# IN THE EASTERN CARIBBEAN SUPREME COURT
# IN THE HIGH COURT OF JUSTICE
# (CIVIL)

**SAINT LUCIA**

**CLAIM NO. SLUHCV2006/0253**

**BETWEEN:**

**ANTOINE MONERO**

Claimant

And

**ANTHONY JOHN**

Defendant

**Appearances:**

Mr. Vernantius James for Claimant
Ms. Diana Thomas for Respondent

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2008: November 26;
2009: May 21.

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## JUDGMENT

[1] **GEORGES, J.:** This claim arose as a result of a motor vehicular accident which occurred at approximately 6:50 pm on 16th July 2000 along the Micoud/Mon Repos section of the Castries/Vieux Fort Highway when motor car registration number HC1014 owned and driven by the defendant in a northerly direction collided with the mid and right rear section of the claimant's Audi 90 motor car registration number PC546 whilst in the process of overtaking it.

[2] Although denying liability the claimant alleged that the defendant a police officer in the Special Services Unit of the Royal St. Lucia Police Force then and there at the scene represented/promised him that he would undertake at his own expense to

have his car repaired to its pre-accident condition upon being furnished with a cost estimate of repairs.

[3] Two estimates of the cost of repairs were obtained by the claimant and given to the defendant who opted for the lower quotation of $3500.00 from Michel's Garage in La Pointe Mon Repos which was owned and operated by Michel Descartes. There the defendant contracted with the autobody repairman (Michel) to repair the claimant's car to its pre-accident condition for $3,500.00 with payment to be made by an initial deposit of $1500.00 and the balance as they went along.

[4] Although there was no evidence of the Audi 90's vintage its pre-accident value as was put at $30,000.00. The claimant told the Court that he was a retired person having worked in England for 45 years as a paint sprayer and had returned to St. Lucia in 1995. He was now 78 years old he said.

[5] I pause to say that although the accident which resulted in loss and damage to the claimant occurred in July 2000 the claim for damages was only filed and served in April 2006 well nigh six years later. The statement of claim was then framed in negligence and damages for breach of contract.

[6] On 20th April 2007 Master Cheryl Mathurin declared that the claim for damages in negligence was prescribed by 3 years and as such was extinguished. The action accordingly proceeded on the basis of the defendant's breach of contract since he had implicitly accepted liability for damage to the Claimant's car and had undertaken and contracted with Mr. Michel to repair/restore it to its pre-accident condition at his expense for the claimant's benefit. The claimant therefore relies on third party rights derived from a contract entered into by third parties namely the defendant and Michel the autobody repairman for his benefit sometimes referred to as the jus tertii.

[7] The original claim had to be amended and re-amended as a result with consequential amendments to subsequent pleadings so that the matter finally came on for trial at the end of November 2008 – over eight years after the accident. By then the claimant admitted that he could not read or write much either. Meanwhile the damaged car was at Michel's garage and had been repaired in about 2/3 weeks but the defendant had not paid Michel in full as promised.

[8] Michel Descartes on his affirmation told the Court that he came to know the defendant through the claimant and confirmed having entered into an agreement with him for the repair of the claimant's car at a cost of $3500.00 with the defendant making an initial deposit of $1500.00. No arrangement was made for payment of the balance. This the defendant told him would be made along the way. The defendant he said had signed a written agreement to pay for the cost of repairs to the claimant's car but (not surprisingly) he was not sure he could find it now at his home at it was such a long time ago – over 8 years.

[9] In the estimate was a list of damaged parts namely rear bumper rear right park light and rear right fender. The work he did he said initially consisted of repairs that he could do without replacing parts such as straightening the right side of the car – the back side not the fender. He had to cut the flooring at the back. He had to fix it and straighten it he disclosed.

