

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2022/0505 (formerly GDAHCV2017/0348)

BETWEEN:

**GARVEY HOSTEN
(Trading as “Final Stop Auto Sales & Rentals”)**

Claimant

and

MOISES A THOMAS

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Ms. Alicia Lawrence for the Claimant

Ms. Danyish Harford for the Defendant

2023: March 7
August 9

JUDGMENT

- [1] **ACTIE, J.:** The claimant claims against the defendant for damages for breach of contract and/or negligence and/or breach of statutory duty arising from a motor vehicular accident on 4th September 2016. The defendant counterclaims fraudulent misrepresentation and damages against the claimant.
- [2] The claimant is the proprietor of the business “Final Stop Auto Sales and Rentals”, renting motor vehicles to the public. By claim form filed on 11th September 2017, the claimant avers that he entered into a written rental agreement with the defendant for a Toyota Rav4 Registration No. PAL270 (hereafter referred to as “the said vehicle”) for the period of 1st September 2016 to 5th September 2016. The claimant also avers that the defendant paid the sum of \$345.00 which was solely for the rental of the said vehicle.

- [3] The claimant contends that it was an express term of the agreement that the defendant would be liable for the cost of repairs and loss of use occasioned by any collision occurring during the rental period.
- [4] The claimant asserts that on 4th September 2016, the defendant negligently and recklessly drove the motor vehicular and collided into a railing/electric pole and then into a wall, which subsequently flipped over and landed on its roof. The claimant states that the said vehicle was severely damaged and was written off.

Defendant's case

- [5] The defendant in his pleaded defence admits renting the said vehicle from the claimant for a period of three days from 2nd September 2016 to 5th September 2016 at the total rental fee of \$330.00.
- [6] The defendant however challenges the purported rental agreement relied on by the claimant. The defendant denies signing any rental agreement and states that he was required to pay an additional fee of \$500.00 for the insurance for the rental period. The defendant states that the claimant was indebted to him in the sum of \$800.00, and that it was agreed that the deduction of \$500.00 for the insurance be made from the amount owing to the defendant.
- [7] The defendant further avers that the claimant tampered with the purported rental agreement and contends that the claimant and/or his agents fraudulently created the Rental Agreement representing that the defendant signed same knowing that it was untrue. The defendant contends that he only signed a one-page yellow document at the bottom front of the page, with no writing at the back. The defendant contends that he never signed as agreeing to the terms stated on that second page which includes liability for cost of repairing the said vehicle if involved in an accident.

- [8] The defendant pleaded the following particulars of fraud:
- (1) Inserting a signature on the rental agreement falsely representing it to be the defendant's;
 - (2) Inserting an incorrect fee on the rental agreement; and
 - (3) Scratching out several portions of original information on the Rental Agreement and replacing with information designed to deceive one into believing that the defendant affixed his signature to the rental agreement.
- [9] Further, the Defendant disputes the signature on the purported rental agreement where his name is spelt "Moises" Thomas. He states that the name written in the claimant's Rental Agreement, next to "Client's Signature", is spelt "Moses Thomas", leaving out the "i" and contends that he would not sign and leave out a letter from his name.
- [10] The defendant states that at all material times he understood, or was misled by the claimant to understand, that he (the claimant) was operating a Rental business which had insurance to cover any damage or losses incurred from accidents during the rental period.
- [11] The defendant further pleaded that it is public knowledge that Rentals in Grenada operate with the relevant rental insurance. The defendant states that he has also been renting vehicles from other persons and business places for years and knows from experience that all Rentals operate with insurance to cover damage/loss incurred during the period a vehicle is rented out, and hence the reason why payments are made for the daily rental and an insurance fee.
- [12] The defendant further states that assuming, but not conceding; that the Defendant had signed the purported rental agreement it would be of no binding effect as at all material times, the claimant had a legal obligation to ensure that the said vehicle had the proper insurance to cover/bear losses incurred by a driver while operating the insured vehicle. The defendant contends that he having paid an insurance fee for the said vehicle would accordingly be protected from any liability.

[13] The defendant argues that if the claimant did not have the correct type of insurance for the van, then he was operating his rental business contrary to law, negligently and/ or recklessly and must personally bear the responsibility and/ or liability for the losses incurred.

[14] The defendant denies driving negligently as he suddenly had a blackout while driving and counterclaimed for, inter alia, damages for fraudulent misrepresentation and breach of contract; declarations; monies due and owing; such further or other relief and costs.

Legal Analysis

[15] The claimant's claim is filed in the alternative namely breach of contract, negligence and breach of statutory duty.

[16] The issues arising are whether there is a valid contract, whether the contract is void for illegality or in the alternative whether the defendant was negligent and breached his duty of care to the claimant resulting in damage to the said vehicle.

