

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Civil)**

SLUHCV2011/0766

BETWEEN:

- 1. ALBAN PAULEON**
- 2. ALLAN MITCHELL**

Claimants

and

- 1. SAINT LUCIA INSURANCES LIMITED**
- 2. D & J CAR RENTAL LIMITED**

Defendants

Appearances:

Mrs. Lydia Faisal of Counsel for the Claimants

Ms. Shallone Surage of Counsel for the First Defendant

2014: May 14th.
2019: January 24th.

JUDGMENT

- [1] **Wilkinson, J.:** The Claimants (Mr. Pauleon and Mr. Mitchell) filed their claim form and statement of claim on 11th July 2011. Therein they claimed special and general damages for breach of two (2) agreements made in the first instance between Mr. Pauleon, Mr. Mitchell and the First Defendant (SLI) and in the second instance between Mr. Pauleon, Mr. Mitchell and the Second Defendant (D & J Car Rental). SLI filed its defence on 6th October 2011. D & J Car Rental chose not to defend the proceedings.

The Issues

The issues are:-

- (1) Whether Mr. Mitchell was acting in the capacity of agent for Mr. Pauleon.
- (2) Whether Tyrone's Wrecking Services Garage (Tyrone's) could be held to be the agent of SLI.
- (3) Whether SLI was under any obligation to Mr. Pauleon and Mr. Mitchell by virtue of the purported sale of the Kia to them.
- (4) Whether SLI discharged its obligation by the return of the purchase price of \$6000.00 to Mr. Pauleon and Mr. Mitchell.
- (5) Whether Mr. Pauleon and Mr. Mitchell acceptance of the refund from SLI and subsequently agreement with D & J Car Rental was a waiver of Mr. Pauleon and Mr. Mitchell's right to claim against SLI for the alleged cost of repairs to car.

The Facts

- [2] The primary facts are largely uncontested.
- [3] Mr. Pauleon, a sergeant of Police desired to purchase a motor car for his personal use. He favoured purchasing a second-hand and damaged motor car. In this regard in early April 2008, he made contact with Mr. Mitchell, a mechanic with his garage located at Cul de Sac, in the Quarter of Castries and informed him of his wish. Mr. Mitchell promised Mr. Pauleon that he would contact SLI about his wish as he knew that SLI often had damaged motor vehicles for sale and indeed he had purchased one (1) from SLI on a prior occasion.
- [4] Mr. Mitchell visited SLI and there spoke with Mr. Eric Paul (Mr. Paul) whom he believed to be the Claims Manager. He inquired of Mr. Paul whether SLI had any damaged motor cars for sale. Mr. Paul stated that SLI did have such motor cars for sale.

- [5] Following Mr. Mitchell's meeting with Mr. Paul, Mr. Pauleon and Mr. Mitchell together visited SLI. At this time Mr. Paul informed them that there were 3 damaged motor cars for sale – a Mitsubishi Diamante, a Honda Civic and a Kia. They were told that the cars were stored at Tyrone's.
- [6] Mr. Pauleon and Mr. Mitchell together visited Tyrone's. They observed motor vehicles were displayed behind a fenced off area and the fence prohibited access. There was a sign on the fence prohibiting access without permission. They visited Tyrone's office and informed the staff there that they were interested in viewing the 3 motor vehicles described by Mr. Paul as belonging to SLI. They were accompanied by one (1) of Tyrone's workers back to the fenced off area and found the 3 motor cars described by Mr. Paul corded off by a chain-link fence. The 3 motor cars were parked away from other motor vehicles, were next to each other in a row and the Kia was in the center, the Mitsubishi Diamante to its left and the Honda Civic to its right.
- [7] Mr. Pauleon and Mr. Mitchell inspected the 3 SLI motor cars. They informed the secretary at Tyrone's that they were interested in the Kia motor car (the motor car) and would return. She informed them that they had to have authorization from SLI for the motor car to be released. She requested that they ensure that they had such authorization when they returned as the motor car would not be released without it even if they had paid SLI the purchase price.
- [8] Mr. Pauleon and Mr. Mitchell returned to SLI and met with Mr. Paul. Mr. Mitchell was advised that the price for the motor car was \$6000.00. Mr. Pauleon who had carried some money with him in the event that a purchase was possible gave Mr. Mitchell \$6000.00 in cash and this was handed to Mr. Paul. A receipt was issued in favour of Mr. Mitchell for \$6000.00. A note was issued by Mr. Paul and given to Mr. Mitchell to take to Tyrone's for the release of the motor car. There was no change of ownership issued at this juncture. Mr. Paul told Mr. Mitchell that he would prepare the change of ownership document when Mr. Mitchell had

completed the repairs to the motor car and was ready to have it registered (with the Ministry for use on the road). The agreement for sale/purchase was oral.

