

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No. HBC 241 of 2015

**BETWEEN** : **SAHID BEGG t/a SHAHIDS LOGGING SUPPLIES** of Lot 49 Matana Street, Nakasi, Nausori in the Republic of Fiji, Businessman  
**PLAINTIFF**

**AND** : **ELINA LEDUA** of Qaranivalu Place, Nasinu in the Republic of Fiji, Employment Unknown  
**1<sup>st</sup> DEFENDANT**

**AND** : **LAND TRANSPORT AUTHORITY** a statutory authority established under Section 6 of the Land Transport Act 1998.  
**2<sup>ND</sup> DEFENDANT**

Appearances : Mr. K. Singh for the Plaintiff  
Ms. M. Ligabalavu for the 2<sup>nd</sup> Defendant  
1<sup>st</sup> Defendant In Person  
Dates of Hearing : 27<sup>th</sup> and 28<sup>th</sup> February, 2017  
Date of Judgment : 7<sup>th</sup> April, 2017

**JUDGMENT**

**INTRODUCTION**

1. The Plaintiff was the owner of a vehicle, Bulldozer. The 1<sup>st</sup> Defendant was an employee of 2<sup>nd</sup> Defendant. The Plaintiff's vehicle was transferred by a third party. This transfer was registered in the records of the 2<sup>nd</sup> Defendant. The Plaintiff alleges that said transfer was registered as a result of the negligent act of 1<sup>st</sup> Defendant who failed to verify Part 3 of Application for Transfer of Ownership of Vehicle form (P2). The 1<sup>st</sup> Defendant admitted said oversight, though she was not involved in the alleged illegal act of the third party. The vehicle was sold in an action pursuant to a Bill of Sale, by a financial institution. The Bill of Sale was granted by the third party having obtained the registration by alleged illegal transfer.

## FACTS

2. The following facts are admitted in the Pre-trial Conference Minutes
  - a. The 1<sup>st</sup> Defendant at all material times was employed by the 2<sup>nd</sup> Defendant from 31<sup>st</sup> July 2000 to 25<sup>th</sup> November, 2014.
  - b. The 2<sup>nd</sup> Defendant is a statutory authority established under section 6 of the Land Transport Act 1998.
  - c. The Plaintiff was the owner of Caterpillar Bulldozer D6D having registration no FD 531 only between the period of 7<sup>th</sup> January, 2009 to 18<sup>th</sup> February, 2014 until it was transferred to one Manos Jeet logging.
  - d. The vehicle registration No FD 531 (hereinafter referred to as the Vehicle) was transferred to one Manos Jeet on or about April 2015 and was clear of any financial noting.
  - e. Transfer of the Vehicle from the Plaintiff to Manos Jeet was undertaken by the 1<sup>st</sup> Defendant.
3. The main facts of this case are not in dispute. For the Plaintiff two witnesses gave evidence. The first witness was a Detective Police Officer who had investigated the complaint of the Plaintiff regarding the alleged fraudulent transfer of his Caterpillar Bulldozer D6D (The Vehicle) by a person called Manos Jeet.
4. He had obtained statements from the employee (1<sup>st</sup> Defendant) of the registration authority (2<sup>nd</sup> Defendant). In his evidence it was revealed that the transfer form for the Vehicle was not properly witnessed and this part was not verified by the 1<sup>st</sup> Defendant.
5. The signature of the owner needed to be attested by a Justice of Peace or a person holding a Driver's Licence. In this instance the alleged Plaintiff's signature transferring the Vehicle, was attested by a person holding a Driver's Licence named Ajay Chand. In the investigation, Ajay Chand had denied any involvement in the said transaction. He was a person living abroad and his Driving Licence number, was also incorrectly stated in the said application.

6. In the evidence he said that he could not arrest and prosecute the person who was involved in the alleged fraudulent transfer, as he had already gone abroad.
7. The Plaintiff in his evidence said that Manos Jeet approached him and desired to purchase his heavy equipment including the Vehicle and he had obtained an Agreement to Sell, and possession of the Vehicle was granted in terms of the said agreement. Accordingly, monthly payments were due from the intended purchaser, Manos Jeet. The payments under the said agreement were not timely made and the Plaintiff repossessed the Vehicle and then he learnt that the Vehicle was already transferred to Manos Jeet and it was also subjected to a Bill of Sale, in favour of the said financial institution. Upon default of financial obligation by Manos Jeet, the Vehicle was auctioned, in terms of said Bill of Sale.
8. The Plaintiff produced the valuation of the Vehicle which was estimated at \$130,000.
9. The Plaintiff denied his signature on the said Application for Transfer Ownership of Motor Vehicle form (P2). Based on the said registration of the transfer in the records of the 2<sup>nd</sup> Defendant the Vehicle became a subject of the said Bill of Sale to the financial institution.
10. For the 2<sup>nd</sup> Defendant a senior officer gave evidence. She admitted that the 1<sup>st</sup> Defendant had carried out the transfer of the Vehicle to Manos Jeet as a Customer Service Officer in her official duty. She also said all the officers were adequately trained and also instructed to seek opinion of their Team Leader at their own discretion.
11. She admitted that the Part 3 of the said document marked 'P2' should have been verified by 1<sup>st</sup> Defendant before she made the transfer in the records of 2<sup>nd</sup> Defendant, as she had access to the data base of 2<sup>nd</sup> Defendant regarding vehicles and persons holding Driving Licenes. It is admitted fact that purported witness, Ajay Chand's details were contained in the data base of 2<sup>nd</sup> Defendant.

