6 pages.

190A.

In the Royal Court of Jersey
(Samedi Division)

16th November, 1989

Before Commissioner F. C. Hamon assisted
by Jurats M. G. Lucas and A. Vibert.

BETWEEN	La Motte Garages Limited	PLAINTIFF
AND	Donna Jayne Morgan	DEFENDANT

Dispute arising over the sale of a motor vehicle.

Contract - mistake - mutual mistake negativing agreement -objective test applied to ascertain "the sense of the contract" - equitable assignment of debt - unjust enrichment.

Advocate M.St J. O'Connell for the plaintiff
Advocate P.C. Sinel for the defendant.

COMMISSIONER HAMON: The defendant owned an Austin Metro motor car (J62905). A few days before the 14th May, 1988, she telephoned a Mr. Alex Milligan who is a car-salesman employed by the plaintiff. She made the telephone call

because a friend of hers had purchased a car from that company and had recommended them. She went to the plaintiff's premises at Grouville and saw a Ford Fiesta on the forecourt. She liked it and decided there and then to purchase it. Prominently displayed on the windscreen was a sign showing that the price of the motor car was £4,995.

She met Mr. Milligan. She told him that her car was registered in 1985. On that car she owed £2,270 to a hire purchase company, Lombard Finance (C.I.) Limited Mr. Milligan told her that the plaintiff would pay off the hire purchase company.

She was offered £2,270 for her car on the basis that it was a 1985 model. This sum was equivalent to the hire purchase debt. When some days later Mr. Milligan discovered that the Metro was not in fact registered in 1985 but in 1984 he told the defendant that he could only offer £2,000. She was surprised to find that the car was one year older than she had thought but she accepted the reduction.

The car was prepared for the defendant and a sales invoice was drawn up. The £2,000 was deducted from the sale price and the defendant was asked to pay £2,995. She did so. The defendant signed the form (or at least one section of the form) and took the Fiesta away. She was not given the log book of the vehicle although in normal circumstances this would have been sent on to her by the motor tax office in the usual course of events.

When Mr. Milligan sent the original order form to the plaintiff's accounts department it became apparent that he had made an error. He had omitted to include the outstanding hire purchase debt of £2,270 on the invoice. This meant that the plaintiff was still owed £2,270. The defendant drove the Fiesta away from the plaintiff's premises. The following morning she was telephoned at her place of work by Mr. Milligan. He told her that he had made a mistake. She could not understand, she asked him to come to her place of work Valentines' the florists. Mr. Milligan called at Valentines and explained the matter annotating certain items on to the invoice. It took the defendant ten minutes to understand the explanation. Her employer was present during the discussion.

She agreed that there had been a mistake but decided to take advice on the matter. Mr. Milligan explained that she could either pay the £2,270 or alternatively each would return the car to the other and forget the matter.

The meeting was perfectly amiable Mr. Milligan suggested a time limit. When he left the meeting he formed the impression that he did not have a definite answer.

After he had gone the defendant took advice from her employer and from her parents in Manchester whom she consulted on the telephone. She felt that she could not afford the extra money but she understood the mistake.

The advice she got was unequivocal. It was to consult a lawyer. She sought the advice of Advocate Sinel.

The letter from her lawyer did not in any way mince words. It is dated the 19th May, 1988. It is addressed to Mr. Milligan and reads:-.

> "I have been consulted by Miss Donna Morgan in relation to an agreement reached between yourselves in relation to the sale of a motor car. The parties have signed binding agreements copies of which you will forward to me by return of post.
>
> You are not entitled to steal my client's car or otherwise breach the agreements reached. Please do not phone her at work or at home again."

Mr. Milligan gave the letter to his employers. They consulted their lawyer. A detailed letter of reply was sent. There was, unfortunately, no meeting of minds. The matter has now reached this Court.

Before us Advocate Sinel maintained his uncompromising approach. He argued that there had been no mistake at all. There had been a concluded contract which the plaintiff did not later consider to be sufficiently profitable. Mr. Milligan on the plaintiff's behalf thereupon set out either to put matters back to where they had been or to increase the profit by a further £2,270.

We do not, on the evidence that we have heard, accept that this was so. We find that Mr. Milligan made a genuine mistake and never intended to include the payment of the hire purchase debt as part of his offer. We have no doubt that he intended the defendant to reimburse the sum of £2,270. Indeed the defendant in her evidence agreed that he had made a mistake. Once the explanation had been given to her by Mr. Milligan she accepted that he had made a mistake and she understood it. We do not believe that she was devious in any way at all; it might be that had the matter been explained to her properly at the time of the signing of the invoice she would not have proceeded to purchase the Fiesta.

How then does one deal with what was, on the face of it, a voluntary payment by the plaintiff to the hire purchase company to discharge the defendant's debt.

