

IN THE SUPREME COURT OF BELIZE, A.D. 2007

CLAIM NO. 620

	(TERENCE SUTHERLAND	CLAIMANT
	(
BETWEEN	(AND	
	(
	(ADOLFO HERRERA	DEFENDANT

Before: Hon Justice Sir John Muria

20 June 2008

Mr. H. Elrington for Claimant

Mr. O. Twist for Defendant

JUDGMENT

Muria J.: In these proceedings, the claimant claims the return of his one (1) 440 John Deer Skidder or the sum of \$50,000.00, which sum is said to be the value of the skidder. The claimant's case is premised on the basis that the agreement between himself and defendant was one of a hire arrangement. The claim is denied by the defendant.

Brief Facts

The facts of this case are in short compass. Sometime in February 2004, the defendant wanted to purchase a skidder. After some discussion with one

Frederick Banner, the defendant learnt that the claimant had an old skidder sitting in his shed for some years. The defendant, accompanied by Mr. Banner and one Marcelo Bartley (a mechanic) went to see the claimant on 12th February 2004 to discuss the possibility of purchasing the old skidder from the claimant. Following that discussion, an agreement was reached on the same day, between the claimant and the defendant, and evidenced by a *Receipt* dated 12 February 2004 (Document marked “FBI” attached to Frederick Banner’s Witness Statement and marked “AH” attached to Adolfo Herrera’s Witness Statement) signed by Johnny Cash Sutherland (claimant), also known as Terrence Sutherland, for the purchase of the old skidder from the claimant for the sum of \$5,000.00. The receipt shows that \$2,000.00 was paid on the same date 12 February 2004 and the balance of \$3,000.00 was to be paid by one Frederick Banner in two payments of \$1,500.00 each. Having received the \$2,000.00, the claimant handed the skidder over to the defendant.

The skidder was unserviceable and needed to be repaired. The defendant had to engage a mechanic, one Marcelo Bartley, to do the repairs on the skidder. Mr. Bartley inspected the skidder and estimated the costs of repairing it to be \$5,000.00. In his assessment as a mechanic, he put the worth of the old skidder to be worth not more than \$5,000.00 BZD. The skidder was repaired by Mr. Bartley

at Stann Creek and was put to work. The defendant used the skidder, but it broke down three weeks later and became unserviceable again.

Non Est Factum

There was some attempt at the hearing, by the claimant to set up the plea of *non est factum*. When cross-examined by Counsel for the defendant, the claimant said that he never signed an agreement with Mr. Herrera on 12th February 2004. When pressed further, he said that he agreed he signed the Document “FBI” (*Receipt*) on 12th February 2004, but that he did not write its contents. Again in cross-examination he further said that he would not deny that his signature was on the document, but added that he signed the document, not for the sale of the skidder.

Although not pleaded as such, having raised the plea or a least attempted to do so, the Court is obliged to consider it.

Having thus considered the suggested plea, I feel any claim or suggestion of claim of *non est factum* cannot succeed in this case, for the simple reason being, that the claimant was and still is, not illiterate; he read the document before he signed it and he agreed he signed it; and he knew what he signed. It can hardly be plausible for him to contend now, that the document he signed was not for the purchase of

his old skidder tractor for \$5,000.00, the first payment of which he had received in the sum of \$2,000.00. I respectfully agree with Mr. Twist of Counsel for the defendant that any suggestion of a claim of *non est factum* in this case cannot succeed. See *Saunders (Executrix of the Will of Rose Maud Gallie (Deceased)) - v- Anglia Building Society* [1971] AC 10004 ; see also *Island Marketers Ltd and Belize Yacht Club -v- Guerra* (24th February 2000) Supreme Court of Belize, Action No. 461 of 1999.

Contract for sale or to hire out?

The claimant's case is that he only agreed to let his skidder out on hire to the defendant for \$2,000.00 for 90 days. He accepted \$2,000.00 from the defendant on 12 February 2004. The claimant further claims that after the 90 days, upon request from the defendant, he permitted the defendant to continue using the skidder at the hired rate of \$150.00 per week. Six months after the initial 90 days, the defendant was still working the skidder, but that he (claimant) only received \$450.00 from the defendant for that period. Thereafter he demanded the return of his skidder but the defendant refused to return it.