[10] The witness went on to say that the repairs to the vehicle had been completed more than two years and the defendant had by then paid only $1100.00 so that he now owed him $2400.00. On the question of monies paid by the defendant to him the witness after declaring that the repairs were scheduled to take no more than 2 – 3 weeks had this to say at paragraphs 7, 8, 9 and 10 of his witness statement which was not seriously challenged:-

7. Mr. John (the defendant) indicated to me that he did not have with him the deposit requested. However, I accepted his undertaking given to me that within a day or two he would return with the requested deposit. Following my agreement with Mr. John and in his presence, I accepted the car for repairs and parked it outside my garage. About a week afterwards Mr. John brought me $300.00 which I accepted. I informed him that it was way below the requested deposit and too little to undertake the said repairs. In response Mr. John told me that this was the amount he could raise at the time and that he expected to raise the balance in a few days time and to make it available to me.

8. I used the $300.00 from Mr. John to start the repairs to the car but it took another 6 – 8 weeks after the first payment before he paid another $300.00 towards the requested deposit. I was concerned that Mr. John's departure from the agreed payment schedule was hampering the progress of the repairs to the car. Meanwhile Mr. Monero (the claimant) began to pressure me that it was time that I finish the job. I therefore had to inform him that I could only do so much repairs as the $600.00 from Mr. John allowed me to do. As a matter of fact I even had to use my own resources in repairing the car.

9. For almost 2 – 3 years afterwards, I lost contact with Mr. John and I did not receive any further payments from him. Nor did I receive the replacement parts that he undertook to supply me with. Mr. Monero continued to apply pressure on me to complete the repairs to the car and release it to him. I informed Mr. Monero that I could not do either because Mr. John had not kept to his side of my agreement with him. I also informed Mr. Monero that I was contracted by Mr. John and not by him and that even though the car belonged to him it was on the basis of an agreement with Mr. John that the car was taken by the garage for repairs. I further informed him that unless I was paid the amount due to me for the

repair work done thus far I would not release the car. I took that position in order to protect my interest under the agreement. I knew that Mr. Monero was not pleased with my response. I also knew that he wasn't pleased with my decision not to release the car when he demanded that I release it to him.

10. About a few months afterwards someone brought me $500.00 and said that it was money sent by Mr. John to repair the car. The total thus far paid by Mr. John was $1100.00 ($400 short of the requested deposit) and this was more than 3 years after the car was accepted for repairs. By that time the earlier repairs done to the car had deteriorated and both the elements and the duration of down time had caused further deterioration to it.

[11] I am thoroughly satisfied that the defendant's own testimony largely corroborates that of Michel Descartes. Early under cross-examination the defendant agreed that there was no doubt that he was involved in a car accident with Mr. Monero (the claimant) who had been driving ahead of him and that the accident occurred whilst he was trying to overtake him at a time when it was not safe to do so. On a balance of probabilities the defendant (John) would be liable for the ensuing damage to the claimant's car. I am equally satisfied that the defendant then and there accepted liability for the repairs to the claimant's car as the claimant told the court. Evidence revealed that the defendant's vehicle was at the time uninsured and unlicensed.

[12] Under further cross-examination the defendant agreed that he would pay for the cost of labour and parts to repair the claimant's car and undertook to do so after entering into an agreement with Michel Descartes proprietor of Michel's Garage to pay for same at his own expense on the basis of a cost estimate of $3500.00 of which he said he would have paid an initial deposit of $1500.00.

[13] His evidence under further cross-examination reads thus:-

"The $3500.00 was agreed to be paid by instalments. The number of instalments was not specified. I can't recall how many times I sent instalments of money. I brought money myself a couple times – more than twice. Other times I would give it to his stepson Jonelle. I cannot recall how many times I gave Jonelle money for Michel. I can't recall how much money I gave Michel on each occasion that I paid him. When myself and Michel spoke he said he had received in all a total of $3000.00 from me and there was a balance of $500.00 for him. He said so a few months before he gave Hart a note for me. That was this year. Unfortunately I do not have that note with me. I agree that in the absence of the note one cannot say what I am saying is correct/true. The piece of paper from Descartes saying that he had been paid $3000.00 was inappropriate to take to court. I left it on my desk at work and it was discarded.

