

*Ngiraloi v. Sbal*, 1 ROP Intrm. 85 (Tr. Div. 1983)

**EBAS NGIRALOI,  
Plaintiff,**

v.

**SABINO SBAL,  
Defendant.**

CIVIL ACTION NO. 186-82

Supreme Court, Trial Division  
Republic of Palau

Memorandum opinion  
Decided: August 11, 1983

BEFORE: ALAN L. LANE, Associate Justice.

The action is brought by the plaintiff against the defendant to recover the value of his vehicle which was left with the defendant in 1979 and never returned. Plaintiff is also seeking to recover loss of business income resulting from the loss of his vehicle.

The plaintiff, in 1979 and before, was engaged in the business of fish sales in Koror State, Republic of Palau, and conducted his business by selling fish door-to-door by the use of his personal pick-up truck, a 1977 Mazda equipped with a Public Address system. During this same period, the defendant was engaged in the automobile repair business, to whom plaintiff took his pick-up truck for repairs.

The plaintiff owned two pick-up trucks at the time, and there is disagreement as to which pick-up was taken to defendant for repairs, or whether both pick-ups were repaired at different times. The defendant insists that plaintiff's older 1970 or 1972 pick-up, brown in color, was repaired on April 12, 1979, repainted blue, and again brought back for repairs eight months later. Plaintiff contends that the pick-up that was repaired and painted blue was his new red 1977 Mazda pick-up, and that his older pick-up was also repaired, but returned in satisfactory condition. In resolving this dilemma, the Court looks to Exhibit IV and finds that the pick-up repaired on April 12, 1979, was the "newer" 1977 pick-up, as the color red is indicated on the Exhibit. Both parties agree that the vehicle returned for a second repair was the same repainted blue pick-up. Therefore, the Court concludes that the subject vehicle returned to defendant for repair later in 1979 was plaintiff's newer 1977 Mazda pick-up.

**186** Evidence presented by both parties indicated that the second repair was to have consisted initially of minor body work amounting to \$300.00. The plaintiff took his vehicle to the defendant and was promised one week for repair. The plaintiff returned after one week to find that additional time would be necessary to make the repairs. The defendant advised the plaintiff that major chassis and frame work was also necessary to restore the vehicle in a safe condition.

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The defendant further advised the plaintiff that until a new chassis and frame were provided by plaintiff, no further work would be undertaken. The plaintiff denies there was a chassis and frame problem at all. Plaintiff insists that he returned to defendant week after week over a period of two or three years inquiring about his vehicle. Finally, sometime in 1982, the plaintiff discovered that his vehicle was lost, stolen or converted from defendant's repair shop.

The legal issues presented are: What are the respective duties of the parties when bailment is created? A bailment is defined as “. . . the delivery of personal property by one person to another in trust for a specific purpose, with a contract, express or implied, that the trust shall be faithfully executed, and the property returned or duly accounted for when the specific purpose is accomplished, or kept until the bailor reclaims it”. 8 Am. Jur. 2d., *Bailments*, § 2. There is no question that a bailment existed between plaintiff and defendant, and defendant was entrusted with plaintiff's vehicle for safe keeping while awaiting repair. However, the original purpose of the bailment was expanded, according to the defendant, and the term was extended for an indefinite period of time while awaiting a new frame and chassis. The court must accept this version as the cause for the delay in repairs, as no other reasonable excuse was offered. These facts are supported by plaintiff's actions. Plaintiff had every right to reclaim his vehicle at any time over a period of two to three years, but made no effort to do so. If in fact only minor repairs were necessary and defendant failed to perform, plaintiff should have and would have taken his vehicle to someone else for repairs -- especially if the vehicle was needed in his business so desperately as plaintiff contends.

Because of the extended period of time of the bailment created as a result of more serious repairs needed, the bailee (defendant) had a continuing obligation to protect plaintiff's vehicle. If he wishes to terminate the bailment, defendant was under an obligation to restore the property to plaintiff, or put the plaintiff on notice to remove the vehicle. 8 Am. Jur. 2d., *Bailments* § 294. Of course, the plaintiff must also act **187** reasonably to protect his property interest and cannot merely sit on his rights indefinitely. It appears unreasonable to the Court that plaintiff is claiming the value of the vehicle as of the time it was taken for repairs in 1979 when plaintiff knew that the vehicle was exposed to the elements for two to three years outside defendant's shop. Therefore, the Court finds that each party had a duty with respect to the vehicle in question.

Evidence was offered by the defendant that because of lack of room near his shop he had the vehicle removed to an area near the street where junk cars were located. This area was apparently public property outside defendant's property. Subsequent to this move, Koror State Government apparently removed all of the junk cars, along with plaintiff's vehicle, from the area. Defendant knew nothing of this until after the fact.

As previously stated, the defendant had a continuing obligation to protect plaintiff's vehicle unless he first restores the vehicle to plaintiff or otherwise terminates the bailment. In this case, the defendant placed the property outside his dominion and control, and exposed it to damage or loss, which was clearly a foreseeable possibility. Therefore, the Court concludes that the defendant is liable for the loss.

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With respect to damages, the plaintiff claims the value of the vehicle at \$2,800.00. However, the vehicle needed \$300.00 of body work plus a new frame and chassis. Furthermore, the plaintiff knew of and allowed the vehicle to remain outside and exposed to the elements for almost three years. The defendant placed a maximum value of \$500.00 on the vehicle, and the Court accepts this evaluation under the circumstances. The defendant offered evidence that plaintiff owed him \$300.00 from the previous repair on the same vehicle, which was not denied by the plaintiff. Therefore, the Court sets damages at \$500.00, less the \$300.00 owed by plaintiff, for a total sum of \$200.00.

Plaintiff's claim for loss of business income is denied. As pointed out earlier, plaintiff should have taken some action to recover his vehicle and have it repaired timely. Plaintiff merely sat on his rights and made no attempt to mitigate his loss. The frame and chassis problem which arose after the bailment was created relieved the defendant from any responsibility to plaintiff for business losses.

This Memorandum Opinion shall constitute the findings of fact and conclusions of law pursuant to Rule 41(a) of the **188** Rules of Civil Procedure, and judgment shall be entered in favor of plaintiff in accordance herewith.