

BETWEEN

ACU Ltd

APPLICANT

AND

ZXF

FIRST RESPONDENT

AND

ZXG Ltd

SECOND RESPONDENT

Date of Order:

19 August 2013

Referee:

Referee ter Haar

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZXF is to pay ACU Ltd the sum of \$6806.27 by 4 pm on 26 August 2013.

Facts

[1] On 6 August 2010 WY and QY took out a loan and security agreement with ACU Ltd.

[2] A security interest was created in respect of two vehicles – a 1993 Toyota and a 1997 Toyota.

[3] This security was registered in the NZ Personal Property Securities Register on 11 August 2010.

[4] Terms included in the loan and security agreement were that WY and QY would make 155 weekly payments of \$83.01 and a final payment of \$80.95, totalling \$12,947.50.

[5] ZXF purchased the 1997 Toyota, which was a subject of the security interest, in November 2010.

[6] WY and QY failed to make the required payments to ACU Ltd and as a result ACU Ltd attempted to repossess the vehicle that was now in ZXF's possession.

[7] ZXF refused to release the vehicle and ACU Ltd now makes a claim in the Tribunal against ZXF for \$6,806.27 which they say is the amount owed on the loan and security agreement.

Issues

[8] The issues to be decided are as follows:

- (i) Is ACU Ltd entitled to repossess the 1997 Toyota from ZXF?
- (ii) If so, is ZXF liable for the tort of conversion by hiding the 1997 Toyota from ACU Ltd's repossession agents?
- (iii) If so, what is the appropriate remedy?

(iv) Is ZXG Ltd liable?

Decision

Is ACU Ltd entitled to repossess the 1997 Toyota from ZXF?

[9] The Personal Property Securities Act 1999 in general provides that once a security interest is registered, that security interest is enforceable against a third party who may claim rights in the property.

[10] In this case, that means that since ACU Ltd had registered its security interest in the 1997 Toyota in the Personal Property Securities Register in August 2010, then that security interest is enforceable against ZXF who purchased the 1997 Toyota from WY and QY in November 2010.

[11] The security agreement made with WY and QY provided for repossession of the vehicles which are the subject of the security interest if they failed to meet their commitments under their consumer credit contract.

[12] Given that I accept the evidence that shows that WY and QY failed to meet their payments under the agreement, and that the security interest is enforceable against ZXF, I therefore find that ACU Ltd is entitled to repossess the vehicle from ZXF.

Is ZXF liable for the tort of conversion by hiding the 1997 Toyota from ACU Ltd's repossession agents?

[13] One of the ways that conversion arises is where a person who has lawfully obtained possession of goods is shown to have an intention to keep those goods from a person or entity which has an immediate right to their possession.

[14] For conversion to apply, the person detaining the goods must show an intention to keep them in defiance of the rights of the claimant.

[15] Once that intention is established, liability for conversion arises regardless of whether or not blameworthiness or moral right is established on the part of the person detaining the goods.

[16] I have already found that ACU Ltd is entitled to repossess the 1997 Toyota lawfully purchased by ZXF in November 2010.

[17] In terms of points made at paragraphs 13 and 14 above, ZXF admitted at both hearings that he has hidden the vehicle so as to ensure that it cannot be repossessed and that he will continue to do so. This shows the required intention to deprive ACU Ltd of its rights of possession of the 1997 Toyota.

[18] ZXF states that he has hidden the 1997 Toyota because he believes it would be unfair for ACU Ltd to be able to take advantage of the considerable improvements he has made to the 1997 Toyota since its purchase.

[19] However, as stated in paragraph 14 above, a person may be liable for conversion regardless of whether or not they consider they have a moral right to the goods.

[20] I therefore find that AXF is liable for the tort of conversion by hiding the 1997 Toyota from ACU Ltd.

What is the appropriate remedy?

[21] The remedy for conversion is damages.

[22] In assessing damages payable, the House of Lords in *Kuwait Airways Corp v Iraqi Airways Co (Nos 4 and 5)* [2002] 2 AC 883 held that two questions must be asked.

[23] The first question is whether the Respondent's wrongful conduct contributed to the loss, and if it did, the second relates to the extent of the loss for which the Respondent ought to be liable.

[24] In this case the first question would then be whether ZXF's act of hiding the vehicle contributed to the loss.

[25] I find that the hiding of the vehicle did contribute to ACU Ltd's loss because had he allowed repossession to occur, ACU Ltd would have been able to recover the amount outstanding pursuant to the deed of Loan and Security Agreement, given that the vehicle had been given an estimated value of \$7,000.00 in February 2013.

[26] I accept the evidence provided by ACU Ltd that that the amount outstanding as at the date of filing this claim was \$6806.27.

[27] Therefore, in answer to the second question outlined in paragraph 23 above, I find that ZXF is liable for that amount, that being ACU Ltd's proven loss.

Is ZXG Ltd liable?

[28] At the first hearing on 15 July 2013, ZXF stated that he purchased the 1997 Toyota in a personal capacity and that it was never part of the assets owned by his company, ZXG Ltd.

[29] I therefore find that ZXG Ltd cannot be made liable for the damages payable by ZXF.