

2014

88/W

DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

BETWEEN:

MOHAMED SHAHABUDEEN JUMAN

Plaintiff

-and-

REPUBLIC BANK (GUYANA) LIMITED, (a
Company incorporated in Guyana with its
registered office situate at 155 -156 New
Market street, Georgetown, Demerara)

Defendant

BEFORE THE HON. MR JUSTICE NARESHWAR HARNANAN

MS. SHAUNELLA GLENN FOR PLAINTIFF

MR. NIKHIL RAMKARRAN FOR DEFENDANT

DECISION:

Brief facts:

1. The plaintiff had purchased a motor car from an individual named *Abdool Da Silva*. That motor car while being in the plaintiff's possession, was later seized by the Defendant bank under the terms of a registered Bill of Sale in their favour over the motor car.
2. The Defendant produced evidence of the bill of sale registered on the 3rd May 2010 and renewed on the 4th May 2013. The grantor of the bill was *Nishaud Rajoomar*.
3. There is no evidence before the court as to how *Abdool Da Silva* acquired possession of the motor car, as well as how he was able to dispose of it and

transfer the registration to the plaintiff. This however, is immaterial for the purposes of the action before the court.

The issue:

4. The action raises an issue of law, and the parties have agreed to invoke **Order 23**, rules 1 and 2 of the *High Court Rules*, made pursuant to the **High Court Act, Cap. 3:02** of the Laws of Guyana, to determine the action without the need to lead evidence at a trial.
5. This agreed issue of law is whether there existed a valid Bill of Sale at the time when the defendant exercised its right to repossess the motor car, registered in the plaintiff's name, which was the subject of the Bill of Sale. The parties have agreed that a determination of this question will dispose of the action filed herein.

The law and analysis:

6. A Bill of Sale is a written instrument by which one-person transfers property in goods or chattels to another. See **Gallop v. Dey** [1861] 7 H&N 457. In Guyana the statutory provisions governing Bills of Sale are contained in the **Bill of Sale Act, Cap. 90:12** of the Laws of Guyana [the Act].
7. The uncontroverted fact before the Court is that whilst the Bill of Sale over the motor car was registered in time, that is, 7 days of the grant of the Bill, the Registrar of Deeds who was obliged by the provisions of the **Bill of Sale Act** to publish it in the Official Gazette within 21 days of its filing, did not so do until 4 days after the 21-day period expired. See **Section 8(1)(b)** of the Act.
8. The plaintiff asserts that the obligation of registration and publication as provided for in the Act, is mandatory, and if there is non-compliance, the Bill of Sale is void, since its validity hinges on the satisfaction of the statutory requirements. He submits that the repossession by the Bank under an invalid Bill is unlawful.

9. All Bills of Sale must be issued pursuant to the statutory regime. A Bill, once issued, being validly filed and published, is in general, operates to transfer legal title to a grantee, with an express or implied *proviso* for re-transfer or redemption. That legal title is valid against the world. See ***Halsbury Laws of England, Vol. 4, paragraph 653.***
10. Further, where a security Bill of Sale operates to transfer a legal title to the grantee, this will usually prevail over all claimants whose interest arise subsequently, including a purchaser, even if buying in good faith and without notice. See, ***Halsbury Laws of England, Vol. 4, paragraph 761*** and the cases of ***Taylor v. Mc Keard*** (1880) 5CPD 358 and ***Payne v. Fern*** 1881 6QBD 620.
11. It therefore follows that for legal title to pass, the Bill of Sale must comply with its statutory requirements, in that:
 - I. It must be filed with the Registrar of Deeds in 7 days after its making, and,
 - II. The Registrar must publish a notice of the Bill of Sale in the Official Gazette within 21 days of the filing.
12. It is a two-stage process of validation. The accepted evidence before the Court is that the Bill of Sale was filed in time, but there was non-compliance with the second component of validation. The Registrar published the notice of the bill 4 days outside of the statutorily prescribed 21 days, after it was filed.
13. The question is whether this is such a fundamental breach of the provisions of the ***Bill of Sale Act***, that it operates against the validity of the Bill over the motor car.
14. Generally, a Bill of Sale is capable of being declared invalid if the requirements of ***Section 8(1)(b)*** of the Act have not been complied with. Any interest acquired by a third-party over the property secured during the period of its invalidity, may be held to be enforceable.

15. Therefore, the issue is whether the Bill in question was a valid Bill of Sale, because of the omission by the Registrar of Deeds to publish it 21 days of it being filed.
16. It is clear that in the 4 days after the 21st day allowed by statute for publication, there was no validly registered Bill of Sale. This Court is of the view that the validity of the Bill crystallises on publication. Any right or interest acquired by 3rd parties over the property secured during that 4-day period it remained unpublished, may be enforced by those 3rd parties.
17. Further, this Court is of the view that the statutory requirement of publication was satisfied when the Bill of Sale was published by the Registrar, albeit 4 days late. The **intention** of the legislation is **publication** of the notice of the Bill of Sale, to the world. This is achieved by placing it in the Official Gazette. If it is never placed in the Gazette, then it may be argued justifiably, that the Bill of Sale remains invalid and any right to property purportedly secured by it is unenforceable.
18. **Bennion on Statutory Interpretation**, Section 163-171, at page 25 states:

Legislative intention is a 'very slippery phrase'¹. That is far from meaning that the concept is unimportant or illusory. **It is axiomatic that Parliament is to be taken to have an intention in everything it enacts**; and that the function of the court is to find out and declare that intention. This is the paramount, indeed only ultimate, criterion.

