

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 09 of 2019

Carpenters Fiji Pte Limited
trading as Carpenters Motors
Plaintiff

v.

Auto One Importers & Exporters Company Pte Limited
Defendant

Counsel: Mr E. Narayan with Mr S. Lal for the plaintiff
Mr E. Kumar for the defendant

Date of hearing: 26th and 27th October,2022 and 1st November,2022

Date of Judgment: 5th April,2023

Judgment

1. The plaintiff claims that the defendant breached a contract of sale and failed to pay the purchase price of a brand new Hyundai Genesis registration No. JP120 vehicle. The plaintiff claims loss and damages. The defendant denies that it agreed to purchase the vehicle.

2. The amended statement of claim states that Rameez is son of Mr and Mrs Rafiq, Directors of the defendant. Mr Rafiq was the Managing Director. Rameez and Mrs Rafiq test drove the vehicle. The plaintiff gave Rameez two quotations for the vehicle. A LPO was issued after the second test drive.
3. Rameez, on behalf of the defendant submitted the following: (i) the revised quotation and the defendant's financial statements to Credit Corporation (Fiji) Limited for finance and, (ii) the plaintiff's New Vehicle Order Form, as executed and documents with the defendant's stamp to register the vehicle at the LTA. Credit Corporation approved the loan for the full sum. The defendant obtained comprehensive insurance and ACCF cover. On 10th June, 2018, the vehicle was handed to Mr Rafiq. Mr Rafiq drove the vehicle from the plaintiff's showroom accompanied by Rameez.
4. The plaintiff claims that Rameez held out as having actual and/or ostensible authority as Senior Executive and Operations Manager of the defendant. The actions of Rameez were approved by Mrs Rafiq and subsequently by Mr Rafiq on 10th June, 2018, when he took delivery of the vehicle. On 20th July, 2018, Mr Rafiq asked the plaintiff to remove the vehicle. The plaintiff advised that the vehicle would be taken for storage. The plaintiff sold the vehicle to mitigate its loss and incurred further costs.
5. The statement of defence states that Rameez was an employee of the defendant, not a Senior Executive and Operations Manager. He had no authority to enter into a contract for purchase of the vehicle. The defendant did not issue a LPO. It was unaware that Rameez submitted its financial statements to Credit Corp Corporation (Fiji) Limited for finance. Credit Corporation advised the plaintiff that approval was granted for finance and stated that it was not an instruction to proceed with registration and release of the vehicle. The transfer documents were signed by Rameez on a conditional basis until its Director confirmed the purchase. Within a few minutes of signing the transfer documents before the plaintiff's sales representative could leave the defendant's premises, Mr Rafiq informed him that they would not proceed with the purchase and told him not to act on the transfer documents.

6. The sales representative of the plaintiff insisted and informed the Director of the defendant to take the vehicle home to get “a feel” of it before confirming the purchase. Rameez, the youngest son of Mr and Mrs Rafiq returned the vehicle. The plaintiff’s representatives did not accept the vehicle. The plaintiff came to its premises and took the vehicle.

The hearing

7. *PW 1*

PW1, (*Alvin Sharma, Exports Manager for Punjas Fiji Ltd*) in evidence in chief said that he was in employment with the plaintiff during this transaction. On 13th April, 2018, Rameez and Mrs Rafiq test drove the vehicle. Rameez test drove the vehicle again on 27th April, 2018. In June, the price was revised to \$179,500.00. On 6th June, 2018, the plaintiff’s New Vehicle Order Form (agreement) was signed by the parties. On 7th June, Credit Corporation informed the plaintiff that approval was granted to finance the purchase price. The LTA registration documents and third party documents were signed. The vehicle was registered on 8th June, 2018.

Rameez wanted to surprise his late father for his 60th birthday with this vehicle. On 10th June 2018, Rameez and the late Mr. Rafiq came to the plaintiff’s showroom to pick up the vehicle. The late Mr Rafiq drove the vehicle out of the showroom with Rameez. Mr Rafiq appears to have signed the delivery checklist. It is mandatory that a customer signs the delivery checklist when he takes a new vehicle. On 10th June, 2018, Rameez wrote to Credit Corp that he has taken satisfactory delivery of the vehicle registration and authorized them to release payment to the plaintiff. On the same day, an invoice was issued to the defendant for \$179,500.00. An insurance policy and ACCF was issued. A month later, on 20th July, the late Mr Rafiq sent an email to the plaintiff advising that the vehicle was at risk, no responsibility was taken and requested it be removed from their premises.

PW1 said that he ceased working with the plaintiff on 30th July, 2018, but he was aware that the negotiations between the parties were going on. On 31st July, 2019, the vehicle was resold.

In cross-examination, PW1 said that the defendant provided its business licence certificate, business registration no and TIN no to register the vehicle. The insurance cover was paid by the defendant. It was put to him that the plaintiff registered the vehicle on 8th June, 2018, contrary to the instructions of Credit Corporation, which stated in its letter to the plaintiff that approval of finance was not an instruction to proceed with registration and release of the vehicle. PW1's response was that the plaintiff registered the vehicle based on discussions with the defendant.

