

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2010/0239

BETWEEN:

ANGUS WAYNE VITALIS

Claimant

and

FLORENTIUS ST. MARIE

Defendant

Appearances:

Ms. Diana Thomas for the Claimant
Mrs Lydia Faisal for the Defendant

2011: 15th June
2011: 17th November

JUDGMENT

[1] BELLE J. Sometime towards the end of March 2007 the Claimant and the Defendant, who were next-door neighbours, entered into an agreement that the Defendant would repair a RAV4 SUV vehicle for the Claimant for the sum of approximately twenty thousand dollars (\$20,000.00). The Vehicle had been damaged, and had been deemed totalled or "written off" under the insurance policy which had covered it.

- [2] Pursuant to this agreement between himself and the Defendant, the Claimant procured two Bank Drafts, one to cover the purchase of the vehicle and the other to commence the repairs. Both of these Bank Drafts from the RBTT Bank Caribbean Limited were issued on the 30th March 2007 and the Draft of fifty thousand one hundred dollars (\$50,100.00) was paid to EC Global Insurance Company and the other for fifteen thousand dollars (\$15,000.00) was paid to the Defendant.
- [3] Repairs were started on the vehicle but stalled when it became necessary to commence the mechanical and electrical component of the job. After some months with the repairs not proceeding in spite of the Claimant's persistent requests the Claimant filed the claim to recover the vehicle and damages against the Defendant, inter alia.
- [4] The Defendant by way of response claimed that the Claimant had rented a vehicle from his garage for about three (3) months, and the Claimant had refused to pay the rental fee of about twelve thousand dollars (\$12,000.00) which was due to the rental owner, forcing him to compensate the rental owner, a Mr. Monroe, by repairing three of his vehicles at a cost of about (twelve thousand dollars) \$12,000.00. But this rental period is in dispute.
- [5] The Defendant also claimed that the Claimant had contracted private persons to complete the mechanical work which he was not qualified to do and it is the Claimant's fault that this work had not been completed.
- [6] Based on the pre-trial memoranda of both parties and my own views I have determined that the issues to be decided in the case are as follows:
1. Was there a contract between the Claimant and the Defendant?
 2. If the answer to number 1. is yes, what were the terms of the contract ?
 3. Was the rental of the vehicle to the Claimant part of the contract?
 4. Did the Claimant pay for the rental of the vehicle?

5. Based on the terms of the alleged contract, was there a breach of the contract by either side?
6. If there is a breach of contract on either side, what quantum of damages is the claimant/defendant entitled to?

Was there a contract between the parties?

- [7] The law of contract requires that there should be an intention to create legal relations. It is therefore important to examine the facts in this case and weigh the evidence of an intention to create legal relations against any evidence that there was no such intention.
- [8] The alleged contract is based on the Claimant's evidence that he knew the Defendant well. He had indicated around February of 2007, that he was interested in purchasing a new vehicle as he was about to leave his existing employment and he had to turn in the vehicle he drove. He turned in the vehicle on about 21st February 2007.
- [9] About the middle of March 2007 the Defendant told him that he was able to source a vehicle for him which was practically new but which had been damaged as a result of an accident. The vehicle had been deemed a write-off by EC Global Insurance Ltd, but he (the Defendant) could repair it. The Defendant agreed to make a bid of fifty thousand one hundred dollars (\$50,100.00) for the wreck and it would cost about twenty thousand dollars (\$20,000.00) to repair it, inclusive of parts materials and labour. According to the Claimant the Defendant also said that he would take about four (4) months to repair the vehicle since he would have to order some parts for it. But he thought this was two (2) or three (3) weeks in terms of man-hours work.
- [10] The Claimant stated that he went ahead and obtained a loan of sixty thousand dollars (\$60,000.00) from RBTT Bank Caribbean Limited to complete the purchase and repair job. He also alleged that after he informed the Defendant that he was going ahead, the Defendant informed him that the vehicle would be transferred to

his, (the Defendant's) name and that he would immediately make a transfer to the Claimant.

