

Deleon v Charlie Auto Sales, Inc.

2018 NY Slip Op 32792(U)

November 2, 2018

Civil Court of the City of New York, Bronx County

Docket Number: CV-2370-18

Judge: Sabrina B. Kraus

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 15

JOSE ALEXANDER DELEON, X

Plaintiff

HON. SABRINA B. KRAUS

-against-

DECISION & ORDER
Index No.: CV-2370-18

CHARLIE AUTO SALES, INC. s/h/a
CARLIE AUTO SALES and
CNN AUTO SALE CORP,
Defendants

X

BACKGROUND

This replevin action was commenced by Plaintiff against Defendants seeking an order directing Defendants to turnover title to a 2008 Chevy Tahoe. Defendants appeared by counsel and asserted a counterclaim for breach of contract.

PROCEDURAL HISTORY

Plaintiff commenced this action pursuant to a summons and verified complaint filed February 7, 2018 against CNN Auto Sales Corp (CNN). On March 2, 2018, Plaintiff filed an amended summons and complaint which added a second defendant Charlie Auto Sales, Inc. S/h/a Carlie Auto Sales (CAS).

On April 2, 2018, Plaintiff filed a request for inquest.

On April 6, 2018, defendants appeared by counsel, and filed an answer asserting a general denial as well as a counterclaim seeking \$4,730.00 for breach of contract.

The court held a bench trial on November 2, 2018 and reserved decision.

FINDINGS OF FACT

The court heard the testimony of Plaintiff at trial as well as the testimony of Sandy Nunez a/k/a Soindy Nunez (Sandy), who testified that he is the president of both Defendant corporations.

The court takes judicial notice that CAS is a domestic corporation registered with the New York State Department of State, Division of Corporations. CNN appears to be a New Jersey Corporation. There was no evidence at trial offered as to whether CNN is authorized to do business in New York State.

Plaintiff and Sandy have known each other for over thirty years . The parties first met in the Dominican Republic.

In July 2017, Plaintiff and Sandy went to a car auction. Plaintiff wished to purchase a Chevy Tahoe. Sandy agreed to put the purchase through his business in exchange for the payment of fees. The purchase was done through CNN, the New Jersey Corporation (see Ex B). The parties chose a 2012 Chevy Tahoe. The price at auction was \$10,800.00. Plaintiff gave Sandy \$11,500 in cash. In addition to the purchase price of the vehicle, the cash was to recover fees due to the auction house, a service charge for Sandy, and monies for obtaining the title. Plaintiff drove the car home from the auction. The next day Sandy gave Plaintiff a temporary license plate for the vehicle. Plaintiff testified he eventually received title and registered the vehicle. Plaintiff drove the vehicle to Texas with his family.

Due to severe storms, Plaintiff left the vehicle in Texas and came back to New York. Plaintiff went to meet with Sandy to arrange for a company to tow the vehicle back to New York from Texas. Sandy then proposed a new transaction to Plaintiff. Sandy stated he had purchased

a 2008 Chevy Tahoe at auction, which had much less mileage on it than the 2012 Tahoe. Sandy stated he had purchased the 2008 Tahoe for \$15,000. The parties agreed that Plaintiff would trade Sandy the 2012 Tahoe, for the 2008 Tahoe, that Plaintiff would pay Sandy an additional \$4000 for the exchange.

Up until this stage, the facts are more or less uncontested.

Plaintiff testified that in September 2017, when the 2012 car arrived from Texas, he brought it to Sandy's place of business for the exchange. Sandy was away in the Dominican Republic, but that he paid Sandy's wife \$4000, in cash. Sandy's wife gave Plaintiff a Bill of Sale as a receipt (Ex 1). Plaintiff gave Sandy's wife the title for the 2012 vehicle, delivered the 2012 vehicle, and drove home the 2008 vehicle. Sandy's wife gave Plaintiff temporary plates to drive the 2008 vehicle home and stated she would forward the title when Sandy returned from the Dominican Republic.