- [9] Neither Mr. Pauleon nor Mr. Mitchell had any difficulty with Mr. Paul's proposal of providing the change of ownership at a later date because the motor car could not be driven in its present state.
- [10] Armed with the receipt for \$6000.00 evidencing payment for the motor car and the note authorizing delivery of the motor car to Mr. Mitchell, Mr. Pauleon and Mr. Mitchell returned to Tyrone's to seek delivery of the motor car. At Tyrone's, the note authorizing delivery was presented. Mr. Pauleon asked whether Tryone's could deliver the motor car to Mr. Mitchell's garage at Cul De Sac where the repairs would be carried out. Mr. Pauleon was informed that there would be a fee of \$300.00 for such delivery. He immediately paid the \$300.00 for delivery.
- [11] The same motor car that was seen at Tyrone's was delivered to Mr. Mitchell's Garage. It was a 2007 model with Chassis no. 76215074 and Engine no. 406740.
- [12] The motor car was badly damaged at time of purchase and required intensive labour and spare parts to restore it to a useable and roadworthy condition.
- [13] According to Mr Pauleon the spare parts required for the repairs were not available in Saint Lucia and the local Kia dealer Northwest Limited advised him to seek the parts in Barbados, and further provided him with the details of the dealership in Barbados. Mr. Pauleon travelled to Barbados on 26th April 2008, for the sole purpose of purchasing the required spare parts and upon completion of purchase he returned to Saint Lucia on the same date.
- [14] In Barbados, Mr. Pauleon purchased the hood, front bumper, radiator and condenser at Mc Eneaney's at the cost of BDS \$3,026.05/EC\$4,085.16. He also paid Mc Eneaney's BDS\$1,398.69/EC\$1,888.23 to ship the hood and front

bumper to Saint Lucia. He returned to Saint Lucia via LIAT carrying with him the radiator and condenser. He paid customs duties in respect of these two (2) items totaling \$820.00. He paid \$171.08. in freight costs to Mc Enearney's for AMERIJET for the shipping of the hood and front bumper which arrived in Saint Lucia on 13th day May 2008. That payment was made to AMERIJET by Mc Enearney's on 6th May 2008. He paid customs duties totaling \$639.42 in respect of the said hood and bumper. On May 17th 2008, he paid \$300.00 to Hervey Wenceslas to tint the windows of the motor car. He paid \$450.00 to repair the air conditioning unit on June 10th 2008. Upon completion of the repairs, he purchased a battery at the cost of \$319.00. Although he was unable to produce a receipt for that purchase, he stated that the car could not have been functional if a new battery had not been installed. He also paid Mr. Mitchell the discounted price of \$3,800.00 for the auto body repairs which were carried out between April and June 2008. Earlier recorded charge to tow the vehicle to Mr. Mitchell's garage was \$300.00. Total expenditure on repairs and getting the motor car roadworthy was \$12,772.89.

- [15] Upon completion of the repairs, Mr. Pauleon sought to have the fully repaired motor car inspected, registered and insured. He approached SLI for the change of ownership form and then attempted to have the motor car registered with the Licensing Authority. It was whilst Mr. Pauleon was attempting to register the motor car that he realized that the information contained in the change of ownership form did not match the information that was inscribed on the engine and chassis of the motor car. An inquiry at the Transport Department showed that the motor car was registered in the name of D & J Car Rental. This information was immediately brought to the attention of SLI who agreed to return the purchase price of \$6,000.00, upon Mr. Pauleon and Mr. Mitchell's return of the receipt for payment of \$6,000.00, the change-of-ownership form and the delivery note that was given to them to facilitate delivery by Tyrone's of the motor car.

