

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE (CIVIL) A.D. 1999

CASE NO: 445/1993

BETWEEN

GUY ANGELO TRADING as Guy's Rental

PLAINTIFF

VS

WENDELL PHILLIP

DEFENDANT

Appearance

Mr D Theodore for Plaintiff
Mr M Francois for Defendant

**1998: APRIL - 21st, 28th
MAY 11th
1999: FEBRUARY 9th**

JUDGMENT

d' Auvergne, J

By a Writ of Summons endorsed with a Statement of claim filed on the 16th day of July 1993 the Plaintiff claimed against the Defendant
The sum of(1) \$8,650.00.

(2) Damages

(3) Interest there on at such rate and for such period as to
the Court seem just

(4) Costs

The Defendant filed an appearance on the 23rd day of July 1993 and a defence accepted out of time, on the 17th day of November 1993. In his defence he denied owing the Plaintiff any monies in respect of

hire of the Plaintiff's motor vehicle under any agreement in writing. Reply was accepted out of time and filed on the 5th day of January 1994 and a request for hearing was filed on the 22nd day of March 1994. The Matter came up for hearing on the 21st day of April 1998.

At the hearing Guy Angello gave evidence on his own behalf for the Plaintiff and Wendell Phillip on his own behalf for the Defendant.

Facts

The Plaintiff is the Managing Director of Guy's Car Rentals operating from Walcott's building on Victoria Street and the Defendant is a Surveyor whose office is also situated in the same building above mentioned.

Guy's Rental Company is a car rental operation which supplies vehicles to clients. The procedure followed is that a written rental agreement is drawn up between the Company and the new client which states "the type of vehicle hired, the daily rate and other information pertaining to the client."

The Plaintiff said that he first rented vehicles to the Defendant in June/July 1992 which rental he eventually paid.

He said that on the 15th day of December 1992 the Defendant rented a vehicle for 30 days at \$150.00 per day which amounted to \$4,500.00. Plaintiff said that the Defendant made two payments \$3,000.00 and \$400.00 respectively leaving a balance of \$1,100.00. He exhibited an invoice which confirmed the above mentioned but there are erasures and writings all over the said invoice.

He exhibited two other invoices Nos 219 and 283.

Invoice 219 for a period of 30 days from 15/1/1993 to 15/2/1993 30 days at \$150.00 totalling \$4,500.00.

Invoice 283 for a period of 23 days from 15/2/93 to 8th Mach 1993 totalling \$3450.00.

He further said that on or about the end of February 1993 and early March 1993 the vehicle loaned to Defendant got damaged and was sent for repairs which lasted three days. Nevertheless Defendant was loaned another vehicle during that interval. The cost of repairs was assessed at \$600.00 (exhibited). Therefore 3 day period of the vehicle at garage at \$150.00 a day and \$600.00 for repairs amounted to \$1,050.00 as claimed.

Plaintiff said he approached the Defendant on many occasions for the payment of the rentals but to no avail, so he had no alternative but to seek redress from the Courts.

Under Cross Examination it was disclosed that the Plaintiff's Company drew up a new agreement with every client if the period of rental was for 30 days or more but it was customary that only the first contract was signed by the client.

The Defendant gave evidence describing his initial meeting with Plaintiff. He more or less indicated that the first rental agreement was forced on him but he eventually accepted it.

He said his second car rental with the Plaintiff was for thirty days out

of which "the first five days were paid, the second five days were also paid that is ten days I usually pay by cheque. I had the vehicle up to December 15th. I was required to pay at end the of the term. I know that sometime in December I paid Mr Angello."

Defendant said "there must have been an agreement between Mr Angello and myself signed by my secretary on my behalf. It was like a standing order. She knew what had to be done. I never on my own signed a rental agreement all were signed by my secretary. Sometime in January about the fifteenth..... I paid that cheque for \$3,000.00. I cut off my rental with Mr Angello as of 15th December 1992.....
From then 15th January 1992 ~~I went to~~ ^{I entered into a} loose arrangement with Mr Angello this loose arrangement continued till Saturday 6th day of March 1993."

