

SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE
CIVIL SUIT NO. 340 OF 2000

BETWEEN:

Dexter John

Plaintiff

and

Lincoln James

Defendant

Appearances:

Mr. Joseph Delves for the Plaintiff

Mr. Ronald Marks for the Defendant

.....
March 7 and 14, 2001
.....

DECISION
(ASSESSMENT OF DAMAGES)

[1] **Webster, J. (acting)** On November 24, 2000 the Court entered a consent judgment against the Defendant for damages and costs to be assessed. Having heard evidence in Chambers from the Plaintiff and the Defendant, and the submissions of Counsel for the parties, this is my decision on the assessment of damages.

[2] The plaintiff was the owner of a Toyota Hiace passenger van (the "van"). Paragraph 4 of the Statement of Claim discloses that the plaintiff and the defendant entered into an agreement whereby:

- (i) the Defendant would have custody of and operate the said van;
- (ii) the Defendant would make monthly payments of \$1000.00 to the National Commercial Bank which held a mortgage bill of sale on the van;

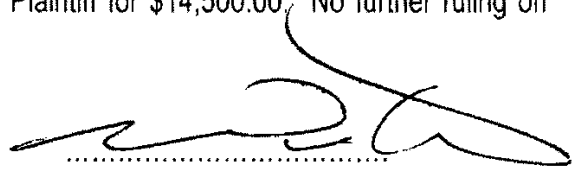
- (iii) the Defendant would make monthly payments of \$135.00 to Y De Lima Ltd in relation to a stereo system in the van in relation to which Y De Lima Ltd held mortgage bill of sale; and
- (iv) upon the completion of the loan payments to the National Commercial Bank the Defendant would pay the Plaintiff the sum of \$4000.00 whereupon the Plaintiff would transfer the legal ownership of the van to the Defendant.

The evidence of the trial is consistent with this agreement.

- [3] Pursuant to the agreement the Plaintiff delivered the van to the Defendant in February 2000 and thereafter the Defendant operated the van as a passenger van with varying degrees of success. He breached the agreement in the following ways:
 - (i) he made only two payments totaling \$803.00 to the Bank;
 - (ii) he did not make any payments to Y De Lima on the stereo system Limited; and
 - (iii) he removed several parts from the van.
- [4] While the van was in the Defendant's possession it was damaged in an accident in March 2000 and the Defendant received \$3,691.00 from the insurers, Beacon Insurance Co. Ltd, for repairing the van. He did not account to the Plaintiff for this money.
- [5] The van was valued by Joyette's Auto Collision Works on November 22, 1999 at \$24,500. Both parties agreed that Joyettes are experts in valuing refer vehicles
- [6] The van was valued by Richardson Motors Limited on June 24, 2000, at \$10,000. This was after parts had been removed from the van by the Defendant and the Bank had repossessed the van.
- [7] I accept both valuations.

- [8] As a result of the non-payment by the Defendant of the monthly installments on the bank loan, the bank repossessed the van in June 2000 and sold it for \$7,000.
- [9] On August 11, 2000 the Plaintiff started this action from against the Defendant claiming the difference between the value of the van when it was delivered to the Defendant (\$24,500), and when it was sold (\$10,000). The Plaintiff also claimed the cost of repairs of \$3,691.00.
- [10] The Joyette's valuation was done on November 22, 1999, and the van was delivered to the Defendant in late February 2000. Counsel for the Plaintiff invited the court to treat the value of \$24,500 as applicable to the van in February 2000, having regard for the fact that the Defendant agreed to pay the balance of the Bank loan of \$19,000, the Y De Lima loan, plus a further \$4,000 to acquire the vehicle. He submitted that total amount of these payments amounted to approximately \$24,500 which is the best evidence of the value of the van when it was delivered to the Defendant. He submitted that the Joyette's valuation was no more than an opinion which the Plaintiff is entitled to rely on in the absence of evidence of the actual value. However, in this case there is evidence of the actual value, being the amount that a willing seller was prepared to accept from a willing buyer. This he submitted is the best evidence of value.
- [11] I accept this submission and I will therefore allow the claim for \$14,500.00.
- [12] I am not satisfied that the Defendant was obliged to pay any part of the \$3,196 for repairing the van to the Plaintiff. He was in possession of the van at the time, with full responsibility to keep it in good repairs under the agreement. The cost of repairs is therefore payable to him by the insurers, to be spent on repairing the van. In any event there is no direct evidence that he did not spend the \$3,196 on the paying for the repairs to the van. The claim for the \$3,196 is therefore disallowed.

[13] Accordingly, there will be judgment for the Plaintiff for \$14,500.00. No further ruling on costs is necessary.

A handwritten signature in black ink, appearing to read 'Paul Webster', written over a horizontal dotted line.

Paul Webster
High Court Judge [Ag.]