

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE
(Civil Division)

CLAIM NO. SVGHCV2023/0143

BETWEEN:

BALLY AND BALLY INVESTMENT LTD.

Claimant

And

DESMOND LLWELLYN

Defendant

BEFORE:

The Hon. Mde. Cybelle Cenac-Dantes (Ag.)

Judge of the High Court

Appearances:

Ronnia Durham-Balcombe counsel for the claimant

Akin John counsel for the defendant

2025: 28 April
23 May [closing submissions not filed]
27 May [closing submissions of the defendant]
29 May

ORAL DECISION

- [1] **Cenac-Dantes, J.:** This is my oral decision and I reserve the right to amplify these brief reasons in the event of an appeal.
- [2] At the end of the trial the court ordered that closing submissions were to be filed by the 23rd May, 2025. No submissions were filed by either party and no application for an extension of time was filed by either party. Notice that judgment was to be delivered on the 23rd May was given to both counsel. On the 27th May, 2025 closing submissions were received by this court from the defendant and filed on even date unaccompanied by any application for an extension of time.

Introduction

- [3] By claim filed on 12 September 2023, the claimant, acting by its managing director Cameron Balcombe brought an action against the defendant for damages for breach of contract for the defendant's failure to pay the orally agreed sum of \$30,000 for the purchase of a concrete mixer.
- [4] The defendant, by his defence, opposes the claimants claim on the basis that there was no agreement between the parties for the purchase of the mixer and further, if there was a contract, it should be vitiated on the basis that the claimant made material misrepresentations to induce him to purchase the mixer, to his detriment.
- [5] Prior to trial the parties made the following admissions:
- (1) The claimant offered to sell the defendant a concrete mixer.
 - (2) The claimant disclosed to the defendant that the mixer had engine problems.
 - (3) The defendant took possession of the mixer and moved it to his property at Villa.

- (4) The claimant offered the defendant a discount on the selling price after the defendant claimed that the mixer had a gearbox issue.
- (5) The defendant is still in possession of the cement mixer.

[6] The factual and legal contentions between the parties are as follows:

- (1) The claimant asserts that an oral agreement existed between the parties for the sale of the cement mixer to the defendant at a purchase price of \$50,000. However, the defendant disputes this, maintaining that the offer price was \$55,000 and that no binding agreement was reached until he had the opportunity to inspect the mixer to determine its suitability.
- (2) The claimant claims that the defendant accepted the offer to purchase the mixer even after it was disclosed that it had an engine problem. The defendant contends that he never accepted the offer to purchase the mixer.
- (3) Notwithstanding the disputed facts as to the existence of an oral agreement the defendant took possession of the mixer and towed it to his property. He later asserted that the mixer had additional issues and requested a further reduction in the asking price due to anticipated repair costs. Both parties acknowledge that the price was adjusted to \$30,000. However, the claimant maintains that this adjustment constituted a variation of the oral agreement, whereas the defendant contends that it was merely a modification of the original offer, which he had not yet accepted. The claimant further asserts that an invoice dated March 23, 2022, was sent to the defendant via WhatsApp and remains unpaid. In contrast, the defendant denies receiving the invoice, stating that he was only contacted about the payment in early 2023, at which point he responded that no payment was due as no agreement had been finalized.

- (4) Despite the defendant's assertion that he had not accepted any offer to purchase, he acknowledges, in paragraph 15 of his witness summary, that he invested funds to facilitate the repairs being undertaken by Paul Chapman, a mechanic out of the UK working on the mixer's engine.
- (5) The defendant continues to retain possession of the mixer, and both parties have submitted reports regarding its valuation. The claimant's report, dated April 9, 2024, estimates the mixer's worth at \$80,000 following inspection. In contrast, the defendant's appraisal report, dated May 13, 2024, values the mixer—excluding the engine and gearbox—at \$15,000. However, since neither party obtained the court's permission to introduce this expert evidence, it has been disregarded.

[7] The issues to be determined by this court are:

- (1) Whether there was an oral agreement between the parties for the purchase of the mixer at the varied cost of \$30,000, to be paid within three months.
- (2) If such an agreement existed, whether it should be vitiated due to material misrepresentations by the claimant, including the implied condition that the mixer should be reasonably fit for the purpose for which it was to be sold.
- (3) If the court determines there was an agreement for sale that has not been vitiated, what, if any relief is the claimant entitled to.

Claimant's evidence

[8] The claimant asserts that he initiated contact with the defendant and offered to sell him the concrete mixer for \$50,000 around March 2022, an offer the defendant accepted. At the time of the sale, the claimant informed the

defendant that the engine was undergoing repairs in the UK. According to the claimant, the defendant arranged for the mixer to be towed from the claimant's father's property in Georgetown to his own property in Villa. Later, the defendant contacted the claimant, reporting an issue with the transmission and requesting a price reduction to make the purchase worthwhile. In response, the claimant agreed to lower the price by \$20,000.

- [9] The claimant further states that an invoice was sent to the defendant via WhatsApp, but it remains unpaid. Additionally, the defendant was contacted by the claimant's office regarding payment, yet no payment has been received to date. The claimant is unwilling to reclaim possession of the mixer, as it has remained with the defendant for nearly two years.

Defendant's evidence

- [10] The defendant states that the claimant first contacted him on May 17, 2021, regarding the purchase of the mixer, offering a sale price of \$55,000. However, he did not accept the offer and remained silent on the matter. He acknowledges towing the mixer from Georgetown in January 2022, but asserts that this was merely an act of assistance to "*help out*" the claimant due to their longstanding business relationship. According to the defendant, the claimant repeatedly requested that he store the mixer on his property, citing concerns about theft at the Georgetown location.
- [11] The defendant explains that his hesitation in accepting the offer was due to two prior "*lemons*" purchased from the claimant. He maintains that from the time he towed the mixer away in 2022 until he later informed the claimant that he did not want it, he never expressed acceptance of the offer.
- [12] The defendant asserts that no contract exists. However, if the court finds that a valid contract was formed, he argues that it should be nullified due to material

misrepresentations made by the claimant regarding the mixer's condition, specifically its suitability for its intended purpose.

The Law

- [13] The ingredients to form a valid contract, whether oral or written are long established. The claimant must be able to show that there was not only an offer made and acceptance given but that there was valid consideration and an intention, by words or actions to create legal relations. The very existence of the contract under this claim being in dispute the claimant would have to demonstrate, on a balance of probabilities, that his version of events leading to the conclusion of the agreement were more plausible than that of the defendant.

Finding

- [14] Having heard the evidence presented by the witnesses in this matter, I am satisfied that a binding contract existed between the parties. The testimony provided by the claimant's managing director was credible, reinforcing the conclusion that there was an offer and acceptance, supported by consideration and an intention to create legal relations. Based on the following reasons, I find that the claimant has proved, on a balance of probabilities that the necessary legal elements of a valid contract have been met and that the parties were bound by its terms.

Analysis

- [15] Whether a contract has been formed is a mixed question of law and fact. Whether a party intends to be bound by a contract is a matter of fact and what terms are material to a contract is determined by the court on a case-by-case basis.

Offer and Acceptance

- [16] It is undisputed that the claimant through its managing director made an offer to sell the mixer to the defendant. According to the claimant, he invited the defendant to propose a price, and the defendant proposed \$50,000. However, the defendant's account differs—he states that when approached by the claimant, he was invited to make an offer but responded that he first needed to inspect the mixer and receive additional details before considering a purchase. The defendant further asserts that the claimant indicated the mixer could be sold for approximately \$55,000, but he neither accepted nor rejected this proposal.
- [17] The defendant asserts that his reluctance to accept any offer stemmed from two prior transactions with the claimant: a stone roller purchased four years ago and a generator acquired seven years ago. In both instances, the claimant made the offer, which the defendant accepted, and payment was completed within a short period. However, neither piece of equipment ever functioned properly. When questioned, the defendant stated that he had raised concerns about the generator with the claimant, but the issue remains unresolved. He further explained that he chose not to pursue the matter further to avoid conflict. Since the full details regarding the inoperability of these items were not included in the pleadings or elaborated upon in his witness statement, the claimant was not given an opportunity to respond to these allegations. As a result, the court disregarded this evidence in determining whether the defendant had informed the claimant of the issues and how the claimant had responded.
- [18] There is no reliable evidence before the court explaining the basis for the defendant's supposed rejection of the offer. Furthermore, at no point—whether in his written or oral testimony—did the defendant indicate that he had communicated these considerations to the claimant. Specifically, he did not state that his acceptance of the offer was contingent upon a full inspection of

the mixer or that its complete operability was a prerequisite for finalizing the contract.