Breach of contract - Whether the purported written rental agreement is a fraudulent document

[17] The only issue is whether the written contract relied on by the claimant is fraudulent and unenforceable as averred by the defendant.

[18] The purported disputed terms of the agreement are at Paragraphs 12 & 13 of the purported contract which read:

“12. The client is liable and responsible to cover the cost of repair to the vehicle which may result from major or minor collision (or any other) occurring during the contracted period.

13. In the event of any damage done to the vehicle the client will be liable and responsible for the days in which vehicle was inaccessible to the owner or any other potential client.”

- [19] The question of whether a false representation was fraudulent is a question of fact¹, and it is for the defendant to satisfy the evidential burden of proving fraud as alleged.
- [20] The defendant at trial did not deny that he signed a document but stated that he signed on a blank last page. He did not produce that document which he at trial stated was left in the vehicle after the accident.
- [21] The defendant contends that the claimant and/or his agents fraudulently created the rental agreement representing it to be signed by the defendant. The defendant's main challenge to the purported contract is the omission of letter "i" from his first name "Moises" on the agreement.
- [22] On the other hand, the claimant denies the allegation of fraud by the defendant and called corroborating witnesses who personally witnessed the defendant's signing of the agreement.
- [23] At the trial, the witness Stephon Hosten, brother of the claimant, states that he usually solicits clients for his brother. He said he knows the defendant personally as the defendant had been a customer of the said business for more than four (4) years. He said that the defendant contacted him via telephone on 1st September 2016 at about 5: 30 p.m. regarding the rental of one of the vehicles for the period 1st to 5th September 2016. He states that the \$500.00 deposit was waived, and the defendant was permitted to have the use of the said vehicle for a further 24 hours without additional charge. He said that he contacted one, Denver Hosten, and instructed him to wait for the defendant, as the office was already closed for the day.
- [24] There are several obliterations, crossings and alterations on the face of the disputed contract relied on by the claimant. Some of the purported changes did not bear the initials of the defendant. The contract was also signed by the said Denver Hosten as "owner" of the business, however the claimant asserts that he

¹ Halsbury's Laws of England (Volume 31 4th edn) para 758

is the owner of the business, and at trial it was revealed that Denver Hosten was a minor brother assisting the claimant in the business.

[25] Denver Hosten, in his witness statement and at trial admitted the crossings and obliterations. He said that he immediately obliterated the sum of \$500.00 from the contract (under 'deposits') and corrected the figures under, the rubric 'total rental charges' and 'total charges'. He states:

“I corrected the 'total payment' sum as well. Quite apart from the corrections to the figures on the contract, I did make a genuine error in writing the date out and date returned. These are not completely obliterated and so it is clearly visible that the dates were re- written for cosmetic reasons and not as corrections of errors contained in them”.

[26] The witness states that all of the amendments to the said contract were made on 1st September 2016 in the presence of the defendant who never objected to the corrections neither did he request to complete another contract.

[27] The defendant denies that the purported document is what he allegedly signed as “he would not sign and leave out a letter from his name”. During cross examination, the defendant was consistent in saying that the only challenge he had with the signature was with the spelling of his name. The defendant pointedly said he had no issue with how the “s” was written neither the “a” or any other letters. When asked to confirm whether there were any similarities with how the “T” and the “h” were joined in his last name with the samples of cards submitted by the defendant in his supplemental list of documents, the defendant confirmed that they were similarly joined.

[28] The court accepts the evidence that the parties had a long-standing business relationship, and that the claimant accommodated the defendant after hours. The instructions for the waiver and the late return of the vehicle were all consistent with the changes made on the document although not initialled by the defendant.

[29] The most significant issue arising out of the purported contract, however, is the signature of the defendant. The claimant produced witnesses who testified to witnessing the defendant’s so signing.

- [30] No handwriting expert witness, nor any neutral witness was produced by either of the parties. The issue with the signature of the defendant as signed on the purported contract is that it reads "Moses A Thomas", whereas the defendant asserts that his name is "Moises A Thomas". The defendant argues that he signed a document but asserts that it was not the document which the claimant purported to be the contract.
- [31] The court does not accept the defendant's evidence that he signed a blank document. The defendant only takes issue in the omission of letter "i" in his first name. The defendant provided various national identification documents which demonstrate the spelling and signing of the defendant's name to be "Moises Thomas". However, the manner of signing of the defendant's signature on the disputed contract is consistent with all the documents. The defendant's surname was consistently signed in the same manner in all the documents before the court, a point he conceded during cross examination. As noted by the claimant, the defendant's Supplemental List of Documents recited the very same spelling that is being challenged without any addition of the letter "i" in the defendant's name.
- [32] The absence of a handwriting expert to support the defendant's assertion is a real challenge. It is undisputed that the defendant paid the claimant for the rental of the vehicle. The defendant failed to produce a receipt that he paid \$300.00 instead of \$345.00 as pleaded by the claimant. One thing that is agreed between the parties is the waiver of \$500.00 which the claimant states is the normal deposit paid.
- [33] The evidence establishes that there existed a contract between the parties. There was an intention to create legal relations evidenced by the signing of the document, the passing of consideration followed by the delivery of the said vehicle. The defendant has not denied that he signed an agreement with the claimant to rent the said vehicle. Therefore, a clear enforceable contract existed between the parties. The contractual document appears to be a standard form contract with printed conditions for the rental of the said vehicle and the vehicle was delivered to the defendant. This court is of the view that the defendant has