- [16] Mr. Pauleon states that SLI has failed or refused to consider compensating him for the other expenses which he incurred by virtue of the sale of the motor car on the presumption that it was a proper sale.
- [17] Mr. Pauleon also stated that he related the problem to the proprietor of Tyrone's garage who contributed a small sum of money to him in empathy, namely \$1,000.00. However, Tyrone's confirmed that it acted in accordance with the instructions of SLI.
- [18] After the motor car was fully repaired, Mr. Terrance C.A. Foster, a director of D & J Car Rental demanded possession of it and agreed that he would pay the full cost incurred for all the repairs and parts. Upon that agreement, Mr. Foster commissioned an inspection of the repaired motor car by Mauricette's Garage. Mauricette's Garage confirmed that the damaged parts had all been replaced with new parts. The agreement for reimbursement was oral.
- [19] Mr. Pauleon and Mr. Mitchell said that up to date of trial, D & J Car Rental remained in possession of the motor car and has failed or refuse to pay them the costs of repairs as agreed. D & J Car Rental has been hiring out the motor car to the public since 2008 to date of trial.
- [20] On cross examination Mr. Pauleon reiterated that Mr. Mitchell was acting on his behalf at all times during the purchase of the motor car. He stated that Mr. Mitchell told him that Tyrone's was an agent of SLI. He admitted to receiving the sum of \$1000.00 from Tyrone's. He admitted that the transfer of ownership was issued in the name of Mr. Mitchell. He also agreed that Mr. Terrance Foster of D & J Car Rental had agreed to pay the repair costs of the motor car. He acknowledged that Mr. Foster took possession of the motor car and to date he has not been reimbursed.

- [21] On cross examination Mr. Mitchell accepted that the receipt for the payment of the motor car was issued in his name only. He also accepted that the transfer of ownership issued by SLI was also issued in his name only and the refund cheque of \$6,000.00 was also issued in his name.
- [22] Mr. Paul gave evidence on behalf of SLI. He is SLI's Claims Manager. He said that during the course of the transaction he communicated only with Mr. Mitchell. Mr. Pauleon was a person unknown to him and he never had any discussions with him.
- [23] According to him, it was around April 2008, when Mr. Mitchell approached him indicating his desire to purchase a wrecked motor vehicle from SLI. He and Mr. Mitchell then entered into an oral agreement for the sale of a motor car described as a KIA Cerato 2005 Chassis Number 55101385. Mr. Mitchell on 24th April 2008, paid SLI the sum of \$6,000.00 for the purchase of the said motor car.
- [24] According to Mr. Paul, Tyrone's was not an agent of SLI. SLI and Tyrone's relationship was that Tyrone's had a storage facility and provided a service of towing and storing wrecked or damaged motor vehicles.
- [25] On 5th June 2008, Mr. Paul authorized an application for transfer of ownership of the motor car in favour of Mr. Mitchell. He also wrote a letter to the Licensing Authority on 6th June 2008 confirming the sale of the motor car to Mr. Mitchell and requested courtesies be extended to Mr. Mitchell as regards the registration of the motor car.
- [26] Mr. Paul recalls Mr. Mitchell informing him in June 2008, that upon attempting to register the said motor car, it was realized that the chassis number recorded on the documents did not match the chassis number of the motor vehicle in the possession of Mr. Mitchell and on 10th June 2008, having been advised by Mr.

Mitchell that the motor car agreed to be sold to Mr. Mitchell by SLI was not the motor car handed over to Mr. Mitchell by Tyrone's.