12. 1<sup>st</sup> Defendant admitted that she did not verify the attestation or witness part (ie Part 3 of 'P2') where the owner's signature was verified.

## ANALYSIS

13. The Plaintiff's evidence was that he never transferred the ownership of the Vehicle to Manos Jeet. He admitted that Manos Jeet desired purchasing it and an Agreement to Purchase was signed. According to the said agreement he gave physical possession of the Vehicle and there was requirement to pay monthly. Manos Jeet did not pay the monthly payments as required by the said Agreement, hence he repossessed the Vehicle. This evidence was not challenged in cross-examination.
14. Later the Plaintiff learnt that the Vehicle was already under a Bill of Sale to a finance institution and this was done by Manos Jeet after obtaining a transfer of the Vehicle in his name, by making an application for the transfer of the Vehicle.
15. The said transfer of the Vehicle was done without the Plaintiff's knowledge. On the balance of probability the Plaintiff had not transferred ownership of the Vehicle, hence he had not signed the transfer document marked 'P2'.
16. Though there was no report from handwriting expert, the evidence presented to the court at this hearing proves on the balance of probability that the Plaintiff did not sign the said transfer of ownership form marked 'P2'.
17. The 1<sup>st</sup> Defendant who transferred the Vehicle in pursuant to the application 'P2' failed to verify the 'Certificate of Witness' which was Part 3 of the said application. The Defence witness admitted that this was a part of the application that should have been verified by the person who executed the transfer. The said witness admitted that it should have been verified from their data base by the 1<sup>st</sup> Defendant. If it was verified the application marked 'P2' should have been rejected as details of Part 2 of 'P2' did not correspond with the information contained in the data base relating to the said Ajay Chand.

18. The verification of the witness was not a difficult task as 1<sup>st</sup> Defendant had access to the data base of all the persons who are having a valid driving licence. If the details of the person whose driving licence mention in Part 3 of 'P2' verified, it did not match as the name and the number of the driving licence and even the signature of the witness differed.
19. Apart from this there were some finer details in 'P2' which were incorrect. I do not expect, a person like 1<sup>st</sup> Defendant, should forensically examine every application and reject for slightest and flimsiest reason. My judgment is that non detection of such finer details, which were not even detected by the Detective Police Personnel, proves neither negligence nor tort of 1<sup>st</sup> Defendant (eg. alleged discrepancies in rubber stamp). The witness for the 2<sup>nd</sup> Defendant said she would not pay much emphasis on rubber stamp. She admitted that verification of Part 3 was important. I admit the evidence that 1<sup>st</sup> Defendant was not negligent in non-detection of such minor details, nevertheless required to verify Part 3 of 'P2'.
20. The 1<sup>st</sup> Defendant also admitted that she should have verified Part 3 of document marked 'P2' but said due to her health condition and workload she had mistakenly, did not do it for the application 'P2'.
21. So from the evidence of the 1<sup>st</sup> Defendant as well as the witness who called for the 2<sup>nd</sup> Defendant it was proved that there was a negligent act by the 1<sup>st</sup> Defendant in not verifying the Part 3 of the 'P2' which ultimately resulted the Vehicle being transferred to said Manos Jeet.
22. Manos Jeet used the said certificate of transfer to misrepresent the financial institution to obtain finance and also to execute a Bill of Sale in favour of them.
23. Manos Jeet defaulted payments to the financial institution and they had executed the rights under Bill of Sale and auctioned the Vehicle, thus deprived the benefits from the Vehicle to the Plaintiff. This was due to the transfer of the Vehicle to Manos Jeet.