failed to prove that the purported rental document relied on by the claimant is a fraudulent transaction.

Whether the rental agreement relied on by the claimant is not enforceable due to statutory illegality

[34] It is the claimant's evidence that, contrary to the defendant's assertion of his payment of insurance to the claimant on renting the said vehicle, there was no agreement between the claimant and the defendant for the payment of insurance fee or any such further fee, and that this has never been the practice of the business. The claimant asserts that its business policy has always been that the client is liable and responsible to cover the cost of the damage done to a vehicle.

[35] Resultantly, the defendant alleges that the claimant's said vehicle was not covered by rental insurance, and refers to **Section 3(1) of the Motor Vehicles Insurance (Third Party Risks) Act CAP 202** (hereafter referred to as "the Act") which states:

"Subject to the provisions of this Act it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a public road unless there is in force in relation to the user of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act."

[36] The defendant also refers the court to the case of **Re Mahmoud and Ispahani**² in which the court held:

"In my view the court is bound, once it knows that the contract is illegal, to take the objection and to refuse to enforce the contract, whether its knowledge comes from the statement of the party who was guilty of the illegality, or whether its knowledge comes from outside sources. The court does not sit to enforce illegal contracts. There is no question of estoppel; it is for the protection of the public that the court refuses to enforce such a contract."

² [1921] 2 KB 716

[37] Counsel for the claimant argued at length in closing submissions that essentially the claimant has been taken by surprise with regard to “new challenges” of illegality by the defendant, never advanced before in pleadings.

[38] With respect to counsel for the claimant, the defendant in paragraph 4 (viii) of his defence asserted the illegality of the said vehicle being rented without the proper rental insurance, and pleaded the following in his defence and counterclaim:

“At all material times, the claimant had a legal obligation, before putting his van on the road, to ensure that it had proper insurance.”

[39] The above would therefore have put the claimant on notice of the allegation made by the defendant of the illegality of the claimant’s rental of a vehicle without proper insurance, which is the purpose of pleadings.

[40] The court also notes that the claimant himself is in breach of the rules of pleadings by seeking to rely on the common law concept of bailment, where reliance on same was not pleaded, and thus cannot in submissions, and at trial, refer to same. The claimant’s claim is one of breach of contract and negligence.

[41] In any event, it is trite law that he who alleges and seeks to establish their rights in law must prove his case, and on a balance of probabilities. It is therefore for the defendant to prove that the claimant did not have the requisite insurance in compliance with **the Act** as alleged.

[42] **Section 3(1)** of the **Act** which was relied upon by the defendant in skeleton arguments, recites that the motor vehicles on a public road should have a policy of insurance in respect of third-party risks.

[43] The claimant and his witnesses under cross-examination, stated that the vehicle was insured with third party rental insurance, which restricts insurance coverage for liability to any third parties who sustain loss or damage as a result of an accident concerning the insured vehicle. The claimant states there was a policy of insurance for the said vehicle with Eastern Caribbean Insurance Ltd but did not provide the insurance certificate.

- [44] The defendant states the claimant represented to him that the said vehicle was fully insured to cover the rental period and he states that he was aware that the said vehicle had third party insurance. The defendant avers that Eastern Caribbean Insurance Ltd, is required to bear the losses incurred from the accident. Alternatively, the defendant contends that if the claimant did not have the correct type of insurance, then the claimant has to personally bear the responsibility and/or liability for the losses incurred.
- [45] Notwithstanding the above, the defendant goes no further to prove the abovementioned allegation of illegality. The defendant failed to establish any statute mandating that a vehicle for rental must have special insurance. In any event a court will not automatically dismiss a claim solely on the ground that the contract is deemed to be illegal.
- [46] The defendant failed to satisfy the court that he would be absolved from liability for the destruction of the defendant's vehicle in the absence of an express term which covered the specific situation. The defendant has not referred the court to any statute that has been breached by the claimant. There is no evidence that the defendant's liability for the destruction of the vehicle was excluded and therefore the defendant cannot escape liability by calling into question the claimant's liability to be insured. In the circumstances therefore, the defendant cannot rely on that ground to avoid the contract.
- [47] The court finds that the defendant entered a legal and enforceable contract with the claimant. The defendant is under an obligation to compensate the claimant for the damage and any loss occasioned in accordance with the contractual terms of the agreement.

