

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

Claim Number: SLUHCV2022/0131

BETWEEN:

CLENTON DUPLESSIS

Claimant

and

AUSTIN PHILLIP

Defendant

Before:

Honourable Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances: Mr. George F. Charlemange for the Claimant
Mr. David R. Francis for the Defendant

2023: November 1
December 1 - (Closing Submissions)
2024: January 10 - (Closing Submissions)
2025: March 21.

JUDGMENT

Breach of Contract, Agency, Consideration, Damages, Restitution, Sales Agreement, Vehicle Purchase, Articles 918, 923, 945, 949, 995, 996, 1004, 1382, 1601, 1620 and 1621 of the Civil Code of Saint Lucia

[1] **CENAC-PHULGENCE, J:** - On 21st March 2022, the claimant, Mr. Clenton Duplessis ("Mr. Duplessis") filed a claim for damages arising out of an alleged breach of contract for the purchase of a fourteen (14) seater Toyota Minibus (hereinafter "the vehicle") from the defendant, Mr. Austin Phillip ("Mr. Phillip"). Mr. Phillip denied that he was a party to the contract but asserts rather, that he merely assisted Mr. Duplessis' brother to purchase the vehicle directly from the vendor. In deciding whether Mr. Phillip breached the contract as alleged, it is important to first determine the issue of whether a contract existed between the claimant and defendant.

The Claimant's Case

- [2] Mr. Duplessis alleges that in or around September 2020, Mr. Phillip informed him that he was an importer of used vehicles from Japan to Saint Lucia. This information resulted in Mr. Duplessis indicating his desire to purchase the vehicle from Mr. Phillip and in that said month, the parties entered into an oral agreement. A term of the agreement was that the vehicle would arrive from Japan into Saint Lucia in or around December 2020, and the vehicle would be delivered to Mr. Duplessis on its arrival. Mr. Duplessis also alleges that he informed Mr. Phillip that the purpose for purchasing the vehicle was for transportation of passengers for hire.
- [3] Pursuant to the agreement, Mr. Duplessis secured a loan from the National Farmers and Farm Workers Co-operative Credit Union ("the Credit Union"), to pay Mr. Phillip the agreed purchase price of EC\$80,000.00. Mr. Duplessis subsequently left for Martinique and was unable to return to Saint Lucia for some time due to the Covid19 lockdown, and therefore requested his brother, Thoughin Bellas ("Mr. Bellas"), to facilitate the payment to Mr. Phillip of the purchase price by way of a Bank of Saint Lucia cheque dated 19th November 2020, in the name of Austin Phillip. However, in December 2020, Mr. Phillip failed to deliver the vehicle to Mr. Duplessis, in breach of the agreement. Mr. Phillip did return the sum of \$53,500.00 to Mr. Duplessis, leaving a balance of \$26,500.00 due and owing to him.
- [4] To date, Mr. Phillip has failed to deliver the vehicle or return the remainder of the purchase price to Mr. Duplessis. As a result, Mr. Duplessis seeks damages for the breach of contract and loss of use, as well as the interest amount on the loan from NFWCCU which he continues to pay.

The Defendant's Case

- [5] Mr. Phillip denies that he entered into an agreement with Mr. Duplessis. Consequently, he was under no obligation to deliver a vehicle to him. He asserts that he was approached by Mr. Bellas, who sought his assistance in importing the vehicle. Mr. Phillip thereafter referred Mr. Bellas to the Japanese Company, Autorod Inc., who issued an invoice in Mr. Bellas' name. Mr. Phillip's case is that at no point did he indicate that he imported vehicles or would sell a vehicle to Mr. Duplessis.

- [6] Mr. Phillip, now acting as agent for Mr. Bellas, made the necessary wire transfer to Autorod Inc., in the sum of US\$16,000.00 (approximately EC\$42,720.00), which was the invoiced price of the vehicle. He was then directed by Mr. Bellas to hold the balance of the purchase price for the payment of duties at the port.
- [7] After the vehicle did not materialise, Mr. Bellas then indicated to Mr. Phillip that the vehicle was actually Mr. Duplessis'. Being still in possession of the balance of the purchase price of EC\$40,000.00, Mr. Phillip then refunded this amount to Mr. Duplessis and indicated that Mr. Verne Emmanuel ("Mr. Emmanuel") of the Saint Lucia Bureau of Standards ("the Bureau") had been contacted and was investigating the matter. After communications between the Bureau and Autorod Inc., the latter indicated that it was not in a position to send all of the money at once and could only remit payments of US\$5,000.00 until the debt was paid off. Mr. Emmanuel did receive confirmation of a remittance from Autorod Inc, in the name of Mr. Phillip, for the sum of USD\$5,000.00. At some point, Mr. Phillip did pay the equivalent of EC\$15,500.00 to Mr. Duplessis from the proceeds of that remittance.

