

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 156 of 2012

Shiu Kamal Singh
Plaintiff

v

Suva City Council
First defendant

And

Land Transport Authority
Second defendant

Counsel: Mr K. Maisamo for the plaintiff
Ms A. Erasito for the first defendant
Mr S. Nandan for the second defendant

Date of hearing: 21st October, 2019

Date of Judgment: 22nd May, 2020

Judgment

1. The plaintiff tendered for motor vehicle DC 653 advertised for sale by the first defendant. He was awarded the tender. The plaintiff states that the first defendant did not pay the arrears of wheel tax and other levies. The arrears were not disclosed during the tender process. He bought the vehicle on the understanding that it is free of encumbrances. He was assured verbally by the first defendant that the second defendant will transfer it to him. The second defendant acted "*negligently*" in not transferring it to him. The plaintiff states that he operates a truck business and claims he sustained loss in a sum of \$ 227,868.78, as the vehicle was not transferred to him.

2. The first defendant, in its statement of defence states that it did not owe any outstanding arrears. The vehicle was left abandoned on the streets, impounded and tendered for sale pursuant to its powers under the Local Government Act and the Land Transport Act.
3. The second defendant, in its statement of defence states that its duty is to ensure that vehicles have valid registration and wheel tax certificates. It could not transfer the vehicle as its registration certificate and wheel tax certificate had expired.

The determination

4. The crucial issues for determination, as recorded at the PTC, are whether there was any obligation on the first defendant to check if the wheel tax and other levies were cleared prior to the tender and whether the second defendant was obligated to transfer the vehicle, despite the expired registration and wheel tax registration certificates.
5. The plaintiff,(PW1) produced the advertisement as published in the Fiji Sun, his letter of tender, the prescribed tender form, the acceptance of his offer by the first defendant and the transfer form given to him by the first defendant. He said that he paid the required sum to the first defendant, which gave him a transfer form. He towed the vehicle to his garage, repaired it and took it to the second defendant to transfer it in his name. The second defendant told him that there were arrears of wheel tax to be paid of \$ 15,391.52. PW1 said that the first defendant has to pay the arrears,
6. In cross examination, Ms Erasito, counsel for the first defendant referred PW1 to his letter of 10th December,2008, to the first defendant submitting his tender and stating that he requires the vehicle for spare parts. His attention was also drawn to the transfer form, which stated that all arrears must be paid to the second defendant. The transfer form was given when he paid the money. He said that there was no arrangement with the first defendant to pay the arrears.
7. In answer to Mr Nandan, counsel for the second defendant, PW1 agreed that the arrears had to be paid before the new registration sticker was issued. He said that the first defendant was the owner of the vehicle.

8. DW1, (*Krishna, Administrative Secretary of the first defendant*) explained the procedures for impounding vehicles. The vehicle was not cleared. The plaintiff was the successful bidder for the vehicle. He did not raise any concerns after buying the vehicle. There was no arrangement with the plaintiff to pay the arrears. In cross examination, he agreed that if there is no claim for the vehicle consequent to the advertisement, the first defendant becomes the owner of the vehicle.
9. DW2, (*Abhishek Chandra, second defendant*) testified. He said that the Land Transport Act and Regulations provides that arrears must be paid.
10. In my judgment, there was no obligation on the first defendant to inform the plaintiff of the arrears nor ascertain if the wheel tax or other levies have been cleared for the following reasons.
11. The plaintiff by letter of 10th December, 2008, informed the first defendant that he required the vehicle for spare parts.
12. The vehicle was a derelict vehicle towed away from the streets of Suva, as provided in the advertisement. The tender form for the purchase of derelict forms given to the plaintiff provides that the vehicle could be inspected.
13. The plaintiff should have inspected the vehicle and ascertained if the wheel tax and registration certificate were up to -date.
14. I do not find that there was an arrangement between the parties for the payment of the arrears, as admitted by the plaintiff, in cross examination.
15. The second defendant was not obliged to transfer the vehicle with the expired registration and wheel tax registration certificates. The Land Transport Act requires the arrears to be paid before the relevant certificates are issued. There is no negligence on the part of the second defendant.
16. In my judgment, for the aforesaid reasons, the plaintiff is not entitled to claim damages.

17. In any event, he has not established any loss.

18. *Orders*

- (a) The plaintiff's claim is declined.
- (b) The plaintiff shall pay the first defendant a sum of \$ 1000 and the second defendant a sum of \$ 1000, as costs summarily assessed.



A.L.B. Brito Mutunayagam

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JUDGE
22nd May, 2020