

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. F031/1979

BETWEEN	Lorenzo Francis	Plaintiff
A N D	Selvin Taylor	First Defendant
A N D	The Attorney General	Second Defendant

Alton Morgan instructed by Dunn, Cox & Orrett for the Plaintiff

Norman Samuels for the First Named Defendant.

Neville Fraser instructed by the Director of State Proceedings for the Second Named Defendant

Heard: 17th June, 1982

Delivered: 30th September, 1982

J U D G M E N T

Bingham J:

In December 1978 the plaintiff owned a 1971 Fargo Tipper Truck.

The engine of this truck was being overhauled. During this exercise it was observed that the cylinder head was cracked. The plaintiff therefore needed a cylinder head as a replacement. He entrusted the task to search for one to James Bradford who was then employed to him as the driver of this truck. Bradford in turn solicited the assistance of the first defendant who lived in the same district as he did and had a vehicle of a similar make and model which was not then in operation. The first defendant agreed to sell the cylinder head, which he had fitted to this truck, to James Bradford acting as agent for the plaintiff.

Although the arrangements for the sale was made with James Bradford, the first defendant knew that Bradford was acting for the plaintiff. This fact is admitted in paragraph 5 of the Defence of first defendant which reads in part:-

"The said James Bradford told the plaintiff that the said consideration would come from the plaintiff and would be delivered to the first defendant that afternoon."

The words "told the plaintiff" is an obvious error and must have been intended to mean "told the first defendant."

The cylinder head was removed from the first defendant's truck by James Bradford and handed over to the plaintiff who having done certain repairs to it fitted it to his truck. It performed quite satisfactory. The plaintiff then utilised the truck in carrying out a contract which he had with Semco (Jamaica) Limited hauling sand from Bog Walk in Saint Catherine to this company's factory at Dunrobin Avenue, St. Andrew.

When the price of the cylinder head came to be negotiated between the first defendant and the plaintiff problems now started to be encountered. According to the plaintiff the first defendant came to him at his business place on Molyne's Road in St. Andrew where he has a lumber yard. The price of the cylinder head was discussed but they were unable to come to any agreement. The first defendant then said "now that the cylinder head is fixed and working I want \$600 and if I don't get that I am going to scrap the vehicle whenever I see it and wherever I see it." There were no further discussions between the plaintiff and first defendant that day. The plaintiff states that he was offering \$250 which figure the first defendant refused to take.

The plaintiff's truck continued working with James Bradford as the driver without any incident for another three weeks.

In the meantime the first defendant was not sitting by idly. He went to the Linstead Police Station and tendered a report that his cylinder head was stolen from his truck. This is the unchallenged evidence given

by Detective Corporal George Williams who was then stationed at Linstead Police Station. He recalls the first defendant visiting the station in December 1978 and making a report to the late Detective Sergeant Dwight Walker who was then officer in charge of the C.I.B. Section at the station. The report was relative to Larceny of Motor Vehicle parts. Along with Detective Sergeant Walker and first defendant Mr. Williams went to Commadore District in St. Catherine to investigate the matter. The plaintiff's truck was seen parked at the home of James Bradford who lives not very far from the first defendant. In the presence of the first defendant, Detective Sergeant Walker made enquiries about the cylinder head which was then fitted to the plaintiff's truck and no doubt satisfied that this was the cylinder head which had been received from first defendant, Detective Sergeant Walker gave orders there and then for it to be removed from the truck. This was done and it was handed over to the first defendant complete with all its fittings.

As a result of this the plaintiff suffered a considerable loss. He had to have the truck removed to Kingston by a wrecker. This cost him Two Hundred Dollars. He then had to obtain another replacement for the cylinder head and to purchase new fittings for it, and during all this period he was unable to carry out his contract to supply sand to Semco (Jamaica) Limited.

The truck was accustomed to make four trips daily bringing in a net profit of \$85 per trip. The plaintiff states that his truck was laid up for about three months. He, however, claimed forty-five days loss of use at \$250 per day which is generous to first defendant if his evidence is to be believed. There is a further claim for repairs to the truck.

It is against this background that the claim in this matter was brought by the plaintiff against the first defendant and the Attorney General, as second defendant.

It may be mentioned in passing that the Attorney General was brought into the suit no doubt because of the actions of the police in this matter in relation to the report made to them by first defendant and the subsequent conduct of Detective Sergeant Walker at Commodore District in December 1978. It strikes me as somewhat strange in the light of the evidence of Detective Corporal Williams as to why the Attorney General was brought into the matter as on the strength of Williams' evidence as to the nature of the report made by first defendant even if it is conceded that Detective Sergeant Walker acted improperly in ordering the removal of the cylinder head from the plaintiff's truck there is nothing to suggest that he acted out of any malice towards the plaintiff in the matter. By virtue of the report made by first defendant there certainly was no lack of reasonable and probable cause on their part. James Bradford who was a vital witness for the plaintiff in establishing his claim against second defendant's did not give evidence. He is no longer employed to the plaintiff and was not called to give evidence in support of the plaintiff's claim.

