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No. 28 of 1963.

39/1964

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL SUPREME COURT OF NIGERIA

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

BETWEEN :-

EMMANUEL AYODEJI AJAYI trading under the name and style of the Colony Carrier Company (Defendant) Appellant

78653

- and -

R.T. BRISCOE (NIGERIA) LIMITED (Plaintiffs) Respondents

CASE FOR THE RESPONDENTS

RECORD

1. This is an appeal from a Judgment and Order of the Federal Supreme Court of Nigeria (Brett, F.J., Taylor, F.J. and Bairamian, F.J.) dated 21st December, 1962, dismissing an appeal from a judgment dated the 18th November, 1960 and continued (after an Accountant's Report) on the 23rd January, 1961, of the High Court of Lagos (Onyeama J.) giving judgment for the Respondents for £11,304.16s.0d. being the arrears of rents outstanding to the Respondents under two hire purchase agreements entered into with the Appellant. pp.41-47 pp.22-24 pp.32-34 pp.25-31

2. The principle question arising in this appeal is whether the Respondents are entitled under the terms of two hire purchase agreements in the same form to recover the arrears of rents outstanding under the said agreements or whether they are estopped or prevented from doing so by reason of representations made by the Respondents after the arrears had become due.

pp. 3-6

3. The Respondents' Statement of Claim alleged that by two hire purchase agreements made in writing and dated the 1st June, 1956 and the 31st July 1956, respectively, the Respondents agreed to let on hire to the Appellant eleven Seddon Tiger lorries and the Appellant agreed to take on hire the said lorries at a rent contained in the agreements. On the execution of the first agreement, the Appellant paid to the Respondents a deposit of £1,071.2s.6d. and agreed to pay the balance punctually by six monthly instalments of £567.14s.1d., £567.14s.1d., £567.14.0d., £567.14s.0d., £567.14s.0d., and £567.14s.0d., commencing on the 1st July, 1956. On the execution of the second agreement, the Appellant paid to the Respondents a deposit of £3,000 and agreed to pay the balance punctually by six monthly instalments of £3,000, £3,000, £3,000, £3,000, £3,000 and £2,034, commencing on the 31st August, 1956 and ending on the 30th January, 1957. The

p.5

Respondents' Statement of Claim further alleged that on the 30th January, 1957, an outstanding sum totalling £11,304.16s.0d. was due to the Respondents from the Appellants. Despite repeated demands, the said outstanding sum had not been paid by the Appellant.

pp. 7-12

4. The Statement of Defence and Counterclaim of the Appellant alleged that the Appellant was induced to enter into the said hire purchase agreements by the fraudulent misrepresentations of one Payne, the Respondents' alleged agent. The Statement of Defence in paragraphs 29 to 31 continued as follows :-

"29. The defendant avers that he was induced by <u>fraud</u> and misrepresentations of Mr. Payne to make the alleged contracts and within a reasonable time after he had noticed the misrepresentations and before he had received any benefit under the said agreement the plaintiffs were informed of the troubles he had with the fleet of Seddon Tippers and by the plaintiffs' letter dated 22nd July, 1957, the defendant was asked to withhold the instalments due on the Seddon Tippers as long as they are withdrawn from the road.

30. The defendant avers that the fleet of Tippers were not on the road on the receipt of this letter and ever since they have not been on the road. (8 are with the plaintiffs and 3 lying in the defendant's garage).

31. The defendant avers that the misrepresentations made by Mr. D.L. Payne were false to his own knowledge in these respects:-

(1) He knew that the plaintiffs at the time of the sale had no spare parts;

(2) No garage where repairs could be made and no qualified Engineers to repair the fleet of Tippers; all that he did was to introduce the Seddon Tippers into the market at the expense of the defendant.

The plaintiffs wilfully and knowingly concealed the above facts from the defendant."

In his Counterclaim, the Appellant alleged that he had paid the Respondents a total sum of £16,000., and that the consideration for which he paid the said sum had wholly failed. The Appellant counterclaimed for the return of the said sum of £16,000. with interest thereon or in the alternative damages. p.11

5. Evidence was given for the Respondents by a Klaus Eric Bayer. He said that there was a total of £24,511.6s.8d. due on the lorries under the hire purchase agreements and that there was an outstanding balance of £11,304.16s.0d. due from the Appellant on the said agreements. He also said that in July 1957, the Respondents received complaints from the Appellant about the lorries; that eight lorries were sent to the Respondents for repairs; that the repairs were carried out by the Respondents; that the Appellant failed to remove the lorries after they had been repaired by the Respondents; and that consequently the lorries were sold by the Respondents for about £3,600. The witness also said that spare parts were available to the Appellant but that the Appellant would not take them. pp.15-17

6. Evidence was given for the Appellant by the Appellant himself. He gave evidence about the alleged fraudulent misrepresentation, and said, inter alia, that Mr. Payne made false representations in saying that the Respondents had a garage with repair facilities and had enough spare parts. He denied that the Respondents had informed him that the eight lorries he had sent to them for repairs were actually repaired and further denied that the Respondents had asked him to take them pp.18-21

away. The Appellant admitted that the Respondents had completed their garage at the time of the hearing and that they provided him with some, but not all of the spare parts he had asked for.

pp.22-24 7. In his Judgment, Onyeama J., held that Mr. Payne had not made any false misrepresentations. He also found that there was no ground for the counterclaim, which he dismissed. The learned Judge went on:-

p.24 "Regarding the claim, there is evidence that some of the tippers were sold by the plaintiffs. The claim appears to be based on the assumption that the tippers had been sold to the defendant and not hired out to him for periodic payments. The liability of the defendant is to pay the rent up to the day the tippers were returned to the plaintiffs. When the tippers were sold, the price realised should have been credited to the unpaid periodical sums agreed in Clause 1 of the agreement, or if the plaintiffs were resuming possession as owners, the defendant would be liable for hire charges until such resumption.