Next, the attention of the witness was directed to the invoice, which provided that ownership would not pass until the purchase price was paid. He said that there was a valid purchase order signed by an authorized officer of the defendant. Mr Rafiq took the invoice on the day of delivery.

PW1 said that he knew Ramiz as a Senior Executive and Operations Manager from their dealings with the defendant, his email and business card. He agreed that the LPO does not give his designation. It was put to PW1 that on 11th June, Mr. Rafiq's youngest son Reez delivered the vehicle back to the plaintiff. He answered that happened much later in July. The New Vehicle Order Form was signed by Mr Rafiq and Rameez. The vehicle was registered by LTA in the defendant's name. Full ownership did not pass till payment was made.

In re-examination, PW1 said that Mr Rafiq and Rameez took delivery of the vehicle with balloons on the vehicle.

DW1

8. DW1, (*Raees Rafiq, youngest son of Mr and Mrs Rafiq*) in evidence in chief said that the first time he saw the vehicle was on Sunday, 10th June, 2018, his Dad's birthday. On that day, his Dad told him to return the vehicle to the plaintiff's showroom. Since it was closed on that day, he was told to return it the next day. His Dad said that it was a high end vehicle which they could not afford. DW1 said that he took the vehicle to the plaintiff's showroom, but the plaintiff did not accept it. DW1 initially parked it in their compound and later outside. The vehicle was taken by the plaintiff after a few weeks. Before 10th June, 2018, a representative of the plaintiff came to their showroom and asked for the defendant's seal

to register the vehicle. Mr Rafiq clearly told him that it was a very expensive vehicle and does not want to register it nor proceed with the deal.

In cross examination, DW1 said that he was surprised to see the vehicle on 10th June, as prior to that date his Dad declined to give the defendant company seal to a representative from the plaintiff. Rameez was a sales representative. He could not make purchases on behalf of the defendant. His mother was in the business, but it was his Dad who was mostly involved in running the business. He did not see any damage on the vehicle on 11th June, 2018.

In re-examination, he said that Rameez resigned from the defendant because of his wrongdoings.

DW2

9. DW2, (*Mrs Rafiq, Director of the defendant*) in evidence in chief said that Mr. Rafiq passed away on 26th July, 2020. She saw the vehicle for the first time when it came home a week before Mr Rafiq's birthday. She test drove it. She told her son Rameez that it was a very beautiful vehicle, but very expensive. Neither she nor his father will accept it and to return it. Mr. Rafiq did not seem happy. He was very upset and kept telling Rameez to return it.

Rameez was not an Executive in the defendant. He was a salesman. Mr Rafiq, as Director was the only person giving directives and making decisions regarding daily operations. She did not approve the purchase. The purchase was initiated by Rameez. An agreement was not made.

In cross examination, she said that Rameez was not an authorized employee of the defendant. Neither she nor Mr Rafiq had knowledge of the LPO issued on 27th April, 2018, nor that Rameez was buying the vehicle. She went for a test drive on 13th April, 2018. She agreed that the order was from her office. The order was missing from an unused order book. Rameez's signature was on the new vehicle order with the defendant's seal. Ramiz was an employee of the company. The delivery checklist contains Rameez's signature, not Mr Rafiq's signature. She agreed that the plaintiff would not have released the vehicle on that day unless the defendant signed the delivery checklist. On 10th June, 2018, Mr Rafiq and Rameez picked up the vehicle and took it home. She said that Mr Rafiq thought he was

going for a test drive. She agreed that it was “*very true*” that a person will take a gift home on his birthday, not go for a test drive.

In re-examination, DW2 reiterated that that Mr Rafiq thought he was going for a test drive.

10. *DW3*

DW3, (*Fazia Fazeem, Salesperson and sub-agent of New India Assurance....*) in evidence in chief said that the registration clerk of car dealers register vehicles at the LTA. Once the registration is done, the dealer comes to her for insurance. She hardly deals with customers. The car dealer brings the money or the cheque. The customer pays the money directly to the car dealer. She processed the insurance for this vehicle without receiving the payment. She has not received payment. She issued a receipt. She never processes insurance without instructions from the plaintiff. The plaintiff sent her scanned copies of the third party, ACCF and the wheel tax. The witness said that the original receipt was with her. The car dealer told her that the policy has to be cancelled as the customer is not buying the vehicle. She has never seen the defendant. The defendant has not signed any documents The plaintiff signed the documents.

In cross examination, she said that she issued a policy without receiving the money. She adopts this practice to-date.

DW4

11. DW4, (*Sheraz Zill, Senior Lending Specialist, Credit Corp*) said that Rameez came to see him regarding financing of the vehicle. He wanted to gift his father with a vehicle for his birthday. After his birthday, Mr Rafiq advised him that he wanted to withdraw from the deal, as he did not instruct anyone for the transaction.

