

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2012/0258

BETWEEN:

IVAN O'NEAL

CLAIMANT

and

COURTS (ST. VINCENT) LIMITED

DEFENDANT

Appearances:

Mr. Ivan O'Neal in person

Ms. Mandella Campbell with Mrs. Cheryl Bailey for the Defendant

2018: November 27

2019: March 7

JUDGMENT

BYER, J.:

[1] By Statement of Claim filed on the 27 February 2013, the claimant sought the following reliefs:

- a) General Damages including damages for emotional distress
- b) Damages for misrepresentation and/or damages for the tort of deceit.
- c) Refund of fees charged for Bailiff fees \$954.03
- d) Refund of monies charged for interest on overdue payment \$680.00
- e) Such further and other relief as to this Honorable court seem fit
- f) Costs

It was only at the trial of this matter that the claimant for the first time raised the issue that the relief claimed was in fact incorrect and placed the blame firmly at the feet of his then counsel on record.

- [2] In fact this entire case was a perfect example of the downfalls of parties in complicated matters appearing pro se.
- [3] Be that as it may, the claimant persisted in his claim as it was before the court.
- [4] The reliefs prayed for made it clear that the relief sought referred to a Hire Purchase Agreement (HPA#1) made between the claimant and the defendant dated the 27 June 2009. The allegation of the claimant was that, at the time that the claimant entered into the HPA#1, the defendant had an ongoing promotion in which customers who bought goods totaling a certain sum, were entitled to a free gift within that price range. The claimant alleges that his free gift was a television set.
- [5] However, it was only at the trial of the matter that it was revealed to the court, that there had been in fact two separate instances when the claimant conducted business with the defendant resulting in two separate transactions under two separate offers by the defendant to the general public.
- [6] The claim clearly dealt with statement of Account#720013608931 or as stated above HPA#1.
- [7] This was clear from the Exhibits that were attached to the Amended Statement of Claim in 2013 and additionally in the Witness Statement of the claimant himself where he was again acting for himself.¹ In the Witness Statement of 16 February 2015 the claimant clearly stated at paragraph 1: *"This claim is to do with a written Hire Purchase Agreement No.720013608931 between Mr. Ivan O'Neal and Courts SVG LTD"*². And so began the confusion related to this claim.
- [8] It was patently clear at this point that not only was the claim confusing to the court but more so in the mind of the claimant himself. In fact, at the trial, the claimant appeared to give evidence in relation to an entirely different transaction to HPA#1 and did not accept that he was bound by his pleadings which were clearly in relation to HPA#1.
- [9] However, when this court made a careful perusal of the claim it was clear to this court that the reliefs sought could only refer to HPA #1.
- [10] The second account upon which the claimant also had done business with the defendant had an entirely different time frame and again on the documentary evidence before the court, the second account which was Account#72001367213 (HPA#2), had in fact been created in July 2009 and to which there was attached an entirely different sales promotion. This promotion as was set out in the witness statement of Wendy Edwards was entitled "three free days"³. This promotion was from the period 28th July 2009 to 30th July 2009 and customers were given an opportunity to choose a free item from a list of selected products depending on the value of the purchase and based on product price not the total credit price. From the dates it was offered, it was clearly applicable to HPA#2.

¹ Notice of Acting in person filed 26/3/14

² Witness statement of the claimant filed on the 16/2/15

³ Witness statement of Wendy Edwards filed 17/2/15 at paragraph 9

- [11] Thus, what the court found as a fact from the evidence was that in June 2009, the defendant held what was touted as a “2-for-1 sale”. It ran for the period 25th June 2009 to 27th June 2009. It is this promotion and not the one that dealt with HPA#2 that this court has to be concerned. HPA#1 which was opened on the 27th June 2009, was clearly the last day of the offered promotion in relation to the promotion known as the “2-for-1 sale”.
- [12] That therefore being said, it was not lost on this court that the manner in which this sale was to operate was as stated by the witnesses for the defendant. On a balance of probabilities, I therefore accept the version of events as proffered by the defendant in that the evidence as a whole was substantially more in keeping with commercial reality. Additionally, I am also satisfied on the balance of probabilities that the version of events given by the defendant’s witness and in particular the evidence of the bailiffs employed by the defendant as to how the claimant interacted with those agents is preferred. These witnesses came across to the court as witnesses of the truth while the claimant in giving his evidence appeared less than forthright and more caught up in his campaign of morality rather than logic.
- [13] On a balance of probabilities, and in order to make commercial sense of the promotion as offered, I therefore accept that the promotion that was being held by the defendant in June 2009, referred to a “2-for-1 sale” in which the defendant offered the cheaper of two selected items which were specially marked absolutely free. Customers who took advantage of this offer paid the price of the more expensive of the two products for both items.⁴ Indeed the claimant never denied that he had bought one washer, one fridge and two stoves. However, his interpretation of the offer was that he was further entitled to one washer, one fridge and two stoves free. This made no commercial sense to this court.
- [14] I am fortified in this determination when this court considers that during cross examination the witness for the defendant Mrs. Wendy Edwards when she was questioned as to the receipt of the “free product” answered the claimant that *“You bought a washer and a fridge and you got the fridge free.”*
- [15] This answer although disputed by the claimant in argument, was never seriously in this court’s mind, challenged.
- [16] This court therefore accepts that on a balance of probabilities, the claimant had in fact taken advantage of the “2-for-1 sale” and had in fact, in spite of his claims, benefited from the “2-for-1 sale”. The attempt to discredit the witnesses for the defendant on this point were in this court’s mind unsuccessful and I therefore do not agree with the claimant’s interpretation of what transpired.

