

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

GRENADA

CLAIM NO. GDAHCV2023/0284

BETWEEN:

MICHAEL ANDERSON

Claimant

and

STEELE'S AUTO SUPPLIES COMPANY LIMITED

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Herricia Willis for the Claimant

Mrs. Michelle Emmanuel-Steele and Ms. Ariel Agostini for the Defendant

2024: October 15th, 22nd

RULING

- [1] **ACTIE, J.:** By claim form filed on 30th May 2023, the claimant claims, among other things, damages for breach of contract and misrepresentation consequent upon the purchase of a Toyota Hiace passenger bus from the defendant company.

Brief background

- [2] The claimant is a bus operator and the defendant is one of the leading distributors of Toyota vehicles on the island. The claimant avers that in or around the beginning of 2019, he informed the defendant of his desire to purchase a Toyota Hiace passenger bus. The claimant states that no documentation or brochure was given to him to assist him in selecting the vehicle, but that it was represented by the defendant that a "19-seater passenger bus" was available.

- [3] The claimant asserts that he relied on the defendant's knowledge and expertise with regard to the seating capacity of the vehicle and agreed to buy a 19-seater Toyota Hiace Mid Roof for \$132,000.00 which he took delivery on 23rd July 2019.
- [4] The claimant states that in the beginning of 2021, he became aware that the Toyota Hiace bus that he purchased (hereafter referred to as "the vehicle") was a 15-seater vehicle. The claimant avers that the 15-seater Toyota Hiace was selling at retail price of \$100,000.00 which is \$32,000.00 less than the amount he paid for the purported 19-seater bus.
- [5] The claimant avers that although the certificate of ownership confirms that the vehicle has a 19-person seating capacity, the Toyota Hiace launched in 2019 had a 15-seating capacity. The claimant states that upon this realisation he immediately contacted his insurer, Beacon Insurance Co. The insurer after investigating and verifying the claimant's contention, downgraded the vehicle insurance to 15 passengers' capacity. The policy was amended, and the claimant was refunded the premium already paid.
- [6] The claimant contends that the lack of seating capacity would severely affect the vehicle's earning potential and his ability to service his loan payments.

Defendant's case

- [7] The defendant contends that the claimant has failed to establish any basis for breach of contract or misrepresentation.
- [8] The defendant states that at no time did it attempt to suppress or hide the features of the Toyota Hiace model which was sold to the claimant. The defendant avers that prior to the claimant's purchase, it held a launch event for the Toyota Hiace Mid Roof passenger bus, where a model was presented and made available for inspection. The defendant at the said launch event demonstrated that the model had a seating capacity for 19 passengers.

- [9] The defendant states that the claimant was in attendance at the launch event and had the opportunity to test drive, inspect and verify the features of the model, including its seating capacity. The defendant further states that the claimant did not query the seating capacity upon inspection of the vehicle.
- [10] The defendant states that it had reasonable grounds to believe and did believe that the representation made at the time of the launch as to the seating accommodation was true. The Licensing Authority authorized the model to be licensed with a seating accommodation of up to 19 passengers and was insured by Beacon Insurance for 19 passengers.
- [11] The defendant further avers that the downgrading by the Beacon Insurance was through no fault of the defendant. Further, the defendant asserts that the claimant is relying on literature from the internet in respect of a motor vehicle with specifications which are not applicable to the Grenada market.

Legal Analysis

Whether the defendant misrepresented the seating capacity of the vehicle to the claimant

- [12] **Halsbury's Laws of England**¹ defines a misrepresentation as:

"a positive statement of fact or law, which is made or adopted by a party to a contract and is untrue. It may be made fraudulently, carelessly or innocently. Where one person ('the representor') makes a misrepresentation to another ('the representee') which has the object and result of inducing the representee to enter into a contract or other binding transaction with him, the representee may generally elect to regard the contract as rescinded."

- [13] The defendant relies on the Privy Council case of **Bisset v Wilkinson & Anr**². In that case, Lord Merrivale relied on dicta of Bowen LJ in **Smith v Land and House Property Corp**³ wherein it is stated:

"It is often fallaciously assumed that a statement of opinion cannot involve the statement of fact. In a case where the facts are equally well known to

¹ (5th edn., 2021) vol. 76, para 701

² [1926] All ER Rep 343

³ (1884) 28 Ch D 7

both parties, what one of them says to the other is frequently nothing but an expression of opinion. The statement of such opinion is, in a sense, a statement of fact about the condition of the man's own mind, but only of an irrelevant fact, for it is of no consequence what the opinion is. But if the facts are not equally well known to both sides, then a statement of opinion by one who knows the facts best involves very often a statement of a material fact, for he impliedly states that he knows facts which justify his opinion."

