

ISABEL PALACIOS, d/b/a
BECKY'S U-DRIVE, Plaintiff

v.

ERMINIA K. NGIRAKED and AMBROSE
IKEYASANG, Defendants

Civil Action No. 148

Trial Division of the High Court

Mariana Islands District

August 21, 1968

Action for damages to a rental car. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that pursuant to the rental agreement the bailee of the car was liable for damages to the car even though the damage had not been shown to have been caused by any fault on her part.

1. Bailments--Generally

Delivery of the automobile in question by the plaintiff to the renter under the agreement between the parties constituted a bailment.

2. Bailments--Liability-Bailee

The common-law liability of a bailee is only for the exercise of due care in the use, custody and return of the property.

3. Bailments--Liability-Bailee

A bailee may enlarge his liability by contract, express or implied.

4. Bailments--Liability-Bailee

The obligations of a bailee under an 'express contract are fixed primarily by the terms of the contract itself.

5. Bailments-Liability-Bailee

Under the rental agreement in question the bailee in effect made herself an insurer of the property against all damage, except any caused by the fault of the bailor, and therefore she was liable for the breach of the terms of the agreement even though the damage to the property had not been shown to have been caused by any fault on her part.

6. Civil Procedure-Damages

Where bailor left the matter of the salvage value of the parts of the property still usable after the accident so undetermined right up to the trial the court considered the bailee could not fairly be charged with any interest prior to judgment.

FURBER, *Temporary Judge*

FINDINGS OF FACT

1. The cause of the accident involved in this action was the negligence of the defendant Ambros Ikeyasang in the operation of the automobile involved.

2. The defendant Ambrose Ikeyasang obtained possession of the automobile without the knowledge, consent or negligence of the defendant Erminia K. Ngiraked and was driving it without her knowledge, consent, or negligence at the time of the accident.

3. The defendant Erminia K. Ngiraked failed to comply with the terms of her rental agreement with the plaintiff in that said Erminia K. Ngiraked failed to return the automobile in the same condition in which she received it, ordinary wear and tear excepted, and failed to pay to the plaintiff a sum equal to the cost of all damages to said vehicle during the rental period and a sum equal to the value of all tires, tools and accessories lost or stolen from the vehicle rented.

4. The defendants have failed to sustain the burden of proving their claim that the accident was due to the fault of the plaintiff.

5. The plaintiff has only proved damages to the extent of one thousand dollars (\$1,000.00).

OPINION

This action involves the question of liability for damage to a "U-Drive-It" automobile which was wrecked on Saipan in the Mariana Islands District while under a written rental agreement made on Saipan between the plaintiff and the defendant Erminia K. Ngiraked and while driven by the defendant Ambrose Ikeyasang.

The findings of fact largely dispose of the defendants' claim that the wrecking of the automobile was due to the

fault of the plaintiff and makes the defendant Ambrose Ikeyasang's liability clear. The principal debatable question of law involved is the question of the liability of the defendant Erminia K. Ngiraked. The defendants have claimed that under the rental agreement in question she only assumed an obligation of due care, or reasonable care, and that she did not fail to perform this. On the other hand, it is clear she failed to fulfill the literal terms of the rental agreement.

It should be noted that the rental agreement involved here contains not only an undertaking by the renter, Erminia K. Ngiraked, to return the vehicle in the same condition in which she received it, ordinary wear and tear excepted, **but** also express agreement by the renter to pay to the plaintiff on demand:-

"A sum equal to the cost of all damages to said vehicle during that rental period.

and

"A sum equal to the value of all tires, tools, and accessories lost or stolen from the vehicle rented."

[1] The delivery of the automobile in question by the plaintiff to the defendant Erminia K. Ngiraked under this rental agreement constituted a bailment. 8 Am. Jur. 2d, Bailments, § 4.

[2] The court recognizes that the common-law liability of a bailee (that is, the person renting or borrowing the property) is only for the exercise of due care in the use, custody and return of the property and that in an impressive number of jurisdictions courts have held that an express agreement by the bailee to return the property in as good condition as when received, ordinary or normal wear and tear excepted, does not, in the absence of some express additional obligation (such as to pay for the property in case of non-delivery) enlarge the bailee's liability over that implied from the fact of the bailment, and does

not make the bailee responsible for damage to the property caused without his fault. Some courts, however, have taken the opposite view. 150 A.L.R. Annot. p. 269. 8 Am. Jur. 2d, Bailments, § 139.

[3] It is well recognized on the other hand that a bailee may enlarge his responsibility by contract, express or implied. 8 Am. Jur. 2d, Bailments, § 137.

[4, 5] Thus the obligations of a bailee under an express contract are fixed primarily by the terms of the contract itself. It is hardly possible to conceive of more apt words to indicate an intention on the part of the bailee to assume the risk damage to the property, regardless of her own lack of fault, than the express promises made here to pay the cost of damages and the value of tires, tools, and accessories lost or stolen. Construing the rental agreement as a whole, the court holds, in accordance with the weight of authority where such additional obligations have been undertaken, that the defendant Erminia K. Ngiraked here in effect made herself an insurer of the automobile against all damage, except any caused by the fault of the plaintiff, and that therefore she is liable for the breach of the terms of her rental agreement even though the damage to the automobile has not been shown to have been caused by any fault on her part. 150 A.L.R. Annot. p. 274. 8 Am. Jur. 2d, Bailments, § 140.

[6] The plaintiff left the matter of the salvage value of the parts of the automobile, still usable after the accident, so completely undetermined right up to the trial that the court considers the defendants cannot fairly be charged with any interest prior to judgment. 22 Am. Jur. 2d, Damages, §§ 185, 186, 189 and 190.

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. The plaintiff Isabel Palacios, who lives on Saipan in

the Mariana Islands District, shall recover from the defendant Ambrose Ikeyasang, who lives in Koror in the Palau District, and the defendant Erminia K. Ngiraked, who lives in said Saipan, the sum of one thousand dollars (\$1,000.00) damages and five dollars and twenty cents (\$5.20) costs (to cover the filing fee, sheriff's charges for serving summons, and trial fee) making a total of one thousand five dollars and twenty cents (\$1,005.20).

2. Each defendant is liable for the full amount of this judgment, but the plaintiff may only collect the amount of the judgment *once*, regardless of whether it is collected all from one defendant or partly from one and partly from the other.

3. Time for appeal from this judgment is extended to and including October 21, 1968.

KUMER and MARIA SIBONG, Appellants

v.

MENROS PETER, Appellee

Civil Action No. 413

Trial Division of the High Court

Palau District

August 26, 1968

Petition for appointment of guardian for an infant. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that in the absence of statutory law, the natural mother, if fit, should be appointed as the child's guardian, however, if the mother is unfit then the natural father, or some qualified person nominated by him, should be appointed as guardian.

1. Guardian and Ward-Appointment of Guardian-Law Governing

Where no provision was found in the Trust Territory Code for appointment of guardians the common law must be considered to be applicable in accordance with Section 22 of the Code, unless local customary law is applicable. (T.T.C., Sec. 22)

2. Guardian and Ward-Appointment of Guardian-Custom

Customary law applies to adoption only, not guardianships.