⁴ Paragraph 4 of the witness statement of Wendy Edwards filed 17/2/15

- [17] That being said, it is trite law that a claimant who files his statement of claim is bound by his pleadings. In fact, the pleadings are to give the gist of the case while the purpose of the witness statements is to amplify those issues raised in the pleadings.
- [18] Therefore the claimant is bound by his pleadings. The case as it was prosecuted did not support his pleadings and as such the relief in relation to the Sharps Flat Screen T.V.⁵ has no relevance whatsoever. There was no evidence led on this pleading and the claimant has not made out his case on this relief. The claim for the delivery up of one Sharps Flat Screen T.V. is therefore dismissed.
- [19] In any event, the claimant at trial having been reminded of a previous hearing in which he had admitted to this very court that he had in fact accepted a credit and another brand of T.V. in satisfaction of that promotion under the HPA#2, the claimant is in any event estopped from pursuing that prayer. That prayer is therefore dismissed.
- [20] In relation to the other claims, having been made by the claimant, he has sought general damages for emotional distress, damages for misrepresentation and or damages for tort of deceit, refund of the fees charged for interest on overdue payments and such, other relief as the Honorable court deems fit and costs.

Issue #1 – General Damages for Emotional Distress

- [21] The claimant's case before the court was that when he purportedly fell into arrears, the defendant had sent bailiffs to him to "harass" him for the late payments.
- [22] When one reviews the evidence having been given by the claimant in this regard, the court has already found on a balance of probabilities that there was no harassment by the bailiffs of the defendant. In fact, the court is satisfied that there were two instances in which the bailiffs of the defendant had contact with the claimant and on those two instances the bailiffs acted appropriately and consistent with the job undertaken.
- [23] I therefore do not find that there was any evidence put forward by the claimant which could be considered sufficient or at all to have caused emotional distress to the claimant.
- [24] In any event, I also agree with the submissions made on behalf of the defendant that in order for the claimant to advance any such allegation, the claimant was required to have proffered evidence of an independent professional who could have spoken to the effect that any actions of the agents of the defendants would have caused.
- [25] This prayer is therefore dismissed in its entirety.

⁵ Paragraph 9 of the Statement of Claim dated 27 February 2013

Issue #2 – Damages for Misrepresentation and Damages for the Tort of Deceit

- [26] The second prayer sought by the claimant was where he claimed damages for misrepresentation and damages for the tort of deceit. It was indeed unfortunate and as has been previously stated in this judgment that the claimant did not appreciate the pitfalls of self- representation in matters of this nature.
- [27] It was clear in the statement of claim filed, that the claim for damages for misrepresentation or the tort of deceit was grounded in the belief that the sales promotion that was at the centre of the action was the sales promotion with regard to HPA#2. This court has already determined that this could not have been the correct promotion when one considered the context of the pleadings and the evidence led at trial. Furthermore, it was clear that during the course of trial, when the claimant realized that he was boxed into a corner and limited by this pleadings, his claim seemed to have taken on a new life and morphed into a reliance on misrepresentation or tort of deceit in relation to the “2-for-1 sale” that is HPA#1.
- [28] This position however is of course not open to the claimant. It was clear on the pleadings that there was no such averment in relation to the “2-for-1 sale”. Having not been raised on the pleadings the defendant would not have been able to defend and place their position to the said averment by way of their defence. To allow the claimant to amend his pleadings in this way would have been highly prejudicial to the defendant and this court will not allow him to do so.
- [29] That being said and for the sake of completeness,⁶ I would however still address my mind to this issue, in so far as misrepresentation and the tort of deceit are concerned with regard to HPA#1, I am satisfied that the statement of law as set out in the submissions of the defendant filed on the 10 December 2018 is clear.
- [30] The court in the case of Eustace Gordon v. Antigua Barbuda Investment Bank⁷ by the judgment of Joseph-Olivetti J states: “A *misrepresentation is a positive statement of fact, 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 binding transaction with him, the representee may generally elect to regard the contract as rescinded – Halsbury’s Direct – Misrepresentation and Fraud para. 701. See also Chitty on Contracts Vol. II 24th Ed. Para. 351.*” It is therefore clear as to what constitutes a misrepresentation.
- [31] In so far as this court is satisfied that this claim arises only on HPA #1, the evidence led by the claimant has not, in this court’s mind, met the necessary threshold to establish that there had been any misrepresentation on the part of defendant with regard to the handling of the promotion. What

⁶ Pursuant to section 20 of the Eastern Caribbean Supreme Court Act Cap 24

⁷ ANUHCv1995/0062

instead this court believes is that the claimant misunderstood the nature and ambit of the “2-for-1 sale” but I find that there was no evidence that established that there had been any act by the defendants to misrepresent the nature of this promotion or any act of deceit.

