

FEDERATION OF SAINT CHRISTOPHER AND NEVIS  
SAINT CHRISTOPHER CIRCUIT

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2023/0133

BETWEEN:

**BERNARD JOHNSON**

Claimant

and

**WILFRED WALTERS**

Defendant

**Appearances:**

Ms. Natasha Grey-Brookes for the Claimant

Mr. Craig Tuckett for the Defendant

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2024: April 18  
June 6  
July 17  
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**JUDGMENT**

- [1] **SAUNDERS, M:** The Claimant ("*Mr. Johnson*"), who is a mechanic, rented property from the Defendant ("*Mr. Walters*") which he used as a repair shop and in which he also lived so as to prevent persons from breaking into the shop. On 13 July 2023 Mr. Johnson was welding when sparks caught a nearby piece of plastic and the shop caught fire. Unfortunately, Mr. Johnson could not put the fire out as Mr. Walters had disconnected the electricity and water supply on account of unpaid utility bills which, at the time of the fire, Mr. Johnson had paid in large part. On 31 August 2023 Mr. Johnson issued a claim against Mr. Walters for his breach of the implied term of quiet enjoyment and, among other less substantial loss, has sought special damages of EC\$85,473.00 arising from the damage caused by the fire.

[2] Mr. Johnson obtained Default Judgment on 2 November 2023 and on 18 April and 6 June 2024 I heard Mr. Johnson's testimony and his witnesses at assessment of damages hearings. At the hearing on 18 April 2024 both parties indicated that the witness statements filed by Mr. Walters had been previously struck out by the Court and, in any event, did not treat with the issue of quantum. Counsel for both parties made oral submissions at the hearing on 6 June 2024 and having heard the evidence, the oral submissions and read the written submissions, I have assessed Mr. Johnson's damages in the amount of EC\$89,473 for the reasons set out below.

### **MR. JOHNSON'S EVIDENCE**

[3] Mr. Johnson's evidence was mostly confined to the terms of his lease, Mr. Walters' breach and the circumstances of the accident. He also explained that many of the vehicles that were lost belonged to his customers and stated that he was now obligated to replace them. Pictures taken by Mr. Johnson of burnt vehicles and vehicle parts lost in the fire were also attached to his statement. Mr. Johnson also gave evidence that he had asked Messrs. Anthony Fraites and Shane Brandy, two mechanics, with experience providing estimates to give evidence on his behalf concerning the replacement cost of the burnt vehicles and auto parts. Lastly, Mr. Johnson noted that the total special damages that he suffered was in the amount of \$85,473.00.

[4] Mr. Tuckett's cross examination of Mr. Johnson concerned, primarily, the fact that no receipts were presented concerning the lost items. When Mr. Johnson drew his attention to the estimates given by Brandy and Fraites Mr. Tuckett challenged that none of them was an insurance assessor. Mr. Tuckett also suggested to Mr. Johnson that no correspondence was adduced by him in support of his claim that his customers were in fact seeking the replacement of their vehicles. In one instance, when Mr. Johnson was asked whether the vehicle belonging to one of his customers was insured, Mr. Johnson stated that he was unaware. Mr. Tuckett further asked whether Mr. Johnson had called an insurance assessor to give evidence on his behalf and if he had obtained a St. Kitts and Nevis Fire and Rescue Services report. Both of which Mr. Johnson denied doing.

### **SHANE BRANDY'S EVIDENCE**

- [5] Mr. Brandy gave evidence that he had researched the replacement cost of the vehicles and other car parts and attached a report to his witness statement which totaled \$20,083.33 as the replacement cost. Mr. Brandy's evidence concerned one portion of the automotive chattels while Mr. Fraites' evidence dealt with the remainder.
- [6] Mr. Tuckett began his cross-examination by suggesting to Mr. Brandy that he was not a mechanic. Although Mr. Brandy accepted that he was not, contrary to his statement, he later stated that he had completed a course in car repair while at the St. Kitts and Nevis Technical College and had been importing and sourcing auto parts for customers for a long period of time. In the course of cross-examination, Mr. Brandy explained that customers came to him because he has a reputation for researching and very quickly bringing into the jurisdiction auto parts. It was suggested to Mr. Brandy that he never saw a fire report of the vehicles lost from the St. Kitts and Nevis Fire and Rescue Services, so he could not be absolutely certain what had actually been damaged at the time of the incident. Mr. Brandy accepted that he had not seen such a report and therefore could not be absolutely certain what was lost.

