

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV 2022/0506 (formerly GDAHCV2020/0008)

BETWEEN:

KYRON WILLIAMS

Claimant

and

LESLIE PHILLIP

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Caryn Adams for the Claimant

Mr. Ruggles Ferguson KC and Ms. Aisha McLean for the Defendant

2025: September 17th, 24th, 26th.

JUDGMENT

- [1] **ACTIE, J.:** This case concerns the determination of liability arising out of a motor vehicular accident and the resultant damage to a 1995 Mitsubishi Fuso garbage truck (hereafter referred to as “the truck”). The court having heard the evidence is of the view that the claimant has proved his case on a balance of probabilities.

Claimant’s case

- [2] It is the claimant’s pleaded case that on or about 26th March 2019, acting pursuant to an oral rental agreement, he loaned the truck to the defendant until 28th March 2019 at the daily rate of \$500.00. The claimant attended the defendant’s premises to collect the subject truck on 28th March, however the truck was filled with garbage, and he was therefore unable to retrieve it. It is the evidence that the

truck was used on 30th March to collect garbage and sustained extensive damage while being driven by the defendant's agent. The claimant filed a claim seeking general damages for breach of contract and/or negligence; special damages; interest and costs.

Defendant's case

- [3] The defendant admits that the claimant attended his premises to retrieve the truck on 29th March, but states that the truck had not been prepared as there was no agreement for collection of the truck on that date. The defendant states that it was agreed that the claimant would on the 29th March bring another truck to replace the truck. The defendant admits that the vehicle was written off in an accident on the 30th March while being used by his agent.
- [4] The defendant seeks to absolve liability on two grounds. Firstly, the defendant contends that the claim was brought against him in his personal capacity, however he was acting as the managing director of Island Supply Limited, a company engaged in waste management, when contracting with the claimant. He contends that the truck was being driven by Martin Roberts, an employee of the said company.
- [5] Secondly, the defendant asserts that the accident was as a result of a latent defect in the truck's brake system which failed while descending a hill. The defendant alleges that the truck was not roadworthy and unfit for the intended purpose in breach of the terms of the agreement. The defendant contends that the claimant was aware of the latent defect at the time of the oral rental agreement.
- [6] The claimant in reply contends that at no time did the defendant indicate he was acting on behalf of a company, and that he was led to believe that he was contracting with the defendant personally.

Legal Analysis

Whether there was an agreement between the parties to the claim

[7] King's Counsel for the defendant agreed the existence of the oral agreement but challenged the identity of the parties to that agreement. The defendant both in pleadings and closing arguments contends that he did not contract with the claimant in his personal capacity but rather on behalf of Island Supply Limited for the purpose of transportation of garbage, and that accordingly the claim should fail.

[8] **Rule 8.5 (1) and (2) of the Civil Procedure (2023)Revised Edition** states the following:

- “(1) The general rule is that a claim will not fail because a person –
(a) who should have been made a party was not made a party to the proceedings; or
(b) was added as a party to the proceedings who should not have been added.”

[9] The court notes the defendant's posture from the service of the claim to the initial filing of the defence never challenged the personal capacity in which he was named as a defendant. Further, the acknowledgement of service form filed by the defendant on 17th January 2020 at paragraph 5 states:

“Is your name properly stated on the claim form? If not, what is your full name”

The defendant answered in the affirmative. Nowhere on the acknowledgement of service or the original defence filed on 14th February 2020 did the defendant challenge the claim filed against him in his personal capacity. It is only in the amended defence filed on 2nd November 2022 that the defendant pleaded that he acted on behalf of the company.

[10] The court accepts the claimant's evidence that he was always of the belief that he was contracting with the defendant in his personal capacity. In any event, given the undisputed existence of the oral agreement, the absence of a timely challenge to the parties named in the claim and the court's powers under the **CPR**, the court is of the view that the claim ought not to fail on the purported misnomer of the defendant.

