ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 480 OF 1999

BETWEEN:

HUDSON SOSO

Plaintiff

and

DA SILVA'S MOTORS LIMITED

Defendant

Appearances:

Samuel Commissiong for the Plaintiff
Arthur F Williams for the Defendant

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2000: November 14, 20

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JUDGMENT

[1] MITCHELL, J: This was a claim for the refund of a sum of money alleged by the Plaintiff to have been wrongfully had and received by the Defendant company from the Plaintiff as an unauthorized charge on the sale and purchase of a used motor vehicle (hereinafter "the Truck") from the Defendant company. The nub of the claim is that the Defendant company sold the Truck to the Plaintiff for a price which wrongfully exceeded the maximum price set by the Ministry of Trade, Industry and Consumer Affairs under the Price and Distribution of Goods Act Cap 112 of the Laws of St Vincent and the Grenadines (hereinafter "the Act".) The central plank of the defence is that the Truck was a used vehicle imported from Japan on which considerable work was done and money spent by the Defendant company, and that this expenditure brought the Truck outside of the ambit of the Act. Counsel for the Defendant stated from the Bar table that this has been the

normal practice followed in St Vincent for some time since the development of the trade in used vehicles in this State. The Ministry of Trade, apparently, does not prosecute dealers in refurbished second hand vehicles who do not comply with the requirements of the Act. The Ministry, he suggested, did not consider that second-hand or used vehicles that are refurbished in St Vincent prior to sale come under the regulation of the Act. He has suggested that this case is a matter of some local interest, both to importers of used vehicles and to the consuming public.

[2] The Plaintiff is a businessman who operates the company Block Makers Ltd in Kingstown in St Vincent. The Defendant company is one of the major importers of new, reconditioned and used vehicles into the State. The Defendant company operates from a number of business outlets throughout the State. The action is brought by the Plaintiff personally, and not in the name of his company. No point turns on this, as it was not taken either on the pleadings or in the evidence or in the addresses by either Counsel at the conclusion of the case. As I understand it, the Plaintiff purchased the Truck with a personal cheque, and although the receipt and written contract were subsequently drawn up in the name of his company, he considered that he had purchased the Truck with his personal money, and he brought this action relating to the purchase price he had paid for the Truck in his own name. No point was taken, as I have indicated, by the Defendant.

[3] Giving evidence for the Plaintiff were the Plaintiff himself, Yvonne Williams from the Price Control Department, and Clement Marshall, a driver for the Plaintiff. Giving evidence for the Defendant were Mr Stephen Da Silva, a director and sales manager of the Defendant company. Several documents were put in evidence, including a photo copy of the cheque of the Plaintiff for $42,000.00, the receipt for that amount from the Defendant, a certificate from the Ministry of Trade indicating a maximum price of $30,668.83 for the Truck, a certificate from Barclays Bank indicating the interest paid by the Plaintiff on the amount he claims he was overcharged, the “Contract of Sale in Respect of Vehicles” form relating to Truck, a Letter Before Action from the Plaintiff’s solicitors, the Price Calculation Sheet

submitted by the Defendant company to the Price Control Department and relating to the Truck, the invoice for the Truck from the Japanese exporter to the Defendant company, and the invoice for repairs to the Truck in an amount of $4,500.00.

