

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

GRENADA

CLAIM NO. GDAHCV2023/0448 (formerly GDAHCV2021/0075)

BETWEEN:

GEORGE MCDONALD

Claimant

and

SAMUEL LEWIS

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Herricia Willis for the Claimant

Mr. Benjamin Hood for the Defendant

2023: November 21st
February 27th

JUDGMENT

- [1] **ACTIE, J.:** In a claim form filed on 19th February 2021, the claimant claims an outstanding debt in the sum of \$25,000.00; interest; such further or other relief as the court deems fit and costs.

Facts

- [2] It is uncontroverted that the parties entered into an oral contract agreement for the claimant to import a 2012/2013 Caterpillar Yellow 950h Loader for the sum of \$153,784.00, however the manufacturer delivered a 2003 Loader to the claimant instead of a 2012/2013 Caterpillar Yellow 950h model. The contract being breached, the claimant was under a duty to refund the defendant the deposit of \$60,000.00 paid for the 2012/2013 Caterpillar Yellow 950h Loader.

- [3] The claimant avers that subsequently, the parties entered into an oral agreement for the defendant to purchase the 2003 Loader for \$100,000.00, but was reduced to \$85,000.00 and, taking into consideration the deposit already paid, leaving a balance of \$25,000.00 to be paid by the defendant. The claimant avers that the parties agreed that the defendant would pay the remaining balance of \$25,000.00 to the claimant on or before 15th November 2019.
- [4] In August 2019, the defendant took delivery of the 2003 but failed to pay the balance as agreed.

The Defendant's case

- [5] It is the defendant's case that the 2003 Loader was in deplorable condition, and he initially refused to accept, but eventually accepted the 2003 Loader in an effort to mitigate his losses, although he did not agree to pay the balance of monies due for the 2003 Loader.
- [6] The defendant states that in the circumstances, he decided to purchase another machine and that he paid \$260,900.00 for same. The defendant counterclaims against the claimant for breach of contract, the result of which he incurred loss and damage. The particulars of the breach, as pleaded by the defendant, include: failure to deliver a 2012 Caterpillar 950h Loader; failure to repair the 2003 Liugong Loader; and failure to return the deposit of \$60,000.00. The defendant counterclaims for special damages of \$320,900.00; general damages for breach of contract; costs; interest; and further or other relief as the court deems fit.
- [7] The sole issue is whether there was second valid oral contract between the parties for the purchase of the 2003 Loader by the defendant.
- [8] In the case of **Donald Bridgeman v HKZ INC**¹ the following was stated:

“The essential elements of a valid contract are trite. There must be an offer, an unconditional acceptance of that offer by another person and there must be consideration flowing from the promisor... To give rise to a binding agreement, the contracting parties must evince an intention to create legal

¹ GDAHCV2021/0011

relations and with each other... In *Keith Garvey v Richardo Richards*, Harris JA (at para 10) put it this way:

“It is well-settled that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into the contractual relationship and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral written agreement, is in existence.”

- [9] The defendant said that he and the claimant came into an agreement that the claimant would supply the needed parts to repair the machine and would bear the costs, but the claimant did not make good of the agreement. The defendant contends that although he said he didn't want the 2003 Loader, he held on onto the machine on condition that it could be fixed and made operational.
- [10] It is the claimant's evidence that after the defendant's mechanic inspected the 2003 Loader, the defendant indicated that he wanted to buy the 2003 Loader. The claimant states that the agreed price for the Loader would be \$100,000.00, with the first payment of \$15,000.00 to be paid when the defendant took delivery of the vehicle. The claimant's evidence is that he further reduced the price of the Loader to \$85,000.00, and that there was agreement that the defendant would pay the outstanding balance of \$25,000.00, taking into account the deposit of \$60,000.00 under the previous agreement into consideration.
- [11] It can be gleaned from the evidence that there was some agreement between the parties by their conduct with respect to the defendant's purchase of the 2003 Loader, though the terms of same are not clear. Neither of the parties produced evidence which support their individual cases with respect to the agreed value of the 2003 Loader.
- [12] The defendant alleges that the 2003 Loader was dysfunctional but did not proffer evidence with respect to the non-functionality of the vehicle. However, the claimant's witness, Carl Greenidge, a mechanic who inspected the vehicle on behalf of the defendant, confirmed that the 2003 Loader was in good condition

and no parts were required, though there was a minor abnormality in the form of an oil leak.

[13] Carl Greenidge further indicated that he observed the 2003 Loader at the defendant's premises at Dusty Highway, and that in or around August or September 2019, to date, he observed the defendant using the 2003 Loader at Gravel & Concrete and other places in St. George.

[14] The court accepts the claimant's evidence and is of the view that the claimant has proved his case on a balance of probabilities that there existed a contract with the defendant for the payment of the balance of \$25,000.00. This is in keeping with the contemporaneous requests made in the correspondence with the defendant since the breach of payment by the agreed date and the continuous hold on the said Loader 2003.

Whether the claimant was in breach of contract

[15] The defendant in his counterclaim states that due to the initial breach of contract of the claimant with respect to the failure to deliver a 2012 Loader, he was forced to purchase another machine for the sum of \$260,900.00. Counsel for the defendant argues that the loss of earnings that the defendant would have incurred would have been much more significant than the cost of the replacement machine. The defendant offers no evidence in support of this besides his own assertions.

[16] 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".

² Civil Appeal No. 7 of 2002

- [17] Without evidence as to how the use of a 2003 Loader as opposed to a 2012/2013 Loader would have effected a loss of future earnings, the court is unable to make a ruling as to the entitlement of the defendant to the entirety of the cost of a machine, which the defendant took upon himself to purchase for the benefit of his business. It was the evidence at trial that the 2003 Loader would basically perform the same functions as the Caterpillar but with a lower capacity. Also, the defendant has failed to prove the value of the 2003 Loader to indicate whether it is less than the \$60,000.00 deposit paid to the claimant plus the benefits he has derived since he took possession of 2003 loader.
- [18] In any event, as is the evidence of Carl Greenidge, the 2003 Loader as supplied by the claimant was already in use by the defendant in his trade. Accordingly, the defendant has failed to prove his counterclaim for the reliefs claimed therein.

ORDER

- [19] For the foregoing reasons it is order and directed as follows:
1. Judgment is entered in favour of the claimant in the sum of \$25,000.00 with interest at the rate of 3% per annum from the date of filing the claim until judgment and at the rate of 6% per annum from the date of judgment until payment in full with prescribed costs in the sum of \$10,000.00.
 2. The defendant's counterclaim stands dismissed with prescribed costs agreed in the sum of \$15,000.00 to the claimant.
 3. The prescribed costs shall be paid within thirty (30) days of today's date, unless otherwise agreed by the parties.

Agnes Actie
High Court Judge

By the Court

Registrar