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

CLAIM NO. GDAHCV2008/0416

BETWEEN:

LUIGI WELLS

Claimant

and

G4S SECURITY SERVICES (GRENADA) LIMITED

Defendant

Appearances:
Ms. Celia Edwards, Q.C. and Ms. Sabrita Khan for the Claimant
Ms. Cindy John for the Defendant

2009: June 16th, 23rd

JUDGMENT

IN CHAMBERS

[1] **MICHEL, J. (Ag):** By Claim Form filed on 13th August 2008 the Claimant claimed against the Defendant damages for negligence arising out of a vehicular accident which occurred on 7th April 2008, together with interest, further or other relief and costs.

[2] On the same 13th August the Claimant also filed a Statement of Claim setting out his claim in full and claiming general damages, special damages in the sum of $7,049.50, interest, further or other relief and costs.

[3] On 5th November 2008, the Defendant not having filed an Acknowledgment of Service or a Defence, the Claimant filed a Request for Entry of Judgment in Default for damages, interest and costs to be assessed.

[4] On the same 5th November a Final Judgment In Default Of Defence was entered for the Claimant for "damages to be assessed, court fees and legal practitioner's costs, and service."

[5] The Defendant, having been served with a copy of the Final Judgment In Default Of Defence on 16th December 2008, then purported to file an Acknowledgment of Service on 22nd January 2009 through the Chambers of Hannibal & Duncan Phillip. No significance will, however, be attached to this document, filed as it was outside of any acceptable time frame.

[6] On 22nd April 2009 the Claimant filed a Notice of Application for a date to be fixed for assessment of damages and costs. The Notice was supported by an Affidavit of the Claimant of the same date and was accompanied by a Draft Order.

[7] On 4th May 2009 the Defendant was served with copies of the Notice of Application, the Affidavit of the Claimant and the Draft Order, with a hearing date fixed for 12th May 2009.

[8] On 12th May 2009 Ms. Cindy John appeared as Counsel for the Defendant and requested an adjournment of the hearing of the matter to enable her to get instructions from and be retained by the Defendant and to be placed officially on the record. The matter was adjourned to 16th June 2009.

[9] The matter came up for hearing on 16th June aforesaid, with no affidavit in response filed by the Defendant and no document on record confirming Ms. John as the Legal Practitioner for the Defendant. An application by Ms. John to cross-examine the Claimant on his affidavit was opposed by Mrs. Celia Edwards Q.C., appearing for the Claimant, and was denied by the Court on the basis that there was no affidavit in response by or on behalf of the Defendant and no contest therefore on the evidence of the Claimant, neither was there any notice given of an intention to cross-examine the Claimant. The matter then proceeded by way of an oral submission by Learned Counsel, Ms. John, on behalf of the Defendant and an

oral response by Learned Queen's Counsel, Mrs. Edwards, on behalf of the Claimant.

[10] On the issue of the cost of repairs of the Claimant's motor car, the Claimant claimed the sum of $6,199.50 as being the cost of labour, materials and parts for the repair of his vehicle and submitted invoices and/or estimates to substantiate this claim. This claim was not disputed by the Defendant and the sum of $6,199.50 is awarded to the Claimant by way of special damages.

[11] The Claimant also claimed the sum of $750 by way of special damages, being compensation for loss of use of his motor car for the five days that the garage took to repair the car, at the rate of $150 per day. On this issue, Learned Counsel for the Defendant submitted that there was no evidence led by the Claimant as to the model of the car or its age and that the sum of $150 claimed by the Claimant as the daily cost of a substitute vehicle is unreasonable and that the cost of a reasonable substitute for the Claimant's car in those circumstances is $100 per day.

[12] In response to this submission, Learned Queen's Counsel on behalf of the Claimant submitted that the general measure of damages for loss of use is the cost of a replacement vehicle, that there is no car to rent anywhere in Grenada for $100 per day and that in Grenada the usual measure of damages for a non-luxury car, such as the Claimant's car, is $150. She said further that the repair estimate indicated that the repairs to the Claimant's vehicle would take four days, but the Claimant swears in his Affidavit that it took five days and she asked that he be awarded five days loss of use.

