

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV2004/0352

BETWEEN:

JAMES GREENAWAY

Claimant

And

TAPLEY LEWIS

Defendant

Appearances:

Mr Charlesworth Browne for the Claimant
Mr Trevor Kendall for the Defendant

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2006: April 25th
June 29th
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JUDGMENT

[1] **Blenman, J:** This is a claim for breach of contract.

Background

[2] Mr James Greenway (Mr Greenway) is a man of advanced years. He owned a 1992 Plymouth Voyager Vehicle Registration Number C 4783 (the vehicle). He also owned spare parts for the motor vehicle and other fittings.

[3] Mr Tapley Lewis is a taxi operator.

[4] Sometime around July 2003, Mr Greenway discussed with Mr Lewis about the sale of his vehicle. Later, he agreed to sell Mr Lewis the vehicle.

[5] Mr Greenway contends that the agreed sale price was US\$11,000.00; the sale price for the rack was US\$250.00, the four hub caps was US\$40.00, and the water pump US\$170.00. The total contract sum is US\$11,460 or EC\$30,942.

- [6] He alleges that Mr Lewis agreed to pay him EC\$8,000.00 towards the price of the vehicle by the month of June 2003 and thereafter to liquidate the balance by reasonable installments by the end of September 2003.
- [7] Mr Greenway complains that Mr Lewis paid him the sum of EC\$7,000.00 and has failed and or refused to pay him the outstanding balance despite repeated demands.
- [8] Mr Lewis denies that he owes Mr Greenway any moneys as alleged or at all.
- [9] Mr Lewis says that Mr Greenway sold him the motor vehicle for EC\$8,000.00, he (Mr Lewis) had offered Mr Greenway the sum of EC\$7,000.00 for the purchase of the vehicle and Mr Greenway accepted.
- [10] In addition, Mr Lewis says that Mr Greenway offered him the spare parts and requested that he (Mr Lewis) "gives him something for it." He denies that the parts were worth US\$450 and says that if they were he would not have accepted them.
- [11] Mr Greenway filed a claim against Mr Lewis alleging that Mr Lewis has breached the contract. Mr Greenway seeks damages for the balance of the purchase price; the cost of the rack, the water pump and the four hub caps.
- [12] The issues that arise for the Court's determination are:
- (a) What was the purchase price for the motor vehicle;
 - (b) Whether Mr Lewis has breached the term of the contract;
 - (c) Whether Mr Greenway agreed with Mr Lewis to sell the latter the spare parts and if so, at what price;

Evidence

- [13] Mr James Greenway gave evidence on his own behalf. Mr Lewis testified in his own defence and called a witness Mr George Otto (Mr Otto) in support of his defence.

Mr Greenway's evidence

- [14] Mr Greenway said that he returned to Antigua and brought his vehicle with him. He had purchased the vehicle in the United States of America for US\$3,000.00 and spent over \$2,000.00 on its repairs.
- [15] Subsequently, he fell ill and needed money for medical expenses. Mr Lewis was a visitor to the home where Mr Greenway lived and showed an interest in purchasing his (Mr Greenway's) vehicle. At this time, Mr Greenway was all living with his granddaughter and her live-in companion Mr Greene. Mr Greenway said that he also told Mr Green of his intention to sell his vehicle.
- [16] Mr Greenway alleged that at all times he had told Mr Lewis that the purchase price of the vehicle was US\$11000 and that the spare parts would cost US\$450. A deposit of EC\$8,000 was agreed on between the parties.
- [17] Mr Lewis had utilized Mr George Otto (Mr Otto) to inspect the vehicle and test drive it and thereafter agreed to purchase the vehicle for US\$11,000 and the parts for US\$460. He had no doubt that Mr Lewis agreed to pay him a deposit of EC\$8,000 and a balance of the purchase price was to be paid in full by September 2003. In July 2003 Mr Lewis sent EC\$7000 with Mr Otto towards the purchase price which Mr Greenway accepted. Mr Greenway said that due to his limited literacy he requested Mr Green to prepare a receipt for the sum of EC\$7000 which he said was a deposit. Mr Greene prepared the receipt which Mr Greenway signed, Mr Greene and Mr Otto signed as witness. The receipt indicates that the price of the vehicle is EC\$7,000 and that there is no outstanding balance.
- [18] However, Mr Greenway asserted that the EC\$7000 was only a deposit and that Mr Lewis was aware of this. He maintained that the purchase price was US\$11,000.
- [19] On signing the receipt, Mr Greenway gave Mr Otto a set of keys to take to Mr Lewis. A few days after Mr Lewis visited his premises and took possession of the vehicle. Mr

Greenway gave Mr Lewis the second set of keys since Mr Lewis had told him (Greenway) that he had not received the first set of keys.

