

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO: SVGHCV2024/0137

BETWEEN:

ANTHONY THOMAS

Claimant

and

LAWRENCE MILLER

Defendant

BEFORE: The Hon. Mde. Justice Cybelle Cenac-Dantes

Made: 10th February 2026, 20th February 2026 (closing submissions)

Appearances: Maxron Holder for the Claimant, Sten Sergeant for the Defendant

JUDGMENT

Introduction

- [1] Reference will be made in this decision to submissions that the Court considers most relevant to issuing its decision. It is to be noted that all submissions, both written and oral, made by counsel have been duly considered, and the failure to mention any specific submission does not mean that it was not considered by the Court.
- [2] This is a claim arising out of a written agreement for the sale of a fishing vessel entered into between the Claimant and the Defendant on 7 December 2021 for the sum of \$50,000.00.
- [3] It is not in dispute that the Claimant paid the sum of \$35,000.00 upon execution of the agreement, leaving a balance of \$15,000.00 to be paid "*within a reasonable time.*" Both counsel accept, and the Court finds on the evidence, that the agreement

constituted a contract of sale within the meaning of the **Sale of Goods Act**¹, and that possession of the vessel was delivered to and taken by the Claimant.

- [4] The central issue for determination is whether the Defendant was entitled to treat the contract as discharged and to resell the vessel to a third party, or whether that resale constituted a breach entitling the Claimant to recover the sums paid and damages.

Issues

- [5] The specific issues for determination are:
- (1) Whether the alleged agreement that payment was to be made from “fishing proceeds” forms part of the contract;
 - (2) The proper construction of the phrase “within a reasonable time”;
 - (3) Whether the Claimant was in breach of the agreement;
 - (4) Whether such breach amounted to repudiation;
 - (5) Whether the Defendant was entitled to resell the vessel;
 - (6) What remedies, if any, arise.

Construction of the Contract

- [6] The Court begins by addressing issues (a) and (b), namely: (i) whether the alleged agreement that the balance of the purchase price was to be paid from fishing proceeds forms part of the contract, and (ii) the proper construction of the phrase “within a reasonable time,” including whether the principle of *contra proferentem* has any application in that regard.

¹ Cap 158 Laws of Saint Vincent and the Grenadines

Parol Evidence

- [7] The Claimant contends that it was agreed between the parties that the outstanding balance of \$15,000.00 would be paid out of the proceeds of fishing operations.
- [8] The Court accepts the Defendant's submission that this alleged term was not part of the Claimant's pleaded case and was introduced for the first time in the Reply.
- [9] As a matter of proper pleading, a Reply is confined to answering matters raised in the Defence and is not the appropriate vehicle for advancing a new and substantive term of the contract. The alleged "fishing proceeds" arrangement is not responsive in nature but seeks to introduce an entirely new basis upon which the Claimant's payment obligation is said to arise.
- [10] In those circumstances, the Court agrees with the Defendant that the Claimant is not entitled to rely on that alleged term, it not having been properly pleaded. The proper course for the Claimant would have been to seek leave to amend his claim, thereby affording the Defendant a proper opportunity to respond by way of defence. By introducing this new basis upon which the Claimant's payment obligation is said to arise for the first time in the Reply, the Claimant deprived the Defendant of a fair opportunity to plead to that aspect of the case.
- [11] On that basis alone, the Court rejects the Claimant's reliance on the alleged "fishing proceeds" arrangement.
- [12] In any event, and in the alternative, even if the Court were wrong to exclude the evidence on procedural grounds, the Claimant's argument cannot succeed.
- [13] The written agreement executed by the parties contains no reference whatsoever to any arrangement that payment of the balance was contingent upon the success of fishing operations.
- [14] The Court finds that the agreement is a complete written contract. This is reinforced by the Claimant's own evidence that he was the architect of the document, having approached the Defendant to write up the agreement and specifically proposing the

phrase “*within a reasonable time*”. There is no pleading or evidence of mistake, omission, or collateral agreement capable of displacing these clear written terms.

