

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION

SAINT LUCIA

Case Number: SLUHCV2021/0167

BETWEEN:

MURPHY RUSSEL ROSEMOND

Claimant

-and-

AUSTIN PHILLIP

Defendant

Before the Honourable Mr. Justice Alvin Pariagsingh

Appearances: Mr. Bapson Ambrose for the Claimant
Mr. David Francis for the Defendant

2024: November 11 – Trial
December 17, 18 – Closing Submissions
2025: January 13 – Decision

JUDGMENT

Breach of Contract, Agency, Consideration, Damages, Restitution, Sales Agreement, Vehicle Purchase, Articles 923, 1382, 1387, 1601, 1620, and 1621 of the Civil Code of Saint Lucia

[1] **PARIAGSINGH, J:** - This matter concerns a claim for damages arising from the alleged breach of a contract for the purchase of a Toyota Hiace vehicle. The primary issue is whether a contract existed between the Claimant and the Defendant or if the Defendant acted solely as an agent for Autorod Ltd., the vendor.

The Claimant's Case

[2] The Claimant asserts that he entered into an oral contract with the Defendant to procure a Toyota Hiace for \$80,000.00 inclusive of all customs, duties, inspection, brokerage and registration fees. The transaction was supported by an initial payment of

\$43,470.40. The Claimant contends that the Defendant promised delivery of the vehicle within 6 to 8 weeks, but no vehicle was ever delivered. As evidence, the Claimant presented a cheque made payable directly to the Defendant, which he argues demonstrates a contractual relationship. The Claimant also provided emails exchanged between Autorod Co. Ltd., and Verne Emmanuel of the St. Lucia Bureau of Standards. The Claimant also provided emails, which he claims solidify the Defendant's role as a seller rather than merely an agent.

- [3] The Claimant seeks the return of his deposit, equal the amount of the deposit pursuant to Article 1387 of the Civil Code of Saint. Lucia, Revised Laws of Saint. Lucia (2022) (hereinafter 'the Civil Code', and damages for the loss of use of the vehicle. He alleges that the Defendant breached the agreement by failing to deliver the vehicle within the promised timeframe.

The Defendant's Case

- [4] The Defendant denies that he was a party to any contract with the Claimant, asserting instead that he acted as an intermediary. He relies on the Civil Code, particularly Article 1382, which defines a sale as a contract involving the transfer of property in exchange for monetary consideration. The Defendant contends that no such transaction occurred between himself and the Claimant. Instead, he claims he facilitated the Claimant's dealings with Autorod Ltd., the vendor located in Japan.
- [5] The Defendant presented an invoice from Autorod Ltd. issued in the name of the Claimant and wire transfer documentation showing \$16,000.00 USD (equivalent to \$43,200.00 XCD) remitted to Autorod Ltd. The \$16,000.00 USD was described in the invoice as the price of the vehicle with shipment. He argued that this evidence supports his position as a facilitator rather than a contracting party. Additionally, the Defendant invoked Article 923 of the Civil Code, asserting that the purported contract lacked consideration and was therefore void. Finally, he relied on agency law under Articles 1601, 1620, and 1621 of the Civil Code to claim indemnity for actions performed within his scope as an agent.

LAW:

[6] The relevant articles of the Civil Code, relied on by the parties are set out as follows:

Article 923:

“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 express in the writing which is evidence of the contract.”

Article 1382:

“Sale is 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.”

Article 1387:

“If a promise of sale be accompanied by the giving of earnest, each of the contracting parties may recede from it; he who has given the earnest, by forfeiting it, and he who has received it, by returning double the amount.”

Article 1601:

Agency is a contract by which a person, called the principal, commits a lawful business to the management of another, called the agent, who by his acceptance binds himself to perform it.

The acceptance may be implied from the acts of the agent, and in some cases form his silence.

Article 1620:

The principal is bound to indemnify the agent for all obligations contracted by him toward third persons, within the limit of his powers; and for acts exceeding such powers, whenever they have been expressly or tacitly ratified.

Article 1621:

The principal or his legal representative is bound to indemnify the agent for all acts done by him within the limit of his powers, after the extinction of the agency by death or other cause, while the principal has been ignorant of such extinction.

- [7] Webster JA (Ag) in **Esther Augustin aka Esther St. Marie, representative for Marie Madeleine Marshall aka Marie Madeleine Agustin (deceased) SLUHCVA2013/0033**, interpreted Article 1387 of the Code as follows:

“[26] ... A literal reading of this article means that if there is a promise to sell accompanied by the payment of a deposit (earnest) either party may recede from the promise and the consequences of such recession are limited to the matters listed in the article – forfeiture of the deposit by the giver or return of the double the amount of the deposit by the receiver.”

FINDINGS:

- [8] The Court finds the Claimant to be a more believable witness whose testimony is accepted as true. During cross-examination, the Claimant struck the court as being simple and honest. The Defendant was not an impressive witness, and the Court found him to be unbelievable. During cross-examination, the Defendant was evasive on material issues, surrounding the allegations that the cheque was made out in his name, and that it was he who took the invoice to the bank, and hesitated before answering some questions. The Court finds in favor of the Claimant on the evidence, that a contract existed between the Claimant and the Defendant. This finding was based on several key pieces of evidence:

- [9] **Payment Details:** Firstly, the cheque for \$43,470.40 was made payable directly to the Defendant, not to Autorod Ltd. This payment indicated a direct transactional relationship between the Claimant and the Defendant. If, as the Defendant alleged, the contract was between the Claimant and Autorod Ltd., there was no reason or no good reason advanced why the deposit for the vehicle was made payable to the Defendant rather than the vendor itself. The Court accepts the Claimant's evidence that the Defendant

provided him with the information to obtain a loan for the deposit from the Credit Union and that he had never seen the invoice presented by the Defendant.

