

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2007/0640

BETWEEN:

(1) CHARLES BERNARD
(2) CLEMENT MONROSE

CLAIMANTS

AND

(1) JOSEPH WILLIAM
(2) KENSON DARCIE

DEFENDANTS

CONSOLIDATED WITH:

CLAIM NO. SLUHCV 2008/0545

BETWEEN:

(1) CHARLES BERNARD
(2) CLEMENT MONROSE

CLAIMANTS

AND

(2) JOSEPH WILLIAM
(3) KENSON DARCIE

DEFENDANTS

APPEARANCES:

Mr. Vern Gill for the Claimants

Mr. George Charlemagne for the Second Defendant

2011: January 18th;
May 5th

- [1] **WILKINSON J.:** On 3rd June 2008, the Claimants filed their claim form and statement of claim seeking the following relief:
- (1) Special damages in the sum of \$18,323.85
 - (2) General damages;
 - (3) Interest at the rate of 6 percent per annum pursuant to Article 1009A of the Civil Code;
 - (4) Costs.
- [2] At 18th January 2008, the Claimants filed in Suit No. SLUHCV 2007/0640 a request for entry of judgment in default of acknowledgement of service against the First Defendant. At 3rd October 2008, the Claimants filed in Suit No. 2008/0545 a Notice of Discontinuance against the First Defendant.
- [3] On 27th November 2008, the suits were consolidated by order of Master Lanns.
- [4] On 9th December 2010, judgment in default of acknowledgment of service was entered against the First Defendant with special and general damages, interest and costs to be assessed at 18th January 2011.
- [5] In Suit No. SLUHCV 2007/0640, the motor vehicle driven by the First Defendant, the licence number was amended with initials by Master Lanns and stated as PD 1397, and in Suit No. SLUHCV 2008/0545 the motor vehicle licence number was stated as PC 1397. Whether it was PC or PD was the subject of cross-examination before the Court.

Issues

- [6] (i) whether the Second Defendant is liable to pay special and general damages, interest and costs to the Claimants because he failed pursuant to section 21 of the Motor Vehicle and Road Traffic Act¹ after sale of the motor vehicle to the First Defendant to ensure that either he or the First Defendant registered the transfer of

¹ Act No.10 of 2003.

ownership of the motor vehicle driven by the First Defendant when it collided with the Second Claimant's motor vehicle.

- (ii) whether the First Defendant was the servant or agent of the Second Defendant.

The Claimants' evidence:

- [7] The First Claimant is a Police Officer with 20 years service and holds the rank of Constable. He joined the Police Force at October 1990. He was 35 years of age at the time of the accident. On 2nd July 2005, at approximately 8.00 p.m. the First Claimant was the driver of a motor vehicle licenced PC 4591 and which belonged to the Second Claimant. He was travelling along the Micoud/Dennery highway in the direction of Dennery. He was travelling behind a pick-up motor vehicle, when he saw a motor vehicle travelling in the opposite direction and another motor vehicle in the process of overtaking that motor vehicle which was ahead of it around a bend. It collided with the motor vehicle in front of him, and then collided with the motor vehicle which he was driving. He was stopped when the motor vehicle collided with him. The First Defendant was the driver of the motor vehicle that collided with him.
- [8] He was unable to open the driver's door, but managed to get into the back seat of the motor vehicle and a bystander broke a glass window at the rear and he climbed out.
- [9] On escaping the motor vehicle he observed that the motor vehicle that he was driving was badly damaged, in particular the entire front was damaged. The pick-up motor vehicle behind which he was travelling was also damaged on its right side. The motor vehicle driven by the First Defendant also had extensive damage to its front. Police attended the scene of the accident as did the Second Claimant. He was taken by ambulance to the St. Jude Hospital.
- [10] At the St. Jude Hospital the First Claimant was diagnosed as having sustained a fracture dislocation of the right acetabulum, and an undisplaced fracture of the right medial malleolus. He spent fourteen (14) days at the hospital, and spent nine hundred dollars (\$900.00) for a CT Scan of his pelvis area and a further nine thousand, one hundred and sixty-eight dollars and twenty cents (\$9,168.20) for medical attention. Upon release from the hospital he had to follow-up with further orthopaedic care as an out patient. The trips to the hospital were at a cost of nine hundred and sixty dollars (\$960.00). Two (2) medical reports were obtained from Dr. Ndidi Dagbue stating his injuries, progress, treatment and prognosis for the future at the costs of four hundred and fifty

dollars (\$450.00) for each report, a total cost of nine hundred dollars (\$900.00). Since the collision and up to trial the First Claimant walked with a limp and he has to receive medication by way of injections for his pain from time to time at the St. Jude Hospital. The average cost per injection was two hundred dollars (\$200.00).

