

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA**

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2011/0061

BETWEEN:

LEO PRINCE

Claimant

and

REPUBLIC BANK (GRENADA) LTD.

Defendant

**INCORPORATED TRUSTEE OF THE SEVENTH DAY
ADVENTIST CHURCH**

Ancillary Defendant

Appearances:

Ms. Celia Edwards, Q.C. with her Mr. Deloni Edwards for the Claimant
Ms. Keisha Lander for Defendant

2013: December 16

REASONS IN ORAL RULING

- [1] **MOHAMMED, J.:** On the 22nd February 2013 the parties entered an agreement arrived at mediation, into an order concerning motor vehicle PAD 634. Two of the material terms of the said order was that, and I paraphrase, that the Defendant shall return the motor vehicle PAD 634 to the Claimant and shall deliver to the Claimant a certificate by Mr. Robert Miller of Anro Agencies Ltd. that the said vehicle is in proper working order.

- [2] The certificate of Robert Miller stated that the motor vehicle was in a road worthy condition. He confirmed that two items were found to be defective but the items did not affect the vehicle's road worthiness.
- (a) Air condition blower fan and system recharge.
 - (b) Left front door handle broken.
- [3] The Claimant not being satisfied that the returned vehicle was not in "proper working order" had his own inspection done and he received a report from Geo. F. Huggins and Co. listing some ten defects.
- [4] One of the source of the dispute between the parties is they agreed that the vehicle is to be returned in "proper working condition" and Anro Agencies spoke to the "road worthiness" of the vehicle. It is clear to me that both terms carry different meanings and in my view, the term "proper working condition" is wider than the "road worthiness" of the vehicle. In my view, "proper working condition" is to be equated with mechanical since the verb is "working".
- [5] I will now deal into the items which the Claimant seeks to be compensated for.
- (a) Scratches to the vehicle: – While the bank has admitted that it did not perform an inspection of the vehicle upon receipt, the Claimant, who has alleged the scratches upon return of the vehicle, did not persuade me that the vehicle was without scratches when it was seized. In keeping with my interpretation of "proper working condition", I find that the scratches do not fall into my definition of "proper working condition".
 - (b) Left front door handle: – The Claimant stated that he knew that this was working when the vehicle was seized since he opened all the doors of his vehicle to empty its contents. Jay Buckmire, representative of the bank, in whose care the vehicle was, admitted that a third person cleaned the motor vehicle, but he did not personally open the left door. In light of the evidence I am satisfied that the left front door handle was broken while in the custody of the bank, and in particular, the broken handle while not affecting road worthiness, affects the "proper working condition" of the vehicle.

- (c) While I accept that the vehicle was not a new vehicle, based on the evidence of the Claimant that the air condition system was working when it was seized, and that the Bank had a duty to ensure that the vehicle was maintained, I find that the air condition system which was not working is to be repaired.
- (d) The Bank has admitted that during the three years it had the vehicle in its possession, it did not service the vehicle. This I consider to be of great concern since while I accept that there is necessarily wear and tear of a vehicle over a period of time, in this case the Bank had a duty of care to ensure that the vehicle was kept in a location and serviced to ensure that any wear and tear would not have been accelerated.
- (e) Television/computer screen: – The Claimant's evidence is the television/computer screen was working when it was seized and upon return there were blotches. Since the bank did not do an inspection of the vehicle on seizure, and there was no evidence of servicing, I find that the Bank is to repair this since it is an important aspect of the vehicle being in "proper working order".
- (f) There was no evidence specifically the Claimant of the condition of the Left Hand side mirror, Right Hand rear door window, Right Hand front door handle; Right Hand rocker panel, front and rear wipers. I therefore I make no finding on these items.
- (g) The Claimant stated that the leather upholstery of the vehicle was in good condition before the vehicle was seized. I do not consider this to be necessary for the vehicle to be in "proper working condition". In my view, this is an accessory and is not mechanical.

Order

- [6] I therefore order the Defendant to comply with the mediation agreement made by the order with respect to my aforesaid findings namely Television/ computer screen, Air condition and left front door handle.

[7] I will hear both parties on costs of the application.

[8] Cost of the application agreed \$1,250.00.

Margaret Y. Mohammed
High Court Judge