



The Defendant resists the claim on the basis that he lawfully imported the vehicle into Belize, it was cleared by Belize customs officials and whilst in his possession for several months after importation but prior to sale, he had driven the vehicle across the border to Mexico and never been stopped. The Defendant says that he is not liable to the Claimants for any purported loss of the vehicle.

### **Issues**

2. The issues which arise for determination in this case are as follows:-
  - (i) What obligation, if any, did the Defendant, as vendor of the vehicle, have towards the Claimants as purchasers? In determining this issue, the following question is to be considered:-
    - a. Was there an implied condition or warranty as to title of the vehicle given by the Defendant to the Claimants?
  - (ii) Did the Defendant purchase and re-sell a stolen vehicle?
  - (iii) If stolen, what is the effect on the contract for sale of the vehicle to the Claimants?
  - (iv) If found liable, what is the measure of damages to be awarded to the Claimants?

### **Background**

3. The Defendant is a businessman who imports vehicles into Belize and re-sells them, presumably at a profit. The Claimants, having previously purchased a vehicle from the Defendant, did so again by essentially trading in one vehicle for another. The vehicle, the subject matter of this claim, was purchased in April, 2012. Payment was made in full thereafter and registration transferred to the Claimants upon full payment. Neither the receipt of the purchase price by the Defendant nor transfer of the vehicle to the Claimants was in issue.

In January, 2013, the 2<sup>nd</sup> named Claimant alleges that whilst in neighbouring Chetumal, Mexico, she was confronted by Mexican Police and after they checked the vehicle identification number (VIN) of the vehicle, she was detained as it was represented to her that the vehicle was one registered as stolen from Florida, United States since February, 2010. The vehicle was retained by Mexican officials and never released back to the Claimants.

4. With respect to the allegation that the vehicle was stolen, the position of the Mexican police which was communicated to the Claimants, was that the VIN appearing on the windshield of the vehicle was not the genuine VIN of the vehicle and that there were in fact three other VINs found on different parts of the vehicle – one on the tailgate and two under the hood. Further, that the VIN on the tailgate matched that of the vehicle's computer and that VIN was registered in the Mexican Officials' criminal database, as being stolen from Florida, United States. After the Claimants returned to Belize, they requested a return of the purchase price of the vehicle from the Defendant, who refused.
5. The Defendant claimed that he purchased the vehicle via a written agreement, from a gentleman in the United States, who possessed a certificate of title for the vehicle. The vehicle was imported into Belize, cleared by the Belize Customs who performed their inspections and verified the documents for the vehicle. The Defendant paid customs duties, registered the vehicle and lawfully sold it to the Claimants. The defendant produced documentation in support of the purchase and importation of the vehicle, which included an agreement of sale with one Joel Cassanova, a certificate of Title issued in Georgia, USA and import documents from Belize Customs. The Defendant further claims to have travelled to Chetumal without incident, several times during the nine month period he had the vehicle in his possession prior to its sale to the Claimants. The Defendant alleges some impropriety on the part of Mexican officials and the detention of the vehicle.

With respect to what became of the vehicle, this was not part of the evidence in chief of either Claimant, but under cross examination it was asserted that the vehicle was with the insurance company in Florida, United States and that a letter from the insurance company had been provided to the Court.

### **Analysis of Issues**

- (i) The Defendant's obligation to the Claimants on sale of the vehicle.
6. The sale of the vehicle by the Defendant to the Claimants is governed in Belize by the Sale of Goods Act, Cap. 261 of the Laws of Belize. In particular, section 14(a), which provides as follows:-

*"In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is*

*(a) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;..."*

7. This provision which is taken from the Sale of Goods Act, 1893 of England codified the common law which up until the statute was enacted had been considered uncertain. The application of this section which is a replica of section 12(1) of the Sale of Goods Act, 1893 of England, is most famously seen in the decision of **Rowland v Divall**<sup>1</sup>. With respect to the UK section 12(1) Banks L.J. said at page 272

*"As I have said, it cannot any longer be disputed, since the passing of the Sale of Goods Act, that there was an implied condition on the part of the seller, the defendant, that he had a right to sell the car. Unless or until something happened to change that condition into a warranty, it seems to me that the plaintiff must have the right to set up that he is entitled to the recovery of the purchase money on the ground of failure of consideration...."*

8. The position at common law was referred to by Scrutton LJ in **Divall**<sup>2</sup> in the following terms:

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<sup>1</sup> [1923] All E.R. 270 (C.A.)

