

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO C.L. E 001 OF 1992

BETWEEN ECONOCAR RENTALS LIMITED PLAINTIFF
A N D LLOYD CHUCK DEFENDANT

Colin Henry for the Plaintiff

Walter Scott for the Defendant

Heard on the 2nd, 3rd, 5th, 16th, 25th May and 1st June 1994

JUDGMENT

COURTENAY ORR J.

On the 16th instant I gave judgement for the plaintiff and in doing so made a summary of my reasons. I promised then to hand down full written reasons. I now do so.

This is an action in conversion brought by the plaintiff a car rental company. In its amended statement of claim the plaintiff company averred in this manner:

1. The Plaintiff is a limited Liability Company incorporated under the Laws of Jamaica with its registered office at 15 Arnold Road, Kingston 4, in the parish of Saint Andrew, and carries on the business of a car rental agency.
3. The Plaintiff was at all material times the registered owner of a 1982 Toyota Corolla motor vehicle registration number RR 4524, engine number 4k-1501597, and chassis number KE 70-0615169.
4. On or about the 15th day of September, 1988, at the Wyndham Hotel, New Kingston, the said motor vehicle was stolen.
5. On a date unknown to the Plaintiff, but before February 16, 1986, the Defendant unlawfully and without the plaintiff's consent, came into possession of the motor vehicle.
6. On or about February 16, 1989, the Defendant delivered the motor vehicle to one Fred Robinson, to whom the vehicle was purportedly sold

7. In the premises, the Defendant converted the vehicle for his own use.

In an amended defence the defendant made the following response:

4. The Defendant denies that he never had possession of the said motor vehicle as alleged in the amended Statement of Claim or at all.
5. That Defendant avers and states:
 - (a) That at the material time he would in the ordinary course of his business negotiate the sale of his customers' cars for them for a commission.
 - (b) that in order to do this his customers would park their motor vehicles for sale on his premises at 24 Old Hope Road in the Parish of Saint Andrew.
 - (c) That the said motor vehicle was parked on his premises by one of his then customers a Mr Lascelles Thomas who held out himself to be the owner of the said motor vehicle.
6. Save that in March 1989 and not February 1986 as alleged in paragraph 6 of the Amended Statement of Claim Lascelles Thomas sold the said motor vehicle to Fred Robinson paragraph 6 of the Amended Statement of Claim is denied.
7. The Defendant avers and states that the said Fred Robinson collected the said motor car from his, the Defendant's said premises after Fred Robinson purchased same from Lascelles Thomas and it was left at the Defendant's said premises to be collected by the said Fred Robinson.

At the trial the defendant adduced no evidence, the plaintiff called five witnesses and tendered a similar number of exhibits.

THE CASE FOR THE PLAINTIFF ON THE ISSUE OF LIABILITY

Josephine James, Secretary and Assistant Administrator of the plaintiff company was the first witness. She gave evidence that in keeping with her duties, she rented motor car RR4524 to a company, Hoffman Levy Inc. on 29th September 1988. The car was

due to be returned on 7th October 1988. The car was part of the rental fleet of the plaintiff and was a burgundy red 1982 Toyota Corolla. The interior was white. At the time of that rental it had been recently repaired and resprayed.

The car was not returned at the end of the rental period.

The second witness was Jean Causewell, the reservations manager and manager of the plaintiff. She too said she was familiar with 1982 Toyota Corolla with licence plates RR 4524, which had been a part of the rental fleet of the plaintiff from she began working with the company in 1983. She described its colour as burgundy red with cream white upholstery, and said that it had a distinguishing feature, namely, the lower rear panel was that of a left hand drive Toyota whereas the car was a left hand drive. This oddity occurred because the rear of the car had been damaged in an accident in instead of a right hand drive one, because the correct one was unavailable. The right hand drive panel at the section above the muffler was 3 inches in diameter and 1 1/2 inches deep. In the case of left hand drive panel, the measurements were twice as much.