- [27] According to Mr. Paul, as soon SLI was made aware of the discrepancy between the particulars of the said motor vehicle and the documents for same, Mr. Mitchell was refunded the purchase price of \$6000.00. Mr. Paul denied knowledge of the expenses incurred by Mr. Pauleon in relation to the purchase of spare parts and repairs carried out.
- [28] Mr. Paul states that Mr. Mitchell accepted the \$6,000.00 from SLI and this was evidence that the agreement between the Parties had been rescinded. To further substantiate this position, Mr. Paul says Mr. Pauleon and Mr. Mitchell entered into an agreement with D & J Car Rental and wherein D & J Car Rental would take possession of the said motor car and refund the cost for repairs made.
- [29] On cross examination, Mr. Paul admitted that he was not present at Tyrone's to deliver the motor car to either Mr. Pauleon or Mr. Mitchell nor did any of his staff. He relied on Tyrone's to deliver the motor car on behalf of SLI. He admitted that other than issuing a receipt for the sum of \$6,000.00, he did nothing further to ensure the delivery of the motor car. That was left to be sorted out by Tyrone's.
- [30] Under cross-examination Mr. Paul admitted that the receipt issued to Mr. Mitchell was without any description such as chassis number and make of the car. He also admitted that the very first time the chassis number and engine number were provided by SLI was when SLI issued the change of ownership in June 2008.
- [31] According to Mr. Paul, SLI has no knowledge of the expenses incurred by Mr. Pauleon and Mr. Mitchell and argues that SLI is not liable to Mr. Pauleon and Mr. Mitchell for the cost of repairs to the motor vehicle.

Findings and Analysis

- [32] The first issue is that of the nature of the relationship between Mr. Pauleon and Mr. Mitchell.
- [33] Mr. Paul in his evidence vigorously asserted that he did not know nor had he ever met Mr. Pauleon. It is not disputed that the agreement for the sale of the motor car was made between Mr. Mitchell and SLI and that all receipts and invoices connect to the repairs to the motor car were issued in the name of Mr. Pauleon. This nevertheless, does not preclude the existence of a relationship of agency between Mr. Pauleon and Mr. Mitchell, nor does it affect Mr. Mitchell's authority to act pursuant to it.
- [34] Whether the relationship of agency exists in any situation depends not on the precise terminology employed by the parties to describe their relationship, but on the true nature of the agreement or exact circumstances of the relationship between the principal and agent. While such relationship can be done expressly by an instrument either by deed or in writing, such relationship can be confirmed orally or it may be implied from the conduct of parties.
- [35] It is apparent from the facts that Mr. Pauleon had conferred on Mr. Mitchell the authority to source, negotiate and purchase a vehicle for him. The evidence of Mr. Pauleon supported by the evidence of Mr. Mitchell is that at all times in his negotiation and meetings with SLI and in fact at all material times he was acting on behalf of Mr. Pauleon. The Court could find no reason to doubt their relationship. There was no benefit to either to infer such relationship where none existed.
- [36] **Siu Yin Kwan v Eastern Insurance Co Ltd** [1994] 2 AC 1994 is authority for the proposition that an undisclosed principal may sue and be sued on a contract made by an agent on his behalf, acting within the scope of his actual authority.

- [37] The Court is satisfied on the evidence lead that Mr. Mitchell had actual authority and had acted pursuant the authority given to him by Mr. Pauleon. The Court accepts the evidence of Mr. Pauleon that he had asked Mr. Mitchell to find him a damaged car, to be repaired for his personal use. The Court is satisfied that Mr. Mitchell's conduct thereafter was consistent with the request made of him.
- [38] The second issue is with whether Tyrone's could be deemed the agent of SLI. It is common evidence that directions were given to Tyrone's on two (2) occasions with respect to the motor car. On the first occasion, SLI through Mr. Paul instructed Tyrone's to show the motor car to Mr. Pauleon and Mr. Mitchell and on the second occasion, instructions were given to release the motor car to Mr. Mitchell. It is also uncontroverted evidence that other than describe the make and model of the motor car, the instructions to release the motor car were bereft of any other identifying marks such as engine and chassis number.
- [39] The evidence of Mr. Paul for SLI was that Tyrone's was not SLI's agent but merely provided a service which SLI utilized. This service he described as being that of storage of vehicles belonging to SLI.
- [40] It was not unreasonable for Mr. Pauleon and Mr. Mitchell to reach the conclusion that Tyrone's authority went beyond the mere storage of the motor vehicles for SLI. Mr. Paul, through them, directed Tyrone's to perform functions that went beyond motor vehicle storage. To show the vehicle, and to release the vehicle. These instructions were not unusual to Mr. Mitchell who had had previous and similar dealing with SLI. As such, it was an entirely reasonable conclusion for Mr. Pauleon to perceive that Tyrone's had the ostensible authority to identify the motor car for sale and the authority to release that motor car on the instructions of SLI.
- [41] The Court has no difficulty concluding that if in fact Tyrone's was misled and or mistook the motor car to be released, that it was SLI ostensibly who was misled and or mistaken. Even though SLI denied the existence of a relationship of agency

between Tyrone's and itself, it is the circumstances of the relationship that in fact determine whether an agency relationship existed or not.

