

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2008/0458

BETWEEN:

LENNON MAPSON

Claimant

AND

BERRY JAMES

Defendant

Appearances:

Mr. Ruggles Ferguson with Mrs. Deborah Mitchell for the Claimant
Mr. Alban John for the Defendant

**2009: September, 22;
2011: June 1, October 4;
2013: March 21st.**

JUDGMENT

- [1] **PRICE FINDLAY, J.:** The Claimant sells cane juice and is a successful business man; he is 46 years old and resides at Mt. Parnassus.
- [2] This is a claim brought by the Claimant for breach of contract. The claim is for the sum of \$94,222.70 plus court fees, costs and interest.
- [3] The Claimant's case is that on or about 28th April, 2008, the Defendant agreed to sell to the Claimant one Toyota Vigo (Hilux) vehicle for the sum of \$106,000.00.
- [4] He pleads that a term of the said agreement which was partly oral and partly in writing, was for him to pay the Defendant a deposit of \$90,000.00.

- [5] The Claimant further pleaded that it was a term of the agreement that the vehicle was to be delivered to the Claimant within six (6) weeks of the contract, and at that time the Claimant would pay the remaining sum of \$16,000.00 to the Defendant.
- [6] On the 28th April, 2008, the Claimant paid the sum of \$90,000.00 to the Defendant by way of transfer from Claimant's bank account to Defendant's bank account. This wire transfer document was exhibited by the Claimant.
- [7] The Defendant issued a receipt dated 28th May, 2008 acknowledging the payment.
- [8] The Claimant claims that the Defendant breached the agreement by not delivering the vehicle in accordance with the contract.
- [9] He was then forced to purchase a new vehicle from another source for the sum of \$80,000.00 and as a result he incurred Bank charges of \$4,222.70.
- [10] The Defendant who was initially representing himself filed a defence and then an amended defence and counterclaim.
- [11] The Defendant in both his defence and amended defence and counterclaim averred that the agreement called for the Claimant to pay to the Defendant the full purchase price of \$106,000.00 prior to shipment. This he pleaded was stipulated by the shipper.
- [12] He averred that the \$90,000.00 paid by the Claimant was not a deposit pending delivery but said was a payment pending the full purchase price before the order could be placed.
- [13] The Defendant states the Claimant raised the purchase price by way of a loan, and at the time he did so he informed the Defendant that he was to raise the remaining balance of \$16,000.00 by way of a loan as well.
- [14] The Defendant also states that the Claimant required certain special features, a grey interior and alloy wheels. He says it took some four (4) weeks back and forth with the Claimant and the suppliers for the matter to be resolved.

- [15] He further states that he waited for the Claimant to provide the remaining \$16,000.00. In or about 29th July, 2008, he persuaded the suppliers to ship the vehicle Free on Board at the price of US\$31,528.00 and as a result he sent US\$16,000.00 followed by US\$15,000.00 a week later to the said suppliers.
- [16] After these payments were made in or about the first week in August, the Claimant inquired about the vehicle and was informed of the transfer of funds. During this conversation the Claimant informed the Defendant that he had test driven a vehicle locally at Steele's Auto Supplies and he was impressed with the vehicle.
- [17] The Defendant states that it was at this time that it became clear to him that the Claimant was intending to resile from the agreement.
- [18] The vehicle was eventually shipped on 24th September, 2008 consigned to the Claimant and it arrived in Grenada on 27th November, 2008 some seven (7) months after the agreement was entered into and the initial payment of \$90,000.00.
- [19] The Defendant denies any breach of the agreement and specifically denies that there was any time of the agreement that the vehicle was to be delivered within six (6) weeks of the agreement.
- [20] He alleges that it is the Claimant who breached the agreement by refusing to complete the agreement and take possession of the vehicle. He claims damages for breach of contract.
- [21] The Claimant approached the defendant and was shown several photos of vehicles. He selected one which met his requirements; it was silver and he said that it matched his cane juice machine.
- [22] He told the Defendant that he was not really interested in the fancy features but if they came with the vehicle, he would take them. He asked for two specific features which I mentioned earlier in this judgment.

