

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIV. CASE No. 1468/94

IN THE MATTER BETWEEN:

IMPERIAL CAR RENTAL (PTY) LTD

PLAINTIFF

AND

N.G. FENWICK

DEFENDANT

CORAM:

DUNN J.

FOR THE PLAINTIFF:

MR. KHUMALO.

FOR THE DEFENDANT:

MR. DUNSEITH.

JUDGMENT

27TH MARCH 1998.

The plaintiff in this case, seeks judgment against the defendant for payment of the sum of E28 091.00 together with interest and costs on the attorney and client scale.

The plaintiffs claim arises from a rental agreement entered into between the parties on the 5th April 1994. The agreement was in respect of a motor vehicle bearing registration number SBZ 445 T. It is the plaintiffs case that the defendant failed to return the motor vehicle in a good and roadworthy condition, in breach of the agreement.

The facts of the case are that Mr. Leroy Rollins, an acquaintance of the defendant, approached the plaintiff and requested to rent a motor vehicle from the plaintiff. Mr. Rollins could not meet certain requirements of the plaintiff regarding payment for the vehicle. He approached the defendant and the defendant agreed to enter into the rental agreement with the plaintiff for the

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vehicle required by Mr. Rollins. The defendant presented himself at the offices of the plaintiff and signed a standard agreement kept by the plaintiff , as the renter of the motor vehicle. Mr. Rollins was included in the agreement as an additional driver. In terms of the agreement, the rented vehicle was to be returned to the plaintiff on the 15th April 1994.

It is common cause that Mr. Rollins took possession of the motor vehicle immediately after the agreement was signed and that the defendant had no further dealings with the motor vehicle. It is further common cause between the parties that the original vehicle developed some problem which resulted in it being substituted by another vehicle on the 16th April 1994 and that Mr. Rollins had the rental period extended first from the 15th April to the 19th April and then from the 19th to the 30th April. The defendant had no knowledge of these extensions and the substitution of the motor vehicle. Mr. Rollins did not return the vehicle to the plaintiff and when it was eventually recovered by the plaintiff it was found to have been damaged, following a collision.

The defendant contends that he is only liable to the plaintiff for the rental period signed for by him namely, the 5th to the 15th April 1998, in respect of the original motor vehicle. He argues that Mr. Rollins had no authority firstly, to change the rented vehicle for another and to have the rental period extended without his (defendant) consent.

The validity of the defendant's defence turns on the interpretation of certain clauses of the agreement between the parties.

In terms of the agreement " renter" of a vehicle means -

jointly and severally the signatory hereto, the person on whose behalf the signatory signs this agreement or takes delivery of the vehicle, the BILLING PARTY (unless he is the holder of a CARD) and the authorised user in terms of a card, the signatory warranting that he is authorised to sign this agreement on behalf of all of these parties.

The "BILLING PARTY "means -

The person mentioned in BLOCK 1, 7, 74 or 75, The " Vehicle " means-

The motor vehicle referred to and described in Block 42, 43 and 44 or any vehicle which may be substituted therefore during the Rental Period or Extended Period and includes all accessories, spares, tools and equipment contained therein.

The Blocks that are referred to are sections of the rental agreement that were

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completed at the time of signature of the agreement. Blocks 1 and 7 reflect the Billing Party and the Driver respectively The defendant's name appears in these two Blocks. Blocks 74 and 75 are spaces for the entry of the names of additional drivers The name of Mr. Rollins appears under Block 75.

It is clear from this definition that the "Renter" of a vehicle includes all the persons listed as drivers and additional drivers of the rented vehicle. This definition places a person who is listed as a driver or as an additional driver on the same footing as the person who signs for the rental of the vehicle. Such a driver can in the circumstances, for example, approach the plaintiff for an extension of the rental period or for purposes of changing the rented vehicle. Neither the definition clauses, nor the main clauses of the agreement make provision for the consent of the signatory to the agreement first being obtained for any variation of the agreement regarding the rental period or a change of vehicles .

A highly attractive argument was advanced on behalf of the defendant to the effect that the defendant should, as one of the contracting parties, have sanctioned the variations of the contract which were effected at the instance of Mr. Rollins. It was submitted that the plaintiff and the defendant entered into a specific contract for a specific rental period and that the defendant was not liable for any breach occurring after that period. Unfortunately for the defendant, this argument must give way to the clear wording and effect of the definition of a "Renter" of a vehicle. Immediately upon the signing of the agreement, Mr. Rollins became vested with the same powers as the defendant in relation to the agreement. It was defendant's duty to read and familiarise himself with the terms and conditions of the agreement before signing it and not merely to assume that his consent was required for any variation of the agreement.

Judgment is granted in favour of the plaintiff as prayed in prayers a, b and c of the summons.

B. DUNN

JUDGE.