<sup>2</sup> Ibid @ pg 273

*Before the passing of the Sale of Goods Act there was a good deal of confusion in the authorities as to the exact nature, if any, of the contract of the vendor with regard to his title to sell. It has ranged from the maximum caveat emptor to what was supposed to be the real rule that the vendor did warrant in title. Gradually a large number of exceptions crept in, and at last, the exception became the rule, the rule being that the vendor did warrant to have a title to what he purported to sell, except in special cases, such as that of the sheriff who does not warrant the title. Then came the Sale of Goods Act which re-enacted the rule as a condition and not as a warranty. Section 12 of the Sale of Goods Act in express terms says that there shall be 'an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods'...*

9. The effect of the breach of the implied condition as to title is that the purchaser is entitled to rescission of the contract and a return of his purchase money on the basis that there has been a total failure of consideration. By section 13 of the Act, provision is made for where the condition is treated as a warranty, in which case the purchaser is then entitled to maintain an action for damages for breach of warranty. In particular section 13(4) provides that where a buyer has accepted goods, breach of an implied condition as to title is to be treated as a breach of warranty unless otherwise provided in the contract for sale. In the instant case, the Claimants did not plead a cause of action under the Sale of Goods Act, but the Act merely codified the common law and did not create any new cause of action. In the circumstances, the statute nonetheless applies and the applicable law establishes that the Defendant was bound by an implied condition or in these circumstances, warranty, that he possessed good title to sell the vehicle to the Claimants. This then leads us to the second issue of whether the Defendant did in fact purchase a stolen vehicle.

Issue (ii) – Did the Defendant purchase and re-sell a stolen vehicle?

10. This is an issue that requires careful consideration. The question of whether or not a vehicle is stolen property is one generally determined by criminal law.

That determination is clearly not within the purview of this Court, but what this Court must instead determine, is whether the Claimants have produced such evidence so that on a balance of probabilities, it can be found that the Defendant did not possess proper title to the vehicle. It must be found, that the title which the Defendant held out as his own was false and this is to be found within the context of all the circumstances of this case. What therefore, is the evidence produced by the Claimants in that regard?

#### Analysis of the Evidence

11. The evidence produced by both parties in relation to the purchase and registration of the vehicle which took place in Belize is accepted as proven as it was accepted by both sides. However, the evidence produced by the Claimants regarding the events that took place in Mexico which formed the basis of their claim was for the most part unsatisfactory. Records were produced in Spanish which were not or not well translated. There was a prior statement of the 2<sup>nd</sup> claimant that was inserted within the her witness statement – this was a statement made by the 2<sup>nd</sup> Claimant to police or judicial officials in Chetumal at the time she was detained, concerning her knowledge and actions relating to the vehicle. This statement contained assertions of what the 2<sup>nd</sup> claimant had been told by Mexican police with respect to the status or findings in relation to the vehicle.
12. Further, the evidence sought to be relied upon by the Claimants in support of the allegations of the events in Mexico was mostly hearsay. The evidence produced by the Claimants included unclear printouts of images said to be photographs taken by the 2<sup>nd</sup> Claimant of the vehicle's multiple VINs. Written notations were made on the images concerning the contents, but by whose hand it is unknown. Photocopies with no account of originals were presented of several documents as follows - a document from an agency marked NICB with vehicle information of a 2006 Toyota Sequoia VIN 5TDZT34A165279547; a document entitled instaVIN Vehicle History & Title Report re VIN 5TDZT344A57S284882;

another document entitled instaVIN Vehicle History & Title Report in respect of a 2009 Toyota Camry; yet another document entitled instaVIN Vehicle History & Title Report in respect of a 2006 Sequoia with VIN 5TDZT34A165279547 recorded as stolen; a letter said to be from a State Farm representative addressed to Inspector Griffith of the Belize Customs. These items are examined individually.

- (i) Photographs – As stated before what was said by the Claimants to be produced as photographs were in fact black and white paper printouts with images of numbers on what was supposed to be different parts of the vehicle that were mostly unclear. The Defendant under cross examination declined to accept the existence of four different VINs on the vehicle he sold to the Claimants. This was the Claimants' case to prove. The images submitted to the Court were of poor quality and not properly spoken to in evidence and are not accepted as proof of the existence of the multiple VINs on the vehicle. It is to be noted however that this does not mean that the Court does not accept the 2<sup>nd</sup> Claimant's oral evidence that she was shown multiple numbers on the vehicle. The effect of that evidence is however another matter.
- (ii) The NICB document and the 3 instaVIN Vehicle & Title Reports in respect of the different VINs are accepted at face value. The value they provide however is to the extent of information having been given and a result being produced arising from that information. What is in issue in this case is the source of the information that would have been inputted to generate those results.
- (iii) The letter said to be from State Farm Mutual Automobile Insurance Company, home office Bloomington Florida – this was firstly a photocopy. No original was produced at trial. This document was addressed to an Inspector Griffith of the Belize Customs & Excise, it bore no connection in it to the Claimants. The author of the letter was signed as one Gary Gonzalez, Claim Representative. Neither Mr. Griffith nor Mr. Gonzalez gave evidence.

