

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**(Civil Division)**

**CLAIM NO. CV 28 of 2013**

**BETWEEN:**

**FABIAN JOHNSON**

**FIRST CLAIMANT**

**RENNECO JOHNSON**

**SECOND CLAIMANT**

**(a minor by Fabian Johnson his next friend)**

**AND**

**SHEM PRESCOTT**

**FIRST DEFENDANT**

**TROY BRADSHAW**

**SECOND DEFENDANT**

**Before the Honourable Mr. Justice Cecil N. McCarthy, Judge of the High Court**

**Date of Hearing: 2019 April 25**

**Date of Decision: 2019 October 22**

**Mr. Steve Straughn attorney-at-law for the Claimants**

**Mr. Benjamin A. Drakes attorney-at-law for the First Defendant**

## **DECISION**

### **INTRODUCTION**

[1] In this matter, the first defendant applies to the court for the following orders:

- (1) Summary judgment against the claimants;
- (2) Alternatively, that the claimants' claim against the first defendant be struck out as disclosing no reasonable ground for bringing the claim;
- (3) Alternatively, that the first defendant be removed as a party to the proceedings;
- (4) costs to be awarded to the first defendant in the sum of \$2,500.00;
- (5) such further relief or other relief as the Court deems just and appropriate.

[2] The substantive matter concerns a claim for negligence arising out of a road traffic accident that occurred on 31 March 2012 in which the second defendant was the driver of a Mazda motor car registration number MC1458 "the Mazda motor car" along Ashford Road, St. Thomas. The first claimant and the second claimant were respectively the driver and a passenger of motor vehicle registration number T5518 and both allegedly sustained injuries in the said collision.

- [3] Subsequent to the accident, it was discovered that the first defendant was at the date of the accident registered at the Licensing Authority as the owner of the vehicle allegedly responsible for the accident.
- [4] The attorney-at-law for the claimants wrote to the first defendant in early September 2012 alleging negligence as ‘owner’ of the said vehicle at the time of the accident.
- [5] In response to the said letter the first defendant by letter dated 10 September 2012 wrote to the claimants’ attorney-at-law informing him that he had sold the Mazda motor car to Mr. Troy Bradshaw, the second defendant, on 12 January 2012 (a copy of the receipt for the purchase money was enclosed in the said letter) and by letter of 2 April 2012 he had informed the Chief Licensing Officer that he was no longer the owner of the said vehicle.
- [6] In the said letter the first defendant explained that he had become aware of the accident on 1 April 2012 when a police officer contacted him and requested his presence at the Holetown Police Station. His explanation to the police officer that he had sold the car to the second defendant was enough to convince the officer that he was not a person of interest in the matter.

- [7] However, his explanation was not enough to convince the current attorney-at-law for the claimants who asserts that the mere fact of being registered at the Barbados Licensing Authority as owner of the Mazda motor car was enough to justify pursuing a claim against him for negligence based on vicarious liability as the owner of the vehicle.
- [8] The facts as outlined above were set out in an affidavit sworn to by the first defendant and filed 22 October 2019 in support of the application before the court.
- [9] In response to the first defendant's affidavit, the attorney-at-law for the claimant filed an affidavit which asserts that at the date of the accident the first defendant was the owner of the Mazda motor car. In support of this at paragraph 3 of the said affidavit he recites that section 2 of the Road Traffic Act, Cap. 295 of the Laws of Barbados defines "owner" of a registered vehicle as "(a) the person in whose name the vehicle is registered".
- [10] The first claimant also swore an affidavit in which he recites the facts of the accident of 31 March 2012 and alleges that the first defendant was the owner of the Mazda motor car.
- [11] Paragraph 5 of his affidavit reads:

*“That I named Mr. Shem Prescott as the First Defendant in the matter herein since at the material time of the accident of 31<sup>st</sup> March, 2012 he was the owner of motor vehicle registration MC1458.”*

- [12] In the said affidavit, the first claimant deposes that since the first defendant only informed the Barbados Licensing Authority of the change of ownership on 2 April 2012, he was at 31 March 2012, the date of the accident, the owner of the Mazda motor car.
- [13] The first claimant contends that the first defendant should not be removed as a defendant because the removal would prejudice his case for changes since all parties involved in the matter of the accident are not before the court.
- [14] At a Case Management Conference held on 22 October 2018, counsel for the first defendant made an oral application to have the first defendant removed as a party to the proceedings. The claimants objected and the court ordered the first defendant to file an application along with an affidavit and submissions in support of the application. The claimants were also ordered to file written submissions in reply.
- [15] Based on the affidavits filed by the respective parties the following facts emerged:

- (1) On March 31, 2012 the first claimant Fabian Johnson, was driving his vehicle registration number T5508 along Ashford Road in St. Thomas when a collision occurred with the Mazda motor car driven by the second defendant, Troy Bradshaw.
- (2) On January 12, 2012 the first defendant sold the Mazda motor car to the second defendant and a receipt was issued to the first defendant and the second defendant took delivery of the vehicle.
- (3) The first defendant remained registered at the Licensing Authority as the owner of the said Mazda motor car and the Licensing Authority was only informed of the sale on April 2, 2019.