- [14] This statement of law developed in **Esso Petroleum Co. Ltd v Mardon**⁴, where the case of **Hedley Byrne & Co. Ltd v Heller & Partners Ltd**⁵ was referenced in the following terms:

"It seems to me that Hedley Byrne & Co. Ltd. v Heller & Partners Ltd., properly understood, covers this particular proposition: if a man, who has or professes to have special knowledge or skill, makes a representation by virtue thereof to another - be it advice, information or opinion - with the intention of inducing him to enter into a contract with him, he is under a duty to use reasonable care to see that the representation is correct, and that the advice, information or opinion is reliable. If he negligently gives unsound advice or misleading information or expresses an erroneous opinion, and thereby induces the other side to enter into a contract with him, he is liable in damages."

- [15] At trial it was admitted by Mr. Nigel Hypolite, sales manager of the defendant, that he made the representation to the claimant that the Toyota Hiace Mid Roof Passenger bus was a 19 seating capacity vehicle.
- [16] The claimant made a down payment of \$5,000.00 on 15th January 2019 to secure the purchase of the vehicle which he took delivery of the bus on 23rd July 2019. It is the claimant's pleaded case that between 2019 – 2021 he generally believed that the vehicle he purchased was a 19-seater and that he would not have entered into the contract had the representation not been made. The claimant asserts that the seating capacity was crucial for his business.
- [17] The claimant at trial did not deny his attendance at the launch but states that he did not stay until the end. The defendant's witness on the other hand states that

⁴ 1 QB 801 820

⁵ [1964] AC 465

the claimant did participate in the demonstration and had the opportunity to assess the seating capacity.

[18] The claimant's two witnesses Ms. Talisha Livingston and Mr. Patrick Gidharry provided evidence in their witness statements in support of the claimant's testimony that the Toyota Hiace bus did not have 19 passengers' capacity.

[19] Counsel for the defendant did not cross examine the claimant's witnesses. It was only in closing submissions that counsel for the defendant attempted through one of its witness, Mr. Nigel Hypolite, to challenge the efficacy of the sworn evidence of the claimant's two witnesses.

[20] The objective of eliciting the truth from witnesses through cross examination was totally missed in light of counsel's decision not to cross-examine.

[21] **Halsbury's Laws of England**⁶ states in relation to cross-examination of evidence that:

"Cross-examination is directed to (1) the credibility of the witness; (2) the facts to which he has deposed in chief, including the cross-examiner's version of them; and (3) the facts to which the witness has not deposed but to which the cross-examiner thinks he is able to depose. Where the court is to be asked to disbelieve a witness, the witness should be cross-examined; and failure to cross-examine a witness on some material part of his evidence, or at all, may be treated as an acceptance of the truth of that part or the whole of his evidence."

[22] The object of cross examination is to weaken, qualify or destroy the case of the opponent; and to establish the party's own case by means of his opponent's witnesses⁷. Edmund Powell in **Powell's Principles and Practice of the Law of Evidence**⁸ states:

"the objects are to impeach the accuracy, credibility and general value of the evidence given in chief, to sift the facts already stated by the witness, to detect and expose discrepancies, or to elicit suppressed facts which will support the case of the cross-examining party".

⁶ (5th edn., 2020) vol. 12, para 838

⁷ Sidney L. Phipson, John H. Buzzard, Roy D. Amlot, Stephen Mitchell: Phipson On Evidence (11th edn., Sweet and Maxwell) 648

⁸ (9th Edn, London: Butterworths) 532

[23] Ms. Livingston in her witness statement said that she was present at the launch in July 2019 and witnessed the demonstration. She purchased and took delivery of the Toyota Hiace Mid Roof in August 2019. She states that the vehicle could not adequately hold 19 passengers but could only hold 15 persons. She states that, like the claimant, she obtained the certificate of registration for 19 persons. She said she reported the matter to Beacon Insurance who informed her to contact the defendant. She reported to the defendant and demanded a refund which the defendant refused. She left the vehicle on the defendant's compound for three days and was informed by the defendant that there would be no refund unless she took legal action. The other witness, Mr. Patrick Gidharry, said he had the similar complaints but eventually sold the vehicle.

[24] The evidence of Ms. Talisha Livingston and Mr. Patrick Gidharry supports the claimant's contention that the vehicle although launched as a 19-seater, had a seating capacity of 15 persons.

[25] However, the evidence of Ms. Livingston confirms the defendant's evidence that 19 persons fitted in the vehicle during the demonstration. At paragraph 5 of her witness statement she states "In hindsight when the passengers were coming off the bus I noticed they were small individuals. Not children but adults like myself who is under 5ft 5ins tall". It appears from the evidence that the 19 seating capacity depends on the size of the passengers.

[26] Under the **Road Traffic Act CAP 289A**, it is the Licensing Officer that has the authority to ascertain the seating capacity of vehicle for the purpose of registration. **Section 7(2) and (3) of the Road Traffic Act** states:

"(2) Before registering any goods vehicle, freight passenger vehicle, motor omnibus or trailer, the Licensing Officer shall ascertain, in the manner prescribed, the maximum gross weight or the maximum number of passengers which the vehicle may be authorized to carry, and such maximum gross weight or maximum number of passengers shall be entered in the register and in the certificate of registration.