[11] Post collision, the First Claimant said he was unable to report for duty for nine (9) months at the Vieux Fort Police Station where he was attached as records exhibit keeper. Since returning to work he has been re-assigned, and he says that his prospects of promotion have diminished significantly. His quality of life is hampered as he used to play both cricket and football and did so for a local club and the Police in the South of the Island. He is no longer able to participate in the sporting events.

[12] Under cross-examination the First Claimant described the motor vehicle which collided with the one he was driving as a white Toyota Corolla, and said that the motor vehicle had been identified by registration PC 1397.

[13] The Second Claimant is a Postman. On 2nd July 2005, he was the owner of a 1989 Mitsubishi Lancer license No. PC4591 and on that day he lent the motor vehicle to the First Claimant. It was around 8.30 p.m. when he received a telephone call informing him that the First Claimant had been involved in a collision. He went to the scene of the collision and saw the First Claimant badly injured, and his own motor vehicle damaged. He had the motor vehicle towed to Hoints Points garage at Desruisseaux, Micoud, and paid two hundred dollars (\$200.00) for the damage estimate. His motor vehicle was deemed a total right-off. His motor vehicle was certified as having a pre-accident value of \$6,000.00. He had his motor vehicle insured at the time with The New India Assurance Co. (Trinidad & Tobago) Ltd. He was the person who assisted the First Claimant with his trips to and from St. Jude Hospital, and he did so for a fee.

[14] Under cross-examination he said that he knew the First Claimant very well, and he has known him for approximately 15 to 16 years. He admitted that the motor vehicle had a salvage value of eight hundred and fifty dollars (\$850.00).

The Second Defendant's evidence

[15] The Second Defendant said that during the year 2005 he was away from Saint Lucia and he left instructions with his brother, Mr. Delman Darcie to sell his white Toyota Corolla registration PD

1397. He was aware that his motor vehicle was sold to the First Defendant, and that it was sold for \$6,700.00. He had seen the receipt for the sale. He returned to Saint Lucia at 28th September 2005, and at this time he was served with the claim in this suit. It was at this time that he was informed of the collision. He expressed the view that at the time of the collision, he had already divested himself of both ownership and possession of his former motor vehicle licenced PD 1397.

[16] Under cross-examination he said that he only owned one vehicle and it was a white Toyota Corolla licenced PD 1397. He gave his brother, Mr. Delman Darcie a power of attorney to sell his vehicle, the power of attorney however, was neither prepared by an attorney-at-law or recorded. He did not sign the transfer form required pursuant to the Motor Vehicle and Road Traffic Act (the Act) but he was aware that his brother, Mr. Delman Darcie had signed the form on his behalf. He believed that having given his brother authority to sell his motor vehicle that his brother could sign the transfer form. He was unaware that pursuant to the Act the transfer of ownership of a motor vehicle had to be registered within 7 days.

[17] Mr. Delman Darcy gave evidence on behalf of the Second Defendant, he is a Fireman and brother of the Second Defendant. On 19th May 2005, he sold on behalf of his brother, the Second Defendant, who was out of Saint Lucia at the time, a white Toyota Corolla with licence number PD 1397 to the First Defendant for the price of \$6,700.00. The sum was paid in cash and a receipt with details of the transaction recorded thereon was issued after it was signed by the First Defendant and witnessed by two other individuals. He delivered to the First Defendant the keys for the motor vehicle, and a transfer of ownership form issued by the Transport Department in the Ministry of Communication Works, Transportation and Utilities and signed by him. He requested the First Defendant to fill out the form, sign it and deliver it to the Transport Department. The First Defendant promised to complete the form and deliver it. He has since found out that the First Defendant never did deliver the form to the Transport Department.