- [15] In those circumstances, the parol evidence rule applies. As affirmed by the Court of Appeal in **Joseph v Clico International General Insurance Co Ltd**², parol testimony cannot be received to contradict, vary, add to, or subtract from the terms of a written contract where parties have “deliberately agreed to record any part of their contract”. Consequently, extrinsic evidence regarding fishing proceeds is inadmissible to alter the absolute payment obligation recorded in this signed instrument.
- [16] The alleged “fishing proceeds” term would fundamentally alter the nature of the Claimant’s obligation. It would convert what is, on its face, an absolute obligation to pay the balance of the purchase price into a contingent obligation dependent entirely on the success of the Claimant’s fishing operations.
- [17] Such a construction would introduce uncertainty as to both the timing and certainty of payment and would effectively leave the balance of the purchase price at large, a result which the Court considers commercially implausible.
- [18] The Claimant’s own evidence, taken at its highest, was that he did not wish to be pressed for payment and, at most, indicated the manner in which he contemplated meeting the balance. That falls short of establishing any agreement that payment was conditional upon the success of fishing operations.
- [19] The Court has considered that part of the Defendant’s cross-examination in which he stated that “*we all speak about when the boat work, the money will come to me.*”
- [20] The Court does not regard that evidence as establishing any agreement that the balance of the purchase price was to be paid solely or exclusively from the proceeds of fishing operations. Properly understood, that statement reflects no more than a general discussion as to the anticipated source of funds from which payment might be made.

² Joseph v Clico International General Insurance Co Ltd (2006) 71 WIR 31

- [21] It does not amount to an agreement that the Claimant's obligation to pay was conditional upon the success of the fishing enterprise, nor does it displace the clear obligation arising under the written contract to pay the balance within a reasonable time.
- [22] The Court accepts the Defendant's evidence that no such conditional arrangement was agreed. To construe the contract in the manner contended for by the Claimant would be to convert an otherwise straightforward obligation to pay into one wholly contingent on uncertain future events, with the result that the balance of the purchase price might never be paid. The Court considers such a construction to be commercially untenable and inconsistent with the objective intentions of the parties.
- [22] The Court finds that the Claimant's own conduct significantly undermines his assertion of a contingent 'fishing proceeds' term. By his own testimony, the Claimant admitted to instructing Elvis to make payments towards the outstanding balance while he was in Canada. This instruction to seek funds from a source entirely unassociated with the vessel's fishing operations demonstrates that the Claimant did not view his debt as being restricted to, or conditional upon, the success of the fishing enterprise. The use of independent funds indicates that the \$15,000 balance was understood as a straightforward debt.
- [23] The Court therefore finds that the alleged "fishing proceeds" term does not form part of the contract.

Contra Proferentem

- [24] In light of that finding, it is to be observed that the Claimant's case, though not framed in express terms, in substance seeks to rely upon a construction of the agreement which would engage the principle of contra proferentem, by reading the obligation to pay as contingent upon the proceeds of fishing operations. That is the very construction which the Court has rejected. To that extent, the Court's conclusion that no such term forms part of the contract significantly circumscribes the scope for any application of that principle. Nevertheless, as the issue was

expressly raised by the Defendant in response to the Claimant's position, the Court will address the doctrine for completeness.

- [25] The Defendant's submission arises from the manner in which the Claimant sought to construe the phrase "*within a reasonable time*." The doctrine of contra proferentem provides, that where a contractual term is ambiguous, it is to be construed strictly against the party who drafted or seeks to rely upon it, particularly where that party is in a stronger bargaining position. In his submissions, the Claimant invited the Court to interpret the phrase "*within a reasonable time*" in a manner consistent with his case, that payment of the balance was to be made from the proceeds of fishing operations, with no fixed or ascertainable timeframe for payment.
- [26] The Court accepts the Defendant's submission that contra proferentem is a rule of limited application and arises only where there is genuine ambiguity in the contractual language which cannot be resolved by the application of the ordinary principles of construction. The evidence established that the Claimant, a seasoned businessman, was the architect of the document and specifically proposed the words "*within a reasonable time*". Even if the phrase were found to be genuinely ambiguous, a position the Court rejects, the rule would operate strictly against the Claimant as the party who drafted the provision. He cannot rely on a strained interpretation of his own chosen wording to convert a flexible timeframe into a permanent contingency
- [27] In the present case, the Court finds that there is no ambiguity in the phrase "*within a reasonable time*." It is a well-understood expression denoting an objective standard to be assessed in light of the nature of the transaction and the surrounding circumstances.
- [28] The Claimant's suggested interpretation does not arise from any ambiguity in the wording of the contract but from an attempt to introduce an extraneous qualification, namely that payment was contingent upon the success of fishing operations. That is not a matter of construction but of variation.