The defendant, on the other hand is adamant that the agreement made with the claimant on 12 February 2004 was for the sale of the skidder to him at the price of

\$5,000.00 and not hired out to him as claimed by the claimant. He paid \$2,000.00 on the same date to the claimant who accepted the payment. The balance of \$3,000.00 would be paid by one Frederick Banner in two installments of \$1,500.00 each. The claimant accepted the terms of the agreement by affixing his signature and name to the *Receipt* which is in the following terms:

***“Receive from ADOLFO HERRERA The sum of \$2,000.00 Dollars
Been 1st payment towards (1) skider tractor with an agreement that
2 other Payment should be made of \$1500.00 each. This two other
payment will be made by Mr. Fedrick Banner***

Sign

Johnny Cash Sutherland “

The contractual agreement between the parties and the evidence in this case, as Mr. Twist correctly submitted, bear the hallmarks of an agreement for the sale of the old skidder by the claimant to the defendant for the price of \$5,000.00. The evidence does not support the claimant’s claim that he let the skidder out on hire to the defendant. There is offer, acceptance, consideration and intention to create

a legal relationship between the parties. See *Carlill v The Carbolic Smoke Ball Company* (1892) 2 Q.B. 484

As to the value of the old skidder, I do not accept that it was worth \$50,000.00 as claimed by the claimant in his statement of case. The evidence shows that the skidder was not only old, but parts of its engine were missing and was parked in the claimant's shed for about ten years. Mr. Marcelo Bartley, the mechanic who repaired the skidder, put the value of the skidder to not more than \$5,000.00, which was the cost of repairing it and putting it to work. Later on in his oral evidence in Court, he added that –

“Complete overhaul work, with engine parts, would cost about \$5,000.00 plus other parts.”

The “other parts” would include replacement of the four (4) wheels (tyres) of the skidder at the cost \$1,000.00 each, the steering wheel and any other parts that needed replacing. Mr. Marcelo Bartley further testified that when pressed in cross-examination that after completely fixing the skidder, he would put its value not more than \$12,000.00. I accept the mechanic's evidence. It must be said that

all these parts were paid for by the defendant to make the skidder operational and they clearly go to show the condition of the skidder. However, the value of the skidder after it was extensively repaired is of no moment to the claimant.

On the facts of this case, the only claim that the claimant can hope for is the balance still owing to him from the defendant on the purchase price of his old skidder tractor. That balance was \$3,000.00 and was to be made by Mr. Frederick Banner under an arrangement between the Defendant and Mr. Banner. That arrangement, however, did not materialize and the defendant (so he claimed) had to make the payment himself to the claimant.

Unfortunately, the claimant still complains that he received nothing further from the defendant or Mr. Banner. The only payment he said he received from the defendant, apart from the \$2,000.00 paid on the date of the agreement, was \$450.00. There is evidence to support that from the claimant's own witness statement. There is, however, evidence from the claimant in cross-examination that he also received \$300.00 from the defendant through his Scotiabank account. The Court accepts that evidence of payment.

The arrangement stipulated that the balance of \$3,000.00 was to be paid by Mr. Banner. However, that arrangement does not remove the defendant's obligation to pay for the full purchase price of the old skidder. It simply presents to the claimant the options of choosing who to enforce his rights against. In this case the claimant chooses to proceed against the defendant and he is entitled to do so.

Findings and conclusion

On the evidence before the Court, I find as facts, the following: the arrangement between the claimant and defendant was for the defendant to purchase the claimant's old skidder tractor, and not for a hire arrangement; the purchase price was \$5,000.00; the defendant paid \$2,000.00 which the claimant received on 12 February 2004; no further payment was received from either the defendant or Mr. Banner until much later, when the defendant paid \$750.00 (\$450.00 + \$300.00) to the claimant; the claimant had received only \$2,750.00 out of the total of \$5,000.00; and that the amount of \$2,250.00 is still due and owing to the claimant. There is absolutely no evidence to support the claim that the skidder in question is worth \$50,000.00 and I reject that claim. Rather, I find on the evidence that the skidder was only worth \$5,000.00, the value for which it was sold to the defendant. I also reject the claim that the skidder was let out on hire to the defendant.

As the evidence does support the claimant's entitlement under the agreement between the parties in this case, namely, the amount of \$2,250.00 still due and owing to him from the defendant, the Court is obliged to make an order granting him his entitlement in that sum.

I therefore give judgment for the claimant in the sum of \$2,250.00 together with costs.

I order accordingly.

(Sir John Muria)