Palau Automotive v. Bai, 9 ROP 300 (Tr. Div. 2002)

PALAU AUTOMOTIVE,
Plaintiff,

v.

MICHELLE and STALIN BAI,
Defendants.

MICHELLE and STALIN BAI,
Plaintiffs,

v.

PALAU AUTOMOTIVE,
Defendant.

SMALL CLAIM NO. 00-391
CIVIL ACTION NO. 00-233
(Consolidated)

Supreme Court, Trial Division
Republic of Palau

Decided: July 26, 2002

[1] **Debtor-Creditor**

If a creditor repossesses and sells a debtor's property, any sum remaining after the satisfaction of the balance due under the agreement shall be paid to the debtor.

[2] **Debtor-Creditor**

A promissory note and agreement that specifically provide that a car be returned to the creditor if the debtor failed to make monthly payments falls within the broad language of 11 PNC § 401.

[3] **Debtor-Creditor**

Pursuant to 11 PNC § 405, if property has been taken or disposed of by the creditor other than in accordance with the debtor-creditor ⊥301 act, the debtor may recover his actual damages, if any, and in no event less than one fourth of the sum of all payments that have been made under the agreement, with interest at six percent a year.

LARRY W. MILLER, Associate Justice:

Palau Automotive sold a car to Michelle and Stalin Bai pursuant to a promissory note and

agreement in February 1997. The total price of the car was $12,750.00, of which the Bais made a down payment of $7000.00. The agreement called for the remaining balance of $5750.00, plus interest at a rate of 18%, to be paid in monthly installments of $165.00. The Bais fell behind in their payments almost immediately, leading to a series of complaining letters from Palau Automotive. Palau Automotive eventually repossessed the car on November 28, 2000, and, on December 5, 2000, resold it for $5000.00.

On December 7, 2000, Palau Automotive filed a small claims complaint in the Court of Common Pleas against the Bais in the amount of $2174.00 which, according to its breakdown, was comprised of $1264.00 in unpaid monthly payments, $890.00 for damage to the car, and $20.00 in court costs.[1] On December 26, 2000, the Bais filed a complaint in this Court against Palau Automotive, seeking either the return of their car, a replacement car, or damages representing the value of their car, plus additional damages for personal property that was in the car and not returned when the car was repossessed. The cases were consolidated before the undersigned and, after unfruitful efforts to settle the matter, trial went forward on May 2, 2002. This decision constitutes the Court's findings of fact and conclusions of law.

The Court begins with the complaint of Palau Automotive and concludes it is not entitled to any damages from the Bais. According to Palau Automotive's own calculations (which, as discussed below, *see* n.3 *infra*, were somewhat overstated), on November 28, 2000, the day the car was repossessed, the Bais were $1264.00 behind in their monthly payments, and still owed $3051.76 in total unpaid principal and interest for the car. Instead of repossessing the car, Palau Automotive certainly could have sued the Bais on that date for the amount for which the Bais were then in arrears. Possibly, it could have accelerated the debt in light of the arrearages and sued the Bais for the total amount due. But Palau Automotive did neither of those things. Instead, it elected to repossess the car and then resold it for $5000.00, an amount that – on anybody's calculations – exceeded the amount that it was owed by the Bais under their agreement. As the Court finds below, this obligated Palau Automotive to repay the excess to the Bais. For the purpose of rejecting Palau Automotive's claims against the Bais, it is sufficient to say that Palau Automotive was paid in full (and more) by the resale of the car, and the Bais owed nothing further.[2]

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[1]As part of its rebuttal case, Palau Automotive offered evidence that it rents cars for $55 a day. To the extent that this was supposed to present an alternative damages theory, the Court believes it was too late and simply not pertinent to this dispute. *See* Decision and Order *Beches v. PT Sun Jin Co.* , Common Pleas No. 00-60A (October 18, 2000), at 6-7 (rejecting rental rate as measure of damages for use of repossessed car).

[2]The other portion of Palau Automotive's claim was $890.00 for damages to the car. That amount is overstated by at least $500.00, the amount claimed for missing speakers that Stalin Bai testified and the subsequent purchaser confirmed were still there (but disconnected) when the car was repossessed. That aside, given the analysis above, the Court can see no legal basis for this claim either. The significance of any damage to the car, and of the car's condition generally, was in its resale value. If the car's condition was such that Palau Automotive could not recoup the full amount owed to it, then it might have been entitled to a deficiency judgment. But that is not what happened here.

There is another provision of the debtor-creditor relations statute discussed below under which, in appropriate circumstances, a creditor may elect to retain repossessed property "as his own without obligation to account to the debtor." *See* 11 PNC § 423(c)(1). By doing so, however, "the debtor shall

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The Court turns, therefore, to the Bais' claim against Palau Automotive. One part of that claim is not complicated and essentially undisputed. Various items of personal property, which the Bais testified had a total value of $510.00, were in the car when it was repossessed and were never returned to them. Palau Automotive has not questioned the valuation of those items, nor the Bais' right to recover that value. The judgment to be entered will therefore include that amount.