- [23] In his testimony he stated that the defendant told him he would get the vehicle in six weeks time after he paid the deposit of \$90,000.00.
- [24] The Defendant delivered the invoice to him in June 2008. He testified that the date on the receipt 28th May, 2009 was an error, it should have been 28th April, 2008; that being the day he transferred the funds. He applied for the loan for the remaining \$16,000.00 the first week in June 2008 about one (1) week before he expected to receive the vehicle.
- [25] He spoke to the Defendant as the bank needed proof that he had paid the \$90,000.00 and he requested a copy of the receipt. He said the Defendant spoke to the loans officer at the Bank.
- [26] He tried to contact the Defendant the week of 9th June, 2008 as he expected to get the vehicle that week, he was not successful. He finally contacted the Defendant during the following week; and the Defendant informed him that the vehicle was in Miami and that it would be in Grenada in two (2) weeks.
- [27] Two weeks came and went; nothing happened. He tried and failed to contact the Defendant. Several weeks passed, nothing.
- [28] He visited the Defendant's home in mid July, 2008, spoke to his wife who informed him that the vehicle was paid for. He then went to Defendant's brother's home, spoke to the Defendant who informed that the vehicle would be in Grenada anytime now. He said it was at this time that he told the Defendant if the vehicle was not in Grenada before Carnival (9th August, 2008) the agreement was at an end and he expected to be refunded his money (\$90,000.00).
- [29] The Claimant had by then test driven a similar vehicle locally.
- [30] Carnival came and went; there was no vehicle. The Claimant could not contact the Defendant, despite leaving messages. On Wednesday 3rd August, 2008 the Claimant went to the Defendant's home and told him the deal was off. He testifies

the Defendant told him if that is how he felt he would return his money. The Defendant, of course, denies this conversation.

[31] The parties met the next day and the Claimant states that the Defendant admitted that the vehicle had not left Thailand. The Claimant then informed the defendant he could no longer wait and that he should return the Claimant's money.

[32] The following week the Defendant told the Claimant he could not pay him all the money at once as he had already ordered the vehicle.

[33] The Claimant suggested that they attend a lawyer to draft an agreement for repayment. He says the defendant agreed but at the appointed time he could not contact the Defendant.

[34] He heard no further from the Defendant. He proceeded to purchase a vehicle locally and gave instructions to his Attorney to file suit.

[35] In cross-examination, he repeated that the Defendant told him he could get a Toyota out of Thailand in six (6) weeks time.

[36] He agreed he requested a gray interior and a throw bar order to tow the cane juice machine, a Dura liner and a cover for the tray. He denied asking for special wheels or a stereo system or an mp3 player. He said he told the Defendant those things did not matter to him. He needed the vehicle to go in the bush to collect cane.

[37] He denied that the defendant told him that Thailand needed the full \$106,000.00 before shipping the vehicle to Grenada. He reiterated that he went to the Bank to get the balance of the funds because he expected the vehicle to be delivered to him within a week, not because the Defendant requested money to pay for the vehicle.

[38] He said that the Defendant never told him that he could not say when the vehicle would arrive in Grenada until he knew the date of shipping from Thailand.