[13] The nature of the claim for loss of use in this case, and even the very language used by Learned Queen's Counsel on behalf of the Claimant, is indicative of the fact that this claim sounds in general damages and not in special damages. Special damages must be specifically pleaded and proved. It was neither pleaded nor proved that the Claimant expended the sum of $750 or any amount for that matter on the hire of a substitute vehicle. There is no indication in the Claimant's

Affidavit of the basis of the claim for $150 per day as compensation for loss of use of his vehicle and both Counsel in this matter took the liberty to offer to the Court their own estimations of the reasonable cost of a substitute vehicle for the Claimant, but – as much as this Court values the opinions of Learned Counsel – the Court declines to accept them as specifically proving a claim for special damages.

[14] General damages were claimed in the Affidavit of the Claimant earlier referred to, but no submissions were made as to the quantum of any award in that regard, excepting the submissions on the issue of depreciation, which will shortly be addressed. This Court awards general damages to the Claimant in the sum of $750, from which he will be adequately compensated for the loss of use of his vehicle.

[15] On the issue of depreciation, the Claimant merely states in his Affidavit that his vehicle would have suffered depreciation by reason of the accident, for which he asked to be compensated in the sum of $1,500. No evidence was presented to this Court to prove that by reason of the damage to the Claimant's motor car, and notwithstanding the repairs thereto, the market value of the car was reduced by $1,500 or any amount whatsoever. I would accordingly adopt and adapt the words of Chief Justice Sir Vincent Floissac in the unreported Eastern Caribbean Court of Appeal case of **Joseph Horsford v Bernard Jarvis**[1] where the Learned Chief Justice stated:

> "The [Claimant] was awarded the cost of repairs to his [car]. He failed to prove (by appropriate evidence) that by reason of the damage to the [car] and notwithstanding repairs thereto, the market value of the [car] was or would have been reduced. In these circumstances, this is not an appropriate case for the award of damages for depreciation or diminution in value of damaged property."

[1] Civil Appeal No. 14 of 1994

Of note too is the fact that the Claimant has been compensated in the sum of $4,649.50 for the purchase of parts for his vehicle, so that it is quite possible that his vehicle might actually appreciate in value because of new parts for old consequent on the accident and the repairs done. No award will therefore be made to the Claimant on the claim for depreciation of his vehicle as a result of the accident.

[16] On the issue of interest, Learned Counsel for the Defendant submitted that the Court ought not to award interest on the claim to the Claimant because the Default Judgment did not include judgment for an amount of interest to be decided by the Court as required by Rule 12.11(2) of the CPR.

[17] Learned Queen's Counsel, on behalf of the Claimant, submitted that both the Claim Form and the Statement of Claim claimed interest pursuant to Section 27 of the West Indies Associated States Supreme Court (Grenada) Act, that is, pre-judgment interest, and that interest was also claimed in the Request for Entry of Judgment in Default. She submits therefore that it is an obvious error that the Default Judgment did not specify interest, but that this does not lead to the conclusion of not awarding interest. She submitted further that Rule 12.11(2) says that the default judgment must include interest and the Court is entitled to overlook what she describes as "an error in the judgment paper." She submits too that the gist of Rule 12.11(1) is to say to the Court that you are obliged to award interest if it is claimed in the Claim Form and Statement of Claim. Then finally, she submits that interest is always in the discretion of the Court.

[18] The Court notes the fact of pre-judgment interest being in the discretion of the Court, which indeed is what Section 27 of the West Indies Associated States Supreme Court (Grenada) Act, 1971 legislates. But the effect of Rule 12.11 is that a default judgment must include judgment for interest for the period claimed or for an amount of interest to be decided by the court if the court, in assessing damages, is to award interest. If the default judgment in this case should have included interest but did not on account of an accidental slip or omission, or on

account of "an error in the judgment paper", as Learned Queen's Counsel put it, then it was incumbent on the Claimant to have applied to correct the slip or omission or error under Rule 42.10.

[19] In the circumstances, I do not consider that it is open to me to award pre-judgment interest to the Claimant and, if it is that I have the discretion so to do, then I exercise that discretion by declining to award pre-judgment interest to the Claimant in this case.

[20] Damages to the Claimant are therefore assessed in the sum of $6,199.50 for special damages and $750 for general damages, with prescribed costs awarded to the Claimant in the sum of $2,084.85.

Mario Michel
High Court Judge