "on sale or return" or other similar terms the property passes to the buyer when he signifies his approval or acceptance to the seller or does some other act adopting the transaction.

[8] Having regard to the terms of the deal, the conduct of the parties and all the circumstances as revealed by Mr Noel's account of events I am of the clear view that the intention of the parties was that property in the vehicle would only be transferred when Mr Monrose's employers had approved the purchase of the vehicle by providing him with a cheque for Mr Noel and when that cheque had been delivered to Mr Noel. Because both parties were aware that the employers would be paying for the vehicle and would obviously only do so if they approved of it I think this case is much more akin to a delivery on approval or "sale or return" as referred to in rule 4 than to an unconditional contract as referred to in rule 1. In the circumstances my finding is that Mr Noel still owned the vehicle when Mr Monrose drove it negligently and collided with Mr Bicar on 22 September 2001.

[9] I should mention for completeness that Mr Maragh for Mr Bicar referred me to section 15 of the Motor Vehicles and Road Traffic Act 1994 which requires a new owner to register his ownership within seven days after "change of possession". I do not accept his submission that legal ownership is not transferred until the new owner is registered. The registration of ownership of a vehicle is not like the registration of ownership of

land. A vehicle is just like any other chattel in relation to acquisition and transfer of title: the fact that owners are obliged by law to register their ownership does not make registration a pre-condition of ownership.

Vicarious liability

[10] The mere fact that he owned the vehicle does not, however, make Mr Noel vicariously liable for Mr Monrose's careless driving. Generally a driver must be acting as the owner's servant or agent for the owner to be vicariously liable for the negligence of the driver. In a case where an owner allows another who is not his servant or agent to drive his vehicle it is necessary that the owner has some interest in the purposes for which the vehicle is being used by the driver for him to be vicariously liable (see: Clerk & Lindsell at para 3-16). Mr Maragh also referred me to para 110 of Charlesworth on Negligence where a case is cited called *Wong It Yong v Lim Gaw Teong* [1969] 1 MLJ 79. He was unable to locate the report but according to the editors of Charlesworth in that case a buyer lent his car for a few days to a prospective purchaser to allow him to test-drive it and the owner was held vicariously liable for the prospective purchaser's negligent driving on the basis that he was driving it partly or wholly on the owner's business or for the owner's purposes.

[11] In spite of Mr Maragh's ingenuity in drawing that case to my attention, I cannot accept that it leads to the result he contends for. It seems to me that in this case, in the absence of any other evidence as to what he was doing at the time, it would be quite unrealistic to find that Mr Monrose was driving the vehicle on Mr Noel's business or for his purposes in the small hours of Saturday morning just because at some stage between the Friday and the Monday he was to take it to his employers to see before

they provided a cheque for payment for the vehicle. I therefore reject the claim that Mr Noel is vicariously liable for the accident.

Damages

[12] I accept the evidence about the loss and damage resulting from the accident contained in Mr Bicar's statement and in the medical reports referred to therein. He was 28 at the time of the accident and active. He suffered serious injuries to his face (including a fracture of the right acetabulum, loss of several teeth and loss of a large portion of the maxillary bone) and lacerations to his right leg and a fracture of the right tibial plateau. He was in hospital for three days following the accident suffering intense pain. He could not sleep or breathe properly. He underwent facial surgery. His face was swollen for 3-4 months and he was off work for five months during which he had to be nursed at home. He had a bone graft and a bridge procedure carried out and Dr Phillips-Jordan has suggested further cosmetic surgery to restore the symmetry of his face which will cost $3,000-5,000 excluding hospital charges.

[13] I accept the claim made in the witness statement for special damages of $38,384 on the basis there set out except that I deduct $12,500 which Mr Bicar admitted in cross-examination that he received from the friend who he allowed to use his taxi licence during the period he was unable to work. I assess general damages for pain, suffering and loss of amenity at $35,000. I will award the cost of future medical care at $5,000 which should also cover hospital charges. This gives a total of $65,884. I will award interest at 6% for a period of 3 ½ years, giving a total of $79,719.

Insurable interest

[14] In the light of my finding that Mr Noel still owned the vehicle at the time of the accident, he clearly retained an insurable interest in it. If he had failed on that argument Mr Maragh would have argued that he retained an unpaid seller's lien under Art 310 of the Commercial Code. This argument would not have worked for the simple reason that Mr Noel had no lien at the time of the accident since he had parted with possession of the vehicle.

Could insurers get the money paid to Mr Bicar for his vehicle back from Mr Noel?

[15] In the light of my decision on whether Mr Noel retained an insurable interest this does not arise but in any event I accept Ms Greene-Ernest's point that, in the absence of any breach of contract or misrepresentation by Mr Noel, the only basis for this claim for the money would have been in restitution on the basis of mistake and that such a claim could only be brought against Mr Bicar who received the money and not against Mr Noel.

Result

[16] There shall be judgment for the Claimant in case 396/2004 against the First Defendant for $79,719 and the claim against the Second Defendant shall be dismissed. The claim in case 117/2004 is dismissed. I will hear the parties on costs.

Murray Shanks

HIGH COURT JUDGE (Ag)