[18] Under cross-examination he reiterated that his brother, the Second Defendant's motor vehicle was a white Toyota Corolla bearing licence No. PD1397. He became aware of the collision involving the First Defendant while he was at work when fellow firemen told him the motor vehicle was involved in an accident. He said that because his brother, the Second Defendant was out of Saint Lucia he felt responsible for the motor vehicle. Following the accident he went to see the insurer

about the Second Defendant's interest in the motor vehicle and he recalled discussing the accident with the insurer.

Law

[19] The Motor Vehicle and Road Traffic Act² as amended provides:

“Registration of motor vehicles and trailers

10. Unless exempted under section 11, the owner of a motor vehicle or trailer shall register the motor vehicle or trailer under this Act before using or permitting its use on the road.

Period of validity

20. – (1) The registration of a motor vehicle or trailer is valid until cancelled under section 25.

(2) The registration may however be suspended or amended under this Act.

Change of ownership

21. – (1) In this section, change of ownership does not include transfer under an instrument of security.

(2) Before the expiration of seven days after a change of ownership, an application shall be made for amendment of the Register.

(3) The application shall be in the prescribed form and accompanied by the prescribed fee, documents establishing change of title and, if the transfer is by voluntary act, the Certificate of registration and proof of payment of insurance shall also be annexed.

(4) The transferee and the transferor commit an offence if subsection (2) is not complied with and are each liable on summary conviction to a fine of one thousand dollars and a further fine of fifty dollars for every day that the offence continues or imprisonment for one year.

(5) The provisions of subsection (3) shall not apply in respect of motor vehicles or trailers registered before 1990 in respect of the Certificate of Registration.

Cancellation and suspension of registration.

25. – (1) The registration of a motor vehicle shall remain valid so long as the motor vehicle or trailer is kept in use, and shall only be cancelled if the Licensing Authority is satisfied that the motor vehicle or trailer has been destroyed or rendered permanently unserviceable or permanently removed from Saint Lucia, or if it has not been re-registered for one year.” (My emphasis)

[20] On the issue of whether the First Defendant could be deemed a servant or agent of the Second-named Defendant, the case of **Avis Rent-A-Car Ltd. v. Maitland**³ is instructive. In this case the respondent had argued that the driver of a hired motor vehicle did so for the benefit of the owner in

² Act No. 10 of 2003

³ (1980) 32 W.I.R 204.

that the owner would be making a profit whilst the motor vehicle was being driven, that the owner delegated the task of driving its motor vehicle to persons who hired it, and that he was obliged to bring in the motor vehicle once weekly for checking and so in these circumstances he, being the driver at the time of the collision was the agent of the owner. The Court of Appeal cited the law stated at Halsbury's Laws of England⁴:

"The owner is, however, responsible only where he has delegated to the driver the execution of a purpose of his own over which he retains some control and not where the driver is a mere bailee, engaged exclusively upon his own purpose."

Also cited therein was **Morgans v. Launchbury** [1973] A.C. 127⁵ where Lord Wilberforce said:

" For I regard it as clear that in order to fix vicarious liability upon the owner of a car in such a case as the present, it must be shown that the driver was using it for the owner's purposes, under delegation of a task or duty. The substitution for this clear conception of a vague test based on "interest" or "concern" has nothing in reason or authority to commend it. Every man who gives permission for the use of his chattel may be said to have an interest or concern in its being carefully used, and, in most cases if it is a car, to have an interest or concern in the safety of the driver, but it has never been held that mere permission is enough to establish vicarious liability... I accept entirely that "agency" in contexts such as these is merely a concept, the meaning and purpose of which is to say "is vicariously liable" and that either expression reflects a judgment or value – *respondent's superior* is the law saying that the owner ought to pay. It is this imperative which the common law has endeavoured to work out through the cases. The owner ought to pay, it says, because he has authorized the act, or requested it, or because the actor is carrying out a task or duty delegated, or because he is in control of the actor's conduct. He ought not to pay (on accepted rules) if he has no control over the actor, has not authorized or requested the act, or if the actor is acting wholly for his own purposes. These rules have stood the test of time remarkably well...."