[4] There is no significant dispute in the evidence given by the witnesses for the Plaintiff and the witness for the Defendant as to the facts. The dispute is principally over the interpretation of the Act as it applies to the facts. The facts as I find them are as follows. On 23 April 1998, the Plaintiff went to the Defendant company's sales outlet in Mesopotamia. He had with him his mechanic, Raphael Stewart, and his driver, Clement Marshall. Mr Stewart was the same mechanic who had done work for the Defendant company on the Truck, and who had charged the Defendant company $4,500.00 for the work that he had done on it. Amongst the second-hand trucks on display at the outlet in Mesopotamia, the Plaintiff was interested in the Truck, a second-hand Nissan Condor being sold by the Defendant company for $42,000.00. The Truck had been imported by the Defendant company at a C.I.F. value of $14,128.40. Bank charges, import duty, consumption tax, landing charges, and other authorised costs, brought the landed cost of the Truck to $26,430.11. To this sum the Defendant company added its legally allowable mark up of $4,238.52, or 30% of the C.I.F value. According to the Price Calculation Sheet submitted to the Price Control Department by the Defendant company, the maximum price that could be charged for the Truck under the Act was the sum of the above figures, or $30,668.63. These figures had been checked by Yvonne Williams as clerk in charge of checking vehicles and other price controlled goods. She testified that when the form was presented to her she had verified that the figures were correct. When the Plaintiff was shown the Truck at the sales outlet in Mesopotamia by the employees of the Defendant company, I am satisfied that he understood that it was a used vehicle on which work had been done. I am also satisfied from the evidence that he was not told the details of the work done; he was merely invited to have his mechanic test drive the Truck for road worthiness. The mechanic and his driver having given their approval, the

Plaintiff paid to the Defendant company a cheque for the requested sum of $42,000.00 and drove the Truck away.

[5] Approximately one week later, on 30 April 1998, the Defendant company sent around to the Plaintiff's company office his receipt for the $42,000.00, dated 30 April and made out in the name "Block Makers Ltd", and a Contract of Sale in respect of the Truck and expressed to be made between the Defendant company and Block Makers Ltd. The Plaintiff signed the contract and sent it back to the Defendant as requested. The contract is quite short, and, other than detailing the parties and the price, it recites that the vendor has reconditioned the vehicle and that the purchaser has agreed that it is road worthy and to his satisfaction and that he has been given the opportunity to fully examine it.

[6] After the Defendant company had cleared the Truck from Customs, it had decided to recondition it prior to sale. It was a second-hand vehicle that needed repairs. The Defendant company paid Raphael Stewart $4,500.00 to repair and replace engine parts and to repaint the Truck. The Defendant company also claimed to have paid some US$5,000.00 to a firm in San Fernando in Trinidad to have the pump repaired. None of these expenses, relating either to the repainting by Mr Stewart or the repair to the pump in Trinidad, were detailed on any document displayed on the Truck in the show room in Mesopotamia. None of these expenses were set out on any document shown to prospective purchasers. Certainly, none of these expenses incurred by the Defendant company were explained to the Plaintiff when he negotiated to purchase the Truck. The Plaintiff was, according to the present practice which I accept enjoys nodding assent from the Ministry of Trade, given a simple lump-sum price to pay of $42,000.00, and he paid it and drove the Truck away. About a week after he purchased the Truck the contract was sent to him and he saw it for the first time and signed it.

[7] Shortly thereafter, a suspension spring on the Truck broke. This may well have been as claimed by the Defendant company because he was overloading the

Truck. The broken spring, and the refusal by the Defendant company to accept responsibility for replacing it, caused the Plaintiff to get into a dispute with the Defendant company. As a result of this dispute, the Plaintiff enquired at the Ministry of Trade as to the maximum price authorised for the sale of the Truck. That is when he learned that the price calculation had been approved at $30,668.63. He sought legal advice which resulted in a letter from his solicitors to the Defendant company of 7 September 1999. This letter not having resulted in the requested refund of the $11,331.37, his writ was issued on 11 October 1999.

[8] The Law. The Price and Distribution of Goods Act, Cap 117, provides at section 13(1) that no person shall in respect of any goods the mark up or maximum price of which has been fixed under the provisions of sections 10 or 11 sell any such goods at a higher mark up or at a price greater than the maximum price. Subsection (2) provides that a first offender is guilty of an offence and liable to a fine of between $1,500.00 and $3,000.00; and in the case of a second or subsequent offence to a fine of $3,000.00 -$15,000.00. Subsection (3) provides that in the case of a third offence he shall have his licence to trade suspended for a period of one to five years.

