THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2016/0298

BETWEEN:

S. L. HORSFORD AND COMPANY LIMITED

Claimant

and

IVOR O. JEFFERS

Defendant

Appearances:
Mrs. Robin Herbert-Thompson with Ms. Cherese Persaud for the Claimant
Mr. John Cato for the Defendant

2019: February 14

ORAL JUDGMENT

[1] **VENTOSE, J**.: The Claimant and the Defendant entered into a Car Credit Agreement on 12 October 2010 (the "**Agreement**") whereby the Defendant was provided with a credit limit or loan to purchase a Nisan vehicle (the "**Vehicle**"). The Vehicle was to be secured by a comprehensive car insurance policy and a Bill of Sale. The Bill of Sale was executed on 15 October 2012 and subsequently registered. The Defendant was the assignor under the Bill of Sale, being assigned the Vehicle by way of security for the payment of the loan under the Agreement.

[2] The Defendant paid a deposit of $8,500.00 and was granted a credit facility, or loan, in the sum of $118,766.75 for the purchase of the Vehicle. This is stated in the Agreement and the loan was used to purchase the Vehicle. Under the Agreement, the Defendant was to pay monthly installments of $1,522.65 on the 28th day of each and every month commencing November 2010 until April 2017, a period of 6.5 years. The Defendant only made payments up to October 2012. The Defendant then sought permission from the Claimant to deliver the Vehicle to the Claimant on the basis that there was an attempt to burn the Vehicle. The Claimant did not object in principle to the return of the Vehicle but made no specific arrangements with the Defendant for the Vehicle to be returned to the Claimant.

[3] The Defendant brought the Vehicle to the Claimant's compound on 13 September 2012. The Credit Department became aware that the Vehicle was on the Claimant's premises on the 14 September 2012. A standard repossession vehicle record sheet was completed indicating that the Vehicle was extensively damaged, including damage to the right side bumper, dent to the backdoor, no right mirror, damage to the lights, damage to the grill, the front panel was dented on the right side and the engine of the Vehicle was completely burnt. The damage to the Vehicle was so extensive that it could not be driven.

[4] The Vehicle was placed on the Claimant's car lot where it stores new vehicles. The car lot was secured using chain link fence with barbed wire rolls at the top, and a locked gate. The Claimant's representative admitted at trial that there were no security cameras or security patrols on or near the car lot but nothing turns on this. During the night of 14 or early on 15 September 2012, the Vehicle was found burnt on the Claimant's car lot. The police investigated the fire determined that this was a case of arson. Ms. Keiza Rawlins, the Assistant Credit Manager of the Claimant, testified at trial that the Vehicle was moved from its original location during the night of the 14 and early morning of the 15 September 2012 (the time period in which the arson occurred). The result of moving the Vehicle was that only minimal damage was done to the other vehicles in the Claimant's car lot. After obtaining an internal and external quotation for the Vehicle, the Claimant sold the

Vehicle to a third party for $2,632.20, comprising the valuation amount of $2,250.00 plus $382.50 VAT. The sum of $1,500.00 was credited to the Defendant's account and the balance was used to repair the only vehicle that was damaged as a result of the fire.

[5] It must be noted that under the Agreement the loan was for the purchase of the Vehicle. The Bill of Sale was the security for the loan. That cannot be in dispute since the documents in evidence provide details of the "particulars of the vehicle to be financed" and the Agreement provides convincing evidence that it was a credit facility by which certain sums were provided or loaned to the Defendant to enable him to purchase the Vehicle.

[6] In **Sutherland v Bank of Saint Lucia Limited** (HCVAP 2012/0021 dated 5 September 2012), the Court of Appeal described Bills of Sales as follows:

> … Today, it is one of the commonest banking transactions a borrower enters into with his or her bank. It is usual today for a bill of sale to be granted by a purchaser to a bank where that bank is providing a loan, and paying the car dealer some or all of the purchase price. The borrower signs the bill of sale before the money is ever paid to the dealer and before receiving ownership of the vehicle. … As is commonly known, the bank pays the proceeds of the borrower's loan directly to the car dealer to ensure that there is no question of the title not passing to the borrower. Simultaneously, the bank submits the bill of sale earlier signed by the borrower to the Registry of bills of sale for registration. The two transactions are simultaneous in law. It must be so for the protection of all of the parties, the bank, the borrower, and the car dealer.