The plaintiff's Attorney, Mr. Morgan, apparently aware of his dilemma before the end of the plaintiff's case withdrew the claim against the second defendant. For his actions in this regard Mr. Fraser who appeared for the Attorney General reciprocated with no less gratitude. He requested that no order as to costs be made against the plaintiff. He acted wisely. It would have been an interesting moot question as to whether on

the evidence presented in this matter even without the evidence of James Bradford the action would not still have had some merit as against the second defendant.

On the pleadings in this matter a number of issues were raised, but for the purposes of my task the main issues which arose for determination were:-

1. Was there a contract for sale of goods in existence between the plaintiff and first defendant? And if so

2. Did the property in the goods pass to the plaintiff?

If both these questions can be answered in the affirmative then the third issue to be resolved is

3. The question of damages, there being no issue on the pleadings that the cylinder head was removed from the plaintiff's truck at the instigation of the first defendant.

On the facts in this case it would seem to have been an almost foregone conclusion that the plaintiff must succeed on the facts as on the pleadings it is admitted by the first defendant that he entered into an agreement with James Bradford for the sale of a cylinder head and that at the time of this agreement he knew that Bradford was contracting for a known principal who was the plaintiff. The goods were ascertained goods, a truck cylinder head. As this was an oral agreement, not a written one in which the parties were fixing their own terms to govern the contract and contracting out, the Sale of Goods Act applied to govern the transaction.

Is this a contract for the sale of goods therefore? On looking at Section 2 (1) of the Act "A Contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to

the buyer for a money consideration called the price."

All these ingredients are present on the evidence in this case.

Once the bargain was struck between the first defendant and James Bradford in December 1978 at first defendant's home a contract for sale of goods came into existence and this was so even if there was not then any clear agreement as to price. There could not then have been any price fixed as it will be recalled that the evidence is that it was not until the cylinder head was tried to to the plaintiff's engine that one would be able to ascertain whether it would work. The contract was therefore conditional on the cylinder head being able to work on the plaintiff's truck. The plaintiff by his conduct accepted the cylinder head. He had work done on it and bought fittings for it. He ratified Bradford's action in procuring the cylinder head by his conduct. There was beyond the peradventure of a doubt a Contract for the Sale of Goods in existence between the plaintiff and the first defendant.

Did the property in the cylinder head pass to the plaintiff? Again on the evidence in this case and applying the provisions of the relevant Act to this evidence the answer must be yes. This is what the first defendant himself had to say when he was giving evidence. Under cross-examination by Mr. Morgan, he said "when I handed over the cylinder head to Bradford I was not looking back for my cylinder head but for my money. I intended to sell Bradford the cylinder head. It was because of this intention that I handed it over to him." Mr. Samuels for first defendant contends that on the evidence there was a dispute as to the price of the cylinder head. Because of this the property in the cylinder head did not pass to the plaintiff. He further contends that the Sale of Goods Act cannot apply as the plaintiff has not pleaded the Act.

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As I have already stated it is my view that where the parties are silent the provisions of the Act applies to the transaction. The plaintiff, moreover, was only required to plead facts. Section 18(1) of the Sale of Goods Act states:-

"Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred."

As on the evidence of the first defendant himself "I intended to sell Bradford the cylinder head. It was because of this intention that I handed it over to him." There is clear evidence of an intention to part with the property to the plaintiff.

The fact that the price was not yet settled or the money paid did not matter. Section 19 of the Act which sets out the rules for ascertaining the intention of the parties states:-

"Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time for payment or the time of delivery, or both be postponed."

It is further the unchallenged evidence of the plaintiff that he had extensive work done on the cylinder head before fitting it to the engine of his truck. The repairs to the head cost him \$180. It needed refacing because apart from the fact that it had been fitted to a truck which was seven years old, the first defendant's truck had been laid up for several months and the cylinder head was rusty. One could not therefore say that it would have been possible to return the thing which the plaintiff had received because that thing had been altered in its natural state to something of a different nature. Now altered to fit the plaintiff's truck.

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To return to the material issues in the case, however, it is clear on the evidence that the property in the cylinder head had passed to the plaintiff. Did the first defendant have any right to recover it?

The only right which the Act gives to the first defendant, this being a contract for the Sale of Specific Goods in which property had passed to the buyer, is an action for the price.