[1, 2] The Court also believes that the Bais are entitled, at a minimum, to recover the amount by which the resale price of the car exceeded the amount still owed as of the date the car was taken.[3] Pursuant to 11 PNC § 423(b), which the Court agrees is applicable to the agreement in this case,[4] if a creditor repossesses and sells a debtor's property, then "[a]ny sum remaining after the satisfaction [of the balance due under the agreement] shall be paid to the debtor." Palau Automotive appears to have violated the statute by selling the car through a privately-negotiated transaction rather than by public auction.[5] But ⊥303 that might be a reason to *increase* the

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then be discharged of all obligations under the agreement." *Id.* On any theory, therefore, Palau Automotive has gotten all that it was entitled to.

[3]As stated above, the Court finds that the amount owed was somewhat lower than the figure calculated by Palau Automotive. By the Bais' calculations (which were themselves revised slightly upward when the Court pointed out some computational errors), the amount due as of November 15, 2000, was $2720.82. Adding 13 days of interest to include the period up to the date of repossession brings the total amount to $2738.26, rather than $3051.76, as shown on Palau Automotive's exhibit. The discrepancy arises from two payments on December 14, 1998 and February 15, 1999, for which the receipts were acknowledged by Palau Automotive's owner on the witness stand but which are not accounted for in its exhibit; a payment of $200.00 on June 17, 2000, which is on Palau Automotive's exhibit, but which was credited as if it were only a $100.00 payment; Palau Automotive's practice, when payments failed to cover the interest due, of adding the unpaid interest to the outstanding principal (and thus impermissibly charging compound interest); and its practice of calculating interest as if there were only 360 days in a year, which has a small but cumulative effect of increasing the amount due. Whether or not that is a widespread practice among banks in Palau (something the Court has never come across before), the Court can see no justification for it.

[4]Under 11 PNC § 401, the provisions of Chapter 4 "apply to any agreement, regardless of its form, which is intended to give rights in personal property . . . as security for the performance of any obligation." The promissory note and agreement here, which specifically provided that the car would be returned to Palau Automotive if the Bais failed to make their monthly payments, plainly falls within the broad language of the statute.

[5]By its terms, this provision applies only if "the debtor . . . has paid at least one half of the principal due under the agreement." That is true here as long as one includes in the calculation the $7000 down payment that the Bais made at the outset, which seems to the Court a sensible reading of the statutory language. There is no legislative history of the debtor-creditor relations statute, which dates back to the Trust Territory Code, and the Court searched in vain for prior interpretations of this statute or similarly-worded statutes from other jurisdictions that might provide some guidance.

In addition to this apparent violation of § 423, it is arguable that Palau Automotive violated the statute in two additional ways. First, to the extent that the agreement with the Bais did not state explicitly that Palau Automotive "may take the [car] if [the Bais were] in default for 20 days or more," *see id.* § 421(a); *see also id.* § 406, then the Bais did not receive adequate notice prior to the repossession. *See id.* § 421(b). More importantly, even if prior notice was not required, Palau Automotive did not "retain

amount payable by Palau Automotive, *see infra*; it is surely not a reason to deny the Bais at least that much. The Court will therefore add to the judgment the difference between the sale price of the car and the outstanding balance ($5000.00 minus $2738.26), plus prejudgment interest from the date of the sale.

[3] Relying on 11 PNC § 405,[6] the Bais have argued that they should be awarded as "actual damages" the full value of the car, which Stalin Bai estimated to be $6000.00, rather than $5000.00. The Court begins by rejecting the higher valuation: although Stalin offered the opinion that the car could have been sold for $6000.00, the Court is not inclined to accept that opinion (which was offered without further explanation) as a better indication of value than the price paid by a willing buyer and a willing seller. Palau Automotive is in the business of selling cars and there is no evidence that it deliberately resold the car at a below-market price.[7]

The Court also believes that even the $5000.00 sale price overstates the Bais' actual damages. It is true that the Bais lost their car. By the Court's reasoning above, however, they also were relieved of their obligation to pay off the remaining debt under the promissory note and agreement. Their "actual damages" therefore are what they lost – a $5000.00 car – minus what they gained – relief from the amounts they still owed – which, together with the damages for lost personal property, is precisely what the Court has decided to award to them.[8]
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An appropriate judgment is entered herewith.

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the [car] for 20 days", *id.* § 421(a), so that the Bais would have an opportunity to redeem it. *See id.* § 423(d).

[6]That section provides that "[i]f the property has been taken or disposed of by the creditor other than in accordance with this chapter, the debtor may recover his actual damages, if any, and in no event less than one fourth of the sum of all payments which have been made under the agreement, with interest at six percent a year."

[7]The Bais have not argued, and the Court has no reason to believe, that the car would have sold for more at public auction.

[8]The Court recognizes that the Bais' recovery would probably be slightly more under the final clause of § 405. *See* n.6 *supra*. However, although the Bais relied on that clause as a basis for defeating Palau Automotive's claim against them, they did not rely on it in making their own claim for damages. Since the Court views that clause as a penalty provision (and one which, to its knowledge, has never been applied in Palau), the Court is not inclined to go ahead and apply it of its own accord, but rather to stop at what it believes to be a fair result. Palau Automotive would be well advised, however, to make sure that its agreements and its practices conform to the requirements of Chapter 4 of Title 11.