

In the High Court of Fiji  
At Suva  
Civil Jurisdiction

Civil Action No. HBC 112 of 2019

Auto World Trading (Fiji) Limited

Plaintiff

v

Rodney Peter Nand as Power of Attorney holder of Peter Nand  
t/a as Pioneer Security Services  
Defendant

Counsel: Mr Shelvin Singh for the plaintiff  
Mr K. Goundar for the defendant

Dates of hearing : 24<sup>th</sup> February, 2022, and 19<sup>th</sup> May,2022

Date of Judgment: 21<sup>st</sup> March ,2022

**Judgment**

1. The plaintiff sold a motor vehicle to the defendant for a sum of \$95,000.00 on credit terms. The amended statement of claim states that the defendant failed to repay the sum of \$ 85,000.00 advanced by the plaintiff. The defendant returned the vehicle, but not the key of the vehicle. The plaintiff contends that it was unable to exercise its right of sale under the Bill of Sale executed, as the defendant refused to release the original key. The plaintiff claims the balance sum of \$ 96,047.38 together with interest at 1.5% per annum and damages for detinue.

2. The defendant in his amended statement of defence states that he returned the vehicle after the plaintiff issued a repossession notice. The plaintiff did not demand the key of the vehicle. It was agreed that payment for security services provided by the defendant to the plaintiff would be set off from payments due for the vehicle. The defendant counterclaims for a sum of \$5065.77 for security services provided.
3. The plaintiff in its reply admits that the defendant provided security services since 2017.

***The determination***

*The plaintiff's claim*

4. It is an agreed fact that the plaintiff on 28<sup>th</sup> June, 2018, sold vehicle no: JP 919 for \$ 95,000.00 to the defendant on credit terms. The defendant paid a deposit of \$10,000.00. The sum of \$ 85,000.00 advanced by the plaintiff was to be paid with interest at 12.5% per annum. The monthly repayment of \$3,683.33 was to be made commencing from 28 July, 2018, and concluding on 20 December, 2020. The defendant made four payments from July to November, 2018.
5. It is also agreed that the defendant returned the vehicle to the plaintiff on 17<sup>th</sup> February, 2019. PW1 said that the defendant parked the vehicle in their driveway.
6. PW1, (*Ravindra Lal*) owner of Auto World Trading (Fiji) Limited in evidence in chief said that the debt owing to the plaintiff was \$ 96,047.88 at the time the defendant parked the vehicle.
7. DW1, (*Savenaca Tadulala, Operations Co-ordinator, Pioneer Security Services*) the sole witness for the defendant in cross-examination admitted that the sum of \$ 96,047.88 was not paid and interest was accumulating. The defendant agreed to pay interest, if he defaulted.
8. In my judgment, the plaintiff is entitled to judgment in the sum of \$ 96,047.88 with interest.

9. PW1 said that he could not sell the vehicle as the defendant did not return the original key. In cross examination, it transpired that the plaintiff had made a duplicate key in February, 2019, and his wife and daughter in law drove the vehicle.
10. DW1 said that he held the original key as a lien for security services provided by the defendant to the plaintiff and not paid. The vehicle could be sold without the original key, as it was operating. The defendant received several TINs from LTA.
11. The plaintiff claims damages for detinue.
12. The defence contends that the key was not demanded. It was submitted that a demand is a precondition to a right of action under the tort of detinue.
13. The riposte of Mr Singh, counsel for the plaintiff in his closing submissions is that a demand for the key was made in its summons for an injunction.
14. The plaintiff had sought an injunction requiring the defendant to return the key, which was the only relief sought in its original statement of claim. I declined the application for the reason that the plaintiff would obtain its substantive relief and the action would be disposed at that stage.
15. In my view, the summons was a sufficient request made by the defendant for the key.
16. On the question of damages, Lord Denning MR in *Wickham Holdings Ltd v Brooke House Motors Ltd*, [1967] 1 WLR 295 held that a plaintiff is entitled only to what it has lost suffered by wrongful conversion, as was also held in *Brandeis Goldschmidt & Co. Ltd v Western Transport Ltd*, [1981] QB 864 in the case of wrongful detention of goods.
17. In *Brandeis*, the plaintiffs were held entitled to nominal damages only for the infringement of their right to possession of the goods.
18. It transpired that the plaintiff had made a duplicate key and his wife and daughter in law were using the vehicle.

19. In my judgment, the plaintiff has not established any loss it suffered as a result of not having the original key.

20. I award the plaintiff nominal damages in a sum of \$ 100.00.

*The defendant's counterclaim*

21. It is not in dispute that the defendant provided security services to the plaintiff.

22. The defendant claims a sum of \$5,065.77 for security services provided from November, 2018, to January, 2019. DW1 produced invoices for that period and statement of account.

23. PW1 said that the plaintiff is disputing the amount claimed on the basis that the defendant did not provide the punching record for the period claimed. 292 hours were not punched.

24. It was put to DW1 in cross examination that the defendant was required to punch in the security hours as stated in the plaintiff's email of 14<sup>th</sup> January, 2019, to the defendant which said that they would pay if hours are punched on hourly basis. No response from the defendant to that email was produced.

25. DW1 said that security guards do not punch. Patrol supervisors inspect and guards sign time sheets which are brought back to the defendant.

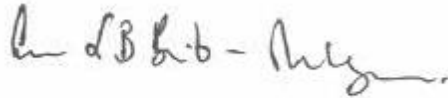
26. In my view, it was for the plaintiff to prove that the security guards were required to punch and provide a record of its punching system, as quite correctly submitted by Mr Goundar, counsel for the defendant.

27. Be that as it may, the defendant was required to produce his time sheets to establish that their guards were on duty at the stated times, since the plaintiff disputes his invoices.

28. The defendant's counterclaim for \$5,065.77 fails.

**29. Orders**

- a. The defendant shall pay the plaintiff the sum of \$ 96,047.88 with interest at 1.5% % per annum from till payment in full.
- b. The defendant shall pay the plaintiff damages for detinue in a sum of \$100.00.
- c. The defendant's counterclaim for \$5,065.77 is declined.
- d. The defendant shall pay the plaintiff costs summarily assessed in a sum of \$ 2000.



**A.L.B. Brito-Mutunayagam**

**JUDGE**

**21<sup>st</sup> March, 2023**

