IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
(CIVIL)
A.D. 1990

SUIT 119 of 1989

BETWEEN

THELMA BAILEY — PLAINTIFF
AND
LESTER WOODLEY — DEFENDANT

Mr. V. Cuffy for the Plaintiff
Mr. M. Malcolm for Defendant.

1990: November 20 and 26

JUDGMENT

MATTHEW J.

On March 15, 1989 the Plaintiff filed a writ of summons indorsed with statement of claim in which she asked for general damages for breach of contra and special damages comprising the value of her vehicle H1910 which she put at $18,000; loss of use to be assessed; and a return of $2,500 paid for work whic was not done. She also asked for her costs of the action.

The Defendant entered appearance on March 28, 1989 and filed his defence April 24, 1989. In his defence the Defendant admitting receiving $2,500 from the Plaintiff but he denied agreeing to deliver the vehicle by the end of September 1986. He also admitted that he agreed to deliver the fully repaired vehicle to Adolphus Jacobs of Lowmans Windward on its completion. He stated that he will contend that repair work was done on the vehicle and that the vehicle has not depreciated. The Defendant alleged that he will plead frustra of the contract.

Only the Plaintiff and the Defendant gave evidence at the trial. The Plaintiff stated that in July 1986 she gave the Defendant her Austin Minibus to repair rust spots on the body of the vehicle, to respray the vehicle and tc replace a missing rear windshield and she paid him $2500 for the labour and materials required. She stated that the Defendant was to finish the work by t end of September 1986 and then to deliver the repaired vehicle to Adolphus Ja that this was never done. The Plaintiff left for England in August 1986 and return to Saint Vincent until March 1988.

She stated that while in England she telephoned the Defendant on three occasions in respect of the performance of his obligations and she got various excuses from him but he was assuring her that the work would be completed.

She stated that the vehicle was still in the Defendant's possession.

The Plaintiff stated that when she returned to Saint Vincent in March 198 she went to the Defendant's garage and there she saw the vehicle in a worse st that when she had delivered it to him and that no work had been done on it. She said that parts of the vehicle had been removed; there were no lights to t front, the wipers were off and only part of the engine was on the van. She s she asked him for the missing parts and he replied that he will fix her up.

She stated that she is aware that the Defendant obtained a windshield for the vehicle from one St. Clair Dowers of Camden Park and that at no time did h tell her he could not get a windshield.

Lester Woodley stated that when he took the vehicle from the Plaintiff it was without front and rear windshield, the interior was damaged and there were other missing items. He put a value of $2,000 and $3,000 on the vehicle at th time. He stated that before he took the job he went to see Mr. Dowers who offered to sell him the windshields since he had a similar vehicle which was t off the road. He said he did not eventually get the windshields from Mr. Dowe His direct testimony or examination-in-chief was as follows:

"I did not get the windscreen from Mr. Dowers. He told me it was a church vehicle and he had to discuss it with the congragation. He told me I would have to give him a chance. I kept checking with him. I did not get t parts. He told me the church decided not to sell the parts but to sell the whole vehicle for $2,000. I told the Plaintiff so. She told me she could not get a windscreen in England. I told her I cannot get the parts so I am prepared to give her back the money."

When he was cross-examined he stated:

"I received $2500 to repair rust spots, paint and replace the windscreen I agreed to deliver the vehicle to Adolphus Jacobs after it was finished. I agreed I would deliver it in September if I got the parts. Mr. Dowers gave me a glass that was slightly bigger.........................All the time I the vehicle it has depreciated.............Mr. Dowers had a vehicle of the type as the Plaintiff which was off the road."

At the trial the Defendant sought to say that before the Plaintiff delivered the vehicle to him for repairs it had been vandalized. This is not so relevant to the issue here save as to a proper value to be placed on the vehicle. Despite its condition the Defendant still thought that a sum of $2500 would put it on the road after he had repaired it. I do not believe the Defendant that the vehicle was in such poor condition as he put it or that its true value was between $2000 and $3000.

It is not disputed that the Defendant is in possession of the Plaintiff's vehicle from July 1986 to the present time and that he received $2500 for effecting repairs. In paragraph 6 of his defence the Defendant alleged that the vehicle has not depreciated in value but under cross-examination he admitt that it had depreciated. I find as a fact that the Defendant has done no work on the vehicle and it has in fact depreciated in value.

I believe the evidence of the Plaintiff as coming from a witness of truth I believe her that she telephoned the Defendant from England on three occasion and that he always gave excuses for his non performance and at no time did he tell her he could not get a windshield or windshields for the vehicle. I beli her that it was only the rear windshield that was missing.

I believe the Plaintiff too that when she visited the Defendant's premise March 1988, not only did she find no repairs work done on the van but also tha parts were missing from the said vehicle.

The Defendant has proved himself an unreliable witness when he gave evide in chief he specifically stated that he did not get the windshield from Mr. Do but when he was cross-examined he admitted that Mr. Dowers give him the glass was slightly bigger. How does that fit in with the decision of the church to the whole vehicle?

I find the Defendant liable in breach of contract. The value of $18000 p on the vehicle by the Plaintiff is not supported by any written document or th testimony of an independent valuer. I therefore assess the value at $15,000. Plaintiff is entitled to the return of the money paid for the work, that is, t sum of $2,500.

I award the Plaintiff damages for loss of use for four months calculated $250.00 a week or $1,000 a month.

As to his defence of frustration I find as a fact that there was no frust event. But even if the Defendant did not get the rear windshield it is very doubtful that this event could frustrate the performance of a contract to rep rust spots, to respray the vehicle and to replace a windshield which is a rel

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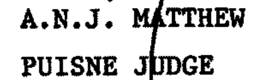
simple matter having regard to the principle of frustration as described as paras 1521 et seq of Chitty on Contracts, 25th Edition Volume I and paras 450 et seq of Volume 9 of Halsburys Laws of England, Fourth Edition.

The Defendant is ordered to pay the Plaintiff damages for the value of his vehicle assessed at $15,000; loss of use $4,000; refund of money paid to him $2,500, making a total of $21,500 and the Plaintiff's costs to be taxed if not agreed.



A.N.J. MATTHEW
PUISNE JUDGE