### **ANTHONY FRAITES' EVIDENCE**

- [7] Mr. Fraites, who gave evidence in his witness statement that he had visited the burnt shop in about July 2023, gave oral evidence that he had been giving vehicle valuations for more than 20 years. Having visited Mr. Johnson's garage, he prepared a damage report based on the pre and post-accident values of the damaged items but noted that some of the items were completely destroyed by the fire. Mr. Fraites' report, which was attached to his witness statement, gave an estimated total loss of \$65,040. Mr. Tuckett suggested to Mr. Fraites that he was not an insurance assessor and was not in a position to give an estimate of the age of the burnt items. In one exchange Mr. Tuckett questioned Mr. Fraites concerning a burnt motorboat on the property which he had assigned a value of \$9,000. The exchange was as follows:

*"Q. In your estimation, to get the pre-value of the boat, how did you come to that?"*

*A. Based on the valuation of a boat of the same kind. We do an inspection of the damaged boat and we find out the type, what it was made from and do an investigation of what a boat of that nature would cost before the damage*

*Q. But that would depend on if the boat was brand new?*

*A. Not necessarily. If we do the valuation on a brand-new boat, we do a depreciation.*

*Q. How old the boat was?*

*A. Not exactly sure.*

*Q. Do you know the boat was not brand new?*

*A. I know that.*

*Q. Do you know when it was bought?*

*A. No.*

*Q. Do you know how much it was bought for?*

*A. No.*

*Q. So you really don't know if the true value was \$9,000 then?*

*A. I did it on the market value.*

*Q. "Pre-value" means you know the value at the time. Do you don't know the age of the boat?*

*A. I don't know*

- [8] Mr. Tuckett continued this line of questioning in relation to the motor vehicles on the property, however, Mr. Fraites indicated that he was told the age of the vehicles when he made his report but could not then remember what they were. On being questioned about his methodology in obtaining the pre/post fire values, Mr. Fraites indicated that he would go to the relevant car dealership and ascertain the price of the relevant vehicle when it was new and conduct a depreciation exercise to arrive at the value at the time of the fire. Mr. Tuckett also questioned how Mr. Fraites could be certain that the vehicles were all damaged in July 2023 if he did not have a St. Kitts and Nevis Fire and Rescue Services report. Mr. Fraites acknowledged that he could not be 100% certain without such a report.

[9] In general, Mr. Tuckett's examination of the witnesses probed the extent to which they could be wrong as it was possible that more proof could have been supplied to support the figures and statements advanced.

## THE LAW

[10] It is undoubtedly the case that special damages must be specifically pleaded and proved<sup>1</sup>. In that regard, Mr. Walters has challenged, mainly, the sufficiency of the proof supplied by Mr. Johnson and, in summary, has made the following submissions:

- a. The evidence of Fraites and Brandy is inadmissible as being opinion evidence for which no permission was given pursuant to Part 32.
- b. Fraites and Brandy have no direct knowledge of the fire and rely on the extent of the damage on Mr. Johnson's evidence. As such their evidence is hearsay; and
- c. Mr. Johnson did not adduce sufficient proof of the damage.

[11] In my view, all of Mr. Walters' arguments can be resolved by an application of the principles set out in the decision of **Grant v Motilal Moonan Ltd** (1988) 43 WIR 372. **Grant v Motilal Moonan Ltd** has been applied in the Eastern Caribbean Supreme Court on many occasions, in particular, by Barrow J (as he then was) in **Malcolm Joseph et al v Alison Charles** Claim No 2002/0077, Baptiste CJ (Ag.) in **Saffron Limited v Angel Estates Limited** ANUHCVP2012/0045 and Alleyne CJ (Ag.) in **Leanne Forbes v Ulbana Morillo** Civil Appeal No. 8 of 2005.