Whether the defendant was in breach of the agreement

[11] The claimant's case for breach of the agreement is twofold. Firstly, the claimant alleged that the defendant failed to return the truck on the agreed date. The claimant further contends that the oral agreement between the parties included a term whereby the defendant undertook to compensate the claimant for any damage to the truck occurring during the rental period. The claimant contends that the defendant has failed to compensate him in breach of their oral agreement. The particulars of breach as pleaded are:

- (1) Failing to return the truck to the claimant as agreed; and
- (2) Failing to compensate the claimant for loss and damage.

[12] The court is of the view that the evidence supports the claimant's pleaded claim that the rental period of the truck was an express term of the contract from 27th to 29th March at a daily rate of \$500.00. The evidence of the defendant further substantiates the claimant's evidence that he returned to collect the truck on 29th March 2019 but was unsuccessful since the truck was loaded with garbage and not in a condition to be delivered to the claimant.

[13] The claimant also asserts a breach of contract arising from the damage caused to the truck. Counsel for the claimant argues that it is reasonable to imply a term into the oral agreement requiring the defendant to compensate the claimant for any damage to the truck while it was in the defendant's care. Relying on **Halsbury's Laws of England**, counsel for the claimant submits that a court of law is entitled to enforce implied terms which logically arise from the formation of a contract¹. The authors of **Halsbury's Laws of England** state that:

“Even where a term may not be logically implied from the words used, the law admits of certain other terms to be implied as follows: (1) terms which the parties probably had in mind but did not express; (2) terms which the parties, whether or not they actually had them in mind, would probably have expressed if the question had been brought to their attention; and (3) terms which, whether or not the parties had them in mind or would have expressed them if they had foreseen the difficulty, are implied by the court

¹ Halsbury's Laws of England 4th edn Vol. 9(1) para 778

because of the court's view of fairness or policy or in consequence of rules of law...”

[14] However, the same authority cautions that:

“...it is clear that terms are not lightly to be implied in fact. If a contract does not expressly provide for what is to happen when some event occurs, the most usual inference in such a case is that nothing is to happen and if the event has caused loss to one or other of the parties, the loss lies where it falls. In this respect there remains a fundamental difference between interpretation and the implication of terms in fact. The court has no discretion to create a new contract for the purpose of doing what seems to it just and reasonable (though no term will be implied in fact unless it was reasonable)...”²

[15] The onus rests on the claimant to establish that a term ought to be implied into the oral agreement such that the defendant would be liable for any damage to the truck while in his custody. It is settled that the implication of contractual terms is not undertaken lightly by the court and must be grounded in the established legal principles. This is especially so in oral agreements, where precise terms are often less clearly defined as the court cannot rewrite contracts for parties. The claimant during cross examination identified himself as a businessman engaged in trucking and bus services. However, notwithstanding his commercial experience, the claimant has failed to express through his evidence the requisite foundation upon which the court may properly imply the said term.

[16] The mere occurrence of an event not expressly provided for in a contract does not, of itself, justify the court in supplying such term. To do so would risk judicially rewriting the contract under the guise of fairness or convenience. The claimant's reliance on general notions of reasonableness or fairness, without further evidence does not entitle the court to impose upon the defendant a liability which was not expressly assumed, nor clearly to be implied from the surrounding circumstances. Accordingly, the court is not satisfied that the requirements for the implication of the alleged term have been met, and the claimant's claim for breach of contract on this ground must fail.

² Halsbury's Laws of England (5th edn.), vol. 22 para 167

Whether the accident was caused by the negligence of the defendant's agent or a latent defect

[17] The claimant's pleadings attribute negligence to the defendant's agent, Martin Roberts, who was driving the truck at the time of the accident, a fact which the defendant has admitted. The particulars of negligence are stated as:

- (1) Driving without due care and attention;
- (2) Driving too fast in the circumstances;
- (3) Failing to take any adequate care for the safety of the truck;
- (4) Negligently driving the truck along the public road;
- (5) Failing to stop in advance, to slow down, brake, steer, swerve, to properly manage or control the truck, or to otherwise manoeuvre the truck so as to avoid the accident.

[18] Conversely, the defendant asserts that the primary cause of the accident was a latent defect in the braking system of the truck.