The Court is unable to accept this document as proof of its contents, only that a letter regarding the status of a vehicle with a certain VIN was sent by one Gary Gonzalez to Inspector Griffith. It is not even known whether this letter was received by Inspector Griffith.

(iv) Finally with respect to the evidence produced by the Claimants, the previous statement of the 2<sup>nd</sup> Claimant which was inserted into her witness statement was not of any great effect. In the first place, in respect of matters already stated in evidence the rule against previous consistent statements would apply – i.e. – that a witness' evidence cannot be confirmed by previous statements to the same effect. Additionally, in respect of all that the 2<sup>nd</sup> Claimant had been told and conclusions drawn by Mexican officials in relation to the vehicle being stolen, this was hearsay and the truth thereof could not be found by the accounts given by the 2<sup>nd</sup> Claimant in the statement she gave to Mexican officials. In particular, the 2<sup>nd</sup> Claimant was told that one of the additional VINs said to be on the tailgate matched that of the vehicle's computer. How there came to be a determination of what was in the vehicle's computer and the means by which this information was extracted was not put before the Court. The fact of whether or not but if so how a VIN is stored in a vehicle's computer, whether or not a vehicle's computer is something that could be changed are all questions which are relevant to the Court being able to impugn the title confirmed by Belizean authorities in favour of the Defendant. The correctness or otherwise of (as distinct from the existence of) the additional VINs said to be found on the vehicle was thus not within the personal knowledge of the 2<sup>nd</sup> Claimant and it is not found that she was competent to speak in this regard. No official from Mexico gave evidence nor was there any official report from any authorised agency in Mexico issued in respect of the status vehicle.

13. The difficulty in this case, is that on the face of the evidence, the Defendant lawfully imported a vehicle into Belize, which was cleared by Belizean law enforcement officials. (In this regard it must be noted that learned Counsel for the Claimants attempted to rely via written submissions on further information concerning the allegation relating to the title of the vehicle and the character of the Defendant and the person from whom he purchased the vehicle. As this further information was never led in evidence in the claim, it cannot and does not form part of the Court's consideration). The circumstances giving rise to the allegation that the vehicle was stolen occurred outside of the jurisdiction of the Belize Courts and there was no change to the status of the vehicle made by Belizean law enforcement. The evidence as to what was the actual or official VIN of the vehicle was hearsay and the method of attributing what was alleged to be the stolen vehicle's VIN to the Sequoia was not factually established.
14. Additionally, there must presumably be a method of assignation of a VIN to a vehicle that is incapable of being altered or that if altered is identifiable as having been altered so as to cast doubt as to the bona fides of the title of the vehicle. The difficulty is that the process by which the Mexican officials found varying VINs on the vehicle and their conclusion that the particular VIN attributed to the vehicle was the real VIN which was then found to be stolen was not firsthand information brought to Court which was tried or tested by cross examination.
15. Alternatively, had this conclusion of Mexican law enforcement been adopted or accepted by Belize law enforcement, the Court would have been inclined to accept the allegation that the vehicle was stolen. Aside from not having any contrary position by law enforcement officials in Belize, it is considered that the presentation of facts occurring outside the Court's physical jurisdiction which contradict an official finding within its jurisdiction, cannot properly be accepted on the basis of hearsay evidence. Breach of the Defendant's implied condition as to his title to sell the Toyota Sequoia has not been established.

**Conclusion**

16. The evidence in support of the claim has not been adequately established to the Court and the claim is dismissed. The remaining issues (iii) and (iv) do not therefore arise for consideration. There was no presentation of evidence nor submissions made in respect of the counterclaim filed, the counterclaim is accordingly dismissed.

**Disposition**

- (i) The claim against the Defendant is dismissed;
- (ii) Prescribed costs on the value of the claim at \$90,000 are awarded in favour of the Defendant.
- (iii) Due to the unsatisfactory conduct of the claim in terms of dilatory compliance with the Court's orders, the Defendant is awarded only 75% of the amount calculated on the costs prescribed.

Dated this 15<sup>th</sup> day of January, 2016.

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Shona O. Griffith  
Supreme Court Judge.