She also said that between September 1988 and February 1990 it was not a part of the rental fleet, nor was it in the possession of the plaintiff company. In late February 1990 she was driving along Oxford Road and saw the said car. She recognised it by the lower rear panel which was that of a left hand drive. It then bore licence plates 8436 AD. The colour had been changed to a bright red, with a black interior.

The third witness Michael Causewell, managing director of the plaintiff, said he ordered and took delivery of 1982 Toyota Corolla RR 4524, it was rented in the business. It was stolen in late September or early October 1988. For a period from late September until early 1991 when he recovered the car from the police it was not being rented in his business. It was sold in March 1991.

Fred Robinson was the fourth witness called. He said that he repairs cars, and buys and sells old cars.

A man told him something and he went to a gas station which was operated by the defendant. There the defendant showed him a red Toyota Corolla motor car which was parked in the gas station but away from the pumps. It had on licence plates numbered 7585 AN.

He told the defendant that one Sister Pascall had asked him to seek out a car for her. He expressed the wish to show the car to sister and the defendant sent someone along with him whilst he showed it to her and tested it.

He told the defendant that he would returned the following day to purchase the car. The defendant named a price of \$80,000 - for it; he asked the defendant to reduce the price but he replied that he was selling it on behalf of someone.

On the following day he returned to the defendant and said that he had come to purchase the car. He told the defendant that he had brought only \$75,000 and he accepted it. He drew a receipt (exhibit 3) and gave him.

The defendant wrote everything written on it and signed it. He did not notice then that the name Lascelles Thomas was written at the bottom. He merely checked that his name and the correct sum was on the receipt, as he thought the defendant was a respectable business man.

When he asked the defendant for the title to the car he said that he would have to collect it on another day because the transfer had not been signed. The defendant gave him the registration booklet and certificate of fitness. He went back to the defendant two days later, and the defendant said he had not yet obtained the title. He again returned to the defendant the following day but did not get the title. He has never seen the title nor did he even meet Lascelles Thomas.

The day after he received the car he delivered it to Sister Pascall. The receipt was in the same condition when he got it as it appeared in Court. On the receipt engine number shown is KE 70615619.

The fifth witness was Ava McKenzie, clerical officer at the Island Revenue Department, King Street, Kingston.

She tendered in evidence a form T1, which stated the particulars for motor vehicle licenced RR4524 in March 1989. Mr Scott objected that it was not a public document, but I ruled that it was admissible.

Subsequently, the plaintiff's attorney recalled Mr Causewell, the Managing Director of the plaintiff. He said that he had inserted the engine and Chassis numbers on the form and that he transcribed the numbers from the invoice sent to him by Unimotors, the company from which he had bought the car. This made those entries on the form hearsay, and so I disregarded them in coming to my conclusion

A title to a motor car was tendered in evidence as exhibit 5. It shows that a car with registration plates 8436 AD was registered in the name of Sisters of Mercy. Other particulars of the car are; make: Toyota, Model: Corolla, Colour: red, chassis number KE 700615169, engine number K1501597.

The receipt Exhibit 3 which Fred Robinson says the defendant gave him reads as follows:

"Received from Fred Robinson the sum
of seventy five thousand dollars (\$75,000)
for one Toyota Corolla Licence No. 7585 AN
engine No. KE 700615519"

I have underlined the last 3 digits of the engine number because on the receipt they are not very clear.

THE SUBMISSIONS ON BEHALF OF THE PARTIES

Mr Collin Henry for the plaintiff submitted there was abundant evidence that the plaintiff's car had been converted; the plaintiff had established property in the car through the evidence of Josephine James, Jean Causewell and Michael Causewell that it was part of the plaintiff's fleet of cars, that it was rented to a company and not returned at the end of the rental period, and not recovered until 1991 from the police.

