

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2016/0398

BETWEEN:

VANYA EDWIN-MAGRAS

Claimant

And

ST. LUCIA ELECTRICITY SERVICES LIMITED

Defendant

Appearances:

Ms. Christa Anthony with Ms. Shari Ann Walker of Counsel for the Claimant
Ms. Vanessa Pinnock of Counsel for the Defendant

2023: May 2;
November 13.

RULING

- [1] **INNOCENT, J:** This matter came before the court on remittal from the Court of Appeal for an assessment of damages. In the appellate proceedings, the Court of appeal had found that the learned trial judge had erred in his approach to the assessment of damages.
- [2] The Court of Appeal held that the cost of replacement was not the appropriate measure of damages where it is unreasonable, in all the circumstances, to demand an exact replacement, such as where it is well in excess of the value of what was destroyed and where a reasonable substitute is available.
- [3] The Court of Appeal also observed that it was clear from the judgment that the learned judge awarded damages on the basis of the cost of the new refrigerator purchased by the claimant in the present proceedings sometime after the loss was incurred, which was in excess of the value of the damaged refrigerator.

- [4] The Court of Appeal also found that the judgment did not acknowledge that the appropriate value is that which a willing buyer would be prepared to pay to a willing seller for a similar appliance immediately prior to the loss.
- [5] Ultimately, the Court of Appeal found that the learned judge erred in using the cost of a new refrigerator as the basis of the assessment. The Court of Appeal also found that the learned judge had fallen into error thereafter having assessed a depreciated value which was unsupported by the appropriate evidence.
- [6] On the foregoing basis, the Court of Appeal set aside the learned judge's award of damages and remitted the matter to the court below for an assessment of damages presumably in accordance with the guidance which the Court of Appeal gave with respect to the correct approach in the assessment of damages on the loss of a chattel.
- [7] The court does not think it necessary at this stage to regurgitate the legal principles in the assessment of damages for the loss of a chattel as this has been appropriately distilled in the appellate decision. The approach which the court will take is to apply the proper principles to the evidence which is presently before the court keeping in mind the guidance already given by the Court of Appeal. The parties are all in agreement regarding the appropriate method of assessing damages for the loss of a chattel given the circumstances inherent in the present case.
- [8] On 19th December 2022, the claimant filed a notice of application for the appointment of an expert to provide an opinion on the market value of the damaged refrigerator immediately preceding the loss and the price of a comparable replacement at the time of the loss or the price of a reasonable substitute; and to determine its depreciated value in order to assist the court in determining the correct measure and quantum of damages to be awarded to the claimant. This application was granted.
- [9] In giving its ruling on that application the court observed that it was clear from the judgment of the Court of Appeal that they had found that the trial judge had fallen into error since there was no evidence before him to substantiate his findings in relation to the quantum of damages awarded to the claimant. This was partly the basis upon which the appellate court set aside the trial judge's order on assessment of damages.

- [10] It is apparent from the Court of Appeal's judgment that the Court of Appeal appreciated the utility in the judge carrying on the assessment having the benefit of expert evidence in order to make a proper assessment. This is particularly reflected at paragraph [61] of the appellate judgment where it reads in part:
- “...this would require either evidence of the attempt to sell the item prior to the loss, or evidence as to the market value of comparables or any expert evidence opining on valuation...”
- [11] Based on the foregoing passage in the judgment of the appellate court, this court, in giving its reasons for granting the application to adduce expert evidence had opined that it appeared that the learned justices of appeal considered and accepted that the reception of expert evidence as it related to the question of the value of the chattel at the time of the loss and the amount of depreciation would have assisted the court in its evaluation of the evidence on the assessment of damages. No such expert evidence was presented before the trial court in relation to these issues.
- [12] Permission was granted to the claimant to adduce expert evidence from Mr. Theophilus Francis ('Mr. Francis'). Mr. Francis prepared a report dated 15th February 2023. Mr. Francis is a loss adjuster with some 30 years' experience. It appeared from Mr. Francis' report that his work involves investigating all types of property losses, including buildings, machinery, appliances and the like and advising regional and international insurers on issues of liability and quantum/values.
- [13] He said in his report that he conducted research and inquiry for historical information with respect to trades involving a 36" Viking Refrigerator which was the precise refrigerator owned by the claimant. He was able to confirm by the Invoice produced that the item was purchased new from La Cuisine Gourmet, a Florida supplier. He gave a thorough description of the item by reference to its model name, model type and serial number which coincided with the item for which the claimant seeks to recover loss. The also described the item as a commercial type unit used in the restaurant trade, bakeries, and by food handlers and keeps items refrigerated and not frozen.
- [14] Mr. Francis explained his experience with this particular brand of item and stated:
- “The Viking brand is known to us and it is one of the market leaders. By virtue of having dealt with hotel claims in Saint Lucia going back to 2008 ... and 2013, we are aware that this brand is sold but not represented in Saint Lucia.”