- [39] He told the Defendant that he had lost interest in the vehicle because time had passed and it made things difficult for his business.
- [40] He did not know how the Defendant planned to return the \$90,000.00 to him if he had already sent the monies to Thailand.
- [41] He said he did not call off the agreement because he got a better deal locally.
- [42] The Defendant stated that he sources and imports vehicles into Grenada for sale to the general public.
- [43] In his original defence he admits that he had never ordered a new vehicle prior to this transaction nor had he done business with Thailand before. He further stated that he normally does business with Japan, and the vehicles ordered from Japan take an average six (6) weeks after departure to arrive in Grenada.
- [44] I say that this is interesting because the Claimant says that the Defendant promised that the vehicle would be delivered within six (6) weeks of being ordered.
- [45] He states that the agreement with the Claimant was for payment in full prior to shipment. He states that this was stipulated by the suppliers; this was a condition precedent to the suppliers shipping the vehicle. The \$90,000.00 paid by the Claimant was not a deposit pending delivery but pending payment of the balance of the purchase price before the Defendant could place the order for shipment.
- [46] He testified that the original price was EC\$91,000.00 but due to the special features requested by the Claimant the eventual cost was \$106,000.00.
- [47] He said that he told the Claimant that he needed the full purchase price as it was a stipulation of the shippers. The Claimant however only raised \$90,000.00 and told him that he would secure a further loan for the balance of \$16,000.00.
- [48] He said he sourced a vehicle and ordered the specifications, alloy wheels and grey interior that the Claimant, requested. This process took approximately four (4) weeks. The Claimant says he eventually agreed on design he found in a

photograph. In May 2008 the Claimant requested an invoice for the balance of \$16,000.00 and a receipt showing that he had paid the sum of \$90,000.00.

[49] Sometime in June 2008, some 2½-3 months after the agreement, the Claimant confirmed to him that he had sourced a loan for the balance of \$16,000.00 and indicated that he did not want to pay interest on the loan before he had the vehicle in his possession.

[50] The Defendant then negotiated with the suppliers and they finally agreed to ship the vehicle F.O.B. (Free on Board). These negotiations he said took weeks but he does not say how long. Once the negotiations were complete, he paid EC\$85,838.42 to the suppliers. The sum was paid in two instalments one in July the other in August 2008, some 4 - 5 months after the agreement was made.

[51] He stated that the Claimant in the first half of August 2008 told him that he had test driven similar vehicle locally. The Claimant told him he could get the vehicle locally for EC\$90,000.00.

[52] Sometime after the middle of August 2008, the Claimant left a message on the Defendant's phone stating that he no longer wanted the vehicle the Defendant had ordered and demanding that the money be returned.

[53] The Defendant testified that the Claimant came to his home that night and demanded his money be returned the following day. The Defendant went to the Claimant to show him proof of the order but the Claimant was not interested in seeing anything, his mind was already made up.

[54] He denied any breach of the agreement, and stated it was the Claimant who had reneged on the agreement, and he wanted judgment on his counterclaim.

[55] In cross-examination he denied that he had a discussion with the Claimant about any vehicle other than the Vigo. He denied that he had discussed a Ford vehicle with the Claimant. The Claimant always stated that he wanted a new Toyota with special features from Japan.

- [56] This was his first opportunity to import a brand new vehicle into Grenada, the other vehicles he brought in were all second hand/used vehicles.
- [57] He described the process that was involved in ordering a vehicle from abroad. He indicated he would get pictures from the internet, and the C.I.F (customer insurance and freight) price. He would then prepare an invoice for the client, which would have all the details and state the amount of the deposit required.
- [58] He explained that the cost is the cost of the vehicle at source. The insurance is to secure the replacement of the cargo if lost at sea. The freight represents shipping costs source to destination.
- [59] F.O.B (Free on Board) represents that the cargo had been shipped without the freight being pre paid. F.O.B from his understanding covers insurance, and by destination he meant final destination.
- [60] He explained that there would be additional charges such as Government duties, port charges and licencing fees.
- [61] He indicated that for the price he quoted for the Claimant, he would take care of the licencing of the vehicle and the port charges. There were no Government fees as the Claimant had concessions.
- [62] He recalled that he had placed the order sometime in June 2008 but could not recall the exact date. He said he had to establish with the suppliers the terms of payment, then obtain the money in order to start the transaction in earnest.
- [63] At the time that he paid the supplier he admitted that he was holding the sum of \$90,000.00 he received from the Claimant for about three (3) months.
- [64] He said there were issues with the special alloy wheels and the colour of the interior of the vehicle. He also stated that because it was the first time he was dealing with this supplier, they wanted all the money up front prior to shipping.