[9] The subsidiary legislation to Acts of the House of Assembly in St Vincent and the Grenadines are published in the 1991 Revised Edition of the Laws of St Vincent and the Grenadines in what are called "Booklets." These Booklets are found printed at the back of each Act. Booklet 5 to the Act is the Price Control (Motor Vehicles) Regulations, SRO 42 of 1978 as amended (hereinafter "the Regulations." Regulation 2 defines "motor vehicle" as any mechanically propelled vehicle imported into the State which is intended or adapted for use on the roads. Regulation 8 requires a trader in motor vehicles to display in legible characters in a conspicuous position on the vehicle the particulars contained in the Second Schedule. The Second Schedule is an approved form in which the information is to be displayed. Regulation 10 is headed "Non-application". It provides that the Regulations do not apply to a motor vehicle that is imported for the personal use of

the owner and is not sold within one year of importation. Regulation 11 is a penalty regulation.

[10] Booklet 6 to the Act is the Price Control (Motor Vehicles) Order SRO 43 of 1978 as amended. It provides that the maximum price of a motor vehicle shall not exceed the C.I.F value, bank and other charges, and 30% of the C.I.F value; ie, the mark up is limited to 30% of the C.I.F value. It is an offence to charge more than the prescribed amount of mark up on a motor vehicle.

[11] The evidence of the witness for the Defendant company was that neither the Act nor the Regulations apply to used vehicles on which the Defendant company has spent money in labour and/or parts and which are being sold to purchasers. The Defendant company had spent money reconditioning the Truck after it had cleared Customs and its value had been certified by the Ministry of Trade. As a result, the particulars that are required by the Act to be displayed on vehicles that are offered for sale were not displayed on the Truck when it was offered for sale at the outlet in Mesopotamia. It was the submission of Counsel for the Defendant that neither the Act nor the Regulations applied to the Truck for the reason given by his client. As I understand it, it is the view of the Defendant that the Act does not permit the Defendant company to do work on a used vehicle and to charge for the "preparation costs," as they are locally called in the trade, in getting a used vehicle ready to market. Counsel for the Defendant company submitted that Parliament could not have intended that a merchant who imported used vehicles and did necessary work in getting them ready for sale should not get back his costs. He submitted that the only reasonable interpretation is that the Act should not apply to such used vehicles. Indeed, the nub of the filed defence was that the Act did not apply to the Truck.

[12] Counsel for the Plaintiff responded that if that had been the intention of Parliament, then such vehicles would have been included in the "non-application regulation" referred to above. His submission was that the vehicle fell within the

definition section of the Regulations, and that the Defendant was required to display the maximum prescribed price and the other information certified by the Ministry of Trade and as required by the Regulations. His submission was that there were ways for a dealer in the position of the Defendant company to avoid or recover his additional expenses; that is, a dealer might import a used vehicle and sell it "as is" to a purchaser; alternatively, a dealer might sell an imported used vehicle "as is" to a purchaser who may then wish to have his own mechanic do such reconditioning as the purchaser wished; a third legal scenario would be that the dealer might list the vehicle for sale at the maximum certified price "as is," and the purchaser may then, in addition to paying the authorised price, enter into an agreement with the dealer for the dealer's mechanic to do work on the vehicle at the cost of the purchaser; or fourth, the dealer might unilaterally recondition the used vehicle to his own satisfaction before offering it for sale, but if he chose this route, he was required by the Act to display on the vehicle the maximum price as originally certified by the Ministry of Trade, and he might then in addition make a charge to the purchaser for the cost of labour and parts incurred in repairing it, provided that he made full disclosure to the purchaser of all of his costs prior to or at the time of the contract of sale. As I understand it, the submission of counsel for the Plaintiff is that the vehicle may only be sold for the regulated price, but any additional work done either at the request of the purchaser or as consented to by an informed purchaser may properly be charged at the same time as the sale occurs.