Expert Witness

[19] To assist the court in this determination, Mr. Eric Bridgeman was appointed an expert witness, and prepared a report pursuant to **Part 32.9** of the **CPR**. Mr. Bridgeman conceded that he neither saw nor inspected the truck. His opinion was based solely on the report on the Motor Vehicle Accident Report by Constable Raphael Rocastle dated 30th March 2019 and the Inspection Report from Sergeant Powlette dated 6th June 2019. In cross examination, Mr. Bridgeman admitted that he could not guarantee accuracy or completeness of these reports and noted that key information, such as the existence and colour of the brake fluid, was omitted.

[20] Sergeant Powlette's inspection, nearly two months after the accident, indicated mechanical defects in the braking system including absence of handbrakes, wheel rotation upon brake pedal application, and differential oil leakage near the right rear brakes. However, Sergeant Powlette was not called as a witness.

- [21] It is Mr. Bridgeman's evidence that brake components contaminated with differential oil would cause the brakes of a vehicle to "not hold" and the wheels to "pull sideways", "skid" or "lock up".
- [22] He stated that such symptoms would manifest over prolonged use, but an ordinary operator would likely not detect the defect until it was too late. He conceded however that an experienced mechanically inclined driver might notice the defect earlier. As an experienced driver and mechanic, Mr. Bridgeman said that he would use engine compression to stop the vehicle in the event of brake failure.

Evidence of Martin Roberts

- [23] Martin Roberts stated that he has been driving for over 40 years. He also stated that he has driven garbage trucks for over 15 years. He stated that he is experienced in the operations of garbage trucks and reported no issues with the truck on 28th and 29th March, driving through the accident area on both days. He then went on to say that he would feel or see if something is wrong with the braking system in a vehicle.
- [24] Martin Roberts testified that while collecting garbage in St. Andrew's, he stopped near the top of a hill and heard a "puff" sound from the truck. As the truck resumed movement, he attempted to apply both foot and hand brakes but neither responded.
- [25] Contrary to the report of Sergeant Powlette, Martin Roberts states that the truck had handbrakes, but that they failed when he tried to use them during the accident.
- [26] Drivers of motor vehicles are under a duty to exercise due care on the road³. One of the tests for determining the effective cause of the resulting damage is stated in **Clerk & Lindsell on Torts**⁴ as follows:

"It has been said that the law seeks the causa causans (effective factor) rather than the causa sine qua non (factor without which damage could not have occurred). In pursuit of the sometimes elusive effective cause the test commonly propounded is the famous (or infamous) "but for" test. Would

³ ANUHCv2013/0206 Clarence Martin et al v Edris George; GDAHCv2009/0552 Bernadette Sampson v Samuel Charles & Anr

⁴ 17th edn. para 2-10

the damage ... have occurred “but for” the negligence (or other wrong doing) of the defendant?”

- [27] The defendant testified that he did not receive any complaints on 30th March 2019 about the truck’s operation until the accident. He avers that his business practice includes employing mechanics to inspect trucks and ensure roadworthiness. He states that while he did not personally inspect the claimant’s truck, but assumed it was roadworthy.
- [28] It was borne out in trial that the area of the accident site included a very steep hill. Martin Roberts stated that he would place the truck in park when stopped on a hill but acknowledged that using the handbrake would be best practice. Expert Bridgeman confirmed a vehicle can stop on a hill without using the handbrake.
- [29] The court notes the defendant’s evidence that no complaints were made about the truck’s functioning on the days leading to the accident, and that his mechanics ensured roadworthiness of vehicles in use. Accordingly, the defendant has failed to establish that the vehicle had a latent defect which could not have been discovered through reasonable inspection. The court therefore reasons that the absence of complaints, coupled with the claimant’s evidence that the truck was regularly serviced is indicative of the truck’s roadworthiness.
- [30] To establish negligence on the part of Martin Roberts, the claimant must demonstrate the existence of a duty of care, a breach of that duty, and resultant loss or damage caused by that breach. The evidence supports the claimant’s claim that the driver of the defendant was negligent by failing to discharge the duty of driving with proper care and attention. The court is also of the view that the defendant remains answerable for the default of any agent that he engaged in the performance of the oral agreement. Accordingly, the court finds that the defendant, being in possession of the truck at the material time is responsible for the damage to the truck, and that the defence fails.

