

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

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Judgment Book

SUIT NO. S158/96

BETWEEN **GARFILED STONE** **PLAINTIFF**
A N D **DERRICK WALKER** **DEFENDANT**

Mrs. M.Georgia Gibson-Henlin, attorney-at-law for the plaintiff instructed by Henlin Gibson Henlin.

Mr. C. Brown. attorney-at-law, for the defendant instructed by Reynolds, Brown, Godfrey and Morgan.

HEARD: APRIL 28, 2000
MAY 2, 2000
JUNE 1, 2000
JULY 12, 2000
FEBRUARY 16, 2001

RECKORD, J.

In a specially endorsed writ filed on the 2nd of July, 1997, the plaintiff claims against the defendant in sum of \$307,700.00 being monies due and owing in respect of the operation of the plaintiff's taxi which the defendant agreed to operate by paying the plaintiff \$5,800.00 per week.

The defendant counter claimed for the sum of \$1,032,000.00 for damages for the value of the car and loss of income.

PLAINTIFF'S CASE

Both himself and the defendant were very good friends. The plaintiff who had been living abroad returned to the island in February, 1994 when the defendant approached him and asked the plaintiff to purchase a car which he, the defendant, would operate as a taxi for the plaintiff. The plaintiff's brother Logan Jarrett was a party to this conversation. Up to when the plaintiff was ready to return to the U.S.A., they had not yet found a car but it was agreed that as soon as a car is found, his brother would pay for the car from an account which the plaintiff had at Jamaica National Building Society. "All three of us agreed that the car would belong to me but licenced in the names of my brother Logan Jarrett and he the defendant . I did this because I would be away from the island and they would be here and since he (defendant), was the driver and friend I put his name on it". The defendant would be able to licence and insure car while his brother was away.

In April, 1994, he received a telephone call from his brother and the defendant informing him they had found car for \$226,000.00. The car however, was not registered, as agreed. Instead, it was registered and insured in the sole name of the defendant. The defendant told him that the

reason why his brother's name was not registered was because he could not make the trip to Kingston on the day he was going to purchase the car.

The plaintiff returned to the island in June, 1995, and spoke to the defendant about adding his name in the title for the cars. He agreed to this, but up to the date of trial this had not been done. He now had possession of the cars since 18th June 1995, but the defendant still has the papers which he has refused to give to the plaintiff. In the arrangement, the defendant was to pay to the plaintiff from 1st June 1994, the sum of \$5,800.00 per week from the earnings of the taxi, a 1992 Lada. The plaintiff had paid \$25,000.00 to insure the car which he had sent to the defendant by a friend.

From 1st June, 1994 to August, 1995, the plaintiff claims that defendant owed him \$342,200.00 from proceeds he made out of the taxi. All he got from the defendant was \$14,500.00 and a further \$20,000.00, leaving a balance of \$307,700.00, which is still outstanding. The defendant promised to make good by working the car at nights, but that never happened.

The plaintiff was cross-examined. He admitted he started building a house in August, 1995. He never asked the defendant to oversee or assist in the building. He never asked the defendant to do anything on the site when he returned to U.S.A. The defendant never asked him for a loan to purchase

a car. He denied telling the defendant he would make the money available when he found the car. He denied that defendant agreed to repay based on his earnings with the car as a taxi. He returned home in June to July, 1994 and saw the defendant with the car which had on temporary plates. He told the plaintiff he had applied for the title and awaiting it from the tax office. He asked the defendant for money for the car. Defendant never told him he can't pay until he got the road licence. While he was away the defendant was to make payment to his brother. He did not borrow the car from the defendant in June, 1995, to do some personal business. It was the defendant who left the car at his home on father's day while he was at church in June, 1995. He identified the title of the 1992 lada sedan, temporary plate 9602. The car was now at his former home in Maroon Town, St. James. It was not being operated. The defendant had told him that because he never had road licence that the police was harassing him. The defendant never gave him \$50,000.00 in June, 1995. While he was away no work was done on his house. The defendant never paid workers for work done on his house nor purchased materials for his house while he was away. He never intended that the car was to be operated as a robot which he knew was illegal. He denied that the defendant paid him a total of \$210,000.00. The police did seize car for operating without road license. The vehicle was returned to

him after he showed police copy of the manager's cheque which was paid for the car in his name. He agreed that the defendant came to him along with the police to get back car. He said he did major repairs to car.

The defendant was present when he showed the police the cheque. He told police in defendant's presence that the car was his, but that defendant had registered it in his name contrary to their agreement. Defendant never denied this.

Mr. Joscelyn Campbell, the Compliance Manager at the Jamaica National Building Society testified for the plaintiff. He produced cheque number 19539 for the sum of \$226,000.00 dated 14th of April, 1994, payable to Samuel Santey drawn on the account in the names of Garfield Stone, Logan Jarrett and Denise Stone on their Montego Bay Branch.

This was the plaintiff's case with reservation to call witness from licensing authority.

DEFENDANT'S CASE

Mr. Walker said in 1994 he had an arrangement with the plaintiff to acquire a car. They were good friends. That same year the plaintiff was building a house and the defendant was involved in the building the foundation. When the plaintiff was going abroad he left instructions with him to keep an eye on the building to see that workmen do the work. On his

return plaintiff asked defendant what he must do for him. He asked the plaintiff to lend him money to purchase a motor car. The plaintiff agreed. When he found the car the plaintiff was abroad and he telephoned him. He told the plaintiff that price was \$226,000.00. Plaintiff sent him a managers' cheque for \$230,000 through his brother. He found money and licensed and insured the car in his name. He identified a receipt from United General Insurance Company for insurance for the car.

It was not true that he was to license and insure the car in Logan Jarrett's and his name. He never agreed to operate the car on behalf of the plaintiff. Logan never came to him for weekly payment of \$5,800.00 the car. The defendant agreed he had an arrangement with the plaintiff to pay back the loan. It was agreed he was to pay \$4000.00 per week. Payments were to be made when the plaintiff came home on his regular visits. Sometimes he gave money to the plaintiff's brother Logan. He spent money buying marl and cement which the workmen needed for the plaintiff's building. "I suppose to owe him \$16,000.00 to \$20,000.00". The largest amount be paid to the plaintiff was \$20,000.00. When plaintiff was asked for more money he took him to lady who ran his partnership and she paid him \$30,000.00. He lent the car to the plaintiff who wanted it to do some private business. He took back the car from the plaintiff and he

started working the car. The plaintiff asked him for more money. When he told the plaintiff he had bills to pay, the plaintiff said "he don't like to deal with any careless boy." He left the car with the plaintiff.

About 2 weeks later he saw the car being driven by another man. He spoke to the man and later made a report to the police who seized the car. He denied that he told the police that the car belonged to the plaintiff and that he was holding onto the car until he repaid partner money. He has not got back the car from the police took it. He spent money on the car in major repairs. He made money operating the car as taxi. He knew he was breaking the law using the car as a P.P.V. He did not owe the money the plaintiff claimed and valued the car when the plaintiff took it at \$180,000 to \$190,000.00.

Under cross-examination, the defendant denied getting \$25,000.00 from one Miss June, a friend of the plaintiff, to insure the car. There was no agreement for him to purchase car to run as taxi.

Lorraine Graham from the office of the Collector of Taxes in St. Andrew gave evidence of the system employed when an application is made to licence a motor vehicle. She had an application from one Derrick Walker of Glenderson district, St. James for a 1992 Lada Sedan motor car. The application

dated 13th May, 1994, was for a temporary license plate for which he paid \$650.00, \$150.00 for the temporary plate and \$500.00 for the P.P.V. plate.

SUBMISSIONS

The attorney-at-law for the plaintiff presented her final submission in over 9 pages of typewritten full-scape paper. She identified the issues as firstly, whether there was a loan as the defendant contends or secondly whether the car belonged to the plaintiff, as the plaintiff claims which the defendant was to operate as a taxi and pay the plaintiff each week \$5,500.00 from his earnings. Thirdly, can the plaintiff recover the amount claimed due to him on the account of the operation of the private car as a taxi. Counsel pointed out that in his evidence the defendant denied that there was any discussion in relation to the car being used as a P.P.V. yet in his defence filed in response to the claim at paragraph 2 he states. 'It was understood between the parties that the purpose of the loan was to purchase a motor car to be operated as public passenger vehicle.' Counsel pointed to several conflicts in the defendant's case.