Evidence of the Claimant:

- [8] Mr. Duplessis was the only witness in support of his case. His witness statement was consistent with his pleadings.

Evidence of the Defendant:

- [9] Two witness statements were filed in support of Mr. Phillip's case: Mr. Phillip's and Mr. Emmanuel's.
- [10] Mr. Phillip's witness statement was inconsistent with his pleadings. His evidence on his witness statements is that sometime in September 2020, he was approached by Mr. Duplessis inquiring about the details of how he purchased his bus and at what cost. He then gave Mr. Duplessis the details and put him in touch with the representative of Autorod Inc., Mr. Daniel Leo. According to his witness statement, it was Mr. Duplessis who then contacted Mr. Leo, resulting in the invoice in the name of Mr. Bellas, which was sent directly to Mr. Duplessis.

- [11] Mr. Duplessis then approached him with the cheque for EC\$43,470.00 and asked him to make the payment to Autorod Inc., on his behalf, which he did as a facilitator of the transaction. Mr. Duplessis then accompanied him to CIBC Bank in Rodney Bay and was present when Mr. Phillip made the wire transfer as per Mr. Duplessis' instructions.
- [12] After the transaction, he did not have any conversation with Mr. Duplessis until Mr. Duplessis came back to him and said that he did not receive the vehicle. Mr. Phillip says he attempted to assist Mr. Duplessis since he gave him Autorod Inc's. contact information and assisted him in sending the money via wire transfer.
- [13] Mr. Phillip then says that he sought the assistance of Mr. Emmanuel of the Bureau, who indicated that it was agreed between Autorod Inc. and the Bureau by way of email correspondence, that the money would be repaid by installments to the Bureau, for Mr. Duplessis.
- [14] As far as Mr. Phillip was aware, Mr. Duplessis was contacted by the Bureau to collect his money but refused to do so because he wanted all his money.
- [15] Mr. Emmanuel's witness statement confirmed that he received a complaint from Mr. Phillip in November, 2020, indicating that he was seeking the intervention of the Bureau regarding vehicles sourced abroad. He then sent email and WhatsApp correspondence to representatives of Autorod Inc., for the refund of US\$48,000.00, which represented the payment for four vehicles that Mr. Phillip had attempted to import. Autorod Inc. agreed that they would refund the US\$48,000.00 by ten weekly installments of US\$5,000.00. Eventually two of the weekly instalments totaling US\$10,000.00 was remitted to Mr. Phillip, but no further payments were forthcoming to date.

Cross-Examination of the Witnesses

Claimant

- [16] During cross-examination, I found Mr. Duplessis to be an honest and credible witness. His testimony was consistent with his pleadings and evidence in chief.

- [17] He stated that he was introduced to Mr. Phillip by Mr. Bellas. After that introduction, he spoke to Mr. Phillip personally, who represented to him that he could purchase the vehicle for him for EC\$80,000.00, as he was in the business of importing used vehicles from Japan. It was Mr. Phillip who advised him on the type of vehicle to purchase. Mr. Duplessis confirmed that Mr. Bellas collected the cheque in the sum of EC\$80,000.00 from the Credit Union and gave it to Mr. Phillip, on his behalf. That evidence is supported by Exhibit CD2 which is a cheque request form dated 16th November 2020 showing that the cheque was to be payable to Austin Phillip for \$80,000.00 to be collected by Thoughin Bellas.¹
- [18] Mr. Duplessis was unaware of the vehicle's import duties, service charge or excise taxes. He attributed to this to Mr. Phillip giving him "one package" for the importation of the vehicle. Mr. Duplessis was therefore unable to account for Mr. Phillip's profit on the transaction.
- [19] On the issue of loss of use, Mr. Duplessis conceded that he did not provide any evidence of having any route band, any taxi endorsements, or any registration certificate for any business carrying passengers. He did not provide any evidence to substantiate the daily rate of \$350.00 that he claimed for loss of business opportunity.