[20] A few months later Mr Lewis visited Mr Greenway and asked him to "sign the document for him to get sticker." They later went to the Transport Board where he signed "what he later learnt was a change of ownership form." Mr Lewis left Antigua a few weeks later. On his return, Mr Greenway approached him and asked him for the outstanding balance of the purchase price and a dispute arose between them.

[21] Mr Greenway maintained that Mr Lewis has an outstanding balance for him for the vehicle and the spare parts.

[22] During cross-examination by learned counsel Mr Trevor Kendall, Mr Greenway maintained that the agreed price was US\$11,000. He said that he told Mr Otto this also and asked Mr Otto if the receipt was properly written up and Mr Otto told him "yes." He further stated that he has limited literacy. At the signing of the receipt he reminded Mr Otto that the EC\$7000 was a mere down payment.

[23] He admitted that he was in need of medical treatment and that at that time when he sold the vehicle he was also selling his boat, deep freeze and fridge with a view to returning to the United States of America.

[24] Mr Greenway denied that the vehicle was not in a proper working condition and that it was in need of repair.

[25] Under further cross-examination Mr Greenway agreed that he bought vehicles previously in the United States of America and was aware that when a person purchases a vehicle the registration of the vehicle has to be changed.

Mr Lewis' evidence

- [26] For his part, Mr Lewis denied that he entered into a contract with Mr Greenway to purchase the vehicle for US\$11,000.
- [27] He said that Mr Greenway offered to sell him (Lewis) the vehicle for EC\$8,000. However, sometime he managed to raise EC\$7,000 and spoke to Mr George Otto (Mr Otto) about the purchase vehicle.
- [28] Mr Lewis said that he originally agreed with Mr Greenway to purchase the vehicle for EC\$8,000. He denied even being told by Mr Greenway that the vehicle cost US\$11,000. In fact, Mr Greenway never mentioned "any US dollars figure to him." The vehicle was not in very good condition when he bought it and he spent over \$4,000 repairing and repainting the vehicle. Mr Lewis produced receipts in support of his contention of having repaired the vehicle soon after he had made the purchase including the cost of effecting repairs to the engine.
- [29] On 5th July 2003, Mr Lewis said, that he gave (Mr Otto) the sum of EC\$7,000 and told him "to go to Mr Greenway and offer him the \$7000 for the van." Mr Greenway took the money and returned to him with a receipt for \$7000 and a key for the vehicle.
- [30] Mr Lewis stated that subsequently when he went to collect the vehicle, Mr Greenway gave him some parts for the vehicle namely; a water pump and two hub caps and told him (Mr Lewis) that "he could give him something later." They never discussed any price for the parts. Infact Mr Greenway never told him the price he was asking for the parts and left it entirely in his (Mr Lewis) discretion.
- [31] In September 2003, "he arranged with Mr Greenway to go to the Transport Board to registrar change of ownership." Mr Greenway willingly agreed and at no time did Mr Greenway even tell him anything about outstanding balance.

[32] Mr Lewis said that he spent about EC\$4,000 to repair the vehicle. It was "after he was able to get the vehicle running again on the road that he had a disagreement with Mr Greenway." The root of the disagreement was that one day when his (Lewis) vehicle was low on gas; Mr Greenway asked him to drop him somewhere as he wanted a free ride. Mr Lewis told him that he could not and Mr Greenway became upset and started to argue with him.

[33] During cross examination by learned counsel Mr Charlesworth Browne, Mr Lewis insisted that he never agreed to purchase the vehicle for US\$11,000. They never discussed any price other than EC\$8,000.00. More importantly, the vehicle was not in a good working condition. He also denied purchasing the spare parts for the sum of US\$480 as alleged or at all.

[34] Mr Lewis maintained during vigorous cross-examination by learned counsel Mr Browne that Mr Greenway never told him that the purchase price of the vehicle was US\$11,000. Mr Lewis said Mr Greenway had told him that the purchase price of the vehicle was EC\$8,000 and he told Mr Otto "to take the EC\$7,000 to Mr Greenway and if he don't want it he don't want it."

[35] Under further cross-examination, Mr Lewis stated that he would never have agreed to purchase a vehicle that was nearly 12 years old for approximately \$30,000.00. The vehicle needed repairing and repainting and it was clear to him when he bought the vehicle that it was in need of repairs.

Mr Otto's evidence

[36] Mr Otto said that he know both Mr Greenway and Mr Lewis. Mr Greenway had enquired of him previously about the possible sale of the vehicle and told him that Mr Lewis wanted to purchase the vehicle. Subsequently, he (Otto) discussed the possible purchase with Mr Lewis.