During the period that Mr. Monero's car was in the garage I had cause to be out of the country for a few months in the aggregrate in spells of 2 / 3 weeks at a time. I was not required to assist after the hurricane devastation in Grenada. As an officer in the SSU I was required to be out of the country for extended periods on training. By extended periods I mean 2 / 3 weeks at a time. I would go in and out. So that during that time I could not be contacted by Michel's Garage. Nor could I be contacted by Mr. Monero. Prior to my trips I did not inform them because most of my trips were sudden. My travels abroad were over a period of 2 / 3 years possibly more than that. During that period my contract with Michel was left on its own – hanging in the air. I will explain. Michel is a repairman we had an agreement for him to repair Mr. Monero's car. There was no time limit for me to pay him. The repairs were supposed to be done by him without my being there. I agreed to pay him $3500.00 by uncertain instalments which we agreed upon. All he was supposed to do is repair the car and I would pay which he never finished the job. And I have even said to him that I would not pay him the rest of his money. I am certain the money I sent to Michel reached him because of

conversations I had with him and the piece of paper (not produced) that he sent me through Hart. Twice I paid Michel myself and 10 times I sent money to him pursuant to our contract. I do not have any supporting receipts. Sometimes business is done like this."

[14] That clearly in my view underscores the lax and indifferent attitude of the defendant in having the claimant's car repaired and his nonchalant and un-business like approach with regard to his contractual agreement with Mr. Michel pertaining to payments for the repair work undertaken by the garage.

[15] The concluding paragraph of the witness' cross-examination aptly sums it all up when he declared:

"I admit that I broke the arrangement that I would pay directly to Michel. I also admit that I left Mr. Monero's car in Mr. Michel's garage waiting for me to make full payments. And that wait is over five years. There was also an outstanding balance and the car was also awaiting replacement parts."

[16] It was mutually agreed between the parties that the defendant would be responsible for providing all necessary replacement parts for the repair work at his expense although the claimant offered to assist in their procurement. The defendant in actual fact never obtained any of the replacement parts inspite of his promises to do so. It was the claimant who in fact apparently obtained some of them on a visit to London in December 2004 and according to him delivered them to Michel's Garage only to discover then that his car had sustained further physical damage and was in need of additional repairs. The claimant contended that as a result of the defendant's failure to honour his contractual obligations with Michel not only did the initial repair work remain undone but the car had in the meanwhile also sustained further damage and had deteriorated. The Court was not told what parts the claimant allegedly delivered to the garage or their cost. Mr. Michel

himself never acknowledged receiving the necessary replacement parts from anyone.

[17] According to an undated report exhibited by the claimant from one Mellanius Fontenelle a Mechanic of Mon Repos the estimated cost of repairs to the car would be $69,600.00 which sum the claimant now holds the defendant responsible for by reason of breach of his contractual obligations in failing to repair/restore the car to its pre-accident condition and the consequent deterioration and additional damage caused to the car which ensued as a result.

[18] Fontenelle's report which is wholly unsubstantiated reads thus:

| Cost of damaged parts | |
|---|---|
| Sun Roof | $3000.00 |
| Back Glass | $4000.00 |
| Front and Rear Bumper | $5000.00 |
| Rear Lights | $6000.00 |
| Front Lights | $3000.00 |
| Front and Rear Doors | $10000.00 |
| Mirrors | $600.00 |
| Inside Floor | $13000.00 |
| Interior | $10000.00 |
| Tires and Rims | $4000.00 |
| Engine Repair | $3000.00 |
| Body Repair | $4000.00 |
| | |
| Labour Cost | $4000.00 |
| | |
| **Total Cost** | **$69600.00** |