(3) If any owner of a motor vehicle or trailer is aggrieved at any decision of an Inspector under this section, he or she shall be permitted to appeal to the Licensing Authority, who may uphold, vary or reverse the decision of the Inspector as the Licensing Authority sees fit."

- [27] The vehicle was examined and inspected by the Licensing Authority of Grenada pursuant to the Road Traffic Act and confirmed the maximum seating capacity of the model to be 19 passengers. Section 7 (3) gives an aggrieved registered owner the right to challenge the decision of the inspector in relation to seating capacity.
- [28] The claimant at the trial stated that he did not report the issue to the Licensing Authority however he reported the issue to the Beacon Insurance Company. When asked by the court whether he reported the matter to the defendant, his answer was negative. According to the legislation it is licensing authority and not the insurer that is authorised under Road Traffic Act to certify the seating capacity of the vehicle.
- [29] Throughout the trial, the claimant gave inconsistent testimony surrounding his purchase of the vehicle and his knowledge of its seating capacity. In one instance, the claimant stated that he took delivery of the vehicle and immediately noticed that a row of seating was missing, and that the vehicle's capacity was 15 passengers and not 19. This evidence is contrary to the claimant's pleadings, where he states that it was in the beginning of 2021 that he became aware that the vehicle he purchased was allegedly a 15-seater vehicle, as opposed to a 19-seater vehicle.
- [30] The claimant also makes reference to the Covid-19 pandemic as justification for his lack of complaint on the seating capacity of the vehicle before 2021, as there was a limit to the number of passengers capable of transportation on public buses. However, the court is aware that the first confirmed Covid-19 case in the State of Grenada was towards the end of March 2020.
- [31] The court accepts the evidence that the claimant attended the launch of the vehicle on 19th July 2019, took delivery on 23rd July 2019 and signed a pre-delivery inspection sheet. The pre-delivery inspection sheet signed by the claimant states that he visually inspected the vehicle and met his satisfaction. The claimant also had the benefit of use of the vehicle to its full seating capacity from July 2019 to March 2020 before the Covid-19 pandemic and from September 2020 to September 2021, the date public transport was authorized to resume

operation at its full capacity and the date of the claimant's attorney's letter to the defendant respectively.

[32] The claimant being an experienced bus operator and a previous owner of 19-seating capacity vehicles operated the vehicle for approximately two years without complaint. The claimant during examination in chief admitted that he attended the launch, but did not make any complaints to the defendant within two years of the purchase of the vehicle. Neither is there any evidence of the claimant lodging an appeal to the Licensing Authority.

[33] The court finds that the claimant has failed to demonstrate that the representation made by the defendant was untrue, which is required for successful demonstration of misrepresentation. Even if the representation of the defendant was untrue, the court finds that the defendant had reasonable grounds to believe that the representation was true, given the Licensing Authority's certification that the vehicle has a maximum capacity of 19 passengers, and the claimant's non contest of the seating capacity contained in his Certificate of Ownership.

[34] Accordingly, the claimant has failed to satisfy his claim of misrepresentation against the defendant.

Whether the defendant breached the contract

[35] The claimant relies on the same facts espoused as the defendant's misrepresentation for his allegation of the defendant's breach of contract. The claimant argues that a breach of contract occurred since the defendant gave him an inaccurate and misleading description of the vehicle that was bought.

[36] The court having found that the description given by the defendant was not inaccurate or misleading, given that the capacity of the vehicle is of the view that it is not necessary to consider the issue of breach of contract. However, for completeness the court will succinctly make the following observations.

[37] Firstly, there is no indication on the part of the claimant that the representation made as to the seating capacity of the vehicle was intended to have contractual

force, so as to ground a claim for breach of contract. In **Stair Memorial Encyclopaedia**⁹ it was explained that:

“...breach of contract does not concern contracts flawed from their beginning. Rather it concerns a subsequent event which in itself not only does not detract from, but even presupposes, the initial validity of the contract”

[38] In addition, **Halsbury’s Laws of England** states that:

“Contractual terms must be distinguished from representations, words of expectation or estimate. Such statements may not even give rise to liability as misrepresentations if they amount to no more than a statement of opinion or belief¹⁰.

[39] It is the evidence that there was a completed contract for a specified sum and the delivery of the 19-seater bus agreed by the parties. The claimant has failed to particularize any loss consequent on the alleged breach. Applying the law to the facts, the court finds that the claimant has failed to satisfy his claim for breach of contract.

ORDER

[40] In the above circumstances, the claimant’s claim stands dismissed with prescribed costs on the sum of \$32,000.00 calculated in the sum of \$6400.00 to be paid by the claimant to the defendant within sixty (60) days of today’s date, unless otherwise agreed.

Agnes Actie
High Court Judge

By the Court

Registrar

⁹ Para 346

¹⁰ Halsbury’s Laws of England (5th edn., 2019) vol. 22, para 152