- [32] I therefore accept on a balance of probabilities that the manner in which this “2-for-1” sale promotion was created by the defendant meant that there was a list (which was in fact produced to this court) which stated a number of items and their prices. I further accept that when an item was purchased that appeared on the list, that the customer was entitled to any item from the list free. The claimant did in fact benefit from this and as the defendant’s witness clearly stated, he did get a free appliance as he was entitled so to do. I therefore accept that in all the circumstances there was no misrepresentation on the part of the defendant.
- [33] Additionally the claimant having prayed for damages for the tort of deceit the burden lay on him to prove this very specific pleading. In doing so, the claimant who relies on fraud must prove fraud. Further the one who seeks to rely on this must also prove that there had been a false representation which was made knowingly with or without belief in its truth or made recklessly, careless of whether it was true or false⁸.
- [34] I therefore do not accept on the evidence that has been led by the claimant that on a balance of probabilities that the defendant had done any act fraudulently or that they had made any representation within the parameters of the second limb of the tort of deceit.⁹ This claim is therefore dismissed in its entirety.

Issue #3 – Refund the Fees Charged for the Bailiffs and of Monies Charged for the Interest

- [35] The two other claims to which the claimant seeks relief, will be dealt with together as they emanated from the same action of the claimant, his failure to make payments to the defendant on time.
- [36] In the HPA#1 it was clearly stated therein that the payment date would have been a month subsequent to the transaction¹⁰.
- [37] The claimant’s submission on this point (which in this court’s mind holds some merit) was that the HPA made specific mention of the time frames within which payments would be made to the defendant, that is, that they would commence one month after the delivery of the items to the customer. This contention was not disputed by the defendant.

⁸**East Pine Management Limited v Tawney Assets Limited** BVIHCVAP 2012/0035 per Mitchell JA

⁹ The case at paragraph 36 of the Defendant’s Submission filed on 10 December 2018

¹⁰ Paragraph 1 (b) of the Conditions of Agreement: “Thereafter punctually and without further demand the above installment commencing one month after delivery of the goods by Courts to the customer such payment to be made to Courts at any other their stores in St Vincent and the Grenadines”.

- [38] In this court's mind, and what I accept on a balance of probabilities is that the defendants implemented an internal policy which amended the terms of the HPA so that customers with more than one payment date would all be correlated together and be fixed to the date of the first transaction regardless of the time/date of the other later transactions. Therefore, if a customer took an item on the 15th of the month on the first account and thereafter took items on the 28th of a month despite the indication that payments would commence a month after the delivery, all subsequent transactions would be bound to the initial date of the 15th.
- [39] On this sole issue, I accept on a balance of probabilities that in fact it may have been a policy of the company that there is only one payment date to avoid one customer who may have 3 or 4 or 5 transactions having several different payment dates throughout the month. I also accept that this internal policy was not made clear to the claimant and as such the result was that he paid according to the HPA and not the internal policy.
- [40] However, as I indicated earlier the claimant is bound by his pleadings. Nowhere in his pleadings did he state or make complaint of the payment date having been changed. What he made complaint about was in relation to HPA#2 that when there was a dispute in relation to whether he would or would not be receiving his free gift, he stopped paying during that period of dispute.
- [41] It is during that period of dispute that the interest and the bailiff fees would have accrued on HPA#2 and not on HPA#1 to which this court has already found this claim is clearly related.
- [42] However, when we look at the Statement of Account which was produced by the defendant for HPA#1 for the period 27 June 2009 to payment off on the 13 January 2012, it would appear that indeed bailiff fees were added for a particular period during 2010 and 2011. Additionally, interest payments were also added to the account when the claimant made late payments.
- [43] The quandary the court had found itself in of course is that the claimant made these pleadings in relation to these sums with reference to HPA#2 and not HPA#1. In fact, there were no periods of dispute in relation to that account and as I have already said earlier in this judgment, the claimant is not entitled at this point to make complaint about the change of the payment date having not raised it before.
- [44] What I will say and go on record to say is that the defendants may wish to consider, in going forward, that this internal policy which seems to be based purely on a financial or accounting decision needs to be properly and adequately brought to the attention of their customers.
- [45] However, as I have repeatedly indicated in this judgment, the claimant is bound by his pleadings. Further when one examines the account summary for HPA#1 (even though not the account to which the claimant in fact made the complaint) there had in fact been instances of late payments. Thus, this court is satisfied that any interest or bailiff fees that accrued on HPA#1 were in fact justified. This claim is therefore dismissed.

The order of the court is as follows:

1. The claimant has failed to prove his claim as pleaded and the claim is dismissed in its entirety.
2. Costs to the defendant on an unvalued claim pursuant to Part 65.5 CPR 2000.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar