

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

GRENADA

CLAIM NO. GDAHCV2023/0102

BETWEEN:

ELVIRA'S GARDEN LIMITED

Claimant/Counter-defendant

and

VLLADIMIR LA MOTHE

Defendant/Counterclaimant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Herricia Willis for the Claimant

Ms. Sheriba Lewis for the Defendant

2025: April 15th, 30th;
May 20th.

RULING

- [1] **ACTIE, J.:** This case concerns the breach of a vehicle loan agreement and an employment contract. All attempts made prior to the trial, including a Judicial Settlement Conference, to amicably settle the matter failed. The matter came on for trial on 15th April and the claimant did not make an appearance; accordingly, the court exercising its powers under CPR 39.4 struck out the claimant's statement of case and the matter proceed on the defendant's counterclaim.
- [2] The court at the end of the trial further encouraged counsel for the parties to engage in settlement discussions having regard to the narrow issue in dispute. The parties failed to settle, and the court now renders its ruling.

Brief Facts

- [3] The claimant employed the defendant as a bookkeeper and youth worker, under a contract of employment which commenced on 11th May 2021. The defendant states that he decided to purchase a vehicle, and informed Linda Mc Givern, director of the claimant, who offered to give the defendant a loan in the sum of \$10,000.00 subject to terms formalised in a “Vehicle Contract Agreement” made between the parties on 8th June 2021. The contract provided that \$500.00 would be deducted monthly from the defendant’s salary.

- [4] By March 2022, relations between the parties broke down. On 12th March 2022, the defendant sent a WhatsApp message to the director of the claimant indicating his intention to resign. However, the court accepts the defendant’s evidence that he continued to perform his duties of employment up until 30th March 2022, and that he accordingly is to be remunerated up to that period.

- [5] The defendant states that the claimant repossessed the vehicle on 30th March 2022, despite being up to date with loan payments in advance for the month of April, 2022. The defendant states that on 22nd January 2023 he was notified that the vehicle was on the road in Mt. Hartman, St. George with a derelict notice from the Ministry of Health for removal. Subsequently, the defendant towed the vehicle to his premises and is to date in possession of the said vehicle.

- [6] The defendant counterclaims that the claimant is in breach of the loan agreement and that he has suffered loss and damage in the sum of \$15,278.18.

- [7] The defendant also counterclaims for monies due and owing for breach of his employment contract and \$750.00 in lieu of two weeks’ notice. However, the latter was not pursued in the filed submissions and therefore the court considers this contention abandoned.

Legal Analysis

Whether the claimant breached the vehicle loan agreement

- [8] The “Vehicle Contract Agreement” included a clause that the defendant would be obligated to continue monthly payments towards the vehicle if released from employment,

and that on failure to make payment, the claimant would repossess the vehicle on the first date of late payment.

[9] The payment under the vehicle loan would have been deducted from the defendant on 31st March 2022, which would have entitled the claimant to repossess the vehicle on 1st May 2022 if he failed to pay. The defendant counterclaims that in breach of the contract, the claimant repossessed the vehicle on 30th March 2022 prior to the date due for payment.

[10] The custody of the vehicle is a term that goes to the root of the contract. The language of the contract suggests that the custody of the vehicle remains with the defendant until such time as it becomes eligible for repossession. The court finds that therefore the claimant was in breach of the vehicle loan/purchase agreement when it prematurely repossessed the vehicle on 30th March 2022.

[11] The authors of **Halsbury's Laws of England**¹ state the following with respect to the rights of innocent parties in cases of repudiatory breaches:

“A repudiatory breach of contract by A will not of itself have the effect of discharging the contract de futuro. Rather, it has the effect of giving the innocent party (B) a prima facie right to elect whether he will treat the contract as at an end or as still on foot as regards future obligations in it. The contract does not come to an end and therefore, in assessing damages, the court will have to have regard to its terms, including those obligations due to be performed subsequently and any exemption clause or liquidated damages clause. Disputes arising from the contract continue to be governed by any arbitration clause.

...

If B affirms the contract it remains in existence for the benefit of both parties, though the innocent party's right to claim damages for the breach is not affected and he can retain any forfeitable deposit. The innocent party must either affirm the whole contract or terminate the whole contract; he cannot approbate and reprobate by affirming part of it and disaffirming the rest.”

[12] It is the evidence that the defendant retained the key for the vehicle from the end of his employment in March 2022. This suggests the defendant's election to continue his obligation under the contract for the payment to the claimant. At the time of the breach of the contract by the claimant the amount owing on the loan by the defendant was \$5,000.00.

[13] The defendant claims for damage sustained by the vehicle while in the possession of the claimant, including:

¹ Vol 22 (2019) para 356

- (1) Broken window frame and the lock on the front driver's side;
- (2) Missing car battery;
- (3) Broken parking and steering locks;
- (4) Rusting;
- (5) Dysfunctional rotor;
- (6) Dysfunctional electrical components; and
- (7) Dents and scratches on the body of the vehicle.

[14] The defendant also states that the following items were left in the vehicle at the time of repossession by the claimant namely, Macbook computer; Passport; Birth certificate; NIS card; and Scanner. The defendant states that he is entitled to the cost replacement of the items, however, only seeks the cost of replacement of a Macbook laptop in the sum of \$2,450.00.