[16] Counsel for the first defendant identifies the issues in detail. Among the issues identified were the following:

- (1) Whether the first defendant was the owner of the Mazda motor car at the date of the accident (31<sup>st</sup> March 2012)?
- (2) Was the second defendant the servant or agent of the first defendant at the material time?
- (3) If the above questions are answered in the negative, should the Court exercise its discretion to (a) grant summary judgment to

the first defendant; or order that the first defendant be removed as a party to the action, or strike out the claimants' claim against the first defendant.

## **THE SUBMISSIONS**

[17] Counsel for the first defendant, Mr. Drakes, submitted that at the material time the first defendant was not the owner of the motor car.

[18] He cites section 18 of the Sale of Goods Act which provides:

*“(1) 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.*

*(2) For the purposes of the ascertaining the intention of the parties, regard shall be held to the terms of the contract, the conduct of the parties and the circumstances of the case.”*

[19] On the second issue, the counsel for the first defendant, Mr. Drakes cites the definition of agent in **Black's Law Dictionary, 6<sup>th</sup> Edn:-**

*“A person authorised by another (principal) to act for or in place of him, one entrusted with another's business. One who represents and acts for another under the contract or relation of agency (q.v.)”*

[20] Counsel for the defendant also cites the following passage from **Bingham and Berryhams Motor Claims Cases 10<sup>th</sup> edn. at page 157.**

*“An owner of a vehicle does not incur liability for damage caused by it, merely by being the owner. It must be established that the driver of the vehicle was driving it as the servant or agent of the owner”.*

[21] Mr. Drakes says that the relationship between the first and second defendant was simply that of a seller/buyer and the claimants have failed to establish vicarious liability on the part of the first defendant.

[22] Mr. Drakes also submits that summary judgment should be given against the claimants in relation to their claim against the first defendant.

[23] Counsel grounds his argument on Rule 15.2 of the Civil Procedure Rules (CPR) which permits the Court to give summary judgment against a party on the whole or on a particular issue if the claimant has no real prospect of succeeding on the claim or issue and there is no other reason why the case or issue should be disposed at trial.

[24] Mr. Drakes argues that the claimants have not established a real prospect of succeeding in their claim against the first defendant and

that there is no other reason for the matter or issue to be disposed at trial.

[25] Since the first defendant was not the vehicle owner at the material time no vicarious liability arises and the claimants are unable to discharge the evidential burden.

[26] Counsel for the claimants, Mr. Steve Straughn, submits that since, at the material time, the first defendant was registered at the Licensing Authority as the owner of the Mazda motor car MC1458 having notified the Chief Licensing Officer of the sale of the vehicle on April 2, 2012, the claim is properly brought against the first defendant.

[27] Mr. Straughn argues that at no time either in the affidavits filed nor in his submissions, did counsel for the first defendant address the evidence that on 12 January 2012 the first defendant sold the Mazda motor car to the second defendant. His view was that the first defendant being the registered owner of the said Mazda vehicle was a proper party before the court and should not be removed as a party since this would prejudice his case for damages and all parties involved in the matter would not be before the court.

- [28] The central issue that arises in this case is whether the first defendant was the owner of the motor vehicle registration number MC1458 at the date of the accident on 31 March 2012.
- [29] The claimants submit that he was and the first defendant submits that the sale of the motor car to the second defendant effected a transfer of ownership to the second defendant.
- [30] **Section 2 of the Road Traffic Act Cap. 295** defines owner as  
*“(a) the person in whose name the vehicle is registered.”*
- [31] In the **Barnard v Sully [1931] 47 TLR 557** it was held that when the plaintiff in an action for negligence proves that damage has been caused by the first defendant’s motor car the fact of ownership of the motor car is prima facie evidence that the motor car at the material time was driven by the owner, or by his servant or agent.
- [32] However, on the facts of this case the first defendant gave evidence that on 12 January 2012 the Mazda motor car was sold to the second defendant.
- [33] The claimants have provided no rebuttal of the evidence. It would seem, therefore that this evidence rebuts the presumption that arises that the driver was servant or agent of the owner.

[34] The evidence of the first defendant was displaced by the evidence of the sale: See **Kent Garbutt et al v Randolph Card et al** (Court of Appeal of Belize Civil Appeal No: 42 of 2010).

## **THE ISSUES**

[35] Having considered the evidence, I am of the view that two issues arise for consideration, namely:

- (i) whether at the time of the accident the first defendant was the owner of Mazda motor car registration number MC 1458; and
- (ii) whether at the time of the accident the second defendant was driving motor car registration number MC 1458 as servant or agent of the first defendant.

