

WONDERLAND PANEL BEATERS (PRIVATE) LIMITED
versus
TRISTAR INSURANCE (PRIVATE) LIMITED

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 19 October & 20 December 2017

Civil Trial

V Muza with K Moyo, for plaintiff
J Mutoono, for defendant

TAGU J: The defendant acting through its insurance broker BGI Financial Services (Private) Limited entered into agreement with the plaintiff the terms of which were that the plaintiff would repair vehicles belonging to the aforementioned insurance company's insured clients at an agreed cost which the defendant would pay. During the period May 2014 to August 2015 the defendant through the said insurance broker referred its various clients to plaintiff for motor vehicle repairs which repairs were effected by the plaintiff. The plaintiff claims through its director Mr Allen Jones that the outstanding costs for such repairs amounted to the sum of USD12 019.64. However, despite numerous demands by the plaintiff for the payment of the outstanding sum of money the defendant has failed, neglected and or refused to pay.

The defendant in its plea as well as its evidence adduced through its sole witness the operations manager Ms Grace Ntuli Chibaya denied liability on the basis that the defendant did not verbally authorise plaintiff to repair the motor vehicles to the tune of USD12 019.64. She further alleged that the authorization to plaintiff to repair the said vehicles was done through letters of authorization which letters were allegedly sent to its broker BGI Financial Services (Pvt) Ltd for onward transmission to the plaintiff. She lastly submitted that these authorization letters only authorised repairs in the sum of USD6 703.89. However, it must be noted that even the admitted sum has not been paid to the plaintiff.

The plaintiff vehemently denied the defendant's version and told the court that from time immemorial they were receiving verbal authorizations from the defendant's agent BGI Financial Services (Pvt) Ltd and that they never saw any written letters of authorizations. To

support its case the plaintiff produced various documentary exhibits showing the repairs done as well as the amount agreed upon.

On the other hand the defendant also produced documentary exhibits.

The only issue for trial in this case was whether defendant is liable to plaintiff the sum of USD 12 019.64 being the outstanding sum for the motor vehicle repairs effected by plaintiff for defendant. In deciding the above issue the sole issue for determination in my view centred on whether or not the verbal authorisation by defendant's agent instructing plaintiff to effect repairs on defendant's clients' motor vehicles was valid.

After careful assessment of evidence led before the court the court found the testimony of the plaintiff to be more credible than the testimony of the defendant. I say so because Mr Jones disputed ever receiving any other form of authorization apart from the verbal authorization from defendant's agent. Nevertheless Ms Ntuli during cross examination admitted that she was not aware if their agent BGI Financial Services (Pvt) Ltd had forwarded the authorization letters to the plaintiff. She further failed to deny that BGI Financial Services (Pvt) Ltd called plaintiff authorizing it to start the vehicle repairs for the agreed sum of USD 12 019.64. She further failed to show that indeed the letters of authorization were received by the plaintiff which corroborates Mr Jones's evidence that it never received the authorization letters. A look at exhibits 2-4 produced by defendant does not show on the face of it that such letters were received by the plaintiff.

In my view its either that the letters are a fabrication or that the defendant's agent did not forward such letters to the plaintiff before repairs were done. I say so because Ms Ntuli's letters of authorization were not consistent with the facts having regard to the dates on which the authorization letters were made *viz-a-viz* the date when the damage assessments and repairs were done on the motor vehicles. During trial particular reference was made to p 9 of exh 1, the plaintiff's bundle of documents, which showed another quotation of the 3rd June 2017 which has an agreed sum of USD 7 245.00 which the said Thando a representative of the defendant's agent countersigned on the 1st of July 2014. The defendant tendered an authorization letter of the 18th of July 2014 as exhibit 2 which authorized repairs for the particular vehicle in the sum of USD 2 760.00. This begs the question as to how the authorization letter could have been issued three weeks after the parties had agreed on the cost of repairs and the repairs had already been effected.

The only logical conclusion to be drawn from the evidence is that the defendant's agent verbally authorized the plaintiff to repair the said motor vehicles for an agreed sum of USD 12

019.64. If the defendant's authorization letters were genuine this communication was not brought to the attention of the plaintiff timeously by its own agent and the plaintiff acted in good faith. Further the Agent did not communicate with its principal the defendant that it had verbally authorized the plaintiff to repair the motor vehicle for the total value of USD 12 019.64.

In casu BGI Financial Services (Pvt) Ltd is the defendant's broker. An insurance broker's relationship to its principal was enunciated in the case of *McNealy v The Pennine Insurance Co. Ltd, West Lanc. Insurance Brokers Ltd and Carnell* [1978] 2 Lloyd's Rep 638 (QB) as follows-

"The ordinary function of the insurance broker or other intermediary is to receive instructions from his principal as to the nature of the risk or risks and the rate or rates of premium at which he wishes to insure, to communicate the material facts to the potential insures and to obtain insurance for his principal in accordance with his principal's instructions and on the best terms available....."

It is therefore trite law that where an Agent executes a mandate on behalf of a known principal he carries out a mandate on behalf of the principal and binds his principal in carrying such duties as stated in the case of *Gwinyai Family Trust and others v Estate Late Misheck Tapomwa* HC 5223/15. In other words a principal is vicariously liable for the acts of the Agent which the Agent carries out within the scope of its mandate.

In the case of *Watteau v Fenwick* [1893] 1 QB 346 LORD COLERIDGE CJ held that:

"the principal is liable for all the acts of the agent which are within the authority usually confided to the agent of that character, notwithstanding limitations, as between the principal and the agent, put upon that authority."

In casu the principal who is the defendant is bound by the verbal actions of the agent BGI Financial Services (Pvt) Ltd the insurance broker. Hence the verbal authorization by defendant's Agent to plaintiff to repair the vehicles for USD 12 019.64 was valid and bind the defendant and hence defendant cannot deny liability in the circumstances. The plaintiff managed to prove its case on a balance of probabilities and the court finds that the defendant is liable to the plaintiff in the sum of USD12 019.64 being the outstanding sum for the motor vehicle repairs effected by the plaintiff for defendant.

In the result I will grant the claim as prayed for by the plaintiff.

IT IS ORDERED THAT

- a) The defendant shall pay the sum of USD 12 019.64 (Twelve Thousand and Nineteen United States Dollars and Sixty Four cents) which amount is outstanding for the motor vehicle repairs effected by the plaintiff for the defendant's clients.
- b) Interest at the prescribed rate from the date of demand to date of payment, and
- c) Costs of suit on the ordinary scale.

Muza & Nyapadi, plaintiff's legal practitioners

Chadyiwa & Associates, defendant's legal practitioners