[11] Based on the Claimant's evidence, the Defendant won the bid and informed the Claimant of this on 22nd March 2007.

[12] The next extract from the witness statement is of some importance because according to the Claimant, he asked the Defendant for a cost estimate of repairs on the vehicle as this was a requirement for the bank. He also asked for an estimated market value after repairs. According to the Claimant the Defendant asked him to collect the report from his secretary Godlyn Prince.

[13] I quote the Claimant's Witness statement as follows:

"The Secretary gave me a report from the Defendant's garage dated 26th March 2007 showing the pre-accident value of the vehicle was \$97,240.00, the value of the new model was \$115,000.00 and the salvage value of the vehicle, which was \$51,000.00. He also gave a report of the cost of repairs to the damages sustained to the vehicle, being \$20,000.00 and the estimated market value after repairs, \$90,000.000. He confirmed that the vehicle would take about 2 to three weeks to repair"

[14] The Claimant claimed in his evidence in chief that he obtained a report from Dennis Primus of Prio's Auto Repair Co. Ltd, which the Bank requested. He paid the Defendant fifteen thousand dollars (\$15,000.00) which the Defendant accepted as a deposit.

[15] The loan was completed on 29th March 2007 and the Bank made out a Bank draft to EC Global Insurance Ltd, dated 30th March 2007 for fifty thousand one hundred dollars (\$50,100.00) and another draft to St Marie's Garage for fifteen thousand dollars (\$15,000.00) dated the same day. This allowed the Defendant to take possession of the vehicle.

[16] On the face of it, there appear to be terms and conditions required to demonstrate that the parties had intended to form legal relations. However it is important to distinguish between what was written for the RBTT Bank's purposes and what had been agreed between the parties. The agreement between the parties was that

the repairs would take four (4) months and that the work would require sourcing parts. The price of the job was twenty thousand dollars (\$20,000.00).

[17] There is no evidence that the Defendant promised that the vehicle would have a post repair value of ninety thousand dollars (\$90,000.00). Such a valuation would have had to be done after the repairs were completed. The Defendant if he did produce this estimate at the initial stages, would have been providing information to satisfy the Bank. This is quite aside from the factual issue of whether the estimate was provided in the first place.

[18] The question arises as to the extent of the repairs which the Defendant agreed to provide. Again on the face of it the Defendant appeared to promise to complete all of the repairs. The Defendant later argued that he agreed to do only body work on the vehicle, and that the Claimant was aware of this, since he knew the basis on which he worked for customers.

[19] There is ample evidence that the Claimant was indeed familiar with the Defendant's operations and based on this evidence and the evidence of the mechanic Philip Joseph I find that there was no agreement between the Claimant and the Defendant on the mechanical aspect of the work.

[20] However the Claimant alleged noticing the Defendant take down certain parts of the vehicle and commencing work on it, but after some months no progress was being made. By way of explanation when asked, the Defendant explained that the parts took longer to get to Saint Lucia than was initially expected.

[21] The Defendant claimed that he had no recollection of any valuation report from Prio's Auto Repair Co. Ltd. He was certain that no-one from Prio's Garage ever came to his garage to inspect the SUV and the vehicle never left his garage after it arrived there from EC Global.

[22] The way the Defendant recalled the transaction was that he at all material times intended to purchase the vehicle. However after payment of the price to EC Global he took possession of the vehicle. The Claimant requested that he undertake

repairs to the body of the SUV and he agreed. It was then that the SUV was taken from the possession of EC Global and brought to his garage at Monier in Gros Islet.

[23] The Claimant did not differ with the Defendant as to the cost of repairs but the Defendant said that the main repairs were the straightening of the chassis, repairs to the left and right front fender and repairs to the radiator and support. The Claimant paid him the sum of fifteen thousand (\$15,000.00) in part payment for the repairs and promised to pay the balance of five thousand (\$5,000.00) dollars at a later date.

[24] The Defendant alleged that :

"Apart from sustaining damage to the body, the SUV had also sustained mechanical and electrical damage, which was not within my expertise and which was not included in the work to be done by me.