- [29] In those circumstances, there is no ambiguity to resolve and the principle of contra proferentem does not arise and has no application in this case.

Construction of “Within a Reasonable Time”

- [30] The agreement required the balance of the purchase price, namely \$15,000.00, to be paid “*within a reasonable time.*”
- [31] The Court accepts that the phrase does not import a fixed calendar date and that, consistently with **the Sale of Goods Act**, a stipulation as to time of payment is not, without more, to be treated as of the essence of a contract of sale. That, however, does not mean that payment may be deferred indefinitely, nor does it permit the purchaser unilaterally to determine the timing of payment according to his own convenience or success in the use of the goods.
- [32] The phrase “*within a reasonable time*” is to be construed objectively. It calls for the Court to determine, in light of the terms of the agreement, the nature of the transaction, and the surrounding circumstances known to the parties, what period was reasonably contemplated for payment of the outstanding balance.
- [33] In the present case, the contract was for the sale of a fishing vessel for a total purchase price of \$50,000.00, of which \$35,000.00 was paid upfront. The balance therefore represented a relatively modest but still significant outstanding portion of the agreed consideration. The agreement did not provide for payment by instalments, did not tie payment to any identified event, did not make payment conditional on the profitability of the vessel, and did not reserve to the Claimant an open-ended period within which to complete payment.
- [34] The Court rejects the Claimant’s suggested construction of the phrase “within a reasonable time” as permitting payment whenever the vessel generated sufficient fishing income. That construction is inconsistent with the words used by the parties, inconsistent with the Court’s findings on the alleged “fishing proceeds” term, and inconsistent with commercial common sense.

- [35] If that construction were accepted, the result would be that the Claimant, having paid the majority of the price and taken possession of the vessel, could postpone the balance for an indeterminate period, with payment depending entirely upon whether, when, and to what extent the vessel was operated profitably. Such a construction would deprive the seller of any real certainty and could lead to the commercially absurd result that the balance might never be paid at all. As noted in **Gopaul and Another v Ragoonath**³, a court must reject any construction that leads to commercial absurdity or does “violence to the meaning” of the words. Commercial common sense dictates that a \$15,000 balance on a completed sale cannot be made wholly contingent on uncertain future events like the success of a fishing enterprise.
- [36] The Court therefore agrees with the Defendant’s submission that the phrase must be given its ordinary and objective meaning. In this contract, “*within a reasonable time*” meant within a reasonable period after delivery and possession were given, having regard to the fact that this was a completed sale transaction in which only a relatively small balance remained outstanding and no special mechanism for deferred or contingent payment had been agreed.
- [37] The Court also considers it significant that the parties did not leave the matter entirely unmanaged. The very inclusion of the phrase “within a reasonable time” demonstrates that payment of the balance was expected after the agreement and within a period capable of objective assessment. It cannot sensibly be read as equivalent to “whenever able,” “when convenient,” or “if the fishing proves successful.”
- [38] Accordingly, the Court finds that the proper construction of the agreement is that the Claimant was obliged to pay the remaining \$15,000.00 within an objectively reasonable period after taking possession of the vessel, irrespective of the source from which he intended to obtain the funds.

³ Gopaul and Another v Ragoonath (1996) 51 WIR 351

[39] Whether that obligation was fulfilled on the facts is a separate question, to which the Court now turns.