In cross examination, DW4 said that Credit Corp’s letter did not mean that LTA could not register the vehicle. He understood that that the defendant had signed a formal letter and would take back the vehicle once Mr Rafiq confirms purchase. Mr Rafiq called him on 11th June, after taking delivery on 10th June, 2018.

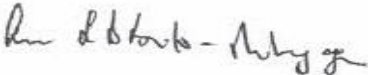
In re-examination, he said that he asked Rameez what his Dad’s reaction would be if he did not want to proceed with the purchase of a high dollar car.

The determination

12. The case for the plaintiff is that the parties entered into a valid contract for the purchase of the vehicle. The defendant took delivery on 10th June,2018, after signing the final delivery docket,(checklist).
13. The position of the defence is that the contract was entered into by Rameez, a salesperson of the defendant who had no authority to enter into a contract for the purchase of the vehicle. The defendant returned the vehicle on 11th June,2018.
14. It is an agreed fact that on 6th June 2018, Rameez signed the application for transfer of the vehicle. On 7th June 2018, Credit Corporation issue a conditional loan approval letter to the plaintiff for the purchase. It is also agreed that on 8th June 2018, the vehicle was registered in the defendant's name at LTA.
15. It transpired that ACCF and insurance cover were obtained, as testified by DW3, but no payment was made by the defendant. Rameez obtained finance from Credit Corp and on 10th June, 2018, he informed them that he has taken satisfactory delivery of the vehicle.
16. DW1 said that prior to 10th June,2018, when a representative of the plaintiff came to their showroom and asked for the defendant's seal to register the vehicle, Mr Rafiq clearly told the representative it was a very expensive vehicle and he does not want to proceed with the deal.
17. DW2 said that Mr Rafiq passed away on 26th July,2020. She saw the vehicle for the first time when she test drove it a "*week before Mr Rafiq's birthday, before 10th of June*". She told her son Rameez that it was a very beautiful vehicle, but very expensive. Neither she nor his father will accept it and to return it. Mr. Rafiq did not seem happy. He was very upset and kept telling Rameez to return it.
18. DW4 said that Mr Rafiq, after his birthday, advised him that he wanted to withdraw from the deal, as he did not instruct anyone for the transaction.

19. I find the evidence of DW1, DW2 and DW4 inconsistent with the conduct of Mr Rafiq, the Managing Director of the defendant on 10th June, 2018.
20. On his milestone 60th birthday, Mr Rafiq drove the vehicle festooned with balloons out of the plaintiff's showroom with Rameez, now portrayed as villain of the piece.
21. DW2 agreed in cross examination that it was "*very true*" that a person would take a gift home on his birthday rather than go on a test drive.
22. It is not in dispute that the New Vehicle Order Form and final delivery checklist was signed by Rameez and another, whose signature is disputed.
23. PW1 in cross examination said that the New Vehicle Order Form was signed by Rameez and Mr Rafiq. In evidence in chief, he said that Rameez and it would appear Mr Rafiq also signed the final delivery docket.
24. Mr Narayan, counsel for the plaintiff pointed out that the letter "*f*" featured in the disputed signature.
25. In my view, the only inference that could properly be drawn from the evidence considered as a whole, is that Mr Rafiq signed the New Vehicle Order Form and final delivery checklist on 10th June. The only other Director, DW2 said that she was a silent Director.
26. DW1 said that he sought to return the vehicle on 11th June, 2018, as 10th June, 2018, was a Sunday.
27. PW1 said that the vehicle was collected from the premises of the defendant's Directors much later in July 2018.
28. I prefer and accept the evidence of PW1, in the light of the agreed fact that on 20th July 2018, Mr Rafiq sent an email to the Carpenters Motors advising that no responsibility was taken for the vehicle, it was at risk and requesting it be removed from his premises.

29. In my judgment, there was a concluded contract for the sale and purchase of the vehicle. The defendant breached the contract after taking delivery and signing the final delivery docklist.
30. The plaintiff has sold the vehicle at \$110,000.00 to mitigate its loss.
31. The plaintiff claims cost of maintenance to the vehicle before it was resold and LTA registration charges.
32. PW2, (*Baram Deo, Manager of the plaintiff*) said that additional costs in a sum of \$5988.53 was incurred for weather shield, trunk box, bonnet protector, purchase of tyres, mud guards, wheel accessories.
33. I am not satisfied that maintenance work was necessary. There is no cogent evidence that the vehicle was used by the defendant. The claim is declined.
34. I would allow only the fees paid to the LTA for transfer to the new owner in a sum of \$3317.53, as provided in the receipt of 31st July,2018, issued by LTA.
35. **Orders**
- a. The defendant shall pay the plaintiff the sum of \$69,000.00 (179,000.00 less 110,000.00) together with interest at 1.5% per annum from 10th June, 2018, till payment in full.
 - b. The defendant shall pay the plaintiff the sum of \$3317.53 together with interest at 1% per annum from 31st July,2018, till payment in full
 - c. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 4500.00.


A.L.B. Brito-Mutunayagam
JUDGE
5th April , 2023