[13] No evidence was given on the point, but the court is well aware that when the Act was passed and the Regulations were made, there existed in St Vincent and the Grenadines no industry of importing and selling used and reconditioned vehicles. It is likely that the House of Assembly never imagined at the time of the passage of the Act that anyone in St Vincent would import or would purchase such a thing as a used motor vehicle. The vehicles for which there was an import market in the 1970s when the Act was passed were principally new vehicles. The phenomenon of the import and sale of reconditioned vehicles from Japan is one that peculiarly

developed in our islands during the last decade of the 20th Century. The importation of unreconditioned used motor vehicles in preference even to reconditioned vehicles is commonly seen to be a growing trade. It is notorious that the importation of used, un-reconditioned vehicles has become more popular in recent years because the labour cost of repair in Japan is so prohibitive that it is preferable to import at a low cost the damaged vehicle and to repair it at the lower local labour cost. Judging from the number of used and reconditioned car lots around the State, it is even conceivable that more second hand vehicles are now being imported and sold than are new ones. Because all this is such a recent development, the Act, not surprisingly, does not make special provision for reconditioned and used motor vehicles. The Act does not make provision for the import of vehicles that are intended to be refurbished locally before they are sold. There is no express provision in the Act as to what is to happen to the costs incurred by merchants and importers in such circumstances.

[14] I have looked at the words of the legislation. I have considered that on one particularly strict interpretation of the words of the Act, they may be considered to mean that if any merchant, trader, or importer of used vehicles expends any money on any work or on parts for a used vehicle after it has cleared Customs and the Ministry of Trade has certified the maximum price that may be charged for that used vehicle, that extra work or spare parts may not be charged for or passed on to the customer without an offence being committed under the Act. This strict view would be that no "preparation costs" are permitted to be charged by the dealer. Was that the intention of the legislature? The mischief that the House was trying to avoid was that of merchants importing goods and charging the consumers too great a mark-up for the goods. The intention was to make the dealer specify the permitted chares that he might apply or pass on to the customer in addition to regulating or limiting his profit on the sale. The intention was not to limit the import of used vehicles by restricting importation to previously reconditioned ones. Insisting that all repair work must be done outside the State before the vehicle is imported would among other things have the undesirable effect of damaging the

motor mechanic industry in St Vincent. The intention was not to prohibit the importation of used vehicles that were within the reach of the pocket of the poor man. The intention was not to oblige an importer to bear the cost of any necessary repairs that had to be done to make a used vehicle saleable. The intention of the legislation is threefold: it is to specify the permitted charges, to oblige the dealer to publish in a prominent place on the vehicle the permitted charges, and to limit the dealer to a maximum mark-up of 30%. Used vehicles are in my view subject to the provisions of the Act. The prescribed information is required to be displayed on imported used vehicles as on imported new and reconditioned vehicles. The maximum price certified by the Ministry of Trade must be published in a prominent place as prescribed by the Act on all imported vehicles offered for sale. To sell a used vehicle that has been reconditioned in St Vincent without displaying the prescribed information is contrary to the Act. To sell it at a price greater than that certified by the Ministry of Trade is contrary to the Act. In my view, the Act does not restrict the dealer from passing on his legitimate "preparation cost." Once the merchant lists and publishes the information prepared for the Ministry of Trade, and, additionally, discloses fully and in advance to a prospective purchaser the details and cost of any repairs done by him in refurbishing the used vehicle, he is entitled to charge for those costs. It may well be that those in authority may wish to consider whether, in view of the completely altered motor vehicle market presently existing in St Vincent and the Grenadines, the Regulations do not need amending to regulate "preparation costs."

[15] I have no hesitation in accepting the submissions made by Counsel for the Plaintiff and rejecting those made by counsel for the Defendant. What the Defendant did to the Plaintiff in this case was contrary to the Act. In the circumstances, the Plaintiff is entitled to the amount of his claim of $11,331.37, together with interest on that amount at the rate of 12.5% from the 23 April 1998, the date of the cheque, until payment, together with his costs to be taxed if not agreed.

I D MITCHELL, QC
High Court Judge