LLOYD'S LAW REPORTS

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COURT OF APPEAL

Apr. 25 and 26, 1972

BROWN & DAVIS LTD. v. GALBRAITH

Before Lord Justice SACHS, Lord Justice BUCKLEY and Lord Justice CAIRNS

Contract — Repairs to damaged car — Whether owner or insurance company liable.

Where an insured vehicle is repaired at a garage, whether the owner or his insurance company is liable for the cost of the repairs will depend on the circumstances.

The defendant's car, which was insured under a comprehensive insurance policy, was damaged in an accident. On July 4, 1970, he asked the plaintiff garage proprietors to tow it to their garage and repair it, and to prepare an estimate. The estimate was sent to him on July 8, 1970. On July 21, 1970, the insurance company's assessor authorized the plaintiffs to proceed with the repairs. The repairs were effected, but the defendant would not sign a satisfaction note stating that he was satisfied with the repairs, and collected the car. The insurance company went into liquidation, and the plaintiffs claimed the cost of the repairs from the defendant. Evidence was given that *(inter alia)* (a) the plaintiffs were informed on July 4, 1970, that the defendant had comprehensive insurance; (b) on the estimate was a note that the defendant's comfirmation should be obtained concerning £25 (i.e., the agreement of the excess for which he was liable under the insurance policy) and part of the towage cost (which the insurance company considered excessive); (c) the invoice for the bulk of the repairs was sent to the insurance company; (d) on the satisfaction note were the words:

> . . . payment of Repairer's account shall constitute a complete discharge of Insurer's liability in respect of damage to my vehicle;

and (e) the defendant was never informed of the price of the repairs agreed on between the assessor and the plaintiffs, and was never given an opportunity of saying whether he would agree to the price or not.

————*Held*, by Cty. Ct. (Judge GRANVILLE SLACK) that the defendant was liable.

On appeal by defendant:

————*Held*, by C.A. (SACHS, BUCKLEY and CAIRNS, L.JJ.), that (1) on the evidence the insurance company was primarily liable to pay for the cost of the repairs (*see* p. 7, col. 1; p. 8, col. 2; p. 9, col. 1).

————*Godfrey Davies Ltd. v. Culling and Hecht*, [1962] 2 Lloyd's Rep. 349, *Cooter & Green Ltd. v. Tyrrell*, [1962] 2 Lloyd's Rep. 377, and *Charnock v. Liverpool Corporation and Another*, [1968] 3 All E.R. 473, considered.

(2) no secondary liability on the part of the defendant could be inferred (*see* p. 7, cols. 1 and 2; p. 8, col. 1; p. 9, cols. 1 and 2).

Appeal allowed.

The following cases were referred to in the judgments:

Charnock v. Liverpool Corporation and Another, (C.A.) [1968] 2 Lloyd's Rep. 113; [1968] 3 All E.R. 473;

Cooter & Green Ltd. v. Tyrrell, [1962] 2 Lloyd's Rep. 377;

Godfrey Davis Ltd. v. Culling and Hecht, [1962] 2 Lloyd's Rep. 349;

Reigate v. Union Manufacturing Co. (Ramsbottom) Ltd., and Elton Cop Dyeing Co. Ltd., (C.A.) [1918] 1 K.B. 592.

This was an appeal by the defendant, Mr. F. R. Galbraith, from a decision of His Honour Judge Granville Slack, at Croydon County Court, who had given judgment in favour of the plaintiffs, Brown & Davis Ltd.,

in an action against the defendant claiming recovery of the cost of repairs which they had carried out on his car.

Mr. M. G. Austin-Smith (instructed by Messrs. D. J. Griffiths & Co., of Bromley) on behalf of the appellant defendant; Mr. H. M. Morgan (instructed by Messrs. Percy Holt & Nowers, of Croydon) for the respondent plaintiffs.

The further facts and arguments are stated in the judgment of Lord Justice Cairns.

JUDGMENT

Lord Justice SACHS: I will ask Lord Justice Cairns to deliver the first judgment.

Lord Justice CAIRNS: This is an appeal from a judgment of Judge Granville Slack given at the Croydon County Court on Oct. 18, 1971. The action before him was an action by car repairers against the owner of a motor car for repairs to that car, which had been damaged in a collision. The defendant counterclaimed for delay in executing the repairs and for defective workmanship. In the result, the learned County Court Judge gave judgment for the plaintiffs for £402.74 on the claim, gave judgment for the defendant for £51 on the counterclaim, and made an order for costs on scale 3 in favour of the plaintiffs, awarding no costs on the counterclaim to the defendant.

The appeal relates only to the claim. It is the defendant's appeal, and he contends that he was under no liability, on the ground that it was not he but only his insurers to whom the plaintiffs gave credit. The reason for this action having been started may well have been that the defendant was in the first instance not satisfied with the workmanship and refused to sign a satisfaction note, but the action assumed greater importance at a later stage because the insurance company was the Vehicle and General Insurance Co. Ltd., and they collapsed without having paid for the repairs.

It may seem, at first sight, an inconsistent attitude for the defendant to deny any liability for the repairs while counterclaiming for failure on the part of the plaintiffs to carry out the repairs satisfactorily and expeditiously, but, as will appear hereafter, it may well be that in such a case as this there are two contracts with the repairers in respect of the repairs, one, the contract with the insurance company under which they become liable to pay, and one with the owner of the motor car under which he is entitled to have the work properly done. The question would then arise whether he too has under that contract an absolute or contingent liability to pay for the repairs.