[7] The only difference in this case and in **Sutherland** is that in the case at bar the bank (the finance company) and the dealer (the seller) are one and the same. This does not mean that the applicable principles are different. In this case, the Claimant, who is the dealer, is providing the finance pursuant to which it got its security in the Bill of Sale. As is usually the case, the finance company (the Claimant) requires pursuant to the Bill of Sale and the loan agreement (the Agreement) for the purchaser (the Defendant) to take out a comprehensive car insurance policy on the Vehicle. This additional protection is for the benefit of both the Claimant, as the finance company, and the Defendant as owner of the Vehicle. If the Vehicle is damaged and under a comprehensive car insurance policy, the

owner (Defendant) can recover the proceeds that can be used to repay the balance owing to the finance company (Claimant). If the insurance proceeds exceed the sum owed on the loan, the owner/borrower (Defendant) receives the proceeds in excess. If it does not exceed the sum owed, the owner/borrower is contractually obligated to pay the balance owing to the finance company. This contractual obligation exists even though the vehicle is written off and can no longer be used by the owner/borrower.

[8] In the case at bar, the Vehicle was destroyed by fire on the premises owned by the Claimant. I agree with Counsel for the Claimant that the location of the Vehicle when it was destroyed by fire matters little, if at all. The Defendant's obligation to pay the balance of the loan under the Agreement continues as long as the loan has not been fully liquidated. The Vehicle was not comprehensively insured by the Defendant, as he was required to do pursuant to the Agreement and the Bill of Sale. At the material time, the Vehicle was only insured against third party risks. The Defendant breached both of his agreements with the Claimant. The requirement to take out a comprehensive car insurance policy on the Vehicle was a secondary security for the Claimant, because the obligation on the Defendant to pay the balance of the loan owing under the Agreement is not dependent on the existence of the comprehensive car insurance policy; it is based on the contract entered into between the parties, that is, the Agreement. The Defendant agreed to receive the loan proceeds and to pay the Claimant the sum of $1,522.20 each month for 6.5 years and that obligation still exists because he has not fully paid the loan.

[9] The Defendant should have ensured that he took out a comprehensive car insurance policy on the Vehicle to minimize his liability to the Claimant. If the Vehicle was under a comprehensive car insurance policy, any proceeds received would reduce that liability. The Defendant did not insure comprehensively the Vehicle so he bears the full loss as a result of the fire. In other words, he cannot thereby reduce his liability to the Claimant by using any insurance proceeds. In any event, the question of whether the Vehicle was insured comprehensively or

not is not material to the legal obligation that the Defendant had under the Agreement to continue to pay the sum of $1,522.20 each month until the loan is fully paid.

[10] It also matters little to the liability of the Defendant to the Claimant whether the Defendant was asked to return the Vehicle or returned it voluntarily. The only significance of that fact is that any proceeds of the sale of the Vehicle by the Claimant have to be subtracted from the balance owing to the Claimant. The Claimant's evidence was that this was done and an amount was also deducted for damage caused by the fire to a nearby vehicle. The Defendant properly does not challenge the Claimant's right to have sold the Vehicle to a third party thereby reducing the amount owing by him.

[11] The Defendant, although he filed a defence and counterclaim, did not file and serve any witness statements in respect of his defence or counterclaim. As a result, at trial, the Defendant adduced no evidence to the court. In fact, Counsel for the Defendant admits that the facts are not in dispute. None of the issues raised in the defence or the counter claim are in evidence before this court, and as a result they cannot form part of the evidence that this court should consider in resolving this dispute between the parties. The Defendant in submissions filed contends that the Agreement is a hire purchase agreement. One can readily see where Counsel fell into error. On the Car Credit Application, in the section termed "Terms of Agreement" at Clause (4) which deals with Security the following are outlined as security: Comprehensive Insurance; Bill of Sale; Hire Purchase Agreement.

[12] I am at a loss why "Hire Purchase Agreement" was included there because the evidence does not indicate the existence of any such document or agreement. Moreover, existence of a Bill of Sale is fundamentally inconsistent with a Hire Purchase Agreement under which a person hires goods for a stated period of time by paying installments. That person can own the goods at the end of the Hire Purchase Agreement if they have paid all the installments. Ownership in the goods remains with the financing company and will only pass to the purchaser when all

the installments are paid. This is not what occurred here and one needs only to rely on the existence of the Bill of Sale to rebut any such argument. The existence of a right to repossess the Vehicle is typical of financing agreements including mortgages does not of itself provide any evidence that a Hire Purchase Agreement exists. The Defendant's argument to that effect has no merit.

[13] Consequently, I find that the Claimant has proven its case not only on a balance of probabilities but convincingly that the Defendant breached the Agreement and is therefore liable for the amount stated in the Fixed Date Claim filed on 10 October 2016.

Disposition

[14] For the reasons explained above, I make the following orders:

(1) Judgment is given in favour of the Claimant for the sum of $89,096.59.

(2) The Claimant is entitled to interest at a rate of 5% per annum on the sum of $89,096.59 from the date of judgment until final payment.

(3) Prescribed costs are awarded to the Claimant in accordance with Part 65.5 of the CPR 2000.

Eddy D. Ventose
High Court Judge

By the Court

Registrar