- [37] Mr Lewis gave him (Otto) EC\$7,000 to take to Mr Greenway for the vehicle. He took the EC\$7,000 and offered it to Mr Greenway the latter who said that he told Mr Lewis he wanted \$8,000. Mr Otto says that he then got up to leave telling Mr Greenway that Mr Lewis had given only seven EC\$7,000 so that he would have to return the money to Lewis where upon Mr Greenway said "no" that Mr Greenway would accept the \$7,000. At this time, they were in Mr Greenway's bedroom. Mr Greenway called his grandson-in-law who counted the money and made the receipt for the sum of EC\$7,000 which Mr Greenway signed and Mr Otto signed as a witness.
- [38] Mr Otto maintained that Mr Greenway never told him anything about outstanding balance neither did Mr Greenway say to him that the price of the vehicle was US\$11,000.
- [39] He supported Mr Lewis' evidence and said that the vehicle engine had to be repaired and many parts were replaced soon after it's purchased. In addition, it was in need of repainting.
- [40] Mr Otto indicated that when the purchase of the vehicle was being affected, Mr Greenway asked him if he knew anyone who was interested in sale of a boat, a deep freezer and a fridge.
- [41] Even though learned counsel Mr Browne cross examined Mr Otto vigorously Mr Otto maintained that at no time did Mr Greenway tell him that he was asking for US\$11,000 for the purchase price of the vehicle. His evidence was unshaken.
- [42] Mr Otto denied that when he took the EC\$7,000 to Mr Greenway that Mr Greenway told him that it was a deposit or that Mr Lewis had an outstanding amount of money on the purchase price.

Submissions on behalf of Mr Greenway

- [43] Learned counsel Mr Browne urged the Court to accept the evidence of Mr Greenway in preference to that of Mr Lewis. Mr Browne also referred the Court to **Chitty on Contracts 29th Edition Vol 1, 2005 at chapter 5** which addresses MISTAKE.
- [44] Counsel asked the Court to find that the receipt which shows that the purchase price was EC\$7,000 was a mistake.
- [45] Mr Browne also sought to rely on the Sale of Goods Act, (the Act) Cap 393 Laws of Antigua and Barbuda (the Act) Section 2(2) which stipulates that "a thing is deemed to be done in good faith within the meaning of this Act when it is infact done honestly, whether it is done negligently or not."
- [46] Section 10 of the Act states that "if the sale price is not agreed or determined by the course of conduct the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependant on the circumstances of each particular case."
- [47] Mr Browne asked the court to examine the evidence led by Mr Greenway and to believe Mr Greenway when he said that he agreed with Mr Lewis to sell the vehicle for US\$11,000.00 and the spare parts for US\$460. However, Mr Greene incorrectly recorded \$7,000 as the purchase price of the vehicle.
- [48] Further, Mr Browne also relied on section 19(2) of the Act which provides that "for the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the contract of parties and the circumstances of the case." Counsel advocated that the court should examine the entire circumstances of the case and conclude that the contract price was US\$11,000.

Submissions on behalf of Mr Lewis

- [49] The crux of learned counsel Mr Trevor Kendall's argument was that Mr Greenway should not be believed. He submitted that the Court should accept the evidence presented by Mr

Lewis and Mr Otto. There is no evidence of any collusion between Mr Otto and Mr Lewis to "trick" Mr Greenway as Mr Greenway would have the Court believe.

[50] Mr Kendall further submitted that the Court could come to no other conclusion that Mr Greenway willingly and with full knowledge took steps to have the registration of the vehicle transferred into Mr Greenway's name.

[51] Mr Kendall relied on the well known principles on offer and acceptance as stated in **Halsbury's Laws of England (3rd edition) Vol 8 part 3 p 69**. "Formation of Contracts" which states that "there should be offer made by one person to another, and an unqualified acceptance of that offer by the person to whom it is made, and the parties to the agreement must have intended that it shall be enforceable."

[52] Mr Kendall therefore advocated that Mr Greenway has conducted himself in such a way that a reasonable man would believe that he was asserting the terms proposed by the other party, therefore, whatever was Mr Greenway's real intention he is bound by the contract as if he had intended to agree to the other party's terms. Mr Kendall further submitted that on a balance of probabilities, the court should find that Mr Greenway contracted to sell his vehicle for EC\$7,000 and not for US\$11,000 as he would have the court believe.

Courts findings

[53] In my opinion this case turns to a great extent on its facts. The court must determine what the facts in the matter are. I have reviewed all of the evidence adduced in this matter. Let me straight way say that I was not impressed with Mr Greenway's evidence. In my opinion he is not a witness of truth. Mr Lewis struck me as being a very candid witness. In addition, Mr Otto was a most reliable witness. His evidence remained unshaken in the face of a very vigorous cross-examination. He is a simple man who came to speak the truth and has no interest in seeking to influence the outcome of the matter. I have no difficulty in accepting the evidence adduced on behalf of Mr Lewis in preference to that presented on behalf of Mr Greenway wherever a conflict in their evidence arise.