Whether the defendant was negligent and is responsible for destruction of the vehicle

- [48] The claimant pleaded negligence in the alternative and listed the particulars of the defendant's negligence as (i) Driving without due care and attention; (ii) Driving at an excessive and dangerous speed, without due care and attention; (iii) Failing to keep proper or any lookout while driving; (iv) Failing to steer manoeuvre or control

PAL270 so as to avoid colliding with the electrical pole; (v) Failing to apply his brakes in time or at all so as to avoid the said collision.

- [49] The defendant in response states that he was not driving recklessly or negligently. The defendant said that he suddenly had a blackout while driving. The defendant both in his witness statement and at trial states that he went to a birthday party from the Saturday on the Concrete Strip beach on the airport. The birthday party went up to the Sunday afternoon. He said he left the party at about 11:00 am on the Sunday morning. He said when going up to Brizan/ Perseverance direction, all he can remember is that he blacked out and heard a loud bang "bloo doow" and realized that it was the vehicle that he was driving. He said "I don't know to date how this happened. I don't know how the accident happened. All I know is that I blacked out while driving".
- [50] The claimant bears the burden of proof on a balance of probabilities to establish negligence on the part of the defendant to prove that (i) the defendant owed the claimant a duty of care in the circumstances of the case; (ii) the defendant breached this duty; (iii) the claimant suffered injury or loss or damage as a result of the defendant's actions; (iv) the breach of duty caused the resulting damage which is the subject of this claim.
- [51] The claimant admits that he was not present at the time of the accident and could not confirm the exact manner in which the accident occurred. The claimant in response to the defendant's counterclaim states that the defendant's pleaded defence that he blacked out and could not explain the accident confirms that the defendant had been consuming alcohol either immediately prior to the accident or whilst driving as the vehicle was laced with alcoholic beverage bottles at the time of the accident.
- [52] The defendant in response states that although he had been at the birthday party whole day Saturday into Sunday morning, he only had a few beers. The defendant did not call any evidence, not even the female occupant who he alleges was with him at the time of the accident.

[53] The defendant having rented and being in possession of the claimant's vehicle, owed a duty of care to the claimant. From the evidence it is pellucid that the defendant breached that duty of care, and as a result the claimant suffered damage. The claimant succeeds on a balance of probabilities on the claim in negligence against the defendant.

Special damages

[54] The claimant pleaded special damages in the sum of \$20,750.00 comprising of pre- accident value of the vehicle in the sum of \$20,000.00 less cost of wreck in the sum of \$3,000.00 making a sum of \$17,000.00; Loss of use for 26 days from 4th to 30th September 2023 at the rate of \$100.00 per day making a sum of \$2,600.00; Storage fee of \$25.00 per day for 26 days making a sum of \$650.00 and \$500.00 for a Solicitor's letter.

[55] The defendant in response contends that the sum ascribed for the value of claimant's vehicle is excessive having regard to the age of the vehicle. The defendant also contends that the vehicle was not damaged to the extent that it was written off as only the windscreen, wheel box/ arm, and hood of the van were damaged. He states that based on the damage, the van could have been repaired. The defendant did not file any evidence to buttress his assertions.

[56] It is the claimant's pleaded case that the defendant was contacted on several occasions after the accident to inspect the vehicle which he failed to do. The defendant admits that the claimant contacted him twice about viewing the van.

[57] The claimant having particularized and proved the special damages pleaded is accordingly awards special damages in the sum of \$27,750.00.

Whether the defendant is due and owing \$300.00 from the claimant

[58] The defendant in his counterclaim claims the sum of \$300.00 for monies due and owing for car mats. The claimant admits to owing the defendant, but states that it was only \$300.00 and not the sum of \$800.00 with a balance of \$300.00.

[59] Neither of the parties produced any proof of the total amount due but the court accepts the evidence that the \$500.00 deposit waiver for the rental which supports the defendants claim. Given this admission, by the claimant, the court finds that the claimant is liable to the defendant for the sum of \$300.00.

ORDER

[60] For the foregoing reasons, it is ordered and directed as follows:

- (i) Judgment is entered in favour of the claimant against the defendant in the sum of \$27,750.00 with interest at the 6% per annum from the date of judgement until payment in full.
- (ii) Judgment on the counterclaim is entered in favour of the defendant in the sum of \$300.00 at the rate of 6 % per annum from the date of judgment until payment in full.
- (iii) Prescribed costs unless otherwise agreed by the parties.

Agnes Actie
High Court Judge

By the Court

Registrar