Section 48(1) states:-

"Where under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods."

That therefore was the remedy which was open to the first defendant when he attended on the plaintiff and requested to be paid \$700 for the cylinder head and the plaintiff offered him \$250. His conduct thereafter was disgraceful and is contemptuous to say the least. This evidence is not challenged. He concocted a false story and caused the Linstead Police to remove the cylinder head from the engine of the plaintiff's truck, causing the plaintiff to suffer loss as a result.

Mr. Samuels when faced with an unsurmountable obstacle in his path has sought most valiantly to raise up obstacles of his own seeking to block the advance of the plaintiff's claim along its path to success. He submits inter alia that the pleadings having alleged that it was he (first defendant) who removed the cylinder head from the plaintiff's truck and the evidence adduced having established that it was James Bradford who in fact removed the cylinder head, acting on the instructions of the police, the act of the removal cannot be attributed to the first defendant, or in the alternative

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he submits the first defendant could not be held responsible for what took place. He contends that for the first defendant to be held responsible, the pleadings would have to state that "the first defendant caused the removal of the cylinder head from the plaintiff's truck engine."

The fallacy of this argument can be easily detected by asking this question, "whose act was it that set the entire chain of events in motion which resulted in the cylinder head being removed from the plaintiff's engine?" The answer to this question when determined, it is my humble opinion that it would not matter in the least who was the hand that actually removed the cylinder head. The first defendant's report being what set in motion a course of conduct which resulted in the cylinder head being removed from the plaintiff's vehicle, he is the responsible tortfeasor.

I turn now to what appears to me the most difficult area in resolving this matter - the question of damages. My task has been so made having regard to the sort of evidence lead in support of the claim as to damages generally. One therefore has just to take the case for the plaintiff in this regard as one finds it.

Damages are claimed under two heads:-

1. Special Damages
2. General Damages

It may be convenient to examine at this stage the plaintiff's evidence on the question of damages.

The evidence of wrecker fee of \$200 is not challenged neither is the figure given of \$85 net profit per load of sand which the truck made for each trip. There is a claim for 45 days @ \$250 per day on the pleadings but the evidence of the plaintiff is that his net profit was \$340 per day for a period of three months while the truck was laid up.

As to the cost of repairs the evidence of the plaintiff appears to be all guesswork and is totally unsatisfactory and I find this

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particular head of the claim for special damages not proven. This is most unfortunate as it must have cost him a reasonable sum to put back his truck in a workable condition, but this course cannot be avoided. Special damages, the head under which this part of his claim falls must be specifically alleged and proven. It has been alleged but no proper proof has been forthcoming.

The question of loss of use can be examined in a different light, however, as here there is clear evidence which is unchallenged as to the fact that the plaintiff earned \$340 per day, as net profit for a contract which he then had to haul sand from Bog Walk to Kingston, and that the truck was laid up for three months. He has, however, claimed a total of 45 days @ \$250 per day. If his evidence is to be believed then he has been most generous to a defendant whose attitude to him was most callous. The question, however, is whether his claim is a reasonable one? On the face of it, it seems exorbitant to me. Assuming that the journey between Bog Walk and Kingston took on the average one hour each way and to add to this a reasonable time for waiting to load the truck with sand and to unload it, it is inconceivable that in a eight hour day, the truck could make four trips. I would therefore be prepared to allow two trips per day, making a total of \$170 per day. The plaintiff has claimed 45 days loss of use. I also find this period too long. He has not given any evidence as to what steps he took during all this time to procure the replacement parts and if so why he was not successful before such a long period of time. One must not also overlook the evidence of Canute McLeod to the effect that the truck was laid up for over one year following the removal of the cylinder head by the police. I would in all the

circumstances consider four weeks to be a reasonable time. To the extent of his claim therefore, the plaintiff will succeed on the head as to Special Damages to the amount of \$5,380, being \$200 for wrecker fee and \$5,180 for loss of use.

The only remaining question is whether I ought to make an award under the head of general damages. The obvious reason being that having regard to the first defendant's conduct, should such conduct be condoned? The plaintiff himself, however, is not entirely without blame. He took up an intractable stand from which he refused to budge. Had he tried to meet the first defendant half way the matter may not have reached the stage that it eventually did. Seeing their demeanour in Court, however, I got the distinct impression that solution was more imagined than real as they are two of a kind - neither prepared to give an inch. It is hoped that lessons have been learnt by both from this unfortunate incident. All in all I am not of the view that this is a matter in which I ought to award any further sum for General Damages and had I been minded to do so I would have made a mere nominal award.

In the circumstances there will be judgment for the plaintiff for \$5,380 with costs to be taxed if not agreed.

D.O. Bingham
Puisne Judge