- [65] The issues with the special features took place between the payment of the deposit in April and July 2008. The freight was also an issue and was not resolved when he sent the first instalment to the suppliers.
- [66] He testified that the supplier had clearly indicated to him that the vehicle had to be paid for in full prior to shipping.
- [67] There was the issue of the colour of the interior outstanding as the suppliers were providing the vehicle with a beige interior and the Claimant wanted a grey interior. All of this took place between the payment of the \$90,000.00 and sometime in July. (They were being worked out)
- [68] In fact he testified that the freight issue was still outstanding when he sent the first payment.
- [69] He sent the second instalment in August 2008, but denies that the Claimant was anxious to have the vehicle delivered. He denied that the Claimant was behind him to have the vehicle delivered since May 2008.
- [70] He denied he promised delivery within six (6) weeks of the payment of the \$90,000.00. The agreement he said had no time for delivery to the Claimant. He said he would work diligently to get the vehicle to the Claimant as soon as possible.
- [71] He denied that between April and June he had the impression that the Claimant wanted the vehicle but by early August he sensed that the Claimant wanted the vehicle urgently, he denies that the Claimant ever gave him a final deadline of Carnival 2008 to deliver the vehicle. He denied that the Claimant told him the agreement would be at an end if the vehicle was not in Grenada by 9th August, 2008.
- [72] After Carnival in 2008, the Claimant demanded his money back, but he denied telling the Claimant that the vehicle was in Miami. He told the Claimant the vehicle had been ordered but the Claimant did not believe him.

- [73] It was not true or correct that the Claimant was to pay the balance of \$16,000.00 upon delivery of the vehicle.
- [74] Just after Carnival 2008 the Claimant came to his home and informed him that the deal was off, but he could not recall that he promised to return to the Claimant the \$90,000.00 he had paid. He did not recall telling the Claimant that they should go to a lawyer to get an agreement to repay the money. He and the Claimant spoke 1-2 times after this, and he described the Claimant as being very aggressive and angry.
- [75] The Claimant was angry because the vehicle had not been delivered but he insisted that he had ordered it. It was not until he sent the \$85,000.00 to the suppliers did he tell the Claimant that he had ordered the vehicle.
- [76] He explained that the suppliers provide the vehicle on order. That means they start the process of production when payment has been made. You must place the order to start the production process.
- [77] He said that he had to make the first payment to start the process. He sent US\$16,000.00 by wire transfer on 29th July, 2008 and on the 6th August, 2008 he wired a further sum of US\$15,528.00 to suppliers.
- [78] The second set of monies were sent after the vehicle was completed. He accepted that the vehicle was completed by the 8th August, 2008.
- [79] He also agreed that his "mark up" was included in the balance of \$16,000.00, which was not paid by the Claimant and that the Claimant would have had to pay for all his services in full prior to the delivery of the vehicle. He only became aware that the Claimant was of the view that the balance of \$16,000.00 was due on delivery sometime at the end of August 2008.
- [80] He admitted that the shipping date on the document issued out of Thailand was 24th September, 2008, and admitted that as of that date the vehicle the Claimant

ordered was still in Thailand and this was so after the Claimant informed him that he no longer wanted the vehicle.

[81] The vehicle was scheduled to arrive in Grenada around 16th November, 2008, about six (6) months after the 24 September, 2008 date. He had also by 24th September, 2008 received a letter from the Claimant's attorney demanding repayment of the monies paid by the Claimant.

[82] The vehicle eventually arrived in Grenada on or about 10th November, 2008 but he did not deliver the vehicle to the Claimant nor did he return the \$90,000.00 to him.