24. In Chandra Deo Sharma High Court Lautoka Civil Action No HBC 326 of 2002 (unreported) (decided on 29<sup>th</sup> September, 2011) at paragraph highlighted “Clerk and Lindsell on Torts; 19<sup>th</sup> Edition, Sweet and Maxwell (2006) at page 383 as follows ;
- “The duty in Negligence, therefore is not simply a duty not to act carelessly. It is a duty not to inflict damage carelessly, since damage is the gist of the action, what is meant by “duty of care situation” is that it has shown that the Courts recognize as actionable the careless infliction of the kind of damage of which the claimant complains, on the type of person to which he belongs, and by the type of person to which the defendant belongs. (emphasis deleted)*
25. As an officer of 2<sup>nd</sup> Defendant, it is the duty of the 1<sup>st</sup> Defendant, to make sure that any vehicle being transferred was transferred in accordance with the procedures of the 2<sup>nd</sup> Defendant and due care should be taken to prevent wrongful transfer. The officer must make sure that the proper documents were presented. The correctness of information contained in the application can be verified from the information contained in their data base. Such verification cannot be comprised for speed as it involved transfer of a property right of a person.
26. In Caparo Industries plc v Dickman and others [1990] 1 All ER 568 (UK House of Lords) Lord Bridge discussed the application of ‘Duty of Care’ to third parties, and at 573-4 held,
- “The most comprehensive attempt to articulate a single general principle is reached in the well-known passage from the speech of Lord Wilberforce in **Anns v Merton London Borough** [1977] 2 All ER 492 at 498, [1978] AC 728 at 751–752: Through the trilogy of cases in this House, **Donoghue v Stevenson** [1932] AC 562, [1932] All ER Rep 1, **Hedley Byrne & Co Ltd v Heller & Partners Ltd** [1963] 2 All ER 575, [1964] AC 465, and **Home Office v Dorset Yacht Co Ltd** [1970] 2 All ER 294, [1970] AC 1004, the position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist. Rather the question has to be approached in two stages. First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter, in which case a prima facie duty of care arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any*

*considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise (see the Dorset Yacht case [1970] 2 All ER 294 at 297-298, [1970] AC 1004 at 1027 per Lord Reid).'*

*But since Ann's case a series of decisions of the Privy Council and of your Lordships' House, notably in judgments and speeches delivered by Lord Keith, have emphasized the inability of any single general principle to provide a practical test which can be applied to every situation to determine whether a duty of care is owed ... ..*

*..... What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of 'proximity' or 'neighbourhood' and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope on the one party for the benefit of the other." (underlining is mine)*

27. **Caparo Industries plc v Dickman and others** [1990] 1 All ER 568 was applied in UK House of Lords in case **Customs and Excise Commissioners v Barclays Bank plc** [2006] 4 All ER 256.
28. In my judgment the 1<sup>st</sup> Defendant owed a duty of care to check and verify the correctness of Part 3 of the document marked 'P2' as it was the basis of the transfer of ownership of a property right of an individual, the Plaintiff. If a mistake was done, the damage due to the loss of the said movable property, the Vehicle, to the Plaintiff was direct. This was foreseeable due to non-verification of the application for transfer.
29. There is sufficient 'proximity' and or 'neighbourhood' between the owners of the movable properties (i.e. vehicles) and the 2<sup>nd</sup> Defendant who are the sole registering authority for ownership of the same. It could be foreseeable that failure to verification of Part 3 of Document Marked 'P2', could lead to deprivation of a person of his rights to the Vehicle. It is just and reasonable for the Defendants to owe a duty of care for its customers, who are owners of vehicles. The 1<sup>st</sup> Defendant being an employee of the 2<sup>nd</sup> Defendant owed a duty of care in the registration of the transfer of the Vehicle, and 1<sup>st</sup> Defendant had failed to do it.

30. So there is sufficient nexus between the said tort and the damage to the owner of the Vehicle.
31. The valuation of the Vehicle presented to the Court through Document Marked 'P12' and it was not challenged by the Defendant, hence on the balance of probability the damage due to the loss of the Vehicle is proved \$130,000.
32. 1<sup>st</sup> Defendant's relationship with the 2<sup>nd</sup> Defendant is employer and the employee and the said negligent act of transfer of the Vehicle, was done within the scope of employment of the 1<sup>st</sup> Defendant as a Customer Service Officer. The 2<sup>nd</sup> Defendant is vicariously liable for the actions and, or omissions of their employees.

### CONCLUSION

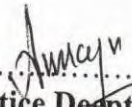
33. The 1<sup>st</sup> Defendant owed a duty of care to the Plaintiff as the owner of the Vehicle, that was subject of 'P2' and Part 3 of the said transfer form should have been verified by 1<sup>st</sup> Defendant. The failure to do so had resulted the Vehicle being transferred to Manos Jeet who executed a Bill of Sale as an owner. Finally the Vehicle was sold in auction in pursuant to the Bill of Sale. 2<sup>nd</sup> Defendant is vicariously liable for the said action of the 1<sup>st</sup> Defendant. This resulted a loss to the Plaintiff for a sum of \$130,000. The cost of this action is summarily assessed at \$2,500.

### FINAL ORDERS

- i. The Defendants breached duty of care to the Plaintiff.
- ii. The Plaintiff is granted a damage of \$130,000 from 1<sup>st</sup> and 2<sup>nd</sup> Defendant jointly and or severally.
- iii. Interest for \$130,000 at the rate of 3% from 10<sup>th</sup> July 2015 to 7<sup>th</sup> April 2017.
- iv. The cost of this action is summarily assessed at \$2,500.

Dated at Suva this 7<sup>th</sup> day of April, 2017



  
Justice Deepthi Amaratunga  
High Court, Suva