SUPREME COURT OF NAURU

Civil Action No. 2 of 1976

JUDGMENT:

In March, 1976, the defendant sold a Valiant Regal motor car to the plaintiff in performance of an oral agreement made between th parties a few days earlier. In November, 1975, the plaintiff had paid to the defendant a deposit of $4,000 upon the defendant, who was at that time the concessionaire for Chrysler cars in Nauru, agreeing to place an order for a Centura car for him. In March, 1976, the parties agreed that that order should be cancelled and that the $4,000 should be held by the defendant as a deposit on, and part-payment for, the Valiant Regal motor car. However, no firm price was agreed at that time. When the defendant delivered the car to th plaintiff he informed him that he would let him know the full price in due course; the plaintiff implicitly agreed to pay the balance when he was notified how much it was. In April, 1976, the defendant notified the plaintiff that the full price was $6,970. The plaintiff, although the amount was higher than he had expected, told the defendant that h accepted the price but could not pay the money until his guardian, Mwea, who was providing it returned from a trip overseas.

Upon his r turn, Mwea decided that he could not afford to p y $2,970 and it was not paid. In consequence, in about the middle of April, 1976, the defendant went to him. According to Mwea, the defendant told him that, if he could not afford to pay the balance of the purchase price, the car should be returned to the defendant so that he could find another buyer. The defendant's evidence is that he only suggested that, if it could not be paid for, it should be brought back to him and he would "try to sell it again". As a result of that instruction or suggestion Mwea wrote a letter dated 18th April, 1976, which the plaintiff took to the defendant together with the car. There is some doubt whether that occurred on 18th April, 1976, or 1st May, 1976, but it is not of material significance.

In his letter Mwea wrote that he wished to return the motor vehicle "because it is not right that it should remain with me for a long period of time". He invited the defendant to check the mileage and to examine the car for

ge. He continued: "I have already paid for the registration and insurance, which totals $29. That amount should set off against any faults you find in the car." The defendant accepted delivery of the car at the same time as he received the letter. The plaintiff has given uncontradicted evidence that the defendant told him that he would reimburse him the $4,000 but not until someone bought the car and that even then he would deduct an unspecified amount for use of the vehicle during the period the plaintiff had it. The plaintiff has admitted agreeing to that. He has admitted also that, while he had the car, it was driven for 7,000 kilometres and was damaged. The damage was minor and was repaired but the defendant has stated that the paint used to effect the repair was not of the same colour as the original paint. The car has remained in the possession of the defendant ever since. He has had a "For Sale" sign on it but has not sold it, latterly because this action was pending.

The plaintiff now claims the return of the $4,000, although he admits that it should be reduced by an amount appropriate to take account of his use of it and of the repaired damage. The defendant denies that the plaintiff is entitled to have any money refunded to him. He is counterclaiming the balance of the purchase price, $2,970.

This action, therefore, turns upon the question whether the property in the car was transferred back to the defendant when the plaintiff delivered it to him with Mwea's letter. The plaintiff asserts that it was; the defendant says that he acquired only possession and, in effect, that he was thereafter trying to sell the car as agent for the plaintiff. The defendant accepts that, if he sells the car, he must account to the plaintiff for any amount received in excess of $2,970.

The onus is on the plaintiff to establish that the property in the car was transferred back to the defendant. I am satisfied that he has discharged it. The defendant's instruction or suggestion to Mwea to return the car to him may have been made by the defendant in one sense and understood by Mwea in the other. But Mwea's letter, which the plaintiff delivered as, in effect, his own when he delivered the car is quite clear. It was the acceptance of an offer to transfer the property back to the defendant; its contents cannot be understood in any other sense. The defendant did

not reject it or point out to the plaintiff that it indicated a misunderstanding of his offer. Instead, he told the plaintiff that he would return the $4,000 only after selling the car and reducing that sum by an amount to take account of his use of it. That is consistent only with his having ccepted the retransfer of the property of the car to him. If he had been accepting only possession of it for the purpose of selling it on behalf of the plaintiff he would have had to tell him that what would be paid to the plaintiff would be the difference between the price received and the balance still owed by the plaintiff. The defendant has not sought to give or adduce evidence that he said that.

I find as fact, therefore, that the property in the car was transferred back to the defendant by the plaintiff in consideration of the defendant releasing the plaintiff from his obligation to pay the price for it and agreeing to repay to the plaintiff the $4,000 p viously paid by him less an unspecified amount appropriate to take account of the plaintiff's use of th car. I find also that the plaintiff agreed to the payment of that amount being deferred until the defendant had sold the car. Clearly, however, it was implicit in that agreement that the defendant would sell th car expeditiously. It has not been suggested that the agre - ment is uncertain. Although th amount to be deducted on account of the plaintiff's use of the car and the rep ired damage was not specified, it was, and is, capable of being ass ss d. The amount of use and the nature of th damage are not in dispute. No evidence has been given of the cost of hiring vehicles in Nauru but the Court is entitled to take judicial notice of matters of common knowledge, that is to say the extent of depreciation in valu caus d by such use. Th Court may ass ss th cost of restoring the app arance of the c r o as to eliminate the damage; thi c n be done on the basis of the amount spent by the plaintiff in effecting inadequate r pairs. Accordingly I assess th amount to be deducted for use of the car as $1,000 and the amount to deducted for the damage as $50. Although in his letter sought to s t off $29 for the cost of r gistration and in urance, ther is no evidence of any agreement by the ant for such a set-off or that he gained any advantag registration or the insurance having b n effected.

I, ther fore, find that the plaintiff is entitled t cover from the defendant $2,950. Five months elaps d

tween the return of the car to th d fen ant and the issue of the writ in these proceedings; that should have been ample time for the defendant, whose business then included the sale of cars, to sell the car. He is not entitled, therefore, to any further time to do so before paying the plaintiff what he owes him.

Judgment is accordingly given for the plaintiff for $2,950 and costs.

26th May, 1977 Chief Justice