As I see it, the plaintiffs are not entitled to sell the tippers and also recover the full purchase price for them from the defendant.

As it is not clear from the evidence what sum was realised on the sale of the tippers by the plaintiffs I direct that an account be taken between the parties as to the rents; if any, due on the date of the sale of the tippers and an inquiry as to the amount realised on the sale."

8. A Mr. J.B. Shogbola, by consent of the parties, was appointed to take the account and make the
pp.25-31 enquiry. He reported, inter alia, that both parties agreed to the following position of the account at the date of the return of eight of the tippers to the Respondents:-

pp.25-26 "Debit - Defendant (C.C.C.) for 9 tippers @ £2,226 each £20,034. -. -d

Debit - Defendant (C.C.C.) for 2 tippers @ £2,234.13.4d. ea. £ 4,477. 6. 8d.

Total £24,511. 6. 8d.

Less Rents already paid on the 11 tippers at the date of the return of 8 of the tippers £13,206.10. 8d.

Net total Rents outstanding £11,304.16. 0d."

9. After hearing further legal argument, Onyeama J., gave judgment for the Respondents for £11,304.16.0d., which was the balance found to be due to the Respondents on the date of the return of the eight tippers. He said:- p.32

"In my view the transaction between the parties was a hire-purchase agreement. The defendant was liable to pay the rents due on the tippers in accordance with the agreement. As the transaction was not one of outright sale of goods it is unnecessary to consider the question of the ultimate sale of some of the vehicles by the owners - the plaintiffs. p.34

Since the parties agreed that the rents due and owing on the date of the resumption of ownership by the plaintiffs, and, therefore, the termination of the hiring, was £11,304:16/-. I do not think that anything more need be said."

10. The Appellant appealed to the Federal Supreme Court on the ground, inter alia, that the trial judge failed to apply the principles laid down by Denning, J. (as he then was) in Central London Properties Trust Ltd. v. High Trees House Ltd. (1947) K.B. 130, to the Respondents' letter dated 22nd July 1957 in which they said :- pp.34-37

"Dear Sirs, p.85 and pp.43-44

SEDDON/TIPPERS

We are in receipt of your letters of 5th and 12th July and are indeed very sorry to hear about the troubles you have had with your fleet of Seddon Tippers.

We hope very soon to be able to put at your disposal the service of our engineer and on completion of our workshop in Apapa we should be able to give you a proper service for your Seddon vehicles in the time to come.

Please rest assured that we do regret the inconvenience and loss you have been put to and we confirm herewith that we are agreeable to your withholding instalments due on the Seddon Tippers as long as they are withdrawn from active service."

Yours faithfully,
(Sgd.) B.A. Heidemann Acting Manager.

During the hearing, this appears to have been the sole ground argued by the Appellant.

pp.41-46 11. The Federal Supreme Court dismissed the Appellant's appeal with costs. Having analysed the cases of Central London Properties Trust Ltd. v. High Trees House Ltd. (1947) K.B. 130, and Fenner v. Blake (1900) 1 Q.B.D. 426, Taylor, F.J., who delivered the Court's judgment, said:-

pp.45-46 "What are the circumstances in the case on appeal before us? It is true that a promise was made, that as long as the lorries were off the road the defendant could withhold the payment of the instalments due. It had not been contended, and indeed it could not be contended that this was a promise which had the effect, in view of the subsequent sale of the lorries, of waiving the payment of the balance of the debit altogether; as distinct from suspending the time for payment. Finally I cannot see in what way the present appellant altered his position, or can be said to have acted on the promise contained in the letter under consideration, and altered his position. In his Statement of Defence, paragraph 30, to which I have already drawn attention, he states that before the letter was received, and ever since its receipt eight of the lorries were with the plaintiffs, and three in the appellant's garage. There is nothing in the evidence, and Mr. Moore' has not been able to show in what way the appellant having known of the promise, acted upon it and thereby altered his position in any way, so as to make it unjust for the respondents to sue for the balance on the hire purchase agreement, two years after Exhibit "9" was written, and nearly three years after the final instalment was due."

pp.84-85

12. It is respectfully submitted that this appeal should be dismissed for the following among other

R E A S O N S

(1) BECAUSE the sum claimed was due to the Respondents on a proper interpretation of the hire purchase agreements.

(2) BECAUSE the principles in the case of Central London Properties Trust Ltd. v. High Trees House Ltd. (1947) K.B. 130 do not apply to the facts of this case.

(3) BECAUSE the judgment of the trial judge was right.

(4) BECAUSE the judgment of the Federal Supreme Court was right.

DINGLE FOOT

DICK TAVERNE

No. 28 of 1963.

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O N A P P E A L

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EMMANUEL AYODEJI AJAYI trading under the name and style of the Colony Carrier Company (Defendant)
... ... Appellant

- and -

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CASE FOR THE RESPONDENTS

WILKINSON KIMBERS & STADDON,
34, Nicholas Lane,
Lombard Street,
London, E.C.4.

Solicitors for the Respondents