Effect of the Defendant's Notice Making Time of the Essence

[40] The Court next considers the effect of the letter issued by the Defendant's attorneys, Williams & Williams, by which the Claimant was required to pay the outstanding balance by a specified date.

[41] As previously noted, a stipulation as to time of payment is not, without more, of the essence in a contract for the sale of goods. However, it is well established that time, though not originally of the essence, may be made so by a subsequent notice requiring performance within a reasonable time.

[42] For such a notice to be effective, it must clearly call upon the defaulting party to perform his contractual obligation within a specified period, and that period must be reasonable in the circumstances of the case.

[43] The letter from Williams & Williams constituted a clear and unequivocal demand for payment of the outstanding balance of \$15,000.00 and specified a date by which such payment was required.

[44] The Court accepts the Defendant's submission that, by the time that letter was issued, a substantial period had already elapsed since the execution of the agreement, during which the Claimant had taken possession of the vessel but had made no meaningful progress toward discharging the balance of the purchase price.

[45] In that context, the Court is satisfied that the period afforded by the notice was reasonable. As established by Lord Denning MR in **Charles Rickards Ltd v Oppenheim**⁴, the reasonableness of a notice period must be judged at the time it is given, taking into account the total delay that has already occurred. The two-week deadline given by letter of demand of the 22nd May, 2022 did not exist in a vacuum; it followed an almost six-month period of silence and non-payment by the Claimant.

⁴ Charles Rickards Ltd v Oppenheim [1950] 1 ALL ER 420

Consistent with the principles in **Oppenheim**⁵, a seller who has been patient and waived initial rights to immediate payment is nonetheless entitled to bring matters to a head by fixing a deadline, provided that deadline is reasonable in light of the prior default.

- [46] The Court therefore finds that, upon the expiry of the time stipulated in that letter without payment being made, time for payment of the balance became of the essence of the contract.

Whether the Claimant Was in Breach

- [47] The Court now considers whether, on the facts, the Claimant complied with his obligation to pay the balance of the purchase price within a reasonable time.
- [48] The Claimant paid the sum of \$35,000.00 upon execution of the agreement in December 2021 and took possession of the vessel. Thereafter, the evidence reveals no structured or consistent effort on his part to discharge the outstanding balance of \$15,000.00.
- [49] The Court accepts the Defendant's evidence that, apart from a single minimal payment of US\$200.00 made one day prior to the 6 June 2022 deadline stipulated in the letter from Williams & Williams, no meaningful payments were made toward the balance after the initial deposit. The Claimant asserted that further sums of EC\$1,000 and EC\$2,000.00 were paid on his behalf by his brother and the boat captain. However, these alleged payments were wholly unsubstantiated by receipts or any corroborative evidence. The Court applies the principle of adverse inference as established in **Bernice Freeman v The Attorney General et al**⁶, which holds that where a party fails to call a witness who could elucidate material facts, the Court may infer that such evidence would not have assisted that party's case. The Claimant did not call Darron Hazell, the person he left in charge of his operations, nor did he call his brother Elvis to verify these payments. In light of their absence

⁵ *ibid*

⁶ BVIHCV2008/0383

and the lack of documentary proof, the Court draws the inference that no such additional payments were made and finds that the only sum received after the initial deposit was the USD\$200 acknowledged by the Defendant.

- [50] The Claimant's own evidence was that he left the State for medical reasons. However, he did so without making any arrangements for the continued discharge of his contractual obligation, without providing any reliable means of contact, and without engaging the Defendant in any discussion as to payment of the outstanding balance.
- [51] The Claimant's evidence was that he remained in Canada for a period of approximately two years. During that period, the Court finds that he made no meaningful attempt to communicate with the Defendant regarding the agreement, to propose any variation of its terms, or to regularise his position in relation to the outstanding balance.
- [52] The Claimant's assertion that the vessel was rendered inoperable by the Defendant, including the allegation that the engine was removed, is not accepted. No corroborative evidence was called to support that contention, notwithstanding that such evidence could readily have been obtained from persons directly involved in the operation of the vessel, including Daron Hazell, who was said to have been responsible for its use. The Court therefore rejects that aspect of the Claimant's case.
- [53] In those circumstances, the Court finds that, even prior to the issuance of the Defendant's notice, the Claimant had failed to pay the balance within a reasonable time.
- [54] The position is further reinforced by the Claimant's failure to comply with the notice issued by Williams & Williams, which made time of the essence. Notwithstanding the clear demand for payment within a specified and reasonable period, the Claimant failed to make payment or to take any meaningful steps toward performance.

- [55] The Court considers it significant that the Claimant's own evidence was that he did not wish to be pressed for payment. While that may reflect his personal expectations, it is inconsistent with the objective obligations arising under the contract.
- [56] On any objective assessment, the delay in payment, extending over a prolonged period and unaccompanied by any structured effort to perform, cannot be characterised as payment within a reasonable time.
- [57] The Court therefore finds that the Claimant was in breach of the agreement.

Whether the Breach Amounted to Repudiation

- [58] The Court next considers whether the Claimant's breach amounted to a repudiatory breach entitling the Defendant to treat the contract as discharged.
- [59] The Defendant submitted, in his closing submissions, that the Claimant's prolonged failure to pay the balance of the purchase price, coupled with his failure to comply with the notice making time of the essence, constituted conduct going to the root of the contract and thereby amounting to repudiation. The Court accepts that submission.
- [60] The applicable principle is that repudiation is to be assessed objectively. The question is whether the conduct of the defaulting party evinces an intention no longer to be bound by the contract or to perform it in a manner substantially inconsistent with its terms.
- [61] In a contract for the sale of goods, the obligation of the buyer to pay the price is a fundamental obligation. The statutory framework recognises that where a buyer fails to pay, the seller may, in appropriate circumstances, treat the contract as at an end and invoke the remedies available to an unpaid seller, including the right of resale.
- [62] In this regard, **section 48(3) of the Sale of Goods Act** provides, in material part, that:

“Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to resell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.”

- [63] The Court accepts the Defendant's submission that, in the circumstances of this case, the vessel was of a nature liable to deterioration if left unused and exposed. The evidence establishes that the vessel was left unattended for a prolonged period and was subject to the risk of deterioration. In that sense, while not perishable in the narrow sense, it was a wasting or depreciating asset, and the Defendant was entitled to act to preserve its value⁷.
- [64] While those provisions are directed to the remedies available to an unpaid seller, they reflect the broader statutory position that a buyer's failure to pay the price, particularly after notice and the lapse of a reasonable time, entitles the seller to treat the contract as discharged and to act upon that position.
- [65] In the present case, the Claimant failed to pay the balance of the purchase price within a reasonable time, made no structured or sustained effort to discharge that obligation, and failed to communicate any clear intention to perform the contract in accordance with its terms.
- [66] The Claimant further failed to comply with the notice issued by the Defendant's attorneys, which made time of the essence and afforded him a reasonable opportunity to perform his outstanding obligation.
- [67] Applying the objective test set out in **Eminence Property Development Ltd v Heaney**⁸, the question is whether a reasonable person in the position of the Defendant would conclude that the contract breaker has clearly shown an intention to 'abandon and altogether refuse to perform the contract'. The Claimant's sustained failure to pay the \$15,000 balance, his departure from the jurisdiction without

⁷ *Gallager v Shilcock* [1949] 1 ALL ER 921. Referenced only for the purpose of establishing the perishable nature of the boat

⁸ *Eminence Property Development Ltd v Heaney* [2010] EWCA Civ 1168

providing a means of contact, and his failure to comply with a formal notice making time of the essence collectively meet this high threshold. Viewed objectively and cumulatively, his conduct evinced an intention no longer to be bound by the agreement. It demonstrated a refusal or inability to perform a fundamental term of the contract, namely payment of the balance of the purchase price. This constituted a repudiatory breach that entitled the Defendant to treat the contract as discharged and the court so finds.