- [42] The case of **Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd. & Anr.** [1964] 2 QB 480 concerned the enforceability of a contract against a company, entered into with a contractor by a director of the company, who had no apparent authority but by representation or conduct of the company, the contractor believed the director to have the authority to contract for and on behalf of the company. At page 503 Diplock LJ said:-

“ An "apparent" or "ostensible" authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.....The representation which creates "apparent" authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal's business with other persons. By so doing the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the kind which an agent so acting in the conduct of his principal's business has usually "actual" authority to enter into.”

- [43] It is the Court's view that the common law principle is equally applicable here in assessing the conduct of SLI. It is the Court's conclusion that Mr. Paul's words, directions and instructions to Tyrone's with full knowledge of Mr. Pauleon and Mr. Mitchell, gave Mr. Pauleon and Mr. Mitchell the belief that Tyrone had the authority to identify and release the motor car to them. SLI is therefore bound by the actions and mistakes of Tyrone's.

[44] The third issue is that of liability of SLI for losses flowing from the representations relied on by Mr. Pauleon and Mr. Mitchell on sale/purchase of the motor car.

[45] Having concluded that the actions of Tyrone's are in fact and law the SLI's actions, it is the unavoidable conclusion that SLI as the seller of the motor car bears the obligation of putting the buyer in delivery of the motor car. The **Civil Code** articles 1401 to 1403 and articles 1418 and 1425 are instructive in that regard. They provide:-

"1401. The principal obligations of the seller are:

1. The delivery, and, 2. The warranty of the thing sold.

1402. Delivery is the transfer of a thing sold into the power and possession of the buyer.

1403. The obligation of the seller to deliver is satisfied when he puts the buyer in actual possession, or consents to such possession being taken by him or her, all hindrances being removed.

1418. The seller is obliged by law to warrant the buyer against eviction from the whole or any part of the thing sold, by reason of the act of the former, or of any right existing at the time of the sale, and against incumbrances not declared and not apparent at the time of the sale. "

1419. Although it be stipulated that the seller gives no warranty, this exemption does not cover his personal acts. Any agreement to the contrary is null.

1420. In like manner, when there is a stipulation excluding warranty, the seller in case of eviction is obliged to return the price of the thing sold, unless the buyer knew at the time of the sale the danger of eviction or had bought at his own risk.

1421. Whether the warranty be legal or conventional, the buyer, in case of eviction, has a right to claim from the seller:

(1) Restitution of the price;

(2) Restitution of the fruits in case he or she is obliged to pay them to the party who evicts him or her;

(3) The expenses incurred, as well in his or her action of warranty against the seller as in the original action;

(4) Damages, interest and all expenses of the contract;...."

[46] Having found that SLI failed whether by itself or its agent to put Mr. Pauleon and Mr. Mitchell in 'delivery' of the motor car bearing the marks, engine number and chassis number, it is the inevitable conclusion that SLI is liable to return the price paid for the motor car. At the time of trial, it was accepted that the purchase price

paid for the motor vehicle by Mr. Pauleon and Mr. Mitchell had been returned to them by SLI.

[47] The final issue is whether Mr. Pauleon and Mr. Mitchell's acceptance of the refund from SLI and subsequent agreement with D & J Car Rental was a waiver of Mr. Pauleon and Mr. Mitchell's right to a claim against SLI for the cost of repairs to the motor car.

[48] Mr. Pauleon and Mr. Mitchell incurred expenditure apart from the sale/purchase price of the motor car. The motor car being sold was a salvage, a damaged vehicle, and it was accepted that it required repairs. It is uncontroverted evidence that the motor vehicle was incapable of registration until it was in a roadworthy condition.

[49] SLI submitted to have no knowledge of the expenses incurred, nor did it claim to be liable. However, Mr. Pauleon and Mr. Mitchell submitted bills for all of the items purchased, work undertaken to the motor car and expenses, which were not challenged. The expenses totaled \$12,772.89. The Court is satisfied that these were reasonably incurred expenses, necessary to restore the vehicle to roadworthy condition.

