This week I was in the county court at Leicester dealing with, what on the face of it, was a claim for breach of contract. However, it was apparent from the facts of the case that this case involved bailment. Bailment involves the transfer of possession of a chattel to the bailee (or the acquisition of possession by him) so that the bailee becomes subject to certain obligations in relation to the goods.

The facts of the case are as follows: The Claimant purchased a second-hand truck (**"the Vehicle"**) from an insurance company, the Vehicle needed to be repaired in order to make it roadworthy before it was to be exported to Africa for sale. Upon purchasing the Vehicle, the Claimant contacted the Defendant garage to let them know the Vehicle would be delivered direct to them for the repairs to be carried out. It is noteworthy that the Claimant and Defendant had previously carried out business like this together.

The Vehicle was delivered to the Defendant garage in early January but as it was delivered after the garage closed one evening the keys were not provided to the garage until 5 days later. Whilst the parties disputed if the keys were handed over or dropped through the letter box, the evidence before the court was that the Defendant garage retained the keys thereafter for 3 months along with the Vehicle being parked outside the front of the premises.

During the 3-month period which the Defendant garage retained the Vehicle and keys, the Claimant made several visits to the garage dropping of various parts that he had obtained for the Vehicle. At all times up until late March the Vehicle was parked to the front of the premises where there was lighting and CCTV. At no point during this time did the Defendant ask the Claimant to remove the Vehicle.

One Friday evening in late March, the Defendant moved the Vehicle to the rear (exterior) of the property where there is no lighting, no CCTV and it was accepted that no one would be present in the evenings over the weekend. The Vehicle was subsequently stolen.

As such, the Claimant claimed breach of contract, there being an implied term for the Defendant to take reasonable care of the Vehicle when storing it. The Defendant denied the existence of a contract as a final quote for repairs had not been agreed and initially denied any responsibility for the Vehicle.

Notwithstanding the breach of contract claim, at the outset of the trial I explained to the learned District Judge that the issue of bailment is relevant to this case and that a bailment can exist in the absence of a contract [see **East West Corp v DKBS 1912Utaniko Ltd v P&O Nedlloyd BV [2003] EWCA Civ 83**] This submission was made, in part, to circumvent a finding that no contract existed between the parties that may have resulted in the claim failing.

As stated above, bailment involves the transfer of possession of a chattel to the bailee (or the acquisition of possession by him) so that the bailee becomes subject to certain obligations in relation to the goods. In this case the bailee is the Defendant garage who comes into possession of the bailor's Vehicle. A bailee must take reasonable care of the chattel according to the circumstances of the particular case [see **Chitty on Contracts 33rdEdition 33-008**]. Once a bailment is found to exist

the burden of proof reverses, it is for the Defendant to establish that he took reasonable steps to ensure the place he stored the chattel was fit for the purposes of custody [see **Chitty on Contracts 33rdEdition 33-049**].

Accordingly, at trial the Defendant's director (witness) argued that moving the Vehicle to the rear of the Property was reasonable because during the day there were other persons present on the industrial estate that would see if the Vehicle was being stolen even though it was parked at the rear of the premises. However, under cross examination, the Defendant's director accepted there was no CCTV at the rear of the property, there was no lighting and that over the weekend in the evenings, no one else would be on the estate. In short, the Defendant's director agreed the rear of the property was less safe than the front.

The learned district judge found that moving the Vehicle to the rear of the premises was not reasonable. It was clearly less secure than at the front, there was no CCTV, no lighting and a higher risk of the vehicle being stolen was created. Reasonable care had not been taken.

Further, the learned judge found that a contract did exist between the Claimant and the Defendant, this was obvious based on the evidence and the fact the Defendant company had retained the Vehicle for 3 months, with the keys and without complaint, it was irrelevant that a final quote had not been provided for the repair works, it was clear that once the Claimant had sourced all the spare parts, the Defendant garage had agreed to repair the Vehicle. The learned judge found there had been a breach of an implied term of the contract to take reasonable care of the Vehicle.

In respect of bailment, the learned district judge reaffirmed the principals of bailment and found that:

1. There is no requirement for a contract in order for there to be a bailment;

2. The bailee (Defendant) must take reasonable care of the chattel according to the circumstances of the particular case;

3. The onus of proof is on the bailee to show that loss or injury to the chattel occurred without his fault, by any failure on its part to take reasonable care;

4. On the particular facts of this case, there was bailment and the Defendant had failed to prove that it had taken reasonable care of the chattel.

Accordingly, there was judgment for the Claimant. The Claimant was able to recover the Value of the Vehicle, the spare parts he had purchase and the cost of having the Vehicle delivered to the Defendant garage.

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