[19] I do not accept the defendant's claim that he did not agree to purchase the mixer for \$50,000. I find that the defendant unequivocally accepted the claimant's offer in March 2022, with the agreed consideration being payment over a three-month period. It is unlikely that the claimant hallucinated these details, as it is equally improbable that he would have permitted the defendant to take possession of the mixer without a binding agreement in place. The defendant's assertion—that the claimant urged him to remove the mixer from his father's property in Georgetown and store it at his own property in Villa due to concerns about theft and lack of supervision—appears highly implausible.

[20] The undisputed evidence establishes that the defendant's property in Villa was situated near the main road and lacked any protective measures such as fencing, a shed, or other security features. I do not find credible the defendant's claim that he was unaware of the fencing at the Georgetown property. He acknowledged that the property of Mr. Balcombe's father was set back from the main road and contained buildings. His own testimony confirms that the mixer was located in the yard of Mr. Balcombe's father, who also testified that it was towed from his property. While it is unclear whether the claimant resided there, it is evident that his father did.

[21] For these reasons, I do not accept the defendant's assertion that Mr. Balcombe urged him to remove the mixer due to security concerns. While it is plausible that the claimant requested its removal, I believe this was because the defendant had already agreed to purchase it but had yet to make arrangements for its collection. Furthermore, I find it improbable that the claimant would have permitted the mixer to be stored at the defendant's premises, which were demonstrably less secure—lacking fencing, security, or a shed, and being directly exposed to the main road.

[22] Having determined that there was an offer and acceptance of the \$50,000, I also find that the subsequent price reduction to \$30,000 was accepted by the defendant. I do not find credible the defendant's claim, that upon discovering additional issues by November 9, 2022, he informed the claimant, who then offered a price reduction to \$30,000, at which point he expressed his unwillingness to purchase the mixer.

[23] I find the evidence of Mr. Balcombe more persuasive, that is, that the defendant did communicate concerns about a transmission issue and requested a price reduction to make the purchase worthwhile. I accept Mr. Balcombe's assertion that, despite being unaware of any transmission problems, his business judgment led him to offer a \$20,000 reduction, which the defendant accepted. If the defendant had truly decided against purchasing the mixer upon discovering its issues, the logical course of action would have been to reject the offer outright and return the mixer. His claim that he informed the claimant of his decision yet failed to return the mixer is unconvincing. Notably absent from his evidence is any indication—whether verbal or written—that he requested the claimant to retrieve the mixer. Instead, he merely states in his witness statement that the mixer remains available for collection at the parties' convenience. I believe the defendant did contact Mr. Balcombe regarding the issues allegedly identified by Paul Chapman and the associated costs, not to reject the offer, but to negotiate a further reduction in the purchase price, which he successfully obtained.

Intention to be Bound

[24] In determining whether the parties intended to be bound by the terms of the agreement, I have focused, not on their subjective intent—given that the agreement was not memorialized in writing—but rather on the overt manifestation of their assent in forming and committing to the contract. Applying this objective test, I have examined the evidence of their communications up to the point of breach, specifically assessing whether their actions clearly demonstrated agreement to the sale.

- [25] For the following reasons, I find that the defendant's actions constituted acceptance of the offer and further demonstrated his intent to be bound by the agreement.
- [26] The evidence presented by both parties indicates a longstanding history of transactions involving the sale and purchase of equipment. In each instance, the claimant, through its managing director Cameron Balcombe initiated the offer to sell, which the defendant verbally accepted, with payment agreed to be made over time. These agreements were consistently oral and never documented in writing. Both parties provided consistent testimony on this point, and the claimant confirmed the defendant's account that at least three previous pieces of equipment, along with a Suzuki Jeep, had been purchased and fully paid for. Neither party raised any disputes regarding their professional dealings over the years. Given this established pattern, the court finds it more likely than not that a similar oral agreement was reached between the parties concerning the mixer.
- [27] The defendant asserts that his hesitation in finalizing the agreement stemmed from two prior transactions involving the purchase of a stone roller and a generator, both of which had never functioned properly. However, nowhere in his evidence does he indicate that he communicated this concern to the claimant, which could have influenced the outcome of the matter—particularly regarding the removal of the mixer from the claimant's premises. Even if the defendant's claim about the previous faulty purchases is accepted, his failure to raise the issue with the claimant suggests one of two possibilities: either he was willing to proceed with the purchase despite the history of unsuccessful transactions, or he is simply being untruthful. In either case, his actions conveyed a clear intention to be bound by the agreement, leaving the claimant with the reasonable belief that a contract had been established.
- [28] The defendant's acceptance of delivery of the mixer, with the claimant's consent, strongly indicates an intention to be bound by the agreement. While the defendant asserts that he never accepted the offer and had communicated to the claimant that he required an inspection and further details before making