At no time did I ever agree to bring the damaged SUV to the value of ninety (\$90,000.00) dollars, by the injection of a mere \$20,000.00 into the repairs of the body of the vehicle.

I never gave the Defendant a time frame for the total repair of the SUV as the repairs to the body were not the only repairs that had to be done to the vehicle. Apart from the body work, the vehicle required, extensive mechanical and electrical repair, which jobs were outsourced by the Claimant to other persons."

[25] Based on the Defendant's evidence the major body work to the vehicle was completed by 30th August, 2007. The Defendant awaited the completion of the mechanical and electrical work to close off the front bonnet, install the headlamps and to install the front windscreen. The Defendant admits that he also had to spray the vehicle, as this would normally be done after all the other works were completed so as to prevent scrapes and scratches to the paint work.

[26] In my view the Defendant's evidence on this aspect of the agreement makes sense and it strengthens my view that the parties had no binding agreement on the mechanical aspect of the repairs which in turn interfered with the completion of the body work because the mechanical repairs were never completed. I consider this evidence to be factual.

[27] What appears to have taken place is that the Claimant found it convenient to argue that the estimate provided to the Bank formed part of the contract. But this was clearly not part of the original verbal agreement which I find was the foundation of any contractual arrangement between the parties.

Three Other Contentious Issues

[28] Three other factual issues are left to be decided in relation to the rental of Mr Monrose' Vehicle and the rental of space at St Marie's Garage, and they are the matters of the alleged agreement to rent a vehicle as part of the general agreement, the agreement to pay the car rental owner after the Defendant demanded payment, and the alleged cost of rental of space at the Defendant's garage.

[29] Once again I note that the agreement was largely a loose arrangement based on the parties' relationship and the Claimant's ability to monitor what was going on at the Defendant's garage. I am also satisfied that there could have been no agreement to rent a vehicle from the Defendant for three (3) months ending around the month of March as the Defendant alleges.

[30] The Defendant alleged in paragraph 12 of his defence that at the time the Claimant paid the sum of fifteen thousand dollars (\$15,000.00) to the Defendant for the repairs to the body of the damaged SUV the Claimant had used the Bee Line's rented car for four months and had incurred rental cost to the extent of over twelve thousand dollars (\$12,000.00) which sum the Defendant was responsible for collecting and forwarding onto the rental dealership.

[31] Since based on the un-refuted evidence of the Claimant, he would only have given up his vehicle towards the end of February of 2007, when he went on leave from the office which provided a vehicle for his use, the Defendant's allegation is unbelievable. The Claimant produced a letter of 14th February, 2007 signed by the Executive Chairman of the National Development Corporation in which the writer requested that the Claimant deliver the vehicle and the keys thereto to the Chief

Operations Officer of the Corporation, Mr Martin Weeks. This implies that the vehicle was in his possession up to that date.

[32] If the Defendant's evidence is to be believed the Defendant started the work on the SUV without having collected one cent from the Claimant. This is so unlikely that I conclude that the Defendant is not telling the truth about this matter. Indeed the copy of the bank draft produced by the Claimant shows that it was dated and stamped 30th March 2007 by the issuing bank.

[33] I do however believe that the Claimant used a rental vehicle which belonged to Bee Line Rental. I also believe that the said vehicle was indeed in the Defendant's possession.

[34] The Claimant claims that he had arranged with two of his brothers, in early February when he was given notice that he was to proceed on vacation, to get access to their vehicles until he purchased a new vehicle. But this was not stated in the Defence to the counter-claim. At the best it is a half-truth.

[35] Nevertheless I find that it is customary that a person who rents a vehicle would pay for it, and therefore it is reasonable to assume that some money was due to the owner for the use of the vehicle. I also find that the Defendant did pay some of the money due to the rental owner.