Damages

- [31] It is trite that the purpose of an award of damages for breaches of contract is to put the claimant back into the position he would have been in had the contract been performed⁵, and for negligence in the position they would have been in had the tort not occurred.

Special Damages

- [32] The claimant claims special damages in the sum of \$73,126.00 comprising:
- Pre-accident value of the truck - \$25,000.00
 - Loss of use for 90 days at \$500.00 a day - \$45,000.00
 - Cost of Tow Truck and recovery services - \$2,000.00
 - Bailiff fees, stamps and fixed costs - \$1,026.00
- [33] It is well established that special damages must be specifically pleaded and proven. In support of this claim, the claimant has submitted evidence of paid invoices amounting to \$2,000.00 for the recovery and towing of the truck.

Pre-accident Value

- [34] Counsel for the claimant also argues that the measure of damages in negligence for a profit earning chattel is restitution that is reasonable to the owner, either by repair or replacement with a comparable vehicle and relies on the case of **Darbishire v Warren**⁶. A valuation report filed with the claim gives the truck a pre-accident value of \$25,000.00, with the estimated wrecked value of \$4,000.00.
- [35] Counsel for the defendant states that the court ought to award a pre-accident value in the sum of \$15,000.00 considering that the truck at the time was 24 years old. However, the defendant although having challenged that amount in the filed defence has failed to provide contrary evidence in support of his averment, particularly in light of the existing valuation report. The court is of the view that the

⁵ Robinson v Harman [1843-60] All ER Rep 383

⁶ [1963] WLR 1067

claimant should be awarded the pre-accident value less the wreck value in the sum of \$21,000.00.

Loss of Use

- [36] The claimant seeks loss of use in the sum of \$45,000.00 for ninety (90) days at \$500.00 a day. In **Tropical Builders v Gloria Thomas**⁷, Blenman J. (as she then was) addressing the issue of loss of use held:

“It is the law that the owner of a motor car that is damaged... is entitled to recover for being deprived of its use during the period that he was without a motor car. The general principle is that the court seeks to compensate the claimant for the use which, but for the wrong, he would have had of the motor car.”

- [37] In **Malcolm Joseph et al v Alison Charles**⁸, Barrow J (Ag) in assessing damages for loss of use of a vehicle said:

“It is unquestionably the obligation of the victim of a tort to take such steps to mitigate his loss as are reasonable in the circumstances. What is reasonable, however, is a question of fact to be considered in light of the particular circumstances of a given case”.

- [38] It is also the law that the injured party must take reasonable steps to avoid or reduce loss⁹. In **International Motors Limited v Ronnie Thomas**¹⁰ it was held that:

“The law is that a person bringing a claim for damages should act reasonably in seeking to mitigate the damages. Even though you have a good, solid claim against a defendant, the law expects you to behave in a reasonable and responsible manner to ensure that the damages suffered or incurred are not greater than they reasonably ought to be. The law will not allow you to recover loss that could and should have been avoided”.

- [39] The court notes the sum claimed by the claimant for loss of use for ninety (90) days is in excess of the pre-accident value of the damaged vehicle. The court also takes into consideration that the claimant was aware that the vehicle was deemed a total loss from the date of the accident but has failed to provide details of actions taken to mitigate his loss. The court is of the view that an award in the sum of \$30,000.00 for a period of sixty (60) days is reasonable in the circumstances.

⁷ ANUHCv228/2004

⁸ GDA High Court 2002/0077

⁹ Halsbury's Laws of England Para 377 Vol 29 (2024)

¹⁰ Civil Appeal No. 7 of 2002

Order

[40] It is therefore ordered and declared as follows:

- (1) The defendant shall pay the claimant special damages in the sum of \$53,000.00 with interest at the rate of 3% per annum from the date of filing the claim until judgment and at the rate of 6% from the date of judgment until payment in full.
- (2) Prescribed costs on total sum awarded less costs on interlocutory appeal to be agreed by the parties.

Agnes Actie
High Court Judge

By the Court

Registrar