[12] In **Grant v Motilal Moonan Ltd** the appellant, in support of her claim for special damages, compiled a list of items and their prices but was unable to provide receipts nor could she remember when she had purchased the items. The respondent did not adduce evidence of their own but contended that the appellant could have done more to prove her case, in particular, by producing

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<sup>1</sup> **Steadroy Matthews v Garna O'neal** BVIHCVP2015/0019

receipts and retaining the services of a valuator to give evidence. It was immaterial for the respondent whether they had adduced evidence and it was submitted that the appellant's evidence was sufficiently challenged in cross examination when she was questioned about the availability of receipts and a valuation by a valuator. In deciding that the Master had fallen into error in finding that the appellant had not proved her damages with sufficient particularity, Bernard CJ stated as follows:

*"In my opinion, the question about receipts which was the line pursued in cross-examination by the attorney for the respondents, could only have gone to test the credibility of the appellant of the fact (firstly) of earlier procurement and (secondly) possession by her of the articles at the time of the accident. This line of cross-examination could not and did not go to proof of the cost of replacement of the chattels which were destroyed, and in respect of which there was no challenge to the veracity of the appellant's testimony of the fact of their loss. By the production in evidence of the list of chattels destroyed together with the cost of their replacement, the appellant had established a prima facie case both of the fact of loss of those articles and of the cost of their replacement at the time. Her special damage had to be established on a balance of probabilities. The respondent called no evidence in rebuttal. In the event, the master, in my view, either had to accept the appellant's claim in full or, if for whatever reason she had reservations, she should have approached the matter along the lines in Ratcliffe's case by applying her mind judicially to each item and the cost therefor in the list. This she did not do. Instead she merely, as stated earlier, made an ex gratia award. She did so on the premise, wrongly in my view, that the appellant had called no evidence of any kind in support of her claim. The master made this gesture, it would seem, in apparent sympathy for the appellant." [emphasis supplied]*

**Part 32 permission required for Fraites and Brandy to give evidence concerning the replacement costs of the items?**

- [13] It is always important to recall that an expert witness governed by Part 32 is, "an expert who has been instructed to prepare or give evidence for the purpose of court proceedings but does not include a person with expertise who is giving

evidence as a witness of fact<sup>2</sup>. In this case Mr. Johnson has said to the Court that he consulted Fraites and Brandy for their services regarding what it would cost to replace the burnt items in his shop. For Mr. Brandy, his evidence on cross-examination was that the sum of \$20,433.33 is what he would charge to import the lost items on Mr. Johnson's behalf. Mr. Brandy's report is, in fact, labelled "invoice". It is clearly evidence of a factual nature.

[14] As regards Mr. Fraites, it is accepted that, insofar as his methodology involved a reckoning of depreciation, he would have brought to bear his experience and expertise in producing his report. Notwithstanding that, the purport of Mr. Johnson's evidence is as follows: He went to Mr. Fraites, an experienced and qualified individual concerning vehicle valuations in St. Christopher and Nevis to obtain the replacement cost of burnt items. He has submitted Mr. Fraites' report concerning that cost. Mr. Fraites has given oral evidence that he produced the report. Equally as with Mr. Brandy, the factual substratum of Mr. Fraites' evidence is that Mr. Johnson sought and obtained from an individual with relevant expertise the cost of the replacement of the relevant items.

[15] By reason of the foregoing, a prima facie case arises in respect of the special damages sought by Mr. Johnson under the principles in **Grant v Motilal Moonan Ltd**. As stated by Barrow J in **Malcolm Joseph et al v Alison Charles** concerning the ratio in **Grant v Motilal Moonan Ltd**, "*values do not have to be proved by documentation and the decision readily lends support to the view that reasonable and informed estimations may be accepted as proof, especially in the absence of contrary evidence.*"<sup>3</sup>

***Is Fraites and Brandy's evidence concerning the fire inadmissible hearsay?***

[16] Mr. Johnson gave direct evidence of the fire and the extent of the damage caused by it. Mr. Johnson's witness statement also attached several photographs taken by him of the damage caused by the fire which, upon review,

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<sup>2</sup> Eastern Caribbean Supreme Court Civil Procedure Rules (revised edition) 2023; Part 32.1(2)

<sup>3</sup> **Malcolm Joseph et al v Alison Charles** Claim No 2002/0077; [8]

was extensive. Mr. Walters, having failed to adduce any evidence of his own, is hard pressed to challenge that evidence. As the Court finds that evidence is sound, it really cannot be said that Fraites and Brandy improperly relied on it in giving their reports. It is not sufficient for Mr. Walters to say that Mr. Johnson did not obtain a St. Kitts and Nevis Fire and Rescue Services report. Mr. Johnson did not have to do so having come to Court and given evidence of the fire and produced the graphic photographic evidence which he has.