[10] The Court finds on a balance of probabilities that the Defendant represented that he would sell the vehicle to the Claimant for the purchase price of \$80,000.00 inclusive of all customs, duties, inspection, brokerage and registration fees, and that is the contract under which the Claimant paid the deposit. At all times, it was the obligation of the Defendant to source, procure and ship the vehicle to Saint Lucia under the promise of the Claimant to pay him the sum of \$80,000.00. I find that the Claimant did not source a vehicle from Japan and purchase it on his own to ship to Saint Lucia.

[11] This finding is further supported by the inability to reconcile the value stated in the invoice of \$16,000.00 USD (approximately \$43,200.00 XCD) and the purchase price of \$80,000.00 which the Claimant alleges included the cost of the vehicle and all the associated duties and fees. On a balance of probabilities, it is highly likely that the Claimant acted under the general direction and instruction of the Defendant, who by the evidence of the purchase price and other contemporaneous documents, stood to make a profit had the vehicle been shipped to Saint Lucia. The Defendant only seemingly distanced himself from the contract when the vehicle could not be procured from Autorod Ltd., and became the Claimant's ally in recovering his deposit.

[12] **Witness Testimony and Email Correspondence:** During cross-examination of the Claimant, Counsel for the Defendant sought imply that because the Claimant was not aware of the location or name of the Defendant's business, nor did he receive an invoice in the name of the Defendant's business, that the Defendant was not the seller and the Claimant was in direct communication with Autorod Ltd., in Japan. However, the Claimant remained unshaken in his evidence that the Defendant was the seller and asserted that it was the Defendant who gave Verne Emmanuel his number to inform him that he was working on what went wrong with the transaction, on behalf of the Defendant.

[13] The Claimant provided a chain of email correspondence between Mr. Emmanuel, a witness for the Defendant (who was not cross-examined), and the agents and/or servants and/or employees of Autorod Ltd. The emails were referred to in Mr. Emmanuel's witness summary and he adopted same into his evidence. The emails referred to "clients" who had deposited funds for four vehicles. On a balance of probabilities, it is highly unlikely that Mr. Emmanuel was referring to the purchasers as 'clients' of the Bureau, but rather as clients of the Defendant, further indicating the Defendant's role as a seller.

[14] This finding is further supported by the witness summary of Mr. Emmanuel, where the persons who did not receive the vehicles were referred to as 'importers' and 'affected parties'. The Claimant's evidence that he knew of two other persons who also lost their monies because of the same issue and the contemporaneous documents undermined the testimony of the Defendant that he was merely acting as an agent, and shows that the Defendant was engaged in an enterprise of importing vehicles to St. Lucia and not merely assisting in recovering the claimant's deposit.

[15] **Defendant's Role:** As a result of the above findings, the court finds that the Defendant's involvement extended beyond the mere facilitation of funds. By directly receiving the cheque and communicating about delivery terms, the Defendant represented himself as a contracting party.

ANALYSIS OF ARGUMENTS

Contractual Relationship:

[16] The Defendant's assertion that no contract existed between him and the Claimant was contradicted by the evidence. The direct payment to the Defendant, coupled with his representations regarding the vehicle, supported the Claimant's argument that a contract was formed. The Defendant therefore failed to prove that he was not a party to the contract and only an agent.

Consideration:

[17] The Defendant argued that the contract lacked consideration and was void under Section 923 of the Civil Code. However, the payment of \$43,470.40 constituted valid consideration for the agreement, making this argument untenable.

Agency:

[18] The Defendant's reliance on Sections 1601, 1620, and 1621 of the Civil Code to establish an agency relationship was inconsistent with the facts. His active involvement in receiving funds and setting delivery terms went beyond the scope of agency.

Loss of Use:

[19] At the beginning of the trial, Counsel for the Claimant conceded that the issue of loss of use, although in the pleadings, did not arise. However, the remedy was revived in the Claimant's submissions. The Claimant, in his pleadings, under the Particulars of Loss and Damage, stated that there was the loss of use of the minibus with income earning capacity at the daily rate of \$350.00. He did not provide any documents nor testimonial evidence to substantiate his claims. In the absence of any evidence whatsoever, the Claimant has failed to prove loss of use and no sum is awarded

Returning Double, the Amount

[20] Counsel for the Claimant relied on Article 1387 to recover double the amount paid as deposit. Based on the interpretation of Webster JA (Ag) in **Esther Augustin**, the Claimant's reliance on this article is misplaced, as the Claimant does not seek rescission of the contract, but rather restitution. In the circumstances, the Claimant is only entitled to the amount of \$43,470.40.

ORDER:

[21] For these reasons, I make the following orders:

1. Judgment is entered for the Claimant against the Defendant;

2. The Defendant shall pay the Claimant damages in the sum of \$43,470.40 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 \$4,852.01. Post judgment interest shall accrue from today's date to the date of payment at the rate of 6% per annum.
3. The Defendant shall also pay the Claimant's costs of this claim on the prescribed scale on the value of the award made (inclusive of pre-judgment interest) calculated in the sum of \$9,664.48.



**Alvin S. Pariagsingh
Judge**

By the Court,

Registrar

Assisted by: Ms. Yeveeda Guinness
Judicial Research Assistant