Whether the Defendant Was Entitled to Resell the Vessel

- [68] The Court next considers whether the Defendant was entitled, in the circumstances, to resell the vessel.
- [69] The Defendant submitted, in his closing submissions, that as an unpaid seller, and in light of the Claimant's repudiatory breach and continued non-payment, he was entitled to resell the vessel in order to mitigate his loss and preserve the value of the asset. The Court accepts that submission and rejects the Claimant's contention that the resale constituted a breach of contract. On the contrary, the resale was a lawful and justified response to the Claimant's repudiatory breach.
- [70] The Defendant's closing submissions address the legal consequences of resale by an unpaid seller under section **48 of the Sale of Goods Act**⁹ and the proper treatment of the proceeds of such resale. The Court has carefully considered and adopts that analysis, subject to its application to the facts of this case.
- [71] The Defendant relied on **Gallagher v Shilcock**¹⁰, a case involving the resale of a vessel, in which the Court treated a boat as goods of a perishable nature for the purposes of section 48(3), thereby permitting resale by the unpaid seller. In that case, resale was approached as a statutory remedy, with the suggestion that the seller may be required to account for any surplus realised.

⁹ Cap. 158 Laws of St. Vincent and the Grenadines Revised Edition 2009

¹⁰ Gallagher v. Shilcock [1949] 2 K.B. 765

- [72] However, as the Defendant correctly submitted, that position has since been clarified by the Court of Appeal in **Ward v Bignall**¹¹. In that case, it was held that where an unpaid seller resells goods in accordance with section 48, the effect of the resale is to rescind the contract, with the consequence that property reverts in the seller and the seller is entitled to retain the proceeds of resale, whether greater or less than the original contract price.
- [73] The Court of Appeal further made clear that the seller is not obliged to account to the buyer for any surplus realised on resale. The resale operates as an election to treat the contract as rescinded, and any further entitlement of the seller is thereafter governed by proof of loss arising from the buyer's breach.
- [74] The Court accepts that statement of the law. Accordingly, while resale is a lawful exercise of the unpaid seller's statutory rights and may result in the seller retaining the proceeds of sale, it does not, without more, establish a further entitlement to damages.
- [75] The Court therefore accepts that the resale was commercially reasonable as the vessel was a depreciating asset, liable to deterioration if left unused, and the Defendant was entitled to act to preserve its value rather than allow it to remain idle indefinitely.
- [76] The fact that the Defendant may have realised a greater sum on resale does not render his conduct unlawful. The law permits an unpaid seller, in appropriate circumstances, to resell the goods and, where applicable, to recover damages for any loss occasioned by the buyer's breach.

Damages and Counterclaim

- [77] The Court now considers the Defendant's counterclaim and the question of damages.

¹¹ R. V. Ward v Bignall [1967] 2 All ER 449

[78] In the present case, the Defendant seeks to recover the sum of \$25,000.00, being the resale price of the vessel. That figure represents the proceeds of resale, which the Defendant is entitled to retain as a matter of law following rescission of the contract.

Conclusion and Orders

[79] For the reasons set out above, the Court finds that the alleged “fishing proceeds” term does not form part of the contract and that the Claimant was obliged to pay the balance of the purchase price within a reasonable time.

[80] The Court further finds that the Claimant failed to pay the balance within a reasonable time, failed to comply with the notice making time of the essence, and thereby repudiated the contract.

[81] The Defendant was therefore entitled to treat the contract as discharged and, as an unpaid seller, to exercise his statutory right of resale. The resale of the vessel was lawful and did not constitute a breach of contract and the Defendant is entitled to retain the proceeds of resale without account or repayment of any surplus.

[82] It is hereby ordered that:

- (1) The Claimant’s claim is dismissed.
- (2) The Defendant’s counterclaim for damages is granted in the sum of \$25,000.00, which has already been received by way of the resale.
- (3) The Claimant shall pay the Defendant prescribed costs in the sum of **\$13,225.00**, based on the value of the claim of \$71,500.00.

- (4) The Defendant is to take carriage of the order after judgment.

CYBELLE CENAC-DANTES

HGH COURT JUDGE

BY THE COURT

REGISTRAR