The bill of sale indicates that it was issued by CNN, who's address is listed as 60 Asbury Road, Suite 212, Hackettstown NJ.

Plaintiff testified that he got no receipt for the cash transaction except the bill of sale and that Sandy never gave him receipts for the cash transactions, because the two trusted each other.

Sandy's wife did not testify at the trial.

Sandy testified that Plaintiff did not pay the \$4000 when he exchanged the vehicle. Sandy testified that when he returned from the Dominican Republic, he went to Plaintiff's home. Sandy testified that because Plaintiff was not able to pay the additional \$4000, the parties agreed to void the car exchange and trade back, with Sandy agreeing to pay Plaintiff an additional \$600 as consideration. However, when Sandy went outside to look at the 2008 vehicle he saw that it

had been damaged by scratches. Photos of the damage were admitted into evidence (Ex A1-A8). After he saw the damage, Sandy no longer wanted to trade back the cars and the parties could not arrive at terms for any new agreement.

Sandy never delivered title to the 2008 vehicle to Plaintiff and Plaintiff remains in possession of the 2008 vehicle as of this date.

The primary contested issue of fact therefore is whether Plaintiff paid Sandy the \$4000 when the vehicles were exchanged. The court finds that the preponderance of credible evidence supports Plaintiff's claim that he made the payment. The payment is acknowledged in the bill of sale (Ex 1), which acknowledged receipt of \$15,000. The first \$11,500 was from the purchase of the previous vehicle, along with the additional \$4000 delivered by Plaintiff. Additionally, Sandy was not there and has no personal knowledge as to whether the cash was delivered to his wife, and Defendants did not call the wife as a witness. Thus the court credits Plaintiff's testimony that the payment was made.

DISCUSSION

An action to recover property is based on CPLR §7101 which provides that an action under Article 71 of the CPLR may be brought to try the right to possession of a chattel. The purpose of the action in replevin is to establish which party has a superior right to possession (*Christie's Inc. v Davis* 247 F.Supp.2d 414).

To establish a claim for replevin, the plaintiff must prove two elements: (1) that plaintiff has a possessory right superior to that of the defendant; and (2) that plaintiff is entitled to the immediate possession of that property. See *Pivar v. Graduate School of Figurative Art of the N.Y. Academy of Art*, 290 A.D.2d 212, 213, 735 N.Y.S.2d 522 (1st Dep't 2002); *Bendheim v. Butler*, 255 A.D.2d 664, 664, 679 N.Y.S.2d 460 (3d Dep't 1998).

[*Jamison Bus. Sys., Inc. v. Unique Software Support Corp.*, No. CV 02-4887 (ETB), 2005 WL 1262095, at (E.D.N.Y. May 26, 2005)].

In this case Plaintiff is already in possession of the subject vehicle. Plaintiff seeks an order directing Defendants to transfer title to the vehicle to Plaintiff. An action for the recovery of chattels is concerned with the right to possession and not title (*Wilk Enterprises Inc v JIB Realty Corp.* 72 Misc2d 507). Title to a motor vehicle passes when the parties intend that it pass (*Fulater v Palmer's Granite Garage, Inc.* 90 AD2d 685).

Plaintiff essentially seeks a declaratory judgment that he is the owner along with injunctive relief in the form of an order directing CNN to transfer title to Plaintiff. These forms of relief are beyond what is available in Civil Court. Based on the foregoing, the action against Defendants is dismissed.

As noted above, the court does not find that Plaintiff is in breach of contract with Defendant and it is unclear that CNN has any standing to maintain suit in this state (*see eg BCL* § 1312). Based on the foregoing, Defendants' counterclaim is also dismissed.

This constitutes the decision and order of the Court.

Dated: Bronx, New York
November 2, 2018

Sabrina B. Kraus, JCC

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