## **ISSUE I**

### **Was the first defendant the owner of motor car MC1458?**

[36] Counsel for the claimants, Mr. Straughn submits that at the date of the accident the first defendant was registered at the Barbados Licensing Authority as the owner of the Mazda motor car was conclusive of the ownership of the vehicle at the material time.

[37] Mr. Straughn referred to the definition of owner in Section 2 of the Road Traffic Act, Cap. 295 when it defines owner as:

“(a) the person in whose name the vehicle is registered.”

[38] Furthermore Mr. Straughn also cites the fact that the first defendant informed the Licensing Authority of the transfer of the vehicle to the second defendant two days after the accident.

[39] It is submitted that Mr. Straughn’s view is misconceived and cannot be supported on a reading of the Act as a whole.

[40] For example, section 18 recognises that ownership of a vehicle can change prior to registration. This Section 18(1) of the Act provides:

*“Where the ownership of a motor vehicle in respect of which a valid road licence is in existence is transferred to another person*

*(a) the transfer of the motor vehicle shall, upon transfer thereof,*

*(i) give notice of the change of ownership of the vehicle in writing to the Licensing Authority for the parish in respect of which the motor vehicle is licensed,*

*(ii) inform the Licensing Authority of the name and address of the new owner of the vehicle, and*

*(iii) return to the Licensing Authority the registration card issued in respect of such vehicle.”*

Similar duties are imposed on the ‘new owner’ of the motor vehicle.

- [41] The Act clearly recognizes that ownership of a motor vehicle may change prior to registration and that the “registered owner” may not in fact be the actual owner of the vehicle.
- [42] A similar issue came before the Court of Appeal of Belize in **Kent Garbutt and Randolph Card supra**. In that case Wagner, the registered owner of a taxi sold and delivered possession of a taxi to Card who was at the material time the driver of the taxi when it was involved in an accident caused by his negligence. At that time the taxi remained registered in the name of Wagner.
- [43] The Court of Appeal held that “the certificate of registration constituted prima facie evidence of ownership”, which was displaced by the evidence of the transfer of ownership.
- [44] Likewise in the case at bar the sale of the car to the second defendant which was evidenced by a receipt for the payment and the fact of assumption of possession by the second defendant rebutted the presumption of ownership arising from the registration at the Licensing Authority.

## ISSUE II

**Was the second defendant driving the Mazda motor car as servant or agent of the first defendant?**

[45] In **Barnard v Sully supra**, the court held that in an action for negligence where a plaintiff proved that damage has been caused by the defendant's motor car, the fact of ownership of the motor car is prima facie evidence that the motor car, at the material time was driven by the owner, or by his servant or agent. It was also held in that case that it is evidence which is liable to be rebutted by proof of actual facts.

[46] In so far as the claimants may wish to rely on this presumption the actual facts demonstrate that the first defendant was not the owner of the Mazda car at the time of the accident. Indeed there is no evidence challenging the sworn testimony of the first defendant that he had sold the motor car to the second defendant. In the circumstances the presumption of or agency like the prima facie evidence of ownership has been displaced.

## THE APPLICATION FOR SUMMARY JUDGMENT

[47] **Part 15** of the **CPR** addresses the grounds on which a court may grant summary judgment. **Rule 15.2** reads in part:

“▪ *The court may give summary judgment against a party on the whole of a claim or on a particular issue if*

▪ (a) *It considers that*

(i) *the claimant has no real prospect of succeeding on the claim or issue; or*

(ii) *the defendant has no real prospect of successfully defending the claim or issue; and*

(iii) *there is no other reason why the case or issue should be disposed of at a trial.”*

[48] The learning on what constitutes a real prospect or success is well known and can be found in the Caribbean Civil Court Practice 2011 at pages 144-145 where it says:

*“The Court should interpret ‘real’ as the opposite of fanciful and should not conduct a mini-trial in order to establish whether a summary disposal [is] appropriate: Swain v Hillman [2001] 1 All ER 91 CA.”*

[49] Having carefully reviewed the relevant law, the statements of this case, the affidavits filed along with the respective submissions of counsel for the contending parties, I have concluded that the claimants

have no reasonable prospect of success on the claim against the first defendant.

[50] In the absence of evidence rebutting the first defendant's evidence that he had sold the car to the second defendant, the claimants' case against the first defendant cannot succeed. Moreover, if there is no proof of agency the case is also destined to fail. In these circumstances, I am bound to exercise my powers to bring to a close the proceedings against the first defendant.

#### **DISPOSAL**

[51] I therefore, make the following orders:

- (1) summary judgment is entered for the first defendant.
- (2) both parties are given fourteen days from the date of this judgment to make their submission on costs.

**Cecil N. McCarthy**  
**Judge of the High Court**