Defendant

- [20] Mr. Phillip was evasive with respect to some questions and was not forthright in answering others. This led the Court to form the opinion that he was not a credible witness.
- [21] Cross-examination of Mr. Phillip soldered the inconsistencies between his pleadings and evidence in chief, especially with respect to how the transaction occurred and who were the parties to the transaction. He admitted during cross examination that it was Mr. Duplessis who approached him personally to import the vehicle from Japan for him and that he asked Mr. Duplessis to pay \$80,000.00 for the purpose of that transaction. He confirmed after some vacillation that he knew that Mr. Bellas was at all times acting on behalf of Mr. Duplessis. This evidence is totally different from what he said in his pleadings and in his witness statement. In his pleadings, Mr. Phillip said that Mr. Bellas was the one who approached him

¹ Page 6 of the Trial Bundle.

to assist him with the importation of the vehicle.² In his witness statement, Mr. Phillip said that Mr. Duplessis came to him with a cheque for EC\$43,470.00³ when the documentary evidence is clear that the cheque was in Mr. Phillip's name and in the amount of EC\$80,000.00.

[22] From saying that it was Mr. Bellas who approached him to it was Mr. Duplessis who approached him, Mr. Phillip in cross-examination had this exchange:

Counsel referred to paragraph 6 of Mr. Phillip's witness statement

"Q. Was it then that he (Bellas) indicated, or you knew all along that he was acting on behalf of the claimant?

A. I believed that the vehicle belonged to both of them because Duplessis spoke to me and Bellas but the documents were on Bellas' name...In as much as they were brothers I thought they were purchasing the vehicle.

Q. So now you are saying it was both of them

A. Duplessis said it was his, but the invoice was on Bellas' name."

When it was suggested to Mr. Phillip that he knew from inception that Mr. Bellas was acting on behalf of Mr. Duplessis, Mr. Phillip said yes but went back to his constant refrain that the invoice was in Mr. Bellas' name. Again, Mr. Phillip's evidence was totally inconsistent.

[23] Further into cross-examination, Mr. Phillip stated that the EC\$80,000.00 was given to him to pay the US\$16,000.00 and the "balance was to return for some other business". Of the other business, he could not account for and was evasive.

[24] Mr. Phillip denied that he informed Mr. Duplessis of any time for the vehicle to arrive in Saint Lucia, as he was merely facilitating the wire transfer of the money to Autorod Inc. He also stated that he was not an importer of used vehicles from Japan but rather only imported one for himself from Autorod Inc. This evidence later changed during the cross-examination, when it was revealed that Mr. Phillip had assisted at least two other persons (apart from Mr. Duplessis) in importing used vehicles from Japan. Mr. Emmanuel's evidence on cross-examination also supported the fact that Mr. Phillip had been involved in more than one

² See para 1 of Defence filed 4th Oct 2022.

³ See para 4 of Witness Statement of Austin Phillip.

importation of used vehicles when he indicated that the complaint made by Mr. Phillip was in relation to four minibuses and that the company involved in the transactions for the vehicles was Autorod Inc.

[25] I observed that Mr. Phillip was very hesitant and reticent when answering questions relating to who the party in direct communication with Autorod Inc. was during the transaction. He went back and forth between being the person in communication with Autorod, to Mr. Duplessis being in contact with the representative of Autorod.

[26] Another glaring inconsistency was where in his pleadings, Mr. Phillip said that Mr. Bellas accompanied him to RBC Bank to do the transfer of funds to Autorod Inc.,⁴ in his witness statement he says Mr. Duplessis accompanied him to CIBC Bank in Rodney Bay when he did the transfer of funds,⁵ and in answer to the question whether his bank was Royal Bank of Canada and whether all bank transfers had been done through that bank, he responded in the affirmative.

Mr. Verne Emmanuel

[27] I found Mr. Emmanuel to be an honest and credible witness, who gave evidence of matters within his personal knowledge. In my opinion, his evidence did not support Mr. Phillip's version of events, but rather Mr. Duplessis'.

[28] Mr. Emmanuel confirmed that the complaint to the Saint Lucia Bureau of Standards of the undelivered vehicles came from Mr. Phillip who indicated to him that "*he was having difficulty with information from a supplier for receiving confirmation of the date of arrival of vehicles*". Furthermore, he knew Mr. Phillip was an automotive technician, and also served as an expert witness in the investigation of a matter regarding another vehicle.

[29] Mr. Emmanuel also stated that the refund from Autorod Inc., was provided to Mr. Phillip and confirmed that the two payments of US\$5,000.00 were sent to Mr. Phillip. In his presence, Mr. Phillip refunded Mr. Duplessis US\$5,000.00. He also refunded US\$5,000.00 to another

⁴ Para 3 of the Defence.

⁵ Para 6 of the Witness Statement of Austin Phillip

gentleman, Trevor Octave. He was also aware that in December, 2021, Mr. Phillip refunded Mr. Duplessis about \$40,000.00.