[15] Mr. Francis also outlined the challenge with arriving at the market value for such an item. He said in his report that:

“For an accurate comment on the market value of such an item, there is a need for a repository of trading information in that regard (for example trade journal or database). There is no such repository in St. Lucia and we aver that even in much larger markets there are no such repositories as the frequency, volume and value of trading in items of this nature does not warrant it.”

[16] The report then outlined the methodology adopted and utilised in arriving at the values. The report states:

“For a snapshot of values at any given point in time for an item of this nature, common practice is to examine trade sites and with the reference of new equipment dealers, seek direction to used items available and make an assessment. In addition, and as cross reference, we would make calculations that take account of historical cost (acquisition cost and movement costs) as well as current costs and apply standard depreciation to a balance of these.”

[17] It appears from the instructions given to Mr. Francis he was asked to comment on the value of the item as at May 2015 at or about the time of loss. In response, Mr. Francis highlighted in his report the approach that could be taken to arrive at such a value. He stated in the report that:

“Quite apart from the fact that there is no or no significant trading in this type of item in Saint Lucia, even in the wider market place, trading in this type of appliances is not so significant that searchable records are produced and available. There are no journals or sites that record the history of trades in this or similar items...”

[18] Consequent on the challenges mentioned above, Mr. Francis indicated that the following methodological approach was adopted in order to arrive at the relevant values. The approach utilised involved taking account of historical cost which was the actual purchase price; factoring in reasonable freight and handling to Saint Lucia; factoring in nearest replacement costs; extrapolating the item's value back to 2015 while factoring in all of the foregoing factors; and take account of reasonable depreciation to a balance in 2015 and current costs by reference to a standard depreciation schedule. It must be recalled that the sums expended on freight and duties were not challenged at the trial.

[19] Having stated the methodology adopted, the report presented the following values: (1) landed costs in the sum of EC\$23,226.62; (2) current value of a similar item in 2022 EC\$41,943.48; (3) value in 2015 EC\$27,686.13; and (4) depreciation as of May 2015 at rate of 7% EC\$19,401.02.

- [20] With respect to current value, the report stated that the model of the claimant's refrigerator was discontinued since 2014 and has been replaced by a model that is of similar make, style, capacity and amenities but reflects updated technology. The report gave the current costs of the later unit as US\$10,659.00. The report went on to state that having regard to approach to valuation already taken, the landed value calculated as at 2022 was US\$15,437.99 converted to EC\$41,943.48.
- [21] Concerning the new of value of the refrigerator as at 2015, Mr. Francis stated that a record of the costs of a new item could not be ascertained as at that date. Therefore, he attempted to extrapolate the value as best as he could. He outlined in his report the formula that he used to arrive at this value.
- [22] In respect of depreciation, Mr. Francis stated in his report that commercial refrigerators are known to be long lasting and normal useful life exceeding 15 years and 20 years is not uncommon. He set out the methodology used to calculate depreciation. He concluded that:
- “Having regard to the over EC\$8,000.00 differential in price between the new unit in 2015 and what would then have been a 3 years and 9 months old one, he anticipated that a willing buyer would have considered paying EC\$19,000.00 to EC\$19,500.00 for the unit in May 2015.
- [23] The court has painstakingly recited a substantial portion of Mr. Francis' report. This is primarily so because of the nature of the challenge mounted by the defendant in cross-examination in relation to his report and the reliability and credibility of the opinions expressed therein.
- [24] At first, it appeared by the tenor of the cross-examination that the defendant sought to impeach Mr. Francis' independence as an expert witness. However, what is of particular significance in relation to Mr. Francis' testimony in cross-examination concerned his opinion concerning the price that a willing buyer would have paid for the refrigerator.
- [25] Based on the tenor of Counsel's cross-examination, it appeared that she took issue with the accuracy of this figure having regard to the time when it was calculated, that is whether the value was at May or June 2015. Mr. Francis testified that he had read the claimant's witness statement and the statement of claim. He testified that the calculation could have been as at June 2015 but he was not sure. He said that this discrepancy as to date would have made little or no difference to the value. In his words, it would be “negligible”.