He further argued that although the defendant denied that he had possession of the car, yet by the terms of paragraphs 5,6, and 7 of the amended defence, he had admitted the plaintiff's car was parked on his premises, and that the car had been sold on his premises.

The only difference on the pleadings was who sold the car.

He urged the Court to accept the evidence of the Fred Robinson that he bought a car from the defendant who had given him the receipt exhibit 3, and to find that the obscurity of the number was part of the defendant's purpose to create confusion in furtherance of a shady deal.

Mr Henry submitted further that the Court could find that the same car which Mr Robinson bought from the defendant was later sold to the Sisters of Mercy - it bearing the same chassis and engine numbers as those of the car claimed by the plaintiff on the pleadings. He suggested that the Court add to this the recognition of a toyota motor car with the same licence number as the car to which the Sisters of Mercy obtained title, as the car missing from the plaintiff's fleet.

Finally, he submitted that the evidence of Ava McKenzie and the form she tendered exhibit 4 proved ownership of the car, to which the Sisters of Mercy obtained title, as that of the plaintiff.

Mr Scott submitted that while there was evidence that the plaintiff's motor car had been converted there was no evidence to link the defendant with its conversion. He advanced the view that evidence in support of the plaintiff's case failed in two crucial areas.

First, the receipt tendered could not assist the plaintiff. The engine number written on it was clearly different from that claimed by the plaintiff. It could not be argued that the witness Mr Robinson had made a mistake in reading it.

Secondly, the form tendered by Ava McKenzie of the Island Revenue Department was inadmissible. It is not a public document; it is not made so by the Road Traffic Act or recognised as such by the Record Office Act, nor was there any evidence of the system by which such documents were made and recorded.

He rejected Mr Henry's submission that the defendant at paragraph 5

in saying that "the said motor vehicle" was parked on his premises was admitting that the motor car described in the statement of claim was the car parked on his premises.

The averment, he said merely set out evidence which the defendant intended to lead.

That statement embodies a failure to recognise the importance, object and functions, of pleadings. Jacob and Golderin, in their book, pleadings : Principles and Practice, define two of the objects at pages 2 and 3 in the followings words:

"First to define with clarity and precision the issues or questions which are in dispute between the parties and fall to be determined by the Court...

"Thirdly, to inform the Court what are the precise matters in issue between the parties which alone the Court may determine ..."

Earlier, they described the function of pleadings in this way at page 2.

"Properly drafted, the pleadings should disclose clearly and precisely the real issues which are in dispute between parties, as opposed to a recitation of evidence which each party intends to adduce at trial. They are not mere narrations of provisional documents. The parties are bound by what they say in their pleadings which have the potential of forming part of the record, and moreover, the Court itself is bound by what the parties have stated in their pleading to the facts relied on by them" (emphasis mine)

I now turn to a consideration of the question whether the defence filed amounts to an admission that the defendant dealt with the plaintiff's car. I will now set out each relevant averment in the amended statement of claim and then how the amended defence deals with it.

Paragraph 3 of the amended statement of claim reads:

"The plaintiff was at all material times the registered owner of a 1982 Toyota Corolla Motor vehicle registration number RR4524, engine number 4K-1501597, and chassis number KE 70-0615169."

In the amended defence this is not admitted. Paragraph 5 of the amended statement of claim reads:

"On a date unknow to the plaintiff, but before February 16, 1989, the defendants unlawfully and without the plaintiff's consent, came into possession of the motor vehicle."

To this the amended defence gives the following response: in paragraphs 4 and 5:

- (4) "The Defendant denies that he never had possession of the said motor vehicle as alleged in the amended Statement of Claim or at all.
- (5) "That Defendant avers and states:
- (a) That at the material time he would in the ordinary course of his business negotiate the sale of his customers' cars for them for a commission.
- (b) that in order to do this his customers would park their motor vehicles for sale on his premises at 24 Old Hope Road in the Parish of Saint Andrew.
- (c) That the said motor vehicle was parked on his premises by one of his then customers a Mr Lascelles Thomas who held out himself to be the owner of the said motor vehicle.

