JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 47 OF 1978

BEFORE: THE HONOURABLE MR. JUSTICE CARBERRY, J.A.
THE HONOURABLE MR. JUSTICE ROWE, J.A.
THE HONOURABLE MR. JUSTICE WHITE, J.A.

BETWEEN:	DELROY MINTO	PLAINTIFF/RESPONDENT
AND	ALVIN MINTO	DEFENDANT/APPELLANT

Mr. H. G. Edwards, Q.C., for defendant/appellant
Mr. C. M. M. Daley and Mr. Wentworth Charles for plaintiff/respondent.

26th & 27th April, 1982 & 15th April, 1983

WHITE, J.A.:

This appeal questioned the judgment of Orr, J., that the defendant appellant pay to the plaintiff respondent the sum of $1,900.00 claimed as balance owing on the price of a truck sold by plaintiff respondent to the defendant appellant. The trial judge found that the purchase price was $3,400.00 on account of which the defendant appellant had paid $1,500.00.

In answer to the claim the defendant appellant admitted the transaction of sale to, and purchase by, him of a truck from the plaintiff respondent, but qualified his admission to this extent: the agreed purchase price of the truck was not $3,400.00, but $2,000.00. This last amount was paid in full on the day the transaction was concluded.

This averment was central to the whole case for the defendant, who contended that the cheque for this $2,000.00, which he received from the bank, was requisitioned by him in pursuance of his indebtedness, and it truly records the state of account between the parties to this suit. This cheque was made payable to the plaintiff respondent, and was issued by the

the Bank of Nova Scotia Jamaica Ltd. On the back of that cheque (Ex. 4) appears a bank stamp stating settlement in full for one 1970 Ford truck. There is some uncertainty from the evidence whether this stamp was there at the time when the cheque was issued by the bank in St. Ann's Bay. The plaintiff respondent adamantly maintained that nothing was stamped on the back of the cheque when he endorsed it for encashment. On the other hand the defendant appellant said that when he received the cheque "It had writing on it. I did not specify what writing was."

To bolster his story the defendant appellant relied on the evidence of John Small, a loan officer of the bank in St. Ann's Bay (but who was not the bank official who dealt with the requisition upon which the cheque was issued). However, he gave evidence of the practice of the bank "where basic lending principles are concerned." He said that when a person applied for a loan to pay another, an invoice must be obtained from the vendor's company confirming the amount involved and the nature of the transaction. Any payment would be made by cheque to the vendor in full, and if the transaction between the two persons involved cash, a receipt would have to be produced. He further said that in issuing cheques in settlement, a stamp defining whether there is a balance in the transaction or the amount of the cheque is the total sum involved in the particular purchase would be used. He said, too, that although it would be improper for cheques to be issued without confirmation from the buyer, it has been done; and, he insisted, such an endorsement would have had to be on the back of the cheque at the time of issue, and if not so; it would not have been stamped when the cheque was returned.

The learned trial judge had to consider this aspect of the case in the light of the evidence of the plaintiff respondent that he had changed the cheque in Montego Bay, not St. Ann's Bay, and, pursuant to the plaintiff appellant's request, had paid him $500.00 out of the amount of $2,000, the defendant appellant having earlier expressed the desirability of being paid this amount of $500.00 which could be made use of in case he needed materials, or to spend if anything happened. Payment was made at the defendant appellant's home.

In his oral judgment the judge said that he was not satisfied that the endorsement on the cheque represented the true transaction. We are unable to say that he is wrong in his conclusion. For one thing, there is no evidence to indicate that the attention of both the plaintiff and the defendant had been drawn to the stamp imposed on the back of the cheque. This evidence could only have been given by Mr. Angus, the bank official who issued the cheque. He did not give evidence at the trial, as by that time he had ceased working at the bank. Secondly, neither of them had subscribed to this stamp; although Delroy Minto's signature appears at the foot of the cheque. He did not subscribe it with reference to the stamp, but only in the act of endorsing for the purpose of the encashment. The fact of the matter is that the questions of what price was agreed for the truck, and what was paid on account, were questions of fact for the judge. A resolution of this question would also take into account another important subsidiary factor of whether the defendant appellant had given security for the balance of the purchase price. It was the plaintiff respondent's evidence that the defendant appellant had given the title for his house in which he lived as security for the balance of $1,900.00 on the transaction involving the truck. This title was later exchanged for one for land in St. James. This exchange came about because the plaintiff respondent had requested payment of the balance of $1,900.00 to assist him in paying for a new truck which he was seeking to buy. The defendant, not being in funds, offered to guarantee a loan from the bank with his title to the land in St. James. This title was itself given in evidence at the trial.

The defendant's explanation of the fact that the plaintiff had his title was to say that he had voluntarily lent it to the plaintiff (his nephew) to help plaintiff obtain a loan from the bank. This loan had fallen through but he had neglected for over one year to recover the title from either the bank or the plaintiff, nor had he sued the plaintiff for its recovery though they were now in litigation. On this issue the judge believed the plaintiff not the defendant.

The learned trial judge had also the benefit of the evidence of Mrs. Icibel Minto, the mother of the plaintiff respondent who gave evidence of the discussions about the truck between the plaintiff and the

defendant, and the resultant agreed price of $3,400.00. It was attempted to obfuscate the evidence of this witness by introducing a transaction between her and defendant over another truck and which resulted in a lawsuit. The learned trial judge obviously did not disbelieve her account of the discussions leading up to the agreement on the purchase price of the truck, the subject-matter of this action.

All in all, it is clear from the notes of the oral judgment, that the trial judge was clear in his own mind as to the credibility of the plaintiff's case, and he therefore gave judgment for him.

In the result, despite the usual painstaking analysis by Mr. Edwards of the recorded evidence, we can find no reason to disagree with the judge. Accordingly, the appeal is dismissed with costs awarded to the plaintiff respondent.