IN THE FIJI COURT OF APPEAL
Civil Jurisdiction

Civil Appeal No. 3 of 1982

BETWEEN:

MICHAEL CHINAPPA Respondent

- and -

MOTOR CORPORATION OF FIJI LIMITED Appellant

Date of Hearing: 12 November, 1982
Delivery of Judgment: November, 1982

G.P. Shankar for Appellant
H.M. Patel for Respondent

JUDGMENT OF THE COURT

Marsack, J.A.

This is an appeal against the judgment of the Supreme Court sitting at Lautoka on the 18th day of December, 1981 awarding the respondent $5192 as damages for the wrongful seizure of respondent's car by appellant.

The facts of the case are complicated and difficult to set out with precision. Appellant is a dealer in motor vehicles and respondent has on occasion purchased cars from that Company. The transaction involved in the present case was the sale

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by appellant to respondent of Subaru van BE215 on 16 May, 1980 for $7024. Respondent had some time previously bought a car AY929 from appellant; and still owed $1,000 under that purchase. This car was taken over by appellant by way of trade-in at a figure of $3,600, being the full trade-in value at that time. A further $2,000 was to be paid in cash by respondent; and he arranged that the British Petroleum Company should pay to the appellant the sum of $2,300 which would be due to respondent for contract work performed for that Company. This sum of $2,300 was paid in July 1980.

On 16 May, 1980 respondent signed a Bill of Sale in favour of the appellant, which recites that the mortagee (the appellant) has agreed to sell to the mortgagor (the respondent) vehicle BE215 for the price of $7024

> "Upon the mortgagor now paying to the mortgagee a deposit of $5600 on account of the said purchase price and entering into these presents to secure payment of the balance thereof namely the sum of $1424."

The $5600 represented the trade-in price of AY929, $3,600, plus the $2,000 cash to be paid by the respondent. The Bill of Sale is the only document given in evidence as to the terms of sale; and the evidence given at the trial concerning those terms by the appellant differs materially from the evidence given by the respondent.

On 24 November, 1980 the appellant Company gave formal notice to the respondent that a bailiff had been authorised "under the terms and conditions set out in the Bill of Sale which you executed" to seize vehicle BE215 unless the sum of $200 plus bailiff's fee $22 were paid within 7 days. There is no evidence as to how the sum of $200 was made up. The instalments payable under the Bill of Sale up to that date amounted to $600 and the respondent had actually paid within that period the sum of $800.

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The main point in issue in these proceedings is the appropriation by the appellant of the sum of $1000 received from the British Petroleum Company to the balance owing on car AY929, and not to the cash payment to be made by the respondent on the purchase of BE215. Mr. Shankar refers to the principles set out in 9 Halsbury 4th Edition, paragraph 505 et seq:

> "Debtor has first right to appropriate. Where several distinguished debts are owing by debtor to his creditor, the debtor has the right when he makes a payment to appropriate the money to any of the debts that he pleases, and the creditor is bound, if he takes the money, to apply it in the manner directed by the debtor. If the debtor does not make any appropriation at the time that he makes the payment, the right of appropriation devolves on the creditor."

In this case the payment was made, not by the debtor personally, but by British Petroleum on his behalf. The question then arises: did the appellant understand at the time the payment was made, that the arrangement between debtor and creditor was that the sum paid by British Petroleum was to be taken as the $2000 payable in cash upon the purchase of the new vehicle BE2152 The finding of the learned trial Judge on this subject is set out in his judgment in these terms:

> "It is clear from both sides that the $2,300 from British Petroleum intended to meet the $2,000 cash deposit under the Bill of Sale. Therefore the defendants should have used it for that purpose."

This finding is strictly in accordance with the evidence on the subject given in the Supreme Court and cannot, in our opinion, be challenged. That being so it necessarily follows that the respondent had not made default in the payments due for the purchase of the new vehicle. His only failure related to the non-payment of the balance of $1,000 owing on AY929.

It is important to note that the action taken by the appellant in seizing vehicle BE215 was expressly stated by the appellant to be in exercise of his powers under the Bill of Sale. But, if the sum received from British Petroleum is appropriated, as it should be, to the purchase price of that vehicle, then it is perfectly clear that there was no such default on the part of the respondent, whether for the stated sum of $200 or another sum. Accordingly, no right of seizure arose under the Bill of Sale; and the learned trial Judge has found the seizure was unlawful.

On this basis respondent was entitled to damages which the learned trial Judge assessed at $5,192, representing value of the car $4892 plus damages $300. The figure of $4892 was calculated as $5600, which the learned Judge found was the value of the car at the time of seizure, less $708 being the balance owing under the Bill of Sale. With great respect we are of the opinion that one matter has been overlooked by the learned trial Judge. The amount set out in the Bill of Sale was fixed after due allowance had been made for the full value of the trade-in car AY929, $3600, and $2000 the amount payable in cash by the purchaser and actually paid by British Petroleum. But at the time of the transaction, $1000 was still owing on AY929; and as the appropriation of that amount from the money paid by British Petroleum was disallowed, the balance of $1000 cannot be held to have been paid on that car. To settle matters finally between parties this sum would then have to be deducted from the amount of the judgment in respondent's favour.

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In the result, we uphold the judgment of the learned trial Judge subject to the reduction of the amount of that judgment from $5192 to $4192. In the circumstances we make no order for costs.

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Judge of Appeal

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Judge of Appeal

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Judge of Appeal