It is noteworthy that as at August 2000 when Mr. Michel furnished his estimate of the cost of repairs to the claimant's car the damaged parts which required replacement were the right rear park light right rear fender and rear bumper. This is in stark contrast to Mr. Fontenelle's report. It will be recalled that Mr. Monero stated that on his return from England in December 2004 he had delivered the necessary replacement parts for his vehicle to Mr. Michel yet some of those items are listed in Mr. Fontenelle's report including an item shown merely as "Interior" at a cost of $10,000.00. Front and rear doors are also put at $10,000.00 and inside floor at $13,000.00. It will be recalled that the pre-accident value of the car as at July 2000 was $30,000.00 and that the defendant's agreement with the claimant was to repair/restore his car to its pre-accident value.

[19] In his written submissions Learned Counsel for the claimant maintained that as the contract between the defendant and Mr. Michel was for the benefit of the claimant certain rights of enforcement were thereby conferred on him. As a result of the defendant's breach of contract he had suffered loss and damage and did not obtain the benefit intended by the contract. On the contrary he had suffered additional loss and damage due to down time and accelerated deterioration of the vehicle by its prolonged exposure to the elements.

[20] It is evident if the claimant is to be believed that over the years the vehicle remained outside of Michel's garage ostensibly awaiting collection (following repairs carried out on it by Mr. Michel) and that it had presumably been 'vandalised' and parts were removed or stolen therefrom and as Mr. Michel himself put it 'the earlier repairs done to the car had as a result deteriorated and both the elements and the duration of down time had caused further deterioration to it." Learned Counsel's submission is that the defendant's breach was the dominant cause of the additional loss and damage which the claimant has suffered and now seeks to recover including damages for unbearable physical inconvenience over his inability to use his car.

[21] The claim filed on 4th April 2006 which was subsequently amended and re-amended is for $69,600.00 being the cost then of repairing/restoring the claimant's car to its pre-accident value estimated at $30,000.00 at the time. The amount claimed holds the defendant liable **for all consequential loss and damage** which resulted from the claimant's car remaining outside of Michel's Garage awaiting collection after the repairs had been carried out by him pending payment of the balance of $2,400.00 due and owing to him by the defendant. As stated earlier not only is the amount claimed wholly unsubstantiated but it is more than double the pre-accident value of the car itself as at the date of the accident in July 2000.

[22] The contractual obligation of the defendant was to repair/restore the claimant's car to its pre-accident condition at his expense. This was estimated at $3,500.00 and the car was left in the possession custody and safekeeping of Mr. Michel for that purpose.

[23] The defendant would clearly be liable to Mr. Michel for any balance due and owing under the collateral agreement between themselves for repairs to the claimant's vehicle as well as to the claimant for the cost of replacement parts but there is no claim or reliable evidence of their value.

[24] Learned Counsel for the defendant has largely premised her case on statements and inferences that are not borne out or supported by the evidence. For example the Court is invited to find that the defendant did not agree to pay for the repairs to the claimant's car whilst the defendant himself conceded that he had under cross-examination. I am satisfied that it is this which led to the collateral agreement between Michel and himself for the benefit of the claimant and Michel's testimony corroborates that fact. It is that in my opinion which constitutes the nub of this case.

[25] Reference was made by Counsel for the claimant to Article 962 of the Civil Code which provides that "a party may stipulate for the benefit of a third person, when

such benefit is the condition of a contract which he makes for himself, or of a gift which he makes to another; and he who makes the stipulation cannot revoke it, if the third person has signified assent." Learned Counsel went on to submit that with the knowledge consent and acquiescence of the defendant the claimant delivered his car to Michel's garage where it was accepted for repairs pursuant to the contract and that such delivery signified his assent. I fully agree.

[26] Claimant Counsel further submitted that on the authority of Articles 949 956 and 917A of the Civil Code certain terms were implied into the contract and customary clauses must be supplied although they be not expressed.

Article 956 stipulates that "the obligation of a contract extends not only to what is expressed in it, but also to all the consequences, which by equity, usage or law, are incidental to the contract, according to its nature."