Law

[30] In their submissions, Counsel placed heavy reliance on the **Civil Code of Saint Lucia**⁶ (“the Code”). The provisions referred to by both parties are as follows:

(a) Article 918 which deals with the requirements of a valid contract and states that for a contract to be valid it must have a subject and a lawful cause or consideration and the parties to it must be legally capable and their consent must be legally given.

(b) Article 923 (the cause or consideration of contracts) which provides that:

“A contract without a consideration, or with an unlawful consideration is void; but may be valid though the consideration be not expressed or be incorrectly expressed in the writing which is evidence of the contract.”

(c) Articles 945 and 949 which deal with the interpretation of contracts:

Article 945 provides:

“When the meaning of any part of a contract is doubtful, its interpretation is to be sought rather through the common intent of the parties than from a literal construction of the words.”

(d) Article 949 states “The customary clauses must be supplied in contracts, although they be not expressed.”

[31] Counsel for the claimant, Mr. George Charlemagne (“Mr. Charlemagne”) also relied on the authority of **Cauldric Fraser v Eric Audain and anor**⁷ to further support his argument that in the interpretation of contracts, the Court tries to ascertain the intention of the parties and interprets a contract in the way a reasonable commercial person would construe them.

[32] Reliance was also placed on Articles 995 and 996 which are general provisions that deal with the effect of obligations.

⁶ Cap. 4.01, Revised Laws of Saint Lucia,

⁷ SVGHCV2005/0479, (delivered 10th December 2012, unreported) at paragraphs 6 and 7.

Article 995 provides:

“An obligation to give involves the obligation to deliver the thing and to keep it safe until delivery. The obligation to keep the thing safely obliges the person charged therewith to keep it with all the care of a prudent administrator.”

Article 996 states that “Every obligation renders the debtor liable in damages for breach or non-fulfilment of it.”

[33] Reference was made to Article 1004 which provides that damages are an available remedy for the non-fulfillment of obligations and those damages being in general the amount of the loss that he has sustained and the profit he has been deprived of subject to exceptions and modifications contained in the said Article.

[34] Reliance was also placed on **O’Neil Cruickshank v Andrea Burgin**⁸ which spoke to when a breach occurs in a contract and the entitlement to damages for breach.

[35] The following Articles were also referred to by Counsel:
Article 1382 which defines a sale was also referred to by Counsel. In this Article sale is defined as a ‘contract by which one party transfers property to the other, for a price in money which that other undertakes to pay, either expressly or by implication.’

Articles **1601**, **1620** and **1621**, which speak to agency and the obligations of the principal towards the agent.

Findings & Analysis

Parties

[36] The Court finds favour with the evidence of Mr. Duplessis: that he entered into a contract with Mr. Phillip for the importation of a used minibus from Japan at the cost of EC\$80,000.00; Mr. Phillip’s role was therefore not a mere facilitator of the funds to Autorod Inc., but the vendor in these circumstances; Mr. Phillip with the cheque in his name, communicated with

⁸ SVGHCV2005/0188, (delivered 25th May 2007, unreported) at paragraphs 17, 21 and 22,

Autorod Inc. directly about the delivery of the vehicle, and made representations to Mr. Duplessis about its anticipated arrival in December, 2020.

[37] Additionally, the refunds from Autorod Inc., were in Mr. Phillips's name, and not that of Mr. Bellas, whom he alleged was the party to the contract with Autorod Inc. as per the invoice which he exhibited.

[38] Further, the email correspondence between Mr. Emmanuel and the representatives of Autorod Inc. revealed that Mr. Phillip had ordered 4 minibuses for different persons, which on a balance of probabilities supports Mr. Duplessis' evidence that Mr. Phillip was engaged in the business of importing used vehicles from Japan.

[39] In further support of Mr. Duplessis' allegations and the Court's findings is the fact that it was Mr. Phillip who undertook the responsibility for the refunds after the vehicle was not delivered. It is not disputed that Mr. Phillip did return the sum of \$53,500.00 to Mr. Duplessis by way of two payments of \$40,000.00 and \$13,500.00, leaving a balance of \$26,500.00 to be refunded to Mr. Duplessis. The receipt representing the refund in the sum of \$40,000.00 refers to Mr. Phillip as the "Automotive Master Technician". The remittance payment from Autorod Inc., in the sum of US\$5,000.00 refers to Mr. Austin Phillip, the defendant, and not Mr. Clenton Duplessis, the claimant nor his brother, Mr. Bellas, as the customer. Additionally, it is apparent that the Bureau was working on behalf of Mr. Phillip to have the issue rectified, and not on behalf of Mr. Duplessis or Mr. Bellas.

