

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2010/0999

ROSANNA ST MARTIN

Claimant

and

TARA ERMINE LEEVY

Defendant

JAG MOTORS LTD.

Ancillary Defendant

Appearances:

Ms Andra Gokool-Foster for the Claimant
Mr. Mark Maragh for the Defendant

2012 : June 24;
2014 : December 22.

DECISION

- [1] **BELLE, J.:** On the 17th November, 2010 the Claimant filed a claim in this suit claiming Special Damages in the sum of \$70,639.02 plus costs and interest from 1st August -17th November, 2010 to the date of trial and General Damages.
- [2] The Claimant claims that in March, 2010 the Defendant offered to sell a vehicle to her for the sum of \$42,000.00. According to the Claimant's Statement of Claim the contract for the sale of the vehicle was confirmed on 9th April 2010.

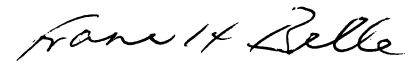
- [3] The Claimant states in her witness statement that she gave the Defendant the cheque in payment for the vehicle on 13th May, 2010. But she had taken possession of the vehicle in 13th May, 2010. She states that she insured the vehicle on 13th May, 2010, with EC Global Insurance Company Limited.
- [4] The Claimant claims that she later discovered that the defendant Tara Ermine Leevy sold the vehicle to her while it was still the subject of security in favour of the Bank of Saint Lucia for a loan granted to persons unknown to her.
- [5] The latter statement in the witness statement mirrors the allegation pleaded that the Claimant subsequently discovered that the Defendant sold the vehicle to her whilst it was still the subject of security in favour of Bank of Saint Lucia for a loan granted to persons unknown to the Claimant.
- [6] The persons who had sold the vehicle to the Defendant who were the original registered owners of the vehicle had failed to settle their debt to the Bank of Saint Lucia resulting in the vehicle being repossessed. As a consequence the Claimant says she suffered the loss of the funds which she continues to pay to Scotiabank for the vehicle and the humiliation of not having a vehicle to use in the circumstances.
- [7] In her defence the Defendant stated that she was informed by the Claimant and the bank (presumably the Bank of Saint Lucia) that the vehicle was previously owned but that these owners never transferred ownership of the vehicle to her.
- [8] The Defendant avers that she purchased the vehicle from JAG Motors Ltd which undertook to effect the necessary change in registration.
- [9] The Defendant also states that she was totally unaware of the existing lien by the Bank over the vehicle at the time of the sale until she was so informed by the Claimant.
- [10] The Defendant argues that it was the duty of the Claimant to investigate the title of the vehicle which the Claimant was purchasing and pleads caveat emptor.

- [11] By way of mitigation the Defendant claims that subsequent to the discovery of the Bank lien, the Defendant has cooperated with the Claimant in an effort to cause JAG Motors Ltd and the former registered owners to make good on their breach of duty to the Defendant and the Claimant.
- [12] The Defendant asserts that as a consequence of her efforts JAG Motors Ltd and subsequently the previous owners gave the Claimant several temporary replacement vehicles, in order to mitigate the inconvenience caused to the Claimant.
- [13] The Defendant filed an Ancillary Claim against JAG Motors Ltd on 21st December, 2010 seeking an indemnity or contribution in respect of the Claimant's claim against the Defendant for damages for negligence or breach of contract in the sum of \$70,639.02, with costs and interest.
- [14] It is based on this matrix of facts and law that the matter came to trial on 13th June, 2012. On that date the court heard the evidence of the Claimant and the Defendant was not present to give evidence and had failed to comply with the case management timetable.
- [15] However the Defendant's counsel made an application of no case to answer. After hearing oral submissions the court ordered the parties to file and serve legal submissions on the no case submission of Counsel for the Defendant and the general issues in the case on or before 13th July, 2012 and reserved judgment.
- [16] The Court also ordered that the application of 16th June 2011 for judgment to be entered against the Ancillary Defendant be scheduled for hearing on 28th June, 2012 at 9.00 a.m. This application was stayed on the said 28th June, 2012.
- [17] The records show that the Claimant complied with the court's order and the Defendant failed to do so. However the Defendant's counsel had made brief oral submissions in which he alleged that the Claimant had failed to lead evidence of sufficient facts to show that there was a breach of contract on which the claim was based and that she also failed to plead that there was an statutory based breach.

- [18] The Claimant in turn stated that there was evidence that there was a breach of contract including the contract itself, evidence that the vehicle which was sold by the Defendant to the Claimant was repossessed by the Bank of Saint Lucia after the sale and finally that the Defendant admitted attempting to mitigate the Claimant's loss which was based on the breach of contract.
- [19] In my view there was sufficient evidence on which it could be found that there was a breach of contract of sale of the vehicle. There is clear evidence that the vehicle which was sold was repossessed. The Defendant says she was involved in assisting the Claimant to mitigate her loss by collaborating with JAG Motors to give her temporary replacement vehicles. Why would the Defendant do the latter favour for the Claimant if she did not acknowledge the breach of the contract and consequential loss?
- [20] It is also my view that the Claimant did not have to plead the statutory position on issue of breach of warranty since it is not a statutory requirement which has been breached but a statutory codification/ declaration of the law which governs the sale of goods and establishes a warranty that a vendor must have the right to sell the goods which he purports to sell and the buyer must enjoy quiet possession. The Court can therefore take judicial notice of this provision of the Law.
- [21] Article 283 of the Commercial Code of Saint Lucia states:
- "In a Contract Of sale, unless the circumstances of the contract are such as to show a different intention, there is-
- (1) *An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass.*
- (2) *An implied warranty that the buyer shall have an enjoy quiet possession of the goods.*
- An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made."*
- [22] An executed contract for sale of a vehicle was tendered in evidence. The Claimant evidence is unchallenged.

[23] The Defendant failed to turn up for trial to be cross-examined and cannot now be called to give evidence. Accordingly judgment is entered for the Claimant and the Defendant is to pay Special Damages to the Claimant in the sum of \$70,639.02 for breach of contract with costs in accordance with Part 65 of the CPR 2000.

[24] The stay imposed on the Application to enter judgment against the Ancillary Defendant is lifted and the Defendant is permitted to proceed with the said Ancillary Claim against the Ancillary Defendant.


Francis Belle
High Court Judge