IN THE FIJI COURT OF APPEAL
Appellate Jurisdiction
Civil Appeal No. 13 of 1980

Between:

M.H. MOTORS LIMITED — Appellant

and

1. RAJAMMA REDDY d/o Munsami
2. DEO LINGAM REDDY s/o Munsami Reddy — Respondents

Mr. H.C. Sharma for the Appellant
Mr. G.P. Shankar for the Respondents

Date of Hearing: 12 June 1980
Delivery of Judgment: 27/6/80

JUDGMENT

Speight J.A.

These proceedings commenced with the above named appellant suing the two respondents for the balance owing in respect of a motor lorry purchased from the plaintiff. The Statement of Claim alleged sale, repossession for non-payment of instalments under a Bill of Sale, resale of the repossessed vehicle and a shortfall which was claimed at $2,406.84 - subsequently amended to $2,373.57.

The Statement of Defence and Counterclaim denied liability and asserted that the defendants (now the respondents) had not been served with the required notice of possession but that the vehicle had been placed in the hands of the plaintiff for

repair consequent upon an accident. They claimed that the plaintiff had neglected to repair the vehicle adequately and had improperly dealt with it and then sold it at a gross undervalue causing loss to the defendants of $4,450.

The history is not exactly clear from the pleadings and the evidence but the learned trial judge made some definite and most helpful findings of facts. From his judgment, supplemented from certain passages in the evidence which do not seem to be disputed, the following chronology emerges:

31st Jan. 1975	Sale of truck by appellant to respondents for $5,000 plus interest and other charges $550.55. Deposit paid of $1,850.55.
Mar. to July	Four or five monthly instalemts paid.
21st Aug. 1975	Respondents had a serious accident with the truck and it was taken to Mudaliar's garage but not repaired there.
Aug.-Sept.	The respondents ceased paying instalments as their source of income derived from the use of the truck had dried up.

25th Sept. 1975	Appellant issued a default and repossession notice.
3rd Oct. 1975	A bailiff on behalf of the appellant served the notice at Mudaliar's garage (Clause 16 Bill of Sale) and towed the truck to appellant's compound at Lautoka.
Oct. 1975 - Feb. 1976	Repairs done under appellant's direction but paid for by an Insurance company under a policy paid for by respondent's There is conflict as to whether the repairs were completely effected or only as to 70% of the work required. There is evidence which suggests that not all the work required to put the vehicle into good order was attributable to the accident. It is possible that the insurers were prepared to pay only for accident damage and this may account for the 70% figure mentioned in evidence.
Feb. 1976 onward	The partly repaired vehicle was left in appellant's compound. During 1976 many of the parts were removed by thieves, greatly reducing its value. The appellant's counsel in this Court submitted that these

losses only occured late in the period, but this does not accord with the finding of the learned judge that they commenced long before May and continued over the period.

13th, 14th, and 15th May 1976	The appellant advertised the vehicle for sale by tender "as is, where is". It received two offers of $2,500 and $2,006 respectively. It attempted to accept but the offerers failed to complete.
Later in 1976 (date not known)	Appellant sold by private treaty for $1,250.

Valuations

Various opinions were expressed as to values at different times, and the judge accepted the following evidence:

Pre-Accident	An offer had been made the day before from a reputable buyer who knew the vehicle to purchase for $5,500.
Post-Accident	The same witness saw it when 70% of the necessary repair work had been done. He said he would have offered $5,000 conditional on the work being completed but in its then state

> he estimated its value at $4,000-$5,000. The judge took this figure at $4,000-$4,500. Another truck operator saw it when it was supposedly repaired, but he too thought more work was needed before he would buy it. But in its then condition he would have paid $4,000-$4,500.