[40] In light of the above discussion, I find that Mr. Phillip has failed to prove that he was merely an agent of Mr. Duplessis (or even Mr. Bellas) acting in accordance with Articles 1601, 1620 and 1621 of the **Civil Code**.

Consideration

[41] The documentary evidence (cheque in the name of Austin Phillip) proves that Mr. Duplessis did pay to Mr. Phillip the purchase price of EC\$80,000.00 for the vehicle, constituting consideration in accordance with Article 918 and pursuant to the sale (Article 1382 of the **Civil Code**). In cross-examination, Mr. Phillip admitted to receiving the cheque in the sum

of EC\$80,000.00 and that it was in his name. Of that sum, US\$16,000.00 (approximately EC\$42,720.00) was wired to Autorod Inc., for the purchase of the vehicle. Mr. Phillip retained the remainder of the purchase price of approximately EC\$37,280.00.

- [42] Were Mr. Phillip a mere facilitator of the payment to Autorod Inc. as he alleged, there was no good reason put forward by him as to why he was the recipient of the entire amount of \$80,000.00 and not only the US\$16,000.00 required as per the Autorod Inc. invoice. Accordingly, the Court is inclined to believe Mr. Duplessis' evidence that the sum of EC\$80,000.00 represented Mr. Phillip's costs for the importation of the vehicle (including any associated customs, duties and other fees) as it was "one package". The contention of Mr. David Francis ("Mr. Francis"), Counsel for Mr. Phillip that the contract lacked consideration and was thus rendered void, is therefore unsustainable.

Performance of Contract

- [43] The Court, having found that a valid contract existed between the parties, also accepts Mr. Duplessis' evidence that he was obligated to pay the purchase price of EC\$80,000.00 to Mr. Phillip, who would import the vehicle to Saint Lucia. Once the vehicle arrived in Saint Lucia in or around December, 2020, Mr. Phillip would be obligated to hand over same to Mr. Duplessis. There being no doubt about the common intention of the parties surrounding their obligations under the contract, Articles 945 and 949 will not be considered.

Breach

- [44] On the evidence, the Court finds that Mr. Phillip did breach the contract when he failed to deliver the vehicle in or around December, 2020 to Mr. Duplessis. By Mr. Phillip's own admission, Mr. Duplessis never received the vehicle.

Damages

- [45] As a result of Mr. Phillip's breach of contract, Mr. Duplessis is entitled to the return of the balance of the purchase price in the sum of \$26,500.00. This is supported by Articles 996 and 1004 of the **Civil Code**.

Loss of Use and Interest on Credit Union loan

[46] Apart from referring to the Saint Lucia Insurance Council tariff of \$350/day in his pleadings, Mr. Duplessis has not put forward any evidence before this Court with respect the amount being claimed for loss of use. The matter was not addressed in his witness statement. Moreover, from evidence of Mr. Duplessis, it is apparent that he was not in Saint Lucia to operate the vehicle, as he was back and forth to Martinique and currently resides in Ducos Martinique. During cross-examination, he also conceded that he did not provide any evidence to substantiate an award under this head. As a result, no award of damages will be made for loss of use.

[47] On the matter of the interest payments on his loan, I find that Mr. Duplessis is not entitled to interest on the loan with the Credit Union as the interest payments on a loan which he chose to take to facilitate purchase of the vehicle is not a loss which flows from the breach of contract by Mr. Phillip. Additionally, Mr. Duplessis received a refund of \$56,300.00 but he did not indicate whether he had put any of that money towards the loan that he had taken in circumstances where the subject of the loan (the vehicle) was non-existent.

Order

[48] Having found that there was a contract between Mr. Duplessis and Mr. Phillip and that Mr. Phillip breached the contract, and based on the foregoing discussion, I make the following orders:

1. Judgment is entered for the claimant, Mr. Duplessis against the defendant, Mr. Phillip;
2. The defendant shall pay the claimant damages in the sum of \$26,500.00 together with pre-judgment interest at the rate of 3% per annum from the date of the filing of the claim to the date of this judgment calculated in the sum of \$2,385.00.
3. Post judgment interest shall accrue on the sum of \$26,500.00 from the date of this judgment to the date of payment at the rate of 6% per annum.
4. The defendant shall also pay the claimant prescribed costs of this claim on the value of the award made (which is to be inclusive of pre-judgment interest) calculated in the sum of \$5,777.00.

[47] I thank Counsel and the parties for their patience in awaiting the delivery of this decision.

Kimberly Cenac-Phulgence
High Court Judge



By The Court

Registrar