a decision, his actions contradict this claim. Under cross-examination, he admitted that neither he nor his mechanic had inspected the mixer before removing it from Georgetown. He also denied ever visiting the Georgetown property to conduct an inspection. If his assertion—that he could not accept the offer without first inspecting the mixer—is to be believed, then it raises the question of why he never undertook an inspection to either finalize the agreement or reject the offer. The court, therefore, concludes that his removal of the mixer from Georgetown, without prior inspection, was because an agreement had already been reached.

[29] It is highly improbable that the claimant would have permitted the defendant to transfer the mixer from a secured location in Georgetown to an unsecured site in Villa for “inspection and other due diligence”, and allowing that process to be prolonged for over eight months before finalizing an agreement. Such an extended delay undermines the credibility of this version of events. The defendant himself acknowledged that holding onto the mixer for eight months was excessive. I do not accept the notion that he was merely retaining possession while deliberating on the offer. Rather, he had already accepted, both the initial and revised offers, and as such he took possession of the mixer.

[30] Even after the defendant, according to his own evidence, informed the claimant that he no longer wished to purchase the mixer, he failed to return it to Georgetown. Having initially taken possession of the mixer to “*hold it*” as he said, for the claimant, and conduct his own inspection, the responsibility to return it logically rested with him. However, he did not do so.

[31] The defendant acknowledges having paid for repairs carried out by Paul Chapman, intending that if no agreement was reached, he and the claimant would “*work this back out*”. When questioned by the court about this arrangement, he explained that they could negotiate a form of set-off, as they had a longstanding business relationship involving frequent transactions and equipment rentals.

- [32] The defendant's account presents an implausible scenario. A businessman with extensive experience, having been, by his own admission, in the construction industry since the age of 13—who appears to have successfully operated a heavy equipment business—claiming to have previously purchased two previous “*lemons*” from the claimant, yet, despite this supposed history, willingly transferred funds to the United Kingdom to cover repairs undertaken by Mr. Chapman, expecting to “*work it out*” with the claimant if no agreement was reached on the mixer leads the court to the only reasonable conclusion, that the defendant financed these repairs because he had already entered into an agreement with the claimant and intended to be bound by its terms.
- [33] The absence of Paul Chapman's testimony in this case is notable. His insights could have clarified the true condition of the mixer and what he had communicated to the claimant regarding any pre-sale issues. This information might have strengthened the defendant's argument concerning alleged misrepresentations by the claimant at the time of sale. Additionally, Chapman could have provided valuable evidence regarding his interactions with the defendant, shedding light on whether the defendant was discussing and financing the repairs as the owner or under a different arrangement.
- [34] According to the evidence of the defendant, after having paid for the repairs, Mr. Chapman informed him that the funds were insufficient to cover both the costs of repairing the engine or a full mechanical overhaul of the mixer, including the transmission and radiator. And it was at that moment that he realized the claimant had handed him, as he termed it, “*a lemon*.” It was then that he contacted the claimant and stated that he had no interest in the mixer.
- [35] I do not find the defendant's evidence credible. I accept that the claimant made an offer, clearly stating that the mixer lacked an engine and that the engine was undergoing repairs in the UK—an undisputed fact between the parties. However, I believe the defendant failed to conduct proper due diligence before agreeing to the purchase. Upon later realizing that the repair costs exceeded his expectations, he experienced buyer's remorse and attempted to withdraw from the agreement.