A passage from Klippet on Unjust Enrichment at page 117 is helpful:

"When a person discharges the liability of another, courts are, it seems, most anxious to ensure that he is not a volunteer before considering whether he may recover against the other. The simple payment of another's debt cannot of itself give rise to a claim. As pointed out by Lord Kenyon C.J. in Exall v. Partridge (1799) 8TR 308.

'It has been said, that where one person is benefited by the payment of

money by another, the law raises an assumpsit against the former; but that I deny: if that were so, and I owed a sum of money to a friend, and an enemy chose to pay that debt, the latter might convert himself into my debtor, nolens volens.'

It should be noted that this passage relates to the lack of choice by the defendant the matter. But interesting point is that in this case, and others with similar issues, shows that if the "enemy", or other payer of the debt, can show he was not avolunteer - by demonstrating compulsion through duress, or secondary liability, or fraud, mistake or self interest for example - then he will be able to convert himself into the debtor 'nolens volens'. As a result he will defeat the "acceptance" principle provided that the debt is discharged by the payment".

We do not accept that this was, in the legal sense a voluntary payment by the plaintiff. They expected to be reimbursed by the defendant and were entitled to that belief.

Mistake has long been accepted as negativing agreement. Pothier put it this way (Traité des Obligations: Tome 1 Chapitre 1)

"17. L'erreur est le plus grand vice des conventions; car les conventions sont formées par le consentement des parties; et il ne peut pas y avoir de consentement losque les parties ont erré sur l'object de leur convention".

And again in the same passage Pothier says:

"18. L'erreur annule la convention".

It is perhaps somewhat disappointing that neither party chose to mine the rich lodes of our ancient French law but to rely on English law. It may well be that their conclusions would have been the same if they had.

Paragraph 2 (c) of the Order of Justice reads as follows:-

"at all material times it was known that the said Mini Metro motor car was subject to a hire purchase agreement. The Defendant agreed to discharge the outstanding balance of £2,270 to Lombard Finance (C.I.) Limited".

and paragraph 4 reads:

"owing to an internal accounting error the Plaintiff has settled the debt to the Hire Purchase Company in the sum of £2,270".

Neither of these statements is correct in fact. We will not insist on niceties of pleading when the true facts have been so clearly established before us and when the issues that we have to decide are so clearly evident.

We believe that when Mr. Milligan told the defendant that the plaintiff would pay off the debt to the finance company, that coupled with the mistake, was

sufficient to give the plaintiff an equitable right of assignment of the debt.

As to the mistake we see it as a mutual mistake. If we have to ascertain "the sense of the promise" it seems to us that we must ascertain the objective test of what a reasonable man would have assumed it to mean.

We have a car clearly advertised as being for sale at £4,995. The defendant has a car worth £2,000 subject to a hire purchase agreement with a balance outstanding of £2,270. The plaintiff undertook to discharge the hire purchase agreement and asked the defendant for £2,995 which she paid. There can be no doubt in our minds that a reasonable man would have seen at once that the plaintiff meant to ask for £5,265 even though at the time the defendant had not seen the mistake and assumed that the sale price was £2,995.

The profit that the plaintiff made on the deal (which was dealt with at some length during the trial) is, in our view, totally irrelevant. The mistake was pointed out to the defendant within hours of her taking possession of the Fiesta and she acknowledged the mistake. She is not unintelligent and we were impressed by the candid manner that she replied to all questions.

We are asked to award damages on three separate alternate grounds. The pleadings are inaccurate, as we have said, but we are able in this case to say that there was clearly an equitable assignment of the debt. The defendant agreed that Mr. Milligan should discharge the outstanding balance of the agreement. We are not certain that we need to enter into the complexities of a case upon which Advocate O'Connell so strongly relied: B. Liggett (Liverpool) Limited -v- Barclays Bank Limited (1928) KBD 48. That case only decided that where defendants act negligently and contrary to instructions to pay off trade creditors of their customer then as their customer's liabilities had not been increased in any way by the payment of the trade creditors they were protected from liability on equitable grounds and were entitled to stand in the place of the creditors whom they had paid. Had we had an opportunity to examine Pothier, Domat and the doctrines of "novation "we feel that our conclusion would have led us by more familiar paths to this conclusion.

Here the defendant is no worse off by reason of having her debt with Lombard Finance (C.I.) Limited paid off. The debt was paid off with her knowledge and consent and under a mistake. We do not believe that there was any improper motive on the part of either the plaintiff or the defendant. The matter could with careful counselling have been resolved (and probably to the defendant's benefit) on the 19th May, 1988.

We give judgment to the plaintiff in the sum of £2,270. We are not prepared to award interest on that sum. We award taxed costs

AUTHORITIES CITED

Klippet on unjust enrichment - P.117
Pothier - Traité des Obligations - Tome 1 Chapitre 1 Paragraph 17 & 18.
Liggett (Liverpool) Limited -v- Barclays Bank Limited (1928) KBD 48
Snell's Principles of Equity 27th Ed - p. 69-80