"There are many so-called rules of construction that courts of law have resorted to in their interpretation of statutes but **the paramount rule remains that every statute is to be expounded according to its manifest and expressed intention.**"²

¹ *Salomon v A Salomon & Co Ltd* [1897] AC 22, per Lord Watson at 38

² *A-G for Canada v Hallett & Carey Ltd* [1952] AC 427, per Lord Radcliffe at 449

What the legislator intends by the words used ideally passes directly to the reader's brain by intuition, defined as 'by immediate perception or direct mental apprehension; without the aid of intermediate ideas'.³ Thus *Evans-Lombe J* rejected a construction suggested by counsel on the ground that it was 'counter-intuitive'.⁴ *Sedley LJ* relied on a different part of the anatomy when he confessed to a 'visceral unease' as to the suggested meaning of an enactment.⁵ *Lord Nicholls of Birkenhead* said:

'Statutory interpretation is an exercise which requires the court to **identify the meaning borne by the words in question in the particular context**. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful so long as it is remembered that the "intention of Parliament" is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even a majority of individual members of either House. These individuals will often have widely varying intentions. Their understanding of the legislation and of the words used may be impressively complete or woefully inadequate. Thus, when the courts say that such-and-such a meaning "cannot be what Parliament intended", they are saying only that the words under

³ *Oxford English Dictionary* (2nd edn, 1992)

⁴ *Todd v Secretary of State for the Environment, Food and Rural Affairs* [2004] EWHC 1450 (Admin), [2004] 4 All ER 497 at [51]

⁵ *A v Head Teacher and Governors of Lord Grey School* [2004] EWCA Civ 382, [2004] 4 All ER 628 at [38]

consideration cannot reasonably be taken as used by Parliament with that meaning.'⁶ (emphasis supplied)

19. **Bennion** (cited above) goes on at page 27:

Blackstone remarked that the courts both profess and are bound '**to interpret statutes according to the true intent of the legislature**'.⁷ *Lord Halsbury LC* summed up the position thus:

"Turner LJ in *Hawkins v Gathercole*(1855) 6 De GM & G 1 at 21, and adding his own high authority to that of the judges in *Stradling v Morgan*(1584) 1 Plowd 204, after enforcing the proposition that **the intention of the Legislature must be regarded**, quotes at length the judgment in that case: that the judges have collected the intention "sometimes by considering the cause and necessity of making the Act ... sometimes by foreign circumstances" (thereby meaning extraneous circumstances), "so that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion". He adds: "**We have therefore to consider not merely the words of this Act of Parliament, but the intent of the Legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts**, and from foreign (meaning extraneous) circumstances so far as they can justly be considered to throw light upon the subject".⁸

⁶ *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd* [2001] 2 AC 349 at 396

⁷ William Blackstone, *Commentaries on the Laws of England* (Oxford: The Clarendon Press, 1st edn, 1765-1769) iii 430

⁸ *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents, Designs and Trade-Marks, Solio Case* [1898] AC 571 at 575

'In all cases the object is to see what is the intention expressed by the words used.'⁹ (emphasis supplied)

20. Lord Campbell, in ***Liverpool Borough Bank v. Turner***¹⁰ noted that:
...no universal rule can be laid down for the construction of statements as to whether mandatory enactments should be considered directory only or obligatory with an implied nullification for disobedience. *It is the duty of the Courts of Justice to get at the intention of the legislature by carefully attending to the whole scope of the statute to be considered...*(emphasis supplied)
21. In the instant circumstances, the plaintiff purports to acquire an interest in the secured property after the notice was published. This Court is of the view that the validity of the Bill of Sale, cannot be called into question ***after*** publication of the notice. The ***intention*** of the legislation is “***publication***” in the Official Gazette.

Conclusion:

22. Therefore, this Court is of the view that the purported interest acquired by the plaintiff by way of purchase of the secured property, is unenforceable, given the existence of a valid Bill of Sale over the vehicle.
23. The purported interest of the plaintiff, having been acquired after the publication of the Bill in the Official Gazette, must be qualified, having regard to the valid Bill of Sale held by the defendant. The orders sought in this action including the return of the motor car must be dismissed. The parties are ordered to bear their own costs.



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Nareshwar Harnanan
Puisne Judge
7th November, 2017

⁹ *River Wear Comrs v Adamson (1877) 2 App Cas 743, per Lord Blackburn at 763*

¹⁰ [1860] 2 De G.F. & J. 502