[36] But overall I think it is fair to conclude that the evidence on this matter is inconclusive. Since the rule is that he who alleges must prove, it is my view that the Defendant failed to prove that the Claimant owed him any money for the rental vehicle. Indeed I do accept that some compensation had been made to the rental vehicle's owner by way of a payment of the vehicle's insurance. But this fact only adds mud to the water in relation to this matter. The exact sum covered in this manner is unclear.

The mechanical works

[37] Indeed the Claimant has not produced any evidence that the Defendant had not completed twelve thousand dollars (\$12,000.00) of the value of the work promised.

Since the mechanical work seemed to be a matter for the Claimant and the persons he employed, the Claimant had no recourse against the Defendant in relation to the delay which came about as a result of his inability to complete the mechanical work.

[38] I am fortified in this view by the evidence of Mr. St Marie and the evidence of Philip Joseph. Mr Joseph said:

"Sometime in or about 2007, I was at St. Marie's Garage doing some work on Mr. St Marie's vehicle when Mr. Vitalis came to the garage. He spoke to me and said that he has a job for me on the Rav 4. I am well known to Mr. Vitalis as I have worked on a Toyota Hiace panel van which he was under his control. He had me to work on the engine of that vehicle both at his home and at my garage at Garrand. I am aware that before that vehicle was given to me to work on, it had first been to St. Marie's Garage for body repairs.

When Mr. Vitalis spoke to me about doing the engine repairs on the Rav 4, it was in St. Marie's garage. He wanted me to work on the suspension and the engine. I agreed to do the work and he agreed to pay me. I removed the engine from the Rav 4 and took it to a machine shop in the Rasco building at Bois D' Orange, where it was welded. After the machine shop had completed the welding I replaced the engine. I told Mr. Vitalis what was needed for the suspension work. I required the shocks, an axle and back engine mounts. He agreed to order the parts but never did. He paid me three hundred and eighty dollars (\$380.00) for the work that I had done and since then, I have never been recalled by him to complete the job as the parts have never been made available. I can't recall exactly how much the welding shop charged but I believe it was in the region of two hundred and eighty dollars (\$280.00), which was paid by Mr. Vitalis.

I am certain that I was never contracted by Mr. St. Marie to do any engine or suspension work. It was Mr. Vitalis himself who contacted me and who paid me for the work that I had done. I did not complete the job because he never obtained the parts. When I last worked on the vehicle, it had the remaining work to be done as stated above."

[39] To be fair to the Claimant it is important to note that he had said that he paid "Cal" money in relation to the welding in the form of a tip above and beyond what Mr'

St. Marie had paid him. He noted that he did not pay for the welding, but he knew that "Cal" had taken care of the engine and put it back.

[40] He said:

"I did not pay Philip \$380.00 and RASCO \$280.00"

[41] Later, the Claimant made a statement to the effect that he *did not object to buying further parts. He accepted that these were just discovered. He only knew this with reference to the mounts. He alleged giving Mr. St. Marie a receipt for the parts because of the relationship they had.*

[42] I believe the Witness Philip Joseph's account of this matter. He appeared to be a witness of truth and was not shaken in cross-examination.

[43] As far as the rental was concerned Mr. Vitalis said he was of the view that he had settled the claim for it. It had not been brought to his attention that Mr. St Marie paid Mr. Monroe for his vehicle.

[44] As previously stated the evidence is unclear on this issue and I find that it is not possible to attach liability to anyone for the rental of the vehicle based on this evidence. There was no clear agreement with regard to the rental and the Defendant has failed to prove his counter-claim in relation to this matter.

The Estimate of Repairs

[45] Another issue of fact left to be determined is that of the authenticity of the estimate of the repairs from Mr. St Marie's garage produced by the Claimant as evidence of his promise to enhance the value of the vehicle to ninety thousand dollars (\$90,000.00). Having perused the relevant documents, I am of the view that the Defendant is telling the truth when he states that the document at page 56 of the Trial Bundle did not originate from his garage and does not bear his signature.