Analysis

[83] I have no doubt that there was an agreement between the Claimant and the Defendant by which the defendant was to order and deliver a Toyota Vigo (new) to the Claimant. The Defendant was to order the vehicle from Thailand and the cost of the vehicle, including all features and incidentals was to be EC\$106,000.00. This was known to the Defendant by 28th April, 2008.

[84] Firstly, when a vehicle is to be ordered, before a final price can be given, it is only common sense that the party ordering the vehicle would know the price of the vehicle, including all the features (both standard and special) which come with the vehicle. It would make no sense otherwise.

[85] Therefore, at the time the Defendant gave the Claimant in this action the total price for the vehicle (\$106,000.00) it stands to reason that this figure took into account any special features the Claimant wished to have on the vehicle.

[86] I pause here to say that the exhibit which shows the features which the Toyota Vigo ordered by the Defendant seem to include no special features whatever, and this was confirmed by the Defendant in his evidence.

[87] Secondly, I find that the agreement was that the sum of \$90,000.00 was to be paid as a deposit, with the balance of \$16,000.00 to be paid on delivery of the vehicle,

especially in light of the admission by the Defendant that out of the remaining balance of \$16,000.00 was his mark up and other incidentals.

[88] I do not accept that all the monies were to be paid up front as postulated by the Defendant, and this was certainly not made clear to the Claimant if it was in fact the case.

[89] Neither the document dated 6th March, 2008 nor the document dated 28th May, 2008 state that the monies were due all at once. Such a term ought to have been in the written documents so as to alert the Claimant that this was a term of the agreement. Interestingly, the Defendant upon receipt of the EC\$90,000.00 did not say to the Claimant that he would not be in a position to order the vehicle until he had the full purchase price in his possession. He merely states that the Claimant undertook to pay the balance once the loan he had applied for was approved.

[90] I believe the Claimant when he states in his evidence that the Defendant informed him that the vehicle would be delivered to him in Grenada within six (6) weeks of the payment of the deposit. I am fortified in my finding because in cross-examination the Defendant stated that the vehicle would take approximately six (6) weeks to get from Thailand to Grenada once it had been shipped.

[91] The Defendant was a businessman seasoned in sourcing and selling vehicles. While his experience was with mostly used vehicles, he held himself out as being capable of conducting the agreed transaction in a satisfactory manner.

[92] The Defendant knew that the Claimant wished the vehicle for his business and was aware that there was a need for some urgency in having the vehicle delivered to the Claimant.

[93] The defendant further agreed that there were two factors that were of importance to purchasers of vehicles: (1) price; and (2) time of delivery. It is not so incredible to believe that the claimant would have asked when the vehicle would arrive in Grenada given the purpose for which he needed it.

- [94] The Defendant cannot rely on his inexperience in sourcing vehicles from Thailand as an excuse; he held himself out as being capable of so doing and the Claimant relied on those assurances.
- [95] I believe that the Defendant was not truthful when he told the Claimant in July 2008 that the vehicle would be arriving in Grenada “at any time now”. In fact by his own admission, the vehicle did not leave Thailand for shipment to Grenada until 24th September, 2008. The Defendant was also not truthful when he told the Claimant in June, 2008 that the vehicle was in Miami.
- [96] I believe that the Defendant did speak to the loans officer at the Grenada Co-operative Bank and was asked to supply proof of the payment of the EC\$90,000.00.
- [97] The Defendant agreed that the Claimant contacted him in August 2008 and was very angry at not having received the promised vehicle. It is clear that there were discussions between the Claimant and the Defendant in June and July of 2008, with the Claimant anxiously requesting of the Defendant the delivery of the said vehicle.
- [98] It would seem strange that the Claimant could be so angry with the Defendant if there was not some deadline attached to the receipt of the vehicle. I find that these angry exchanges began in or about June 2008 and continued through August 2008, at which time the Claimant gave the defendant a deadline of the Sunday before Carnival, the 9th August, 2008.
- [99] I believe the Claimant did try to contact the Defendant after the Carnival celebration without success and that he finally spoke to the Defendant on 13th August 2008, when the Claimant rescinded the contract. I also believe that on 14th August, 2008 the Defendant finally admitted to the Claimant that the vehicle had not yet left Thailand. This is borne out by the Bill of Lading dated 24th September, 2008.