Further Lord Denning M.R. in his judgment in the Court of Appeal in the same case of **Launchbury v. Morgans**⁶ said:

"One word of caution, however, I must give about this principle. The words "principle" and "agent" are not used here in the connotation which they have in the law of contract (which is one thing), or the connotation which they have in the business community (which is another thing). They are used as shorthand to denote the circumstances in which vicarious liability is imposed. Stated fully, the principle is as I stated it in *Ormrod v. Corsville Motor Services Ltd.*[1953] 2 All E.R. 753 at p. 755, slightly modified to accord with the way in which Devlin J. put it (1953) 1 All E.R. 711 at p.712) and approved by Diplock L.J. in *Carberry v. Davies* [1968] 2. All E.R. 817, at p.819.

⁴ 3rd edn., Vol. 28, para. 71 at p. 71

⁵ [1973] A. C. 127 at p. 135

⁶ [1971] 2 Q.B. 245 at p. 255

‘The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his wife, his servant, his friend, or anyone else. If it is being used wholly or partly on the owner’s business or in the owner’s interest, the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it out or hires it out to a third person to be used for purposes in which the owner has no interest or concern.’

Findings

- [21] The trial focused on ownership of the motor vehicle driven by the First Defendant at the time of the collision.
- [22] While much was made in cross-examination of the registration number of the motor vehicle driven by the First Defendant, it was really of no moment as clearly the motor vehicle was identifiable by others as being the motor vehicle owned by the Second Defendant. This was confirmed by the evidence of Mr. Delmar Darcy when he said that he was at work and some fellow firemen told him that the motor vehicle was involved in an accident and they did this because he was the one known to them to be responsible for the Second Defendant’s motor vehicle. He thereafter acted on this information. He never denied that the motor vehicle identified by his work colleagues was not the motor vehicle in issue.
- [23] The evidence of the Second Defendant and Mr. Delmar Darcy was that the motor vehicle was sold. The Act in its preamble states that its purpose is to provide for registration, licensing and control of vehicles and for the regulation of paid parking and for ticketable offences and for matters connected therewith. In short, the matters referred are concerned with giving the public notice of the ownership, and control of how a motor vehicle is used in the public domain. Section 10 identified that it is the owner of a motor vehicle who is responsible to register it pursuant to the Act. Section 25 of the Act provides that cancellation and suspension of registration can occur, without reference to ownership of the motor vehicle. Therefore, a motor vehicle may lose registration but there is no loss of ownership. Registration it is to be concluded, is therefore, not a document of title.
- [24] There being no question at the trial about the validity of the contract for sale of the motor vehicle between the First and Second Defendants, and or the contract being affected by section 21 of the

Motor Vehicle and Road Traffic Act 2003, is it difficult to follow Counsel for the Claimant's submission that the Second Defendant was vicariously liable for the actions of the First Defendant or that the First Defendant was acting as agent for the Second Defendant. Once the motor vehicle was sold, the title vested in the First Defendant.

[25] Even if the Court were to step back for a moment from the issue of there being no challenge to issue of the validity of contract for sale of the motor vehicle, and look at the issue of whether the Claimant could succeed on the plea of vicarious liability and or that the First Defendant was driving as agent of the Second Defendant, the learning in **Morgans v. Launchbury**⁷ and **Launchbury v. Morgans**⁸ clearly indicate that the Claimants must do more than show that the Second Defendant must have given the First Defendant permission to drive his vehicle.

[26] No evidence was led which supported the pleading of the First Defendant being the servant or agent of the Second Defendant. It is not to be an automatic assumption, because at the time of the collision a person other than the owner is in possession of the motor vehicle.

[27] In light of there being no evidence against the presumption of a valid contract for sale between the First Defendant and Second Defendant and therefore there is presumed to be a valid transfer of title of the motor vehicle, and there being no provision in the Motor Vehicle and Road Traffic Act that impacts ownership of a motor vehicle because of failure to register a transfer of ownership, and there being no evidence that the First Defendant was acting in anyway, for the benefit of the Second Defendant, the Claimants' claim against the Second Defendant must fail.

⁷ Ibid

⁸ Ibid

Conclusion

[28] The following orders are made:

- (1) The Claimants' claims against the Second Defendant are dismissed.
- (2) The Claimants are to pay the Second Defendant costs in the sum of \$6000.00.

Rosalyn E. Wilkinson
High Court Judge