[46] It is not difficult to make a finding on the latter. The signature on this document is in no way similar to that of Mr. St. Marie as it appears on other documents, and it is not difficult to conclude that Mr. St Marie did not attach this signature to this document. I am also unable to find that the document is that of the witness Godlin

Prince who was the secretary employed at St. Marie's garage. The document itself could have been produced on any computer and need not have originated in the Defendant's garage.

[47] I therefore find that the so-called Vehicle Accident Survey Form is not a document of St Marie's garage. I do not find it necessary to make a finding as to whether Mr. Primus from Prio's Auto Repair confirmed the contents of the document since the document's authenticity is not proven. Indeed Mr. Primus' approval of it cannot establish its authenticity

Rent Charged for the space occupied by the SUV

[48] The Defendant's final counter-claim was that the Defendant charged the Claimant rent for the time the vehicle spent in his garage. I do not think that this is reasonable in the circumstances. He has not stated that he wrote and asked the Defendant to remove his vehicle and threatened to charge rent if it was not removed. Again based on the manner in which the agreement was made and the process of execution there would be too much uncertainty as to whom was responsible for completing the job.

[49] To sum up then, on a balance of probabilities the parties agreed that Mr St. Marie would conduct certain repairs on the RAV4 SUV but the extent of the repairs he was to complete was left unclear in the agreement.

[50] Mr. St. Marie permitted the Defendant to use a vehicle from his garage which was the property of Bernard Monroe the proprietor of Bee Line Car Rental. Mr. Monroe said that in the end Mr. St. Marie worked on three of his vehicles doing repair work totalling twelve thousand dollars (\$12,000.00). But there is no clear evidence of this, since the vehicles Mr. Monroe recalls being repaired are different to those identified by Mr. St. Marie. Secondly the bills produced do not have any obvious connection to Mr. Monroe's business. Thirdly, there is no independent estimate of the work done on these vehicles.

[51] Indeed even if the allegation is true the fact is that the rental agreement was not part of the initial agreement between the parties for the vehicle to be repaired and

the extent of the repairs done on the RAV4 remains unproven. The estimated time of the rental also remains a mystery.

- [52] Mr. St Marie says he completed twelve thousand dollars (\$12,000.00) worth of work on Mr Vitalis' vehicle but there is no independent valuation of the work he did. The court is therefore unable to guess the value of his work. The fact is that the vehicle has not yet been handed over to the Claimant for him to assess so that there could be a fair contest on the matter of the amount of work done.
- [53] Finally, the Defendant's charge of rental of space when it is unclear how the agreement was to be completed and how much was completed is not reasonable. Furthermore by the Defendant's own admission the RAV4 has not even been registered in the Claimant's name.
- [54] Indeed I have concluded based firstly, on the Defendant's false allegation about the rental being in the Claimant's possession for three (3) months, and secondly based on the Claimant's attempt to use the estimate produced on an apparent St Marie's Garage letter head as evidence of the agreement between the parties, that neither party can be trusted to tell the truth the whole truth and nothing but the truth.
- [55] The result is that neither party has proven his case to this court. Both are equally frustrated and adamant that the other is at fault but the court has been offered inconclusive evidence.
- [57] Nevertheless I think that it reasonable to conclude that to take almost three (3) years to complete the repairs to a vehicle is unreasonable. Based on the evidence, both parties are responsible for this sad state of affairs. I therefore rule that the Defendant should deliver the vehicle to the Claimant forthwith. The cost of the delivery is to be covered by both parties equally. What is not in doubt is that the Claimant purchased this vehicle. The Defendant has proved no entitlement to keep it. The Claimant has paid part of the money for repairs and repairs have been done.

- [58] There is an additional sum of three thousand dollars (\$3,000.00) which remains unaccounted for and this sum should cover the cost of preparing the vehicle to be delivered to the Claimant and the actual delivery.
- [59] This resolution could have been arrived at long ago to bring the impasse in relation to the possession of the vehicle to an end.
- [60] In the premises the Claimant's claim in all respects is dismissed. The Defendant's Counter-claim is also dismissed. The parties will bear their own costs.

Francis H V Belle
High Court Judge