Paragraph 6 of the amended statement of claim is couched in the following items:

"On or about February 16, 1989, the Defendant delivered the motor vehicle to one Fred Robinson to whom the vehicle was purportedly sold."

and the amended defence countered with these statements in paragraphs 6 and 7:

- (6) "Save that in March 1989 and not February 1989 as alleged in paragraph 6 of the Amended Statement of Claim Lascelles Thomas sold the said motor vehicle to Fred Robinson paragraph 6 of the amended statement of claim is denied.
- (7) The defendant avers and states that the said Fred Robinson collected the said motor car from his, the defendant's said premise after Fred Robinson purchased same from Lascelles Thomas and it was left at the Defendant said premises to be collected by the said Fred Robinson."
(emphasis supplied)

To what do the words "said motor vehicle" used in paragraphs 4, 5, (c) 5 (d) and 6 of the amended defence "said motor car" in paragraph 7 refer? Clearly they refer to the motor car described in para. 3 of the amended statement of claim namely "1982 Toyota Corolla Motor vehicle registration number RR4524, engine number 4K-1501597, and chassis number KE 70-0615169".

The plaintiff's witnesses Josephine James, Jean Causewell and Michael Causewell have all given evidence (which I accept) that 1982 Toyota Corolla Motor car with registration number RR4524 was a part of the fleet of the plaintiff company in September 1988.

This means that the company had possession of the car. It is true that no admissible evidence was led to prove the engine number and chassis number of the car, but the amended defence shows that both parties are speaking about the same car.

I therefore hold that the amended defence contains three crucial admissions: At paragraph 5 (b), an admission that the car claimed by the plaintiff was parked on the defendant's premises 24 Old Hope Road, St Andrew; at paragraph 6, that the said car was sold to Fred Robinson; and at paragraph 7 and admission that Fred Robinson collected the said car from the defendant's premises.

On the pleadings therefore the issues which the plaintiff company had to prove are ownership of the said motor car, and that the defendant come into possession of the said motor car and delivered it to Fred Robinson.

The Court found the following facts. 1982 Toyota Corolla Motor Car bearing registration number RR4524 was in the possession of the plaintiff company as part of its rental fleet in September 1988. The said car was rented to Hoffman Levy Inc. on 29th September 1988 and by the contract of hireage it should have been returned on 7th October 1988. It was not so returned, and was not recovered by the company until 1991.

In March 1989, Fred Robinson went to the defendant at his gas station at Old Hope Road and told him he was interested in a car he saw there. The defendant showed him the car, and sent someone with Fred Robinson whilst he tested the car and showed it to a prospective purchaser Sister Pascall. He told the defendant that he would return the following day to purchase the car, and the defendant quoted a price of \$80,000.00. He asked the defendant to reduce the price but he replied that he was selling the car for someone. That car was the same car which the plaintiff company was missing.

The next day Mr Robinson returned to the defendant and told him that he had come to buy the car.

He also told the defendant that he had brought only \$75,000.00 and the defendant agreed to receipt it. He then drew the receipt exhibit 3. The defendant wrote and signed the receipt. The receipt was in the same condition as it was when shown in court as when it was received by the witness Fred Robinson.

Fred Robinson asked the defendant for the title to the car but he said that Mr Robinson would have to collect it another day as the transfer had not been signed. However Fred Robinson received that same day the registration booklet and certificate of fitness.

Two days later he returned to the defendant and the defendant said the title was not yet ready. He went back the following day, but did not receive it. He has never received the title. He has never met Lancelles Thomas.

He delivered the car to Sister Pascall. It was presumably bought by the Sisters of Mercy.