[50] Section 321 of the **Sale of Goods** provision of the **Commercial Code** provides that (1) where a seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery, (2) the measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract. Section 321 is applicable in the instance of this case as SLI through the negligence or inadvertence or incompetence of themselves or their agent did not deliver the correct motor car to Mr. Pauleon and Mr. Mitchell. The measure of damages is also applicable in the instant case and Mr. Pauleon and Mr. Mitchell

are entitled to be indemnified for all repairs and useful expenditure made according to their value.

[51] So to article 1421 of the **Civil Code** which provides that in the case of a warranty against eviction as provided for above, the buyer, in case of eviction, has a right to claim from the seller : (1) restitution of the price, (2) restitution of the fruits in case he is obliged to pay them to the party who evicts him, (3) the expenses incurred, as well in his action of warranty against the seller as in the original action, damages, interest and all expenses of the contract.

[52] From the evidence, the Court is satisfied that Mr. Pauleon set out with minimum delay to secure the required parts for the salvaged motor car and to have Mr. Mitchell undertake the repairs. The expenses listed above were in the Court's view reasonably incurred and required in order to put the motor car in a roadworthy condition and the expenses incurred flowed directly from the actions of SLI. SLI is therefore liable for these expenses as well.

[53] The question of double recovery is also to be considered. SLI's contention on this issue runs thus:- that Mr. Pauleon having received a refund of the sale/purchase price from SLI entered an agreement with D & J Car Rental for the cost and expenses he incurred in repairing the motor car which was ultimately registered in the name of D & J Car Rental and D & J Car Rental agreed to pay the same. Therefore, Mr. Pauleon's redress for expenses incurred should lie with D & J Car Rental. D & J Car Rental has made no payment to Mr. Pauleon and Mr. Mitchell nor has D & J Car Rental defended or participated in the proceedings in any way. Mr. Pauleon and Mr. Mitchell are therefore entitled to judgment against D & J Car Rental on their claim against D & J Car Rental for the improvements made to the salvage in the sum of \$12,772.89. These are sums yet to be recovered and may never be recovered.

- [54] SLI's submission runs contrary to the principle of collateral benefit such that the benefits received by a claimant from a source wholly independent of and collateral to the wrongdoer does not diminish the damages that a claimant can otherwise recover. In **Swynson Ltd. & Anr. v Lowick Rose LLP (in liquidation) [2017] UKSC 32**, the Supreme Court unanimously allowed the appeal against the Court of Appeal's decision that, by virtue of the doctrine of *res inter alios acta* (a thing done between others), when assessing damages to be paid by negligent accountants, the fact that part of the loan advanced on the basis of the accountants' advice had been repaid should not be taken into account to reduce the award. Lord Sumption clarified that a collateral benefit does not reduce a claimant's loss and the critical factor is not that the benefit has come from a third party but that it arose independently of the circumstances giving rise to the loss.
- [55] This common law principle is supported by section 321(2) of the **Commercial Code** referenced above. It is also supported under the statutory provisions of the **Civil Code** under article 1421. This is also supported by article 1424 of the **Civil Code** which provides that "If the thing sold be found, at the time of eviction, to have increased in value, either by or without the act of the buyer, the seller is obliged to pay him such increased value over and above the price at which the sale was made."
- [56] SLI is without recourse and is liable to Mr. Pauleon and Mr. Mitchell for the damages incurred in the amount of \$12,772.89, together with interest thereon and to prescribed costs.
- [57] As regards D & J Car Rental, as earlier stated this company did not defend the proceedings, nor did it challenge the request for payments for unsolicited improvements made to its motor car. In default of defence, Mr. Pauleon and Mr. Mitchell are entitled to judgment against D & J Car Rental with damages to be assessed and to costs to be assessed if not agreed.

[58] Court's Order:

- (1) Judgment is entered for Mr. Pauleon and Mr. Mitchell against SLI for the sum of \$12,772.89 together with interest at the rate of 6 percent from date of judgment until paid in full together with prescribed costs.
- (2) Judgment is entered for Mr. Pauleon and Mr. Mitchell against D & J Car Rental with damages to be assessed and costs to be assessed before the Master.

**Rosalyn E. Wilkinson
High Court Judge**

By the Court

Registrar