And Article 917A provides that "the law of England for the time being relating to contracts quasi contracts and torts shall mutatis mutandis extend to this colony and shall as far as practicable be construed accordingly.

[27] Learned Counsel then submitted that on the basis of Ariticles 948, 956 & 917A Civil Code the following terms, among others, are implied into the contract viz:

(a) the said repairs would be completed within reasonable time of the 2 – 3 week period envisaged by the contracting parties.

(b) that having selected/chosen the particular garage to undertake the repairs the defendant had brought himself under a positive duty to take affirmative action to ensure that the repairs would be carried out with reasonable care and skill and that the car would not be subject to additional physical damage.

(c) that the defendant would ensure that the car was returned to its owner in pre accident condition.

[28] I frankly find great difficulty in accepting as an implied term of the contract that the defendant had a positive duty to ensure that the car would not be subject to additional physical damage whilst undergoing repairs. After all the car was taken to the garage for the purpose of repairs and entrusted to the custody and safekeeping of the proprietor whose obligation it would have been to ensure that it suffered no **additional damage** whilst in his custody and care.

[29] Indeed he had a lien over and an interest in the vehicle in respect of the balance due and owing for the repairs which he had carried out and the claimant could if properly advised have mitigated his loss (as he had a duty to) by paying Michel the outstanding balance and thereby have retrieved his vehicle and so cut his loss. The defendant would then have been liable to reimburse him for the outstanding balance which he had paid to Michel as well as the cost of replacement parts and loss of use for say 30 days at $100.00 a day with interest and costs.

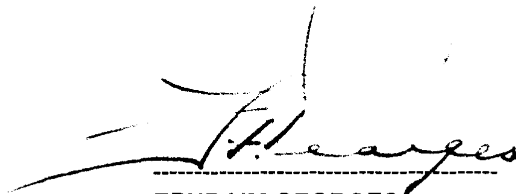
[30] In the circumstances which however at present obtain whilst it is undoubtedly true that the defendant's conduct has been reprehensible throughout and is morally indefensible having regard to all the surrounding circumstances the claim filed against him on 4th April 2006 by the claimant for $69,600.00 for loss and damage is repugnant to ordinary common sense and defies logic and jurisprudence and cannot be maintained in law bearing in mind that the pre-accident value of the claimant's car as at July 2000 was put at merely $30,000.00.

[31] And whilst it is true that the defendant had breached his agreement by reneging on his obligation to pay even the **full deposit** of the cost of repairs of the claimant's vehicle to the autobody repairman and colloquially speaking never even turning back to ensure that he claimant's vehicle had been repaired and restored to its pre-accident condition as promised it is my considered view that although his conduct was a contributory factor it certainly was not the dominant cause of **the additional loss or physical damage** to it and blame cannot be placed wholly at his feet therefor. The amount claimed for a start appears to be grossly

exaggerated and is based on an undated and wholly unsubstantiated report by a mechanic who did not himself testify and whose credentials experience and expertise are not known. Judgment for the sum claimed in those circumstances would in my opinion result in unjust enrichment of the claimant and would be tantamount to a travesty of justice.

[32] Having said that I hasten to say that I am not by any means unmindful of the dilemma yea the plight in which the claimant has found and indeed still finds himself. Therefore looking at the entire case in the round it is my view that the ends of justice would best be served by entering judgment for the claimant in the sum of $30,000.00 that is to say the pre-accident value of his car plus 30 days loss of use at $100.00 a day general damages with interest at 6% per annum from the date of filing the claim to date of payment and prescribed costs of $9,000.00 in accordance with Part 65.5(1) CPR.

The defendant would in the circumstances be entitled to the damaged vehicle (or wreck) to salvage what is salvageable from it upon payment to Mr. Michel of the balance outstanding in respect of repairs carried out by him viz $2,400.00.



**EPHRAIM GEORGES**
**HIGH COURT JUDGE (AG.)**