Defendant exhibited three cheques -

- (1) \$3,000.00 dated 22nd January 1993
- (2) \$410.84 dated 8th February 1993
- (3) \$3,000.00 dated 12th February 1993

He further exhibited (1) a copy of a rental agreement NO.92 which reads as follows.

In the column **Rented To** the words **Mr Wendall Phillip of Victoria Street Castries** were printed.

Next to the word signature was written **B. Biscette paid.**

That agreement noted that vehicle HA7654 was rented out on the 15th of November 1992 and was returned on the 15th of December

1992 for 30 days at \$150.00 per day. Sub total	\$4,500.00
20%	<u>900.00</u>
	3,600.00
Less deficit	<u>4,000.00</u>
Net due	400.00

The Defendant further exhibited two Invoices dated 9th March 1993.

Invoice No. 487 which reads as follows

To labour on repair on jeep	\$ 600.00
Parts	428.44
3 days rental	<u>360.00</u>
	1,388.44
Less	<u>410.84</u>
	\$ 977.60

Invoice 488

15th - 12 - 92 - 1501.93	4,500.00
Less Payment	<u>3,800.00</u>
15-01-93 - 15.0293	4,500.00
	5,200.00
15.02 - 93 802 - 93	<u>3,450.00</u>
Pay this amount	8,750.00

Mr Phillip the Defendant said that he received the above noted invoices after he drove his Suzuki Jeep on the 8th day of March 1993 into the parking lot at his workplace.

He told the Court that when he was presented with those bills he said to the Plaintiff "why now, why as I have a vehicle you say I owe you for

three months." He told the Court that Plaintiff responded with useless threats.

Under Cross Examination the Defendant reiterated what he had said in his Examination in chief. "On or about 15th December 1992 I cut off formal relations with the Plaintiff... after December 15th 1992 I went into a loose arrangement with the Plaintiff..... Correct for 15th December 1992 to 6th March 1993."

Arguments

Learned Counsel for the Defendant argued that the Plaintiff had not discharged his burden of proof. He said that it was Common Business procedure that client must affix his or her to signature to a contract and that neither Defendant nor his secretary had affixed their signatures to the invoices submitted by the Plaintiff.

Learned Counsel for the Plaintiff quoted **Articles 1163 and 1164 of the Civil Code.**

Conclusion

Based on the evidence there is no doubt in my mind that there existed a contractual relationship between the Plaintiff and the Defendant between the period 15th December 1992 and 6th March 1993 (the Defendant admits such though the Plaintiff states and pleads it was to 8th March 1993 but he has nothing to support his allegation but his unsigned documents.)

I will use as my basis for deciding the amounts due, the rental agreement NO.92 as exhibited by the Defendant. (Since it is the only invoice that was signed by Defendant's secretary B. Biscette who was

authorised to do so.

It is also my view based on the above noted agreement NO.92 and from the evidence that there was an element of friendship between the parties hence the rental of the vehicle at \$150.00 per day but with 20% deduction making the total for 30 days rental \$3,600.00 instead of \$4,500.00.

A perusal of Agreement NO.92 indicates that a deposit of \$3,000.00 was placed at the start of all transactions. I accept that there was a rental of 60 days from 15th December 1992 to 15th February 1993 and 21 days from 15th February 1993 to 6th March 1993.

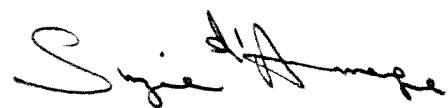
81 days at \$150.00 per day	\$ 12,150.00
Less 20%	<u>2,430.00</u>
Total	9,720.00
Cheques dated 22/1/93	3,000.00
" " 8/2/93 	<u>3,000.00</u>
	3,720.00

I accept as cost of repairs the amount exhibited by the Defendant dated 8th February 1993. I therefore find as a fact that the Defendant is indebted to the Plaintiff in the amount noted above.

My order is as follows

The Defendant is to pay the Plaintiff the sum of \$3,720.00 as special damages.

Costs to the Plaintiff to be agreed or otherwise taxed.

A handwritten signature in black ink, appearing to read 'Suzie d'Auvergne', written in a cursive style.

SUZIE d'AUVERGNE
HIGH COURT JUDGE