[100] I do not accept the explanation of the Defendant regarding the delaying the delivery of the vehicle. It was he who was dealing with the suppliers, and if there was the difficulty he testified to, why did he not convey these concerns to the Claimant rather than be untruthful to him.

[101] The Defendant must have known what features were required by the Claimant by April 28th 2008 when he received the sum of \$90,000 from the Claimant. Why then did he not order the vehicle at that time, or at least inform the Claimant that he needed the full purchase price before he could do so. Even as late as June, July and August 2008 he never told the Claimant that he required the balance of \$16,000.00 in order to complete the purchase.

[102] I find no fault in the Claimant sourcing another vehicle given the delays experienced in his arrangement with the Defendant and do not find that he sourced the local vehicle for any other reason than the delay in getting the vehicle by the Defendant.

Law

[103] It is correct that the mere statement of a date for completion does not make the date so stated a part of the contract.

[104] The Court must consider all the attendant circumstances of each case in deciding whether the time limited for completion is reasonable.

[105] If time is not made of the essence of the contract one party cannot of its own motion make it so. Halsbury's Laws¹ states: -

“The modern law in the case of contracts of all types may be summarised as follows: -

- 1) The parties expressly stipulate that conditions as to time must be strictly complied with;
- 2) The nature of the subject matter of the contract or the surrounding circumstances show that time should be considered of the essence; or

¹ Halsbury's Laws of England 4th Ed Vol 9 (1) para. 931

- 3) A party who has been subjected to unreasonable delay gives notice to the party in default making time of the essence.”

I find that paragraph (3) fits the facts and circumstances of this case.

- [106] Even if the court accepts (which it does not) that there was no stipulation as to the time of delivery of the vehicle to the Claimant in all the circumstances of the case, with payment being made on 28th April, 2008 to the Defendant and the vehicle not being delivered up to mid July 2008, the court finds that this was an unreasonable delay.
- [107] In fact the Defendant having received the initial payment of EC\$90,000.00 on 28th April, 2008 did not make any payment to the suppliers until the 29th July, 2008 (US\$16,000.00), and then on the 6th August, 2008 (US\$15,528.00). This is of itself an unreasonable delay. I do not accept the Defendant’s explanation of negotiating the special features as the reason for the delay as stated earlier.
- [108] The Claimant in mid July 2008 gave the Defendant notice that he should have the vehicle in Grenada on or before Carnival Sunday, which was to fall on the 9th August, 2008. Bearing in mind that the Defendant had told the Claimant that the vehicle was in Miami at this time, was this a reasonable time for the Defendant to complete the contract.
- [109] Having failed to deliver the vehicle by the stated deadline, the Claimant was entitled to and did bring an end to the contract.
- [110] It is clear to the Court that the Defendant knew by June/July 2008 that he was going to be unable to complete the contract and that he could not meet the expectations of the Claimant under the agreement. The Claimant treated the contract as repudiated, and the court agrees that he was entitled so to do.
- [111] In the circumstances, the court finds for the Claimant and awards the following sum:

1. The return of the sum of EC\$90,000.00 paid by the Claimant to the Defendant.
2. The sum of \$4,222.70 representing the interest on the additional loan taken by the Claimant to source a new vehicle locally.
3. Prescribed costs.
4. Interest on the principal due at the rate of 6% per annum from 30th May, 2008 to the date of payment.

The Defendant's counterclaim is dismissed.

[112] The Court thanks Counsel for their assistance.

Margaret A. Price Findlay
High Court Judge