[2018] JMCA Civ 37

JAMAICA

IN THE COURT OF APPEAL

SITTING IN LUCEA, HANOVER

PARISH COURT CIVIL APPEAL NO 24/2018

BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MISS JUSTICE P WILLIAMS JA
THE HON MR JUSTICE PUSEY JA (AG)

BETWEEN RUEL BARNETT APPELLANT

AND DELROY MINTO RESPONDENT

Ronald Paris instructed by Paris and Company for the appellant

George Traile instructed by Phillip Traile and Company for the respondent

7 December 2018

P WILLIAMS JA

[1] This is an appeal from the decision of Her Honour Miss Kaysha Grant, Parish Court Judge for the parish of Saint James, wherein she entered judgment for the respondent, Mr Delroy Minto, and awarded him $458,802.00 and costs of $53,380.25. The respondent had filed three plaints seeking to recover expenses and losses he had incurred due to the appellant, Mr Ruel Barnett, wrongfully removing parts from a tractor/trailer that he had parked on the appellant's property with the permission of the appellant.

[2] There was no dispute that the tractor/trailer had been parked on the appellant's property sometime in September or October 2008 with the appellant's consent. The respondent alleged that when he visited the property in January or February 2009 he observed that four tyres, two hubs and a spring were missing from the vehicle. He brought his claims to recover monies to replace the parts and for loss of earnings due to his inability to operate the tractor/trailer with those parts missing.

[3] The statement of the defence recorded by the learned Parish Court Judge was as follows:

> "The [appellant], Ruel Barnett, does not owe the [respondent], Delroy Minto, for any cane trailer parts he allegedly removed. The [respondent] got permission to store his trailor [sic] cart free of cost. Furthermore, the [appellant] cannot owe money for items that he now owns'."

[4] The parties were diametrically opposed in relation to the issues that the learned Parish Court Judge identified as the issues for her to resolve. At the start of her reasons for judgment, she stated:

> "This is a matter of pure credibility and the quest to finding the truth is synonymous to the clichéd phrase of finding a needle in a hay stack."

[5] The learned Parish Court Judge found that central to the appellant's case was his assertion that he had purchased this tractor/trailer from the respondent. The first issue she determined to be resolved was whether the $100,000.00 referred to in two documents, which she described as "letters/statements" admitted into evidence at the request of the appellant, related to the sale of the tractor/trailer.

[6] The appellant, in cross-examination, acknowledged that he never received any receipts as proof that he purchased the tractor/trailer. He agreed that there was nothing stated in the documents on which he was relying indicating that a tractor/trailer had been sold to him.

[7] The respondent, in denying that he had sold the tractor/trailer to the appellant, offered an explanation for the documents as well as for a cheque for $100,000.00 which had been made payable to him from the appellant.

[8] After a careful review and consideration of the evidence, the learned Parish Court Judge was satisfied that those exhibits could not be relied on as proof of the appellant's purchase of the tractor/trailer.

[9] The learned Parish Court Judge then went on to consider whether a letter written in January 2010, in relation to the ownership of the tractor/trailer, was procured pursuant to the sale of the trailer. The document specifically indicated that the respondent had purchased one articulated trailer from Barnett Limited and was to be licenced and insured in "the joint names of Barnett Limited and Delroy Minto pending the transfer of title to Mr. Minto". The respondent testified that he had obtained the letter to satisfy the appellant that he was the owner of the tractor/trailer and the document was admitted into evidence at his request. The respondent explained that he felt it necessary to show this document to the appellant as the appellant felt that the parts could be removed if there was no proof of ownership.

[10] The appellant testified that he had obtained the letter to "retrieve the plates which should have been at the Tax Office". He claimed that the respondent had failed to provide him with any documents to show him who was the rightful owner.

[11] The learned Parish Court Judge again demonstrated careful consideration of the divergent stories. She found it difficult to believe that the letter was procured in January 2010 to show ownership of the cane trailer pursuant to a sale to the appellant some six months before. She concluded that the letter was not procured for purposes of any sale agreement.