The state of the receipt exhibit 3 given by the defendant Fred Robinson and the fact that the number on it indicated as an engine number is similar to the chassis number alleged by the plaintiff company as belonging to its car, was probably deliberately done to mislead.

The defendant sold and delivered to Fred Robinson the car which had been in the possession of the plaintiff company and had originally borne registration plates RR4524. At the time of the sale the car had on licence plates marked 7588 AN. The defendant thus converted the said motor car, at a time when the plaintiff company had an immediate right to possess it. Thus although the plaintiff company has been unable to prove ownership it has proved an interest sufficient to maintain an action for conversion.

THE ASSESSMENT OF DAMAGES

The witness Michael Causewell gave evidence that when the car was finally recovered it was in a damaged condition and the upholstery had been changed from white to black, and the exterior changed from burgundy to bright red.

He had the car resprayed and repaired at a cost of \$11,109.60. I accept this figure and make an award in that sum as part of a special damages.

As regards loss of rental I accept the evidence of the witness Jean Causewell that the car was rented at \$320 U.S. per week. She also said that the car was airconditioned and therefore much in demand and would most likely have been rented for between 40 to 45 weeks in a year. Michael Causewell gave a figure of 40 weeks. He also said that in arriving at the sum to be charged for rental of a motor vehicle he took into consideration the cost of running the whole operation - salaries, bank interest charged, maintenance of cars and the fact that some had to be bought new and were much more expensive than those bought earlier.

Mr Scott submitted that on the evidence of its own witness the company is not entitled to loss of use at the full rate of \$320 per week but that the court should deduct a portion of that sum for the cost of maintenance and all those other factors which Mr Causewell took into consideration when calculating the rate at which to rent to the cars.

Mr Henry on the other hand referred to paragraph 13558 of the fifteenth Edition of McGregor on Damages where a contrary view is expressed. There the learned authors write:"

"... particular now that detinue has been absorbed by conversion it would seem that the plaintiff should be able to recover the market rate of hire for goods between conversion and Judgement, certainly where he was in the habit of hiring out the goods and possible even where he was not"

The authors then cite the case of Hillesden Securities vs Ryjack [1983] 2 ALL ER 184 in support of the above quoted statement. In that case, an action for conversion brought after the abolition of detinue in England, Parker J awarded the plaintiff the full market hire of a Rolls Royce motor car (which the hirer from the plaintiff had wrongfully sold to the defendants), from the date of its conversion by the defendants until the date of its return to the

plaintiff before judgement. He pointed to the fact that the case concerned a profit earning chattel which the plaintiff would have hired out, and the defendant did hire out at a profit.

In so holding Parker J. expressly ruled that the principle in the case of Strand Electric Company vs Brisford Entertainments [1952] 1 ALL ER 796, applied to the case before him. In the Strand Electric case, a court, consisting of Somervell, Denning and Romer JJ held that the defendant's who had refused to return the profit earning electrical equipment which the plaintiffs had hired out in the course of their business, and which the defendants had made use of during the detention for their own ends, were liable for the full market rate of hire of equipment for the whole period of detention. Importantly, the court held that it was immaterial that the plaintiffs might not have realised the full hire during the detention period by reason of the fact that only 75 percent of their stock of equipment was generally out on hire, that not infrequently some of it was loaned gratis and that some of it might have been accidentally damaged or destroyed.

I accept these two decisions as setting out the proper basis of the measure of Damages in the circumstances of this case, and so I reject Mr Scott's submission and award the plaintiff company for the full period of two years which the parties have agreed as the relevant period of the conversion.

I therefore award the plaintiff loss of hireage for 104 weeks at \$320 in United States currency per week. This amounts to US. \$33,280. I agree with Mr Henry that the interest should be at least 20 percent since the car was used in a commercial enterprise.

In Summary, there will be judgement for the plaintiff in the sum of \$11,109.60 and US. \$33,280 with interest of 20% from 7th October 1988, and the plaintiff shall have its costs to be taxed if not agreed.