Vitiating the contract and a Condition Precedent

- [36] The defendant contends that if the court finds a valid agreement existed, the contract should be nullified. He asserts that the claimant was fully aware that his interest in purchasing the mixer was contingent upon its roadworthiness and ability to transport mixed concrete. Given the circumstances, he argues that the mixer is evidently unfit for its intended purpose.
- [37] If such an agreement did exist, a key consideration is whether it should be set aside due to material misrepresentations by the claimant. This would include assessing whether the claimant implied that the cement mixer was reasonably fit for its intended purpose. If the claimant knowingly misrepresented the condition of the mixer or failed to disclose defects that would significantly impact its functionality, the defendant may have grounds to challenge the validity of the agreement. The determination of whether misrepresentation occurred—and if it was substantial enough to vitiate the agreement—would depend on the facts presented, including any evidence of discussions between the parties regarding the mixer's condition.
- [38] The defendant's evidence indicates that he was aware from the outset that the mixer lacked an engine. However, he neither inspected the mixer himself nor engaged a mechanic to do so. He claims that any agreement was contingent upon the mixer's roadworthiness, but I do not find that this condition was ever communicated to the claimant. There is no indication that the defendant made it clear that roadworthiness was a prerequisite to finalizing the agreement. He was fully aware that the engine was absent and undergoing repairs in the UK, and he willingly paid for those repairs. I do not accept that roadworthiness was a condition precedent to the agreement or that this requirement was conveyed to the claimant. Further, I find that the claimant had openly communicated the existing defects with the mixer – that it did not currently have an engine, and in spite of that disclosure the defendant proceeded to accept the offer. The claimant even prepared, without more, to accept the representations of the defendant regarding additional defects by reducing the purchase price.

- [39] The existence of a condition precedent is a matter of fact and interpretation. It refers to a requirement that must be fulfilled or an event that must occur before a duty of immediate performance arises under the qualified promise. A condition precedent may involve either an action that a party must undertake or an event that must transpire before a contractual right is established or a contractual obligation takes effect. The use of terms such as “if,” “provided that,” or “on condition that,” typically signals an intent to establish a condition rather than a mere promise. In essence, a condition precedent is a prerequisite that must be met for the contract to become enforceable.
- [40] The narrow question here is whether the parties positively agreed that no binding contract would exist until the defendant was assured that the mixer could transport mixed concrete. The defendant stated in his evidence that he had no particular interest in the mixer or in concrete mixers generally, having never owned one. Given this, the court cannot divine his intended use for the mixer—whether for its original purpose or potentially for parts or other purpose. Ultimately, it was the defendant’s responsibility to clarify his intentions regarding the mixer.
- [41] Even if I were to determine that the mixer was not fit for purpose—which I cannot, given the lack of concrete evidence supporting the defendant’s claims regarding its alleged defects—I would still find the defendant liable in damages. The claimant suffered a loss due to the defendant’s retention of the mixer from the time it was removed from Georgetown. According to the defendant, he took possession of the mixer to assess its suitability and later informed the claimant in November 2022 that he no longer wished to purchase it. Despite this, he has continued to hold onto the mixer without returning it or making arrangements for the claimant to reclaim it.

Conclusion

[42] The defendant's account of events appears convoluted and inconsistent with his actions. While I am alive to the real possibility that Mr. Balcombe could be lying, I ultimately find his version of events far more credible. The defendant's evidence lacks coherence and is significantly less plausible than the claimant's account.

[43] The fact that it is possible that the claimant or defendant is lying - the claimant to enforce a contract that may not in fact exist for the purpose of obtaining a pecuniary benefit by deception, or the defendant in trying to evade a valid agreement due to buyer's remorse, means that I have exercised particular caution in evaluating the evidence, consisting mainly of recollections and assertions against what is likely the more plausible of the two scenarios.

[44] Both parties displayed occasional defensiveness, and their recollections of finer details—such as the timing of the offer—were imprecise. The defendant was at times argumentative, leading me to place little weight on the demeanor of either party in assessing their evidence. I acknowledge that this matter was highly emotive for both, given their historically cooperative and mutually beneficial relationship. Nevertheless, I found Mr. Balcombe to be a much more credible witness than the defendant.

[45] **My order is as follows:**

(1) The defendant is to pay to the claimant the sum of \$30,000, being the amount due and owing under the contract for the purchase of the Terex Marina Concrete Mixer.

(2) Prescribed costs on the value of the claim of \$30,000. Costs payable to the claimant by the defendant in the sum of \$6,000.

- (3) Pre-judgement interest of 6% from September 2022 to date of judgment.
- (4) Post-judgement interest of 6% from date of judgment to date of payment.
- (5) Claimant to take carriage of the order after judgment.

Cybelle Cenac-Dantes
High Court Judge

BY THE COURT

REGISTRAR