[54] I am therefore of the considered opinion that Mr Greenway was in some financial difficulties and needed money to meet his medical expenses. He was placed in a situation where he had to liquidate some of his assets including his vehicle and spare parts. With this in mind, I have no doubt that Mr Greenway contracted to sell the vehicle to Mr Lewis for EC\$7,000.00. I do not for one moment believe that he ever told Mr Otto anything about the purchase price being US\$11,000.00, as he would have me believe.

[55] I am also satisfied that Mr Greenway knew Mr Lewis and Mr Otto; Mr Lewis had shown interest in purchasing the vehicle at the asking price of EC\$8,000. Mr Greenway requested both his grandson-in-law Mr Greene and Mr Otto to communicate with Mr Lewis his (Greenway's) willingness to sell the vehicle. The vehicle was sold. Subsequently, Mr Greenway had a change of heart and wanted more money. Mr Greenway's attempt to say that he was not very literate was far from genuine. I am of the opinion that Mr Greenway presented the picture of a man who is fairly knowledgeable of business affairs and I am far from convinced that he is not a literate as he would have me believe. I am totally satisfied that the receipt that shows the \$7,000 was the full price of the vehicle is very simple receipt. It is very clear to me to that anyone could have read that receipt and more so a man of Mr Greenway's intelligence could have read and understood that "very simple receipt" and more. I say all of this to say that I reject outright Mr Greenway's testimony that he has limited literacy and that he did not understand the receipt.

[56] As stated earlier, I am not at all persuaded as Mr Greenway would have me believe that he told Mr Lewis that the purchase price for the vehicle was US\$11,000.00. I do not believe Mr Greenway when he sought to have me believe that Mr Lewis agreed to purchase the vehicle for US\$11,000.00 and that he assisted and facilitate "the change of ownership" thinking he was enabling Mr Lewis to obtain a "sticker".

[57] As stated earlier, I accept Mr Lewis' evidence and find that at all times Mr Greenway was asking for the sum of EC\$8,000 and Mr Lewis realizing that Mr Greenway needed the money urgently counter -offered him the sum of EC\$7,000.00 which sum he sent with Mr Otto. Mr Greenway accepted the sum of EC\$7,000 as the contract price for the vehicle.

[58] In passing, I must state that it strikes me as very strange that Mr Greenway has not sought to call Mr Greene (his grand daughter's live-in companion) to give evidence in support of his evidence that he told him the figure of US \$11,000 neither has he given the Court any explanation as to why he did not call Mr Greene to substantiate his contention of the mistake.

[59] Be that as it may, at this juncture let me reiterate that I have no doubt that Mr Greenway sold the vehicle to Mr Lewis for EC\$7,000 since he needed money urgently. He also gave Mr Lewis the spare parts and requested Mr Lewis "to give him something for them."

Whether Mr Lewis breached the terms of the contract?

[60] Based on my findings above, it becomes unnecessary to address this issue of whether Mr Lewis has breached the contract. For what it is worth to make and to make it pellucidly clear, I am satisfied that when Mr Otto tendered the sum of EC\$7,000 to Mr Greenway as the purchase price of the vehicle, Mr Greenway accepted the counter -offer. There is therefore no question as to Mr Lewis breaching the terms of the contract.

What was the price of the parts?

[61] For the sake of completeness, let me state at the outset that I accept Mr Greenway told Mr Lewis "to give him something reasonable for the two hub caps and the water pump." There is no evidence before me to show that Mr Lewis has paid Mr Greenway. I am therefore of the view that Mr Lewis is indebted to Mr Greenway for the two hub caps and water pump and should have given him a reasonable sum of money for same. However, since this sum was left by Mr Greenway to the discretion of Mr Lewis and the Court will not seek to interfere with this aspect of their agreement.

[62] It would be remiss of the Court however, if I did not state that Mr Lewis should honour his obligation and give Mr Greenway a reasonable sum for the spare parts which I accept as the 2 hub caps and a water pump.

Conclusion

[63] In view of the foregoing and for the above reasons, Mr Greenway has failed to prove his claim against Mr Lewis on a balance of probabilities.

[64] I therefore dismiss Mr James Greenway's claim against Mr Tapley Lewis and give judgment for Mr Tapley Lewis against Mr James Greenway together with prescribed costs, unless otherwise agreed.

[65] I commend both counsel for their industry.

Louise Esther Blenman
Resident High Court Judge