

201145

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 89/95

**COR: THE HON. MR. JUSTICE CAREY, J. A.
THE HON. MR. JUSTICE WOLFE, J.A.
THE HON. MR. JUSTICE HARRISON, J.A (AG.)**

**BETWEEN NOBLE'S EXECUTIVE AUTO
 BROKERS LTD**

AND EDWIN NOBLE APPELLANTS

AND RICHARD BRANTNER RESPONDENT

Patrick Foster & Richard Ayoub for Appellants

Carlton Williams for Respondent

6th & 20th May, 1996

CAREY, J A

Mr. Brantner was minded to purchase a motor car and responded to a newspaper advertisement which took him to Noble's Executive Auto Brokers Ltd. He spoke with Mr. Noble who pointed out certain defects in a car he selected. But, he loved the car and duly purchased it for \$280,000 which he paid to Mr. Noble. He took delivery upon his return to the island from St. Lucia whither he had journeyed to spend his honeymoon. He had to expend money to put the car in order. While his wife was driving the car, it was seized by the police who took the keys. The Brantners have not seen their car again. They sued the vendors.

One would have thought that, as a car dealer jealous for his good name, Mr. Noble would have done something about the matter to enable the purchasers to have

either their car restored or their purchase price and other expenditure returned. That did not occur. The action was strenuously defended up to this court.

I think the pleadings are important. So far as is material, the plaintiff pleaded thus:

"4. Sometimes in or about the month of August, 1991, the 2nd Defendant acting as servant and or agent of the 1st Defendant, sold to the Plaintiff a Honda Prelude motor car for the sum of TWO HUNDRED AND EIGHTY THOUSAND DOLLARS which the Plaintiff paid to the 2nd Defendant.

5. It was an implied condition of the said sale that the defendants had the right to sell the said motor car to the Plaintiff.

6. In breach of the said condition the defendants had no lawful right to sell the said car in that at all material times the motor car was imported into the country in breach of the Customs Act and or was stolen.

7. On or about the 16th day of March, 1992, the Plaintiff was obliged to deliver the said car to the police who demanded and took possession of the car from the Plaintiff."

The defence to these paragraphs were pleaded as under:

"2. The Defendants state that in or about the month of August, 1991 the Defendants, acting within the course and scope of their employment as servants and/or duly authorised agents of a certain Britton Madden, who was known to the Plaintiff, sold a Honda Prelude motor car to the Plaintiff. The Defendants further state that at all material times, the said Britton Madden orally and otherwise represented to the Defendants that he was the legal owner of the motor car. Save that which is expressly admitted, the Defendants deny the allegations of paragraph 4 of the Statement of Claim.

3. Alternatively, the Defendants further state that at all material times, the said Britton

Madden orally and otherwise represented to the Defendants that he was legally entitled to sell the motor car. Save that which is expressly admitted, the Defendants deny the allegations of paragraph 4 of the Statement of Claim.

4. The Defendants state that while acting within the course and scope of their employment as servants and/or duly authorised agents of Britton Madden, the Defendants sold the motor car to the Plaintiff. Save as aforesaid, the Defendants deny the allegations of paragraph 5 of the Statement of Claim.

5. The Defendants deny the allegations contained in paragraph 6 of the Statement of Claim.

6. The Defendants make no admissions as to the allegations in paragraph 7 of the Statement of Claim.

Paragraph 6 was amended at the hearing to read:

"The defendant (sic) admits paragraph 7 of the Statement of claim."

Even the most cursory reading of these pleadings by the defence would prompt the question, what is the issue raised? Indeed they leave a great deal to be desired but save for paragraph 7 thereof, the others can be ignored.

At the hearing, the defence rested on submissions which were reiterated before us. Mr. Foster said that there was no reason advanced by the plaintiffs for the seizure by the police. There was no evidence that the vehicle was either stolen or imported in breach of the Customs Act. The mere seizure by the police could not by itself constitute a breach of any term of the contract.

I fear Mr. Foster is in error. On the pleadings, the plaintiff was entitled to judgment. Once the defendants by paragraph 6, admitted that the plaintiff was obliged

to deliver the car to the police who demanded and took possession of the car, the consideration had wholly failed by reason of a breach of implied conditions imposed by law.

Section 13 of the Sale of Goods Act prescribes as follows:

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

(a) an implied condition on the part of the seller that in the case of a sale he has a 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;

(b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods; ..."

No evidence needed to be adduced and the plaintiff was entitled to move for judgment by admission. But evidence was led, the opportunity for cross-examination was used by the defence. They did not cross-examine Mrs. Brantner who testified as to the seizure. We understood objection was taken to the witness giving evidence of her conversation with the police officer. But it cannot matter. The defence were not in their pleading raising any issue as to the lawfulness of the seizure. The consequence of that seizure was a breach of the implied condition under Section 13 (a) and (b) of the Act. The defendants have not had their car returned; they have been deprived of their possession and title to the car. The sale took place in August 1991, the seizure on 16th March, 1992 and the action was heard in 1995. Not only has Mr. Brantner not had his car back, he has not had his money returned. The dealer says the plaintiff has not proven why the car has been seized. The defence was hopeless and the arguments devoid of merit.

It was for these reasons that I agreed that the appeal be dismissed I with costs to the respondent to be taxed if not agreed.

WOLFE, J A

I agree.

HARRISON, J A (AG)

I agree.