There was not much dispute about the facts in this case. The car was insured under a comprehensive policy. On July 3, 1970, it was damaged by an accident. The defendant had had no previous dealings with the plaintiffs, but a friend of his knew them, and either the defendant himself or that friend on his behalf rang up the plaintiffs and asked them to come and tow the car into their garage. They did so, and on the following day, July 4, 1970, the defendant went and saw a Mr. Davis, who was a director of the plaintiff company. The defendant told Mr. Davis, that he was insured on a comprehensive policy, and it was arranged that the plaintiffs should prepare an estimate for the repairs and send the estimate to the defendant.

The defendant said that he was told that the work would take a fortnight from the time when that or some other estimate was accepted by the insurers, but Mr. Davis denied that he had mentioned any such period. On July 8, 1970, an estimate for the repairs in the sum of £186 had been prepared by the plaintiffs and was sent to the defendant, an estimate, that is to say, for £186 for the actual work, the necessary materials to be charged at the makers' prices.

The defendant had, no doubt, in the meanwhile made a claim on his insurance company, and on July 21, 1970, an assessor employed by them went and saw Mr. Davis and took with him his company's estimate form. That is a form headed with the name of the insurance company. It gives the name of the owner of the car and other details, and it was filled up by the assessor after discussion and agreement with Mr. Davis. The sum of £165 was inserted for the labour costs. There was a reference to £5 for the towing of the vehicle, and then there were printed lines in this way: "To be collected by repairer — excess" — and there was filled in £25, that being the amount of the excess for which the car owner was liable under his policy, and then: "Contributions, £4 10s. to towing." That was because the insurance company took the view that the actual charge of the garage for the towing, which was £9 10s. was excessive, that the distance was too great, and they were willing to pay the £5, but leaving the £4 10s. to be paid by the defendant. Against those lines referring to the excess and the contribution, the items of £25 and £4 10s., there is this

printed note: "N.B. The Insured's confirmation should be obtained concerning these items."

Now the assessor, having agreed the figures with Mr. Davis, authorized the plaintiffs to go on and do the work, and they did. The defendant wanted the car to go on holiday on Sept. 4, 1970. The repairs were not finished by then, but he took it away, it being arranged that he should bring it back after the holiday. He did not in fact use it for the holiday because the dynamo fell off shortly after he collected it, but he brought it back to the plaintiffs on about Sept. 18, 1970. The plaintiffs went on with the repair work and told the defendant that it was ready for collection on Oct. 23, 1970. He went to collect it, but having looked at it he was not satisfied that it had been properly repaired. The plaintiffs would not willingly have let him take the car without signing a satisfaction note, without which they would be in difficulties in getting payment from the insurers, but the defendant managed to drive the car off without being stopped.

The plaintiffs on the same day wrote a letter to the defendant in these terms:

> Further to your telephone call to us this morning. Please find enclosed the satisfaction note which you omitted to sign when you collected your car from our premises this morning.
>
> Also enclosed is the invoice for insurance excess and towing charges payable by you.
>
> I trust you will give this your earliest attention. . . .

and so forth. The actual invoice was not produced in evidence, but the nature of it is sufficiently shown by that letter. It was an invoice for the insurance excess and the towing charges, that is to say, the £25 and the £4 10s.

On Oct. 31, 1970, the plaintiffs rendered an invoice to the insurance company in which they set out £165 as the estimate for the work, £5 for towing, and a list of the items of spare parts that had had to be obtained, with their prices. Those figures added together made a total of £398-odd, with a deduction of £25 for the excess, leaving £373-odd which was their invoice to the insurance company.

The defendant still not having signed the satisfaction note, the plaintiffs instructed solicitors, who on Nov. 5, 1970, wrote to the defendant in these terms:

> We have been instructed to act by the above with reference to repairs carried out to your Elan motor car . . . which you collected from our Clients premises on the 23rd October last without signing the Insurance Company's satisfaction note.
>
> The total amount of repairs plus towing charges amount to £402 14s. 9d. of which, under an excess on your insurance policy, you are liable to the sum of £29 10s. 0d. and as you have not returned the satisfaction note to our Clients, your Insurers will not deal with the claim under the policy.
>
> We write to inform you that unless your cheque for £29 10s. plus the completed satisfaction note are in our hands by Tuesday next the 10th instant, proceedings will be commenced against you in the Croydon County Court for the full amount of the repairs leaving you to recover, if possible, from your Insurance Company, but we trust you will now deal with this matter without delay so avoiding time and costs of further action.

The defendant did not reply to that letter. A further letter was written in somewhat similar terms on Nov. 11, 1970, and another on Dec. 10. In the meanwhile, on Dec. 4, the insurers wrote to the repairers:

> We refer you to your invoice dated 1st December in respect of work carried out on our insured's Lotus, [—describing it—] and we learn from both our engineers and our policyholder that he is dissatisfied with the work done and is, in fact, complaining of a scratch on the nearside rear, and we propose to deduct the sum of £15 to cover the question of spraying. We await your comments regarding the question of complaint.

The repairers, not being satisfied with that position, took out a summons in the County Court claiming the whole sum from the defendant, though it was not I think served until some time later. In January, 1971, the defendant had some work done by another garage at a cost of £19.50, which was what he considered necessary to complete the work that the plaintiffs should have done. He then, on Jan. 22, 1971, signed the satisfaction note, and would have sent it with a cheque for £10, being the difference between £29.50 and the £19.50 to the plaintiffs, but the sending of it was delayed by the postal strike. On Mar. 1, 1971, the failure of the Vehicle and General Insurance Co. Ltd., was announced and on the following day, Mar. 2, the defendant took the satisfaction note and the cheque to the plaintiffs' place of business, but they later returned it.

Now the only issue with which this Court is concerned is: Did the defendant, in the