[15] The court, in its assessment of the evidence of the witnesses, notes the defendant's admission that his passport which he purportedly left in the vehicle was valid up until 2025. The defendant's pleadings, and evidence at trial, suggested damage to the defendant's phone by the claimant. The court notes that the receipt in the sum of \$440.00 relied on by the defendant bears the date of 28th March 2023, almost a year after the defendant alleges the damage was caused to his phone. The defendant makes no mention of any attempts prior to repossessing the vehicle in January 2023, to secure such important items as his passport and laptop that he allegedly left in the vehicle although he was in possession of the key for the said vehicle. Such a lack of endeavour in the face of the misplacement of valuable and essential items is glaring. The court rejects the evidence of the defendant and his witnesses that the listed items were left in the vehicle. On a balance of probabilities, it is more probable than not that the defendant did not leave these items which he now seeks to claim to have been in the vehicle when repossessed by the claimant.

[16] Further, counsel for the claimant raises the issue of mitigation in response to the defendant's requests for compensation for damages sustained by the vehicle while in the claimant's possession. Counsel argues that the defendant/counterclaimant did not mitigate his losses, although being the only person in possession of the vehicle's key. Counsel states that it is unreasonable and unconscionable for the claimant to be liable for damages in the sum of \$15,278.18.

[17] The principle as it relates to mitigation of losses is clear. In **International Motors Limited v Ronnie Thomas**² 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”.

[18] Moreover, the authors of **Halsbury’s Laws of England**³ state the following:

“If [a claimant fails] to do so, they are not in breach of duty as such, but they cannot claim damages for any such loss which they ought reasonably to have avoided, the reason being that such loss is regarded as flowing not from the defendant’s wrong but from the claimant’s unreasonable behaviour.”

[19] The court notes that these proceedings were commenced by claimant after the defendant took possession of the vehicle in January 2023. The court also notes that no attempts were made by the defendant for payment of the balance of the vehicle loan, despite being issued a letter by counsel for the claimant on 7th April 2022, prior to the due date for payment at the end of that month.

[20] The general rule is that the function of damages for breach of contract is to put the injured party as far as possible in the position he would have been had the contract been performed. Damages should be assessed as at the date when the cause of action arose, that is, the date of breach⁴. The defendant has not addressed the court as to the reason for his non-action as against the claimant since its repossession of the vehicle in March 2022. The claimant’s contemporaneous communication to the defendant in April prior to the payment for that month becoming due cannot be ignored. The defendant/counterclaimant did not acknowledge the communication, neither did he make any efforts to continue to make further payments as agreed in the contract. Further, the defendant/counterclaimant failed to request a refund of the monies already paid.

[21] To place the parties in the position they would have been in had the contract not been breached, the defendant/counterclaimant would either have had to pay the claimant/counter defendant the balance of \$5,000.00 to remain in possession of the

² Civil Appeal No. 7 of 2002

³ Para 377 Vol 29 (2024)

⁴ Johnson v Agnew {1980} A.C. 367

vehicle or seek reimbursement of \$5,000.00 from the claimant and relinquish possession of the vehicle.

[22] The conduct of the party applying for relief is always an element for consideration purposes. The defendant was under a duty to mitigate his losses and should have taken all reasonable steps to do so consequent upon the claimant's wrong. To claim the sum of \$15,278.18, which is more than triple the amount due under the vehicle contract is unreasonable in the circumstances.

[23] In **Malcolm Joseph et al v Alison Charles**⁵, 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”.

[24] Barrow J (Ag) further stated that, it is not the law that the claimant was entitled to sit by and wait until he could collect from the defendant.

[25] Although the case of **Malcolm Joseph** concerned damages for tortious liability, the duty to mitigate resonates in breaches of contract. The rule of avoidable loss imposes on a party the duty of taking all reasonable steps to mitigate the loss consequent on the breach and debars him from claiming any part of the damage which is due to his neglect to take such step⁶. It restricts on the damage recoverable if the claimant had acted reasonably to minimize his loss.

[26] The defendant's claim for \$15,278.18 must fail. The defendant ought to have mitigated his loss and was also under a duty to pay the balance of \$5000.00 in accordance with the loan agreement. Also, as it stands it is conceded by counsel for the claimant that the defendant was not paid his salary for March 2022. In the circumstances the balance of the defendant's March salary must be set off against the sum due and owing to the claimant/counter defendant under the contract.

⁵ GDA High Court 2002/0077

⁶ Chitty on Contract 28th Ed. para 27-087

Conclusion

[27] Given the above circumstances, it is therefore ordered and declared as follows:

- (1) The claimant's claim is dismissed pursuant to CPR 39.4.
- (2) Judgment is entered for the defendant on his counterclaim for breach of his employment contract and the vehicle loan agreement.
- (3) The defendant/counterclaimant is under an obligation to pay the claimant/counter defendant the sum of \$5,000.00 less the balance due and owing for his March 2022 salary after NIS deduction for NIS.
- (4) It is the law that the successful party is generally entitled to costs (CPR 64.6) however the court shall depart from the general rule and makes no order as to costs given the fact that the defendant/counter claimant is indebted to the claimant/counter defendant under the "vehicle loan agreement".

Agnes Actie
High Court Judge

By the Court

Registrar