The defendant said cheque was made payable to him for \$230,000.00 Mr. Campbell from V.M.B.S. said cheque was made for \$226,000.00 and payable to Mr. Samuel Santey (presumably the previous owner of the car).

There is no dispute that the cheque was handed to the defendant by Logan Jarrett. If there was a loan, why would Jarrett be required to go along with the defendant when car was being purchased. In his pleadings the defendant alleges that he agreed to pay back \$10,000.00 per month. In his evidence the agreement was for \$4000.00 per week. Repayments were to be made to the plaintiff whenever he comes to Jamaica. Yet he pays money to the brother from time to time. The defendant admits he owes money to the plaintiff, either \$16,000.00 or \$20,000.00.

Counsel further submitted that the building receipts tendered by the defendant post-dated the agreement even on his own case and the loan agreement had no terms and is void for certainty in any event.

The plaintiff can recover the sum claimed since the contract was in and of itself legal and there was an implied undertaking to take reasonable steps to obtain the license which the defendant had breached.

The defendant's claim in detinue must fail for the reason that on his own evidence he left the car with the plaintiff and made no demand for its return. The defendant was obliged to obtain the P.P.V. license. Failure to do so he would be liable no damages. The action of the defendant was inconsistent with his claim that he owns the car and converse, more consistent with the plaintiff's ownership of the car. On a balance of

probabilities the court should find for the plaintiff. The contract with the defendant was itself legal and the defendant was to take reasonable steps to obtain licence which he has failed to do.

Mr. Brown, for the defendant, submitted that question to be determined was whether this was a loan or if there was a joint enterprise. The mere fact that the plaintiff's cheque was made payable to the vendor of the motor car rather than to the defendant is not sufficient to conclude that it was not a loan to the defendant. Inference can be that the vehicle was collateral for the loan. If court were to conclude that it was not a loan the next issue is whether the agreement was to operate the car as a public passenger vehicle without there being at the time of the agreement a road licence in force. This agreement would be an illegal contract and is unenforceable. If not a loan, the plaintiff would only be entitled to take possession of the car.

Counsel for the defendant further submitted that on the evidence, the court may be inclined to find that this was not a loan and therefore the court would not entertain the counter-claim filed by the defendant for detinue. He moved that judgment be entered for the defendant on the claim and that the plaintiff be denied judgment.

FINDINGS

From the very tenure of the final submissions by the defendant's attorney-at-law, it is patently clear that he was conceding that on a balance of probabilities that the defendant's counter-claim would fail as on the evidence, the plaintiff's claim that he was the beneficial owner of the car was substantiated.

I am clearly of the view that on the totality of the evidence that this was not a loan but instead that the sum withdrawn from the plaintiff's account at V.M.B.S. was towards a business arrangement between the plaintiff and the defendant and involving the plaintiff's brother whereby the defendant was to use this car for conveying passengers for the benefit of the plaintiff.

The issue therefore is whether this agreement is enforceable. The defendant contends that the vehicle had not been proved to have been licensed as a public passenger vehicle. The contract was illegal. The attorney-at-law for the plaintiff contends that as formed the contract was legal, but because of the performance of the defendant in failing to properly licence the vehicle, he was liable in damages to the plaintiff. In support of her arguments counsel referred to the Peter Ceassidy case as explained in

Walton (Grain) Ltd. vs. British Italian Trading Company (1959) 1

Lloyds Reports 223.

I find from the evidence that the plaintiff, notwithstanding the fact that he was not always in the island during the relevant period, was aware that the vehicle was being operated for conveying passengers for hire or reward without there being in force a licence for that purpose. He knew that there was no 'red plate' on the vehicle. In fact, after the plaintiff took possession of the car there was uncontraverted evidence that the police seized the car because it was being used to transport passengers without road licence. The car had on temporary licence plates at the time.

Accordingly, the contract is illegal and unenforceable. Therefore both parties have failed in their claim and counter-claim. In the circumstances, each party will bear his own costs.

Defendant ordered to sign transfer of motor car temporary licence No.9602, to the plaintiff within 14 days of service of this order, failing which the registrar is empowered to sign same.