[26] Mr. Francis was also cross-examined as to the defect in the refrigerator's cooling system. Counsel's suggestion was obviously that this would have somehow diminished the price that a willing buyer would have paid for the refrigerator. Mr. Francis said:

"I was advised that there was a defect in the cooling system of the item. I was aware of the thermostat installed as a result or to remedy the defect. A willing buyer would consider that in determining the price for it if its operability was in doubt."

He agreed that if a defect existed at the time, a willing buyer would pay less. However, in the court's view, this issue simply does not arise on the present assessment of damages for the simple reason that the learned trial judge had proceeded on the basis that the refrigerator was destroyed and not merely damaged. It did not appear that the Court of Appeal had disturbed this finding of fact. Therefore, the question of a willing buyer having to retrofit the refrigerator with a thermostat is irrelevant for the present purposes.

[27] Counsel for the defendant sought to illicit from the witness whether he was aware that the refrigerator was still in the claimant's possession. He testified that it was not within his knowledge whether the claimant was still in possession of the item; and that he was not asked to address the salvage value of the item and he had not done so.

[28] The court does not think it either necessary or appropriate to consider the question of salvage value of the refrigerator in this case. It appears from the judgment of Smith J addressed the issue of the salvage value of the refrigerator where he said:

"Once Mrs. Magras has been paid, Lucelec is entitled to possession of the Viking refrigerator in order to salvage value of that refrigerator."

Therefore, there is no necessity in the court factoring salvage value into the present assessment.

[29] The court is fortified in its view by what is contained at paragraph [48] of the appellate judgment:

"It is apparent that the trial judge was therefore satisfied that the assessment should proceed on the basis that the appliance was destroyed and not simply damaged. No doubt this explains his order that, once the respondent had received compensation, the appellant is entitled to possession of the refrigerator in order to salvage its value."

[30] It appeared from the written submissions of both parties that they sought to canvass the issue of the other awards made by the trial judge. It did not appear from the tenor of the judgment of the Court of Appeal that the remittal to the court below required a reassessment of damages in relation to these

items. The court's singular concern on this remittal is to reassess the award of damages previously made in relation to the damaged refrigerator. It did not appear that the Court of Appeal disturbed the other awards made by the judge in the court below.

[31] This is evident based on what is contained at paragraph [27] in the judgment of Smith J where he said:

“...Lucelec did not dispute the sums claimed for surge protector replacement, bulb replacement, electrical inspection and works paid for by Mrs. Magras as a result of the electrical fault, food storage and catering fees. Neither did it dispute the sums claimed for freight, insurance duties, brokerage and transportation...”

Therefore, it is safe to conclude that the appellate judgment did not disturb the learned trial judge's findings in respect of those awards.

[32] In the circumstances, the court finds no reason for not accepting the findings in Mr. Francis' report. It appears that Mr. Francis' report has complied with the provisions of CPR 32 and therefore, the challenge mounted by the other side in respect of his impartiality among other things was not well founded. Therefore, the court accepts Mr. Francis' valuation of the refrigerator at the time of loss and the extent of Mrs. Magras' entitlement to damages.

[33] Therefore, the claimant is awarded the sum of EC\$19,500.00 representing the price that a willing buyer would be prepared to pay to a willing seller for a similar appliance immediately prior to the loss. The judge in the court below had ordered that the defendant pay prescribed costs in accordance with CPR 65(5). The court is not empowered to disturb any of the other orders made by the judge in the court below or the orders contained in the judgment of the Court of Appeal.

[34] The defendant shall pay the claimant's costs on the assessment of damages in the sum of \$1,500.00.

Shawn Innocent
High Court Judge

By the Court



Dp. Registrar