***Did Mr. Johnson adduce sufficient proof of the damage caused by the fire?***

[17] In my view, Mr. Johnson has supplied sufficient evidence to support his claim. Mr. Johnson gave credible evidence concerning how and when the fire occurred and, as I have set out above, produced photographs of the damage caused. Mr. Johnson did not need to adduce the evidence of an insurance assessor or a valuator, which the decision **Grant v Motilal Moonan Ltd** makes clear. It was sufficient for him, in the face of an undefended claim, to adduce the reports of Fraites and Brandy. Furthermore, when I review on an individual basis, the replacement costs of the items as reported by Fraites and Brandy, I do not find them to be unreasonable particularly considering the extent of the fire damage and the significant amount of vehicles damaged.

[18] Insofar as submissions have been made that Mr. Johnson cannot say whether some of the vehicles lost were insured by their owners, as the bailee of the motor vehicles, Mr. Johnson is under an obligation to return them (or their replacement cost) to their owners<sup>4</sup>. It does not matter that the customers (the bailors) may be able, or, have made a claim against their insurers. That is a matter for the insurer to take up with their assured when they are repaid by Mr. Johnson<sup>5</sup>.

**CONCLUSION**

[19] I have decided that Mr. Walters is liable for Mr. Johnson's special damages in the amount of \$85,473.00. Having reviewed the list of items, the only item which troubled me somewhat was the lost fiberglass boat which Mr. Fraites indicated

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<sup>4</sup> See **Constance Astaphan v Auto Trade Limited** DOMHCV2018/0055 as being authority for the proposition that a mechanic is in a bailor/bailee relationship with their customer

<sup>5</sup> **Parry v Cleaver** [1969] 1 ALL ER 555

he had never known the age when he gave his report. Considering the size of the boat (which I was able to gather from one of the photographs supplied<sup>6</sup>) and the fact that the engine was damaged as well<sup>7</sup>, I do not find the total sum of EC\$9,000 to be unreasonable in respect of its replacement cost.

[20] Mr. Johnson has sought loss of earnings for 2 weeks following the fire. Virtually no evidence was provided to support such earnings except for the bald statement by Mr. Johnson that he lost EC\$4,000 per week. Such a sum, however, is unreasonable without additional evidence, for example, concerning the particular jobs Mr. Johnson had been retained to perform and the payment promised. I am notwithstanding prepared to order general damages in the sum of EC\$2,500 for the breach of the covenant for quiet enjoyment under the principles in **Jackson v Horizon Holidays Ltd.** [1975] 3 ALL ER 92. No award, as also sought by Mr. Johnson, can be made for aggravated damages on a claim for breach of a covenant for quiet enjoyment<sup>8</sup>.

[21] Mr. Johnson has claimed EC\$8,500 for the loss of use of a vehicle. I find that sum excessive. On a claim for loss of use of a non-profit earning chattel the Court must make a finding concerning the reasonable cost of obtaining a replacement over a reasonable period of time<sup>9</sup>. As Mr. Johnson has given evidence that his daily cost of a replacement was EC\$50, his claim of EC\$8,500 would mean that he is seeking to recover the loss of a vehicle for the period of 170 days. No rationale is given why Mr. Johnson could not secure a replacement vehicle in less time than that. I have considered such authorities as, **Malcolm Joseph et al v Alison Charles** and **Edlyn Francis v Anthony Chasteau** GDAHCV2018/0097, in which the periods of 66 and 92 days, respectively, were considered reasonable but where reasons were actually proffered by the claimants for the delay. Having done so, I award loss of use to Mr. Johnson in the amount of EC\$1,500 which is comprised of \$50 per day for 30 days. That is

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<sup>6</sup> The bottom of the drydocked boat is visible at the top right of the first photograph in **BJ5** which is attached to Mr. Johnson's witness statement.

<sup>7</sup> The first item listed in **BJ5**, which is attached to Mr. Johnson's witness statement, notes that the fiberglass boat and engine are estimated to be worth \$9,000.

<sup>8</sup> **Kenny v Preen** (1963) 1 QB 499

<sup>9</sup> A fuller discussion of the principle is contained in the decision of Master Sandcroft in **J.Q. Motors Limited v Desmond Wallace et al** SLUHCV2019/0072

the amount I consider to be reasonable, Mr. Johnson having not condescended to an explanation of the delay.

[22] For all of the reasons set out above my Order is as follows:

- a. Special Damages to Mr. Johnson in the amount of \$85,473.00.
- b. General Damages to Mr. Johnson in the amount of EC\$2,500.
- c. Loss of use in the amount of EC\$1,500 to be paid to Mr. Johnson.
- d. Prescribed costs to Mr. Johnson.

**Yuri Saunders**

Master

**Registrar**