

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2010/0357

BETWEEN:

LUANN AMORSINGH

Claimant

and

MARTINA LABADIE

Defendant

Appearing:

**Ermin Moise for the Claimant
Vern Gill for the Defendant**

2013: April 30

DECISION

- [1] **BELLE J.** On 30th March of 2009, the Claimant purchased a Toyota Yaris Registration Number PC3010 from the Defendant Martina Labadie for the sum of thirty seven thousand dollars (\$37,000). At the time the Defendant represented to the Claimant that she was the legal owner of the motor vehicle and there were no encumbrances which would prohibit her from acquiring free and clear title to the motor vehicle.
- [2] Pursuant to the aforesaid agreement the Claimant borrowed the sum of forty thousand five hundred dollars from the Saint Lucia Civil Service Co-operative Credit Union Ltd for the purchase of the vehicle. She subsequently paid the Defendant \$37,000.00 for the vehicle.

- [3] On or about Saturday , 31st October, 2009 the Claimant was stopped by a police officer who handed her certain documents which indicated that the 1st National Bank had a lien on the vehicle, and the police officer demanded that the vehicle be handed over to him since it was being repossessed on the behalf of 1st National Bank.
- [4] The defendant's explanation of the situation is that she purchased the vehicle from one Andre Samuel in September of 2008 for the sum of thirty thousand dollars (\$30,000.00). She also stated that Mr Samuel had purchased the vehicle from Sagicor General Insurance. She was aware that the vehicle was repaired prior to the sale.
- [5] According to the defendant she only became aware of the encumbrance which existed over the vehicle in favour of 1st National Bank Limited after being informed by the claimant that the vehicle was repossessed. The defendant had discovered that the vehicle was originally purchased by Emmanuel Andrew, who was made ancillary defendant in this matter, with the assistance of a loan from 1st National Bank Limited for the sum of fifty thousand dollars (\$50,000.00).
- [6] Indeed Emmanuel Andrew had secured another loan from the Bank of Saint Lucia Limited along with Mr. Edmund Lestraud without disclosing that there was an existing obligation to 1st National Bank Limited. The insurance policy taken out with Sagicor Limited on the vehicle was assigned to Bank of Saint Lucia. The motor vehicle was involved in an accident and Sagicor General Insurance paid over the sum due and owing to the Bank of Saint Lucia. Thereafter the wreck was repaired and the Defendant later purchased the vehicle from Mr. Samuel. The Ancillary Defendant never denied this version of the facts when confronted by the Ancillary Claim and judgement was entered against him.
- [7] Based on this complex factual matrix the Claimant claims damages against the Defendant for breach of contractual agreement entered into on or about 30th March 2007. The Defendant demurs that she is not in breach of the implied term of the agreement with the Claimant as alleged.

[8] The Claimant's counsel relies on Article 283 of the Commercial Code Cap. 244 of the Revised Laws of Saint Lucia which states:

"In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is-

- (1) *An implied condition on the part of the seller that in the case of a sale he has the right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass.*
- (2) *An implied warranty that the buyer shall have and enjoy quiet possession of the goods.*
- (3) *An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made."*

[9] Counsel cited the English provision in section 12 (1) and (2) of the Sale of Goods Act 1979 which laid the basis for the authorities on which he relied.

[10] Counsel for the Defendant in refuting the Claimant's counsel's arguments cited another section of the Commercial Code under Chapter 11 and the rubric

"Transfer of Title Article 293 (1) which provides "where goods are sold in market overt, according to the usage of the market the buyer acquires a good title to the goods provided he buys them in good faith and without notice of any defect or want of title on the part of the seller."

[11] Counsel also cites Article 294 of the Commercial Code which states:

" when the seller of goods has a voidable title thereto but his title has not been avoided at the time of the sale the buyer acquires a good title to the goods provided he buys them in good faith and without notice of the seller's defect of title."

