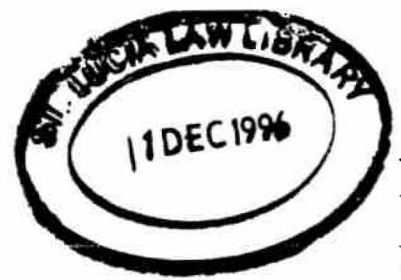


SAINT LUCIA



IN THE HIGH COURT OF JUSTICE

(CIVIL)

A.D. 1996

Suit No. 845 of 1994

Between

ANTHONY HENRY

- Plaintiff

vs

PETERSON JOSEPH

- Defendant

Mr. M. Foster for Plaintiff
Mr. M. Wilson for Defendant

1996: February 21
 March 20

J U D G M E N T

d'Auvergne J.

By a writ of Summons indorsed with a Statement of Claim the Plaintiff pleaded that during the month of August 1993 he entered into an oral contract with the defendant for the Sale of a Mazda pick-up Ref. No. T.A. 9925 at the price of \$9,000.00 payable in monthly installments of \$949.00 at the Bank of Nova Scotia until the loan was cleared.

Further terms of this oral agreement were as follows:

That the Plaintiff pay the monthly house rent of the Defendant at \$200.00 per month until payments on the van were completed.

That the Plaintiff make the annual insurance payments on the said vehicle.

That the Plaintiff would have complete custody and control over the said vehicle once the above terms are fulfilled by himself.

That when the said payments as mentioned in sub paragraph (11) above were completed, the Defendant would sign over ownership of the said vehicle to the Plaintiff.

The pleadings further stated that on the 25th day of October, 1994 four days after the Plaintiff had made the 13th monthly payment to the bank the defendant seized the vehicle from the Plaintiff's home. Prior to that the defendant had requested an additional \$6,000.00 on the agreed \$9,000.00 for the van.

The Plaintiff stated that consequent upon the above the Defendant had breached the contract thereby causing loss and damage to the Plaintiff and he claimed the following:

Return of the said vehicle to the Plaintiff

Damages for breach of contract

Interest

Cost

On 9th November, 1994 the Plaintiff/applicant sought an injunction requesting that the Respondent by himself his servants or agents be ordered to surrender the said Pick-up van T.A. 9925 as prayed in the Statement of Claim and repeated in his supporting affidavit.

The matter was heard on the 7th of December, 1994 and on the 14th of December, 1994. **Matthew J** gave the following order:

1. Subject to paragraph 2 of this order the Defendant Peter Joseph is ordered to deliver to the Plaintiff Mazda Pick-up van Registration No. T. A. 9925 forthwith.
2. The Plaintiff must file a document in Court properly stamped with a proper undertaking as to damages within 5 days failing which the injunction shall cease to take effect.

3. The Plaintiff must also comply with the Rules of Court and make the appropriate indorsement on the writ of Summons within 14 days and in default the writ of Summons shall be struck off.

4. Costs in this matter to be reserved. The order was entered on the 22nd day of December, 1994.

On the 10th of January, 1995 an appearance and an affidavit in reply was entered by the defendant.

On the 18th of January 1995 the defendant filed a Summons supported by affidavit requesting an order for the dissolution of the injunctive order in the cause dated 7th and 14th December, 1994 and also the Costs of the application. The matter was set down for hearing on the 8th day of February, 1995 and was adjourned five times, then on the 30th of November, 1995 an application was filed to place the matter on the Hearing list. This was done and the matter was eventually heard on the 7th of February, 1996.

Counsel for the applicant/defendant argued that prior to the filing of the injunctive order by the Plaintiff, the Defendant had sold the vehicle to a third party a **bona fide** purchaser for good value. He contended that an injunction can only be granted against a person, not against the thing and that when the injunction was executed the applicant/defendant was no longer the owner of the vehicle.

He further stated that the vehicle was now in police custody and that it was substantially damaged.

Learned Counsel for the Respondent/Plaintiff informed the Court that the Affidavit of Service on file showed that the applicant was served on the 3rd December, 1994 for his attendance in Court on the 7th of December, 1994 but he did not appear and therefore the judge

had no alternative but to use the supporting affidavit of the then applicant now Respondent in order to arrive at a decision. He argued that the issues that were presently being raised were premature and were issues to be raised at the trial of the substantive case, **Bona fide purchaser without notice** and moreover that the vehicle was recovered at the applicant, Peterson Joseph's home and was presently in the Police Custody and therefore the applicant could not be said to be undergoing any hardship.

He argued strenuously and persuasively that the injunction granted on the 14th day of December, 1994 should be maintained.

CONCLUSION

In my judgment having considered all the affidavit evidence and arguments by both Counsel I have concluded that this is a matter to be tried for there are many questions of law to be decided. Moreover I find absolutely no reason to interfere with the order of injunction granted to the then applicant, Respondent on the 14th of December, 1994.

Learned Counsel for the applicant neither gave any reason nor did the Affidavit in Reply state the reason for the absence of the then respondent, present applicant at the hearing of the 14th day of December, 1994.

It must be remembered that an injunction is an equitable relief and therefore "he who comes to equity must come with clean hands."

This application is therefore dismissed.

Costs in this matter to be reserved.

SUZIE d'AUVERGNE
PUISNE JUDGE