[12] The next issue she considered was whether the appellant had removed the missing parts from the tractor/trailer. She considered the evidence of Mr Damian Gordon, that he had removed the parts from the tractor/trailer at the request of the appellant, who had paid him for doing so. This witness gave this evidence on behalf of the respondent. The appellant testified that he knew Mr Gordon but denied paying him. The appellant asserted that he was of the firm opinion that the respondent and his men took off the parts. The learned Parish Court Judge favoured the account given by Mr Gordon as to how the parts were removed.

[13] In concluding, the learned Parish Court Judge stated that based on the analysis of the evidence and the demeanour of the witnesses, on a balance of probabilities, she found that the evidence for the respondent was more coherent and credible than that of the appellant.

[14] Mr Paris, appearing for the appellant, valiantly sought to demonstrate to this court that the learned Parish Court Judge had not arrived at a correct conclusion on the evidence presented. He argued that, against the weight of evidence and the preponderance of facts in favour of the appellant, she unfairly and improperly ruled in favour of the respondent.

[15] On behalf of the respondent, Mr Traile submitted that there was only one issue for this court and it was what was the proper approach to be adopted by an appellate court to the findings of a trial judge. He submitted that the authorities have clearly established that an appellate court could only intervene if satisfied that the judge was plainly wrong. He relied on **Clarke v Edinburgh and District Tramways Company Limited** [1919] UKHL 303, **Watt or Thomas v Thomas** [1947] AC 484, and **Bahamasair Holdings Ltd v Messier Dowty Inc** [2018] UKPC 25.

[16] Mr Traile contended that the appellant was seeking to have this court substitute its view of the findings of fact from the printed evidence in preference to that of the learned Parish Court Judge. He submitted that there was sufficient and cogent evidence to support the findings of the learned Parish Court Judge. He further submitted that this case rested on the credibility of the witnesses and the learned Parish Court Judge would have been the best person to make the determination as to whom she believed.

[17] Mr Traile is correct in his identification of the primary issue for this court. The learned Parish Court Judge, who saw and observed the witnesses, made findings of fact

to arrive at her decision. This court can only interfere if satisfied that she was plainly wrong.

[18] In the recent decision of **Bahamasair Holdings Ltd v Messier Dowty Inc**, the Privy Council revisited the matter of the proper approach to the review of the findings of a trial judge by an appellate court. At paragraph 36 of the judgment, Lord Kerr, in reference to the power of the Board to review factual findings, had this to say:

> "The basic principles on which the Board will act in this area can be summarised thus:
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> > 1, '… [A]ny appeal court must be extremely cautious about upsetting a conclusion of primary fact. Very careful consideration must be given to the weight to be attached to the judge's findings and position, and in particular the extent to which, he or she had, as the trial judge, an advantage over any appellate court. The greater that advantage, the more reluctant the appellate court should be to interfere…' -*Central Bank of Ecuador v Conticorp SA* [2015] UKPC 11; [2016] 1 BCLC 26, para 5.
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> > 2. Duplication of the efforts of the trial judge in the appellate court is likely to contribute only negligibly to the accuracy of fact determination - *Anderson v City of Bessemer*, cited by Lord Reed in para 3 of *McGraddie*.
> >
> > 3. The principles of restraint 'do not mean that the appellate court is never justified, indeed required, to intervene.' The principles rest on the assumption that 'the judge has taken proper advantage of having heard and seen the witnesses, and has in that connection tested their evidence by reference to a correct understanding of the issues against the background of the material available and the inherent probabilities.' Where one or more of these features is not present, then the argument in favour of restraint is reduced - para 8 of *Central Bank of Ecuador."*

[19] Mr Paris very passionately sought to engage this court in trying to satisfy us that the learned Parish Court Judge was plainly wrong. However, he was not able to do so. We think that there was evidence to support her findings and therefore, we must dismiss this appeal.

[20] The appeal is dismissed. The judgment of the learned Parish Court Judge handed down on 8 June 2017 is affirmed. Costs to the respondent to be agreed or taxed.