[12] Neither party identified a similar provision in England or any other Common Law jurisdiction, and it was not addressed in the Claimant's counsel's submissions.

[13] But the authorities cited by the Claimant's Counsel are highly persuasive and therefore require some analysis to determine their application to the facts in this case in the context of the Laws of Saint Lucia.

- [14] By way of analysis I note that only one of the cases cited by the Claimant's Counsel involves a seller of goods who may not have been in the business of selling those goods. They all rely on the maxim that where the transaction involving the sale of goods to which the vendor has no title takes place and a third party who has title or who can legally interfere with the quiet enjoyment of the buyer intervenes and interferes with the quiet enjoyment, it is the seller who must accept the consequences of the lack of title and who is saddled with the duty to repay the cost of the goods to the buyer.
- [15] In the case **Rowland v Divall** [1923] 2 K.B. 500 where the Plaintiff was a motor car dealer the issue was whether the Plaintiff should be compensated in damages only or by recovery of the whole purchase price. There is no discussion in **Divall** of the purchaser having purchased in "good faith" as is referred to in the Commercial Code. Neither is there any discussion of a seller having a voidable title which has not yet been voided. The principle enunciated was that the Plaintiff did not get what he paid for and was entitled to recover the whole of the purchase price.
- [16] In **Niblett Limited v Confectioners Materials Company, Limited** [1921] 3 K.B. 387 the alleged breach was that the name of the goods infringed a registered trade mark. This clearly is a matter that ought to have been known to the seller. The facts in that case disclose only one trade-mark, not two possible competing trade-marks as we have in this case with the competing Bills of Sale.
- [17] **Microbeads A.G. and Another v Vinhurst Road Markings Ltd.** [1975] 1 W.L. 218 turned on the subsection 12 (2) of the Sale of Goods Act of 1893 which protected the quiet enjoyment of the goods purchased. In this case the breach was an infringement of a patent by the Swiss Machines. The breach of patent was discovered after the sale but once again the professional seller should have checked before the sale to ascertain whether there could be any issue as to patent of the goods in the future. The issue was one of the breach of the condition of quiet enjoyment.

- [18] It would be seen that the law as applied in those cases does not address the mischief in the present case. Here we have two average citizens involved in a transaction where a reputable Insurance Company after paying the Bank which held a Bill of Sale, had put a vehicle on the market at a value which clearly would have been reduced due to a crash in which the vehicle was involved.
- [19] It is my view that Article 294 of the Commercial Code, the legislative provision cited by counsel for the Defendant, was designed for this kind of scenario to protect the innocent purchaser "in good faith" who could not have been aware of any defect in title or voidable title which up to the time of the sale, had not been voided.
- [20] Black's Law Dictionary, eighth edition, page 713 defines "good faith" as follows:
"Good Faith , A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligations, (3) observance of reasonable commercial standards of fair dealing in given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage. – Also termed bona fides."
- [21] From the Article Good Faith in Contract in Good Faith In Contract : Concept and Context 1, 3 (Roger Brownsword edition, 1999. quoted in Black's Law Dictionary, eighth edition at page 713 the following is extracted:
"(G)ood Faith is an elusive idea, taking on different meanings and emphases as we move from one context to another- whether the particular context is supplied by the type of legal system (e.g. common law, civilian, or hybrid) the type of contract (e.g. commercial or consumer) or nature of the subject matter of the contract (e.g. insurance, employment, sale of goods, financial services, and so on)"
- [22] I therefore hold that the Claimant in this matter had a right to insist that she purchased the vehicle in "good faith" and that she had good title which defeated the 1st National Bank of Saint Lucia's lien. The interference of her quiet enjoyment was therefore unlawful and could not be construed as a breach of the Commercial Code by the seller. She was not entitled to sue the Defendant for breach of

contract because there was no breach and she had received good title to the vehicle.

[23] The Claim therefore must be dismissed with costs awarded to the Defendant in accordance with Part 65 of the CPR 2000.


Francis H V Belle
High Court Judge