No comment could be more justified than a sentence early in the judgment of Williams J. when he said, "The plaintiff's own pleadings indicate that there is something for them to explain." There was indeed. As the judge later commented it was most significant that a lorry which had had a pre-accident value of $5,500 was in the appellant's possession at all material times after the accident, it had insurance cover adequate to pay for accident repairs, most of which were done and yet it dropped in value to $1,250 and no evidence was called by the appellant to explain all this. Indeed the only real explanation was as to pilferage and this came from an ex-appellant employee called as a witness by the respondents - and he detailed many substantial parts which were stolen.

Now some doubt arose as to the legal situation of the appellant vis-a-vis the vehicle when it was in its possession. Had it been entrusted to the appellant as a repairer then the company would have been bailee for reward with the onus of proving that all proper care had been taken. It appears, however, that although the second respondent claimed to be unaware of it, the repossession had been effected pursuant to the powers under the Bill of Sale. This indeed

must be so because the bailee for repair situation could only be brought about by the respondnts entrusting the vehicle to the appellant and this did bot happen. Possession having been taken the grantor's interest comes to an end subject to a proper accounting in respect of the grantor's interest and subject to the duty of the grantee to exercise due care.

Counsel for appellant submitted that appellant was exonerated from all subsequent loss by Clause 7 of the Bill of Sale which empowers repossession and sale "... without being answerable for any loss or deficiency occasioned thereby".

That provision, however, only protects from allegations of loss arising from or incidental to the sale - such as a claim that a better price might have been achieved. It does not cover acts of negligence causing damage in the course of repossession - Johnson v. Diprose (1893) 1. Q.B. 512 and a fortiori it would seem during the period of exclusive possession and control on part of the grantee. Indeed in the course of his submission Mr. Sharma conceded that "as holders of the Bill of Sale their duty was to get the best price they could after repairs".

In the context of this case there was an obligation to have the vehicle repaired for respondents had paid for that protection and to take reasonable steps to prevent deterioration from weather or theft pending resale.

It is obvious that neither of these duties was discharged.

Some doubt might arise because of the difference between the witnesses as to the degree of repair work done, and the consequent value. On one view it was shown that more work could have brought the vehicle up to $5,000 - there was a mention that some of the required work was not caused by the accident. However, the second respondent took the stand that more work was needed and refused to sign the insurance clearance and he was encouraged in this by Mr. Ah Sam, the appellant's credit controller. D.W.1 who was interested in purchasing, said that at the time of his estimate of $4,000-$4,500 there was still work to be done, including damage to the petrol tank and the cab - and these were items that D.W.2 - also a truck operator - and the second respondent said had been damaged in the accident. It had been clearly signalled in the respondents' counterclaim that the appellant had not properly repaired the vehicle, yet no evidence was offered on behalf of appellant to displace the respondents' evidence which backed their counterclaim. It is not surprising that the learned judge said that the 70% related to "necessary repairs" and that proper repair would have brought the value to $5,000 - the difference from the pre-accident figure would of course be attributable to depreciation inevitable from knowledge that the vehicle had been in an accident.

We have said that the grantee in possession owes a duty of care to the grantor and is responsible for loss occasioned by failing to take reasonable steps to discharge that duty. In the present circumstances it had the obligation to guard against physical losses by theft, and obviously failed to do so. It also had a duty to take the

other reasonable step, namely to utilise the money from insurance funds, available at no cost to itself but paid for by respondents, to repair the accident damage. The extent of available cover is not clearly revealed by the evidence but as we have already mentioned both the second respondent and the appellant's credit manager took the position that there was more work still to be done, and the trial judge has acted on this in fixing the achievable post-accident value at $5,000 and we see no reason to disturb that finding.

We conclude that the learned trial judge was entirely correct both in principle and on details of valuation. The appeal is dismissed with costs to be taxed if not agreed.

(Sgd.) C.C. Marsack
JUDGE OF APPEAL

(Sgd.) G.D. Speight
JUDGE OF APPEAL

(Sgd.) B.C. Spring
JUDGE OF APPEAL