IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF MONTSERRAT
(CIVIL)
AD 2011

CLAIM NO. MNIHCV2009/0007

LESTER GREENAWAY — **Claimant**

AND

DAVID TAYLOR — **Defendant**

APPEARANCES:

Mr. David S. Brandt for the Claimant
Mr. Jean Kelsick for the Defendant

2011: May 25th and July 26

JUDGMENT

[1] **REDHEAD, J. (Ag):** The Claimant filed a claim on 13th February 2009 against the Defendant seeking the sum of $12,500.00 for breach of contract or alternatively for negligence in the repair of his motor vehicle. The Claimant is also claiming interest at the rate of 14 percent from 20th December 2008.

[2] When the matter came on for hearing on 25th May 2011, Mr. Kelsick, learned counsel for the defendant, objected to the witness statement filed by the Claimant on 20th May 2011 going into evidence.

[3] Mr. Kelsick pointed to the fact that on 24th July 2009, Master Mathurin made an order that the Claimant should file his witness statement by 20th October 2009. Instead his witness statement was filed on 20th May 2011, one year and seven months later. Mr. Kelsick argued that the Claimant not having complied with the learned Master's orders and did not apply for any relief, the Court should not grant him permission to use the Witness Statement Rule 29.11(1) and (2).

[4] I upheld the objections by Mr. Kelsick and therefore the Claimant's witness statement was struck out.

[5] The Claimant in his Statement of Claim alleges that by an oral agreement he made on or about the month of October 2007 with the defendant, the Claimant agreed to employ him as his mechanic to repair his pickup truck and to pay the Defendant for the said repairs. The Defendant accepted the employment to repair the said vehicle.

[6] The Claimant alleges that in the month of October 2007 he drove his motor vehicle to the defendant's work place and delivered the said vehicle to the Defendant. The Claimant alleges that the value of the said vehicle at the time of delivery was $12,500.00. The Claimant also alleges that it was a term of the agreement or alternatively it was the duty of the Defendant to exercise all reasonable care, skill, diligence and competence as a mechanic to repair the said vehicle within a reasonable time and to take reasonable care of the said vehicle.

[7] Finally the Claimant alleges that realizing that the Defendant had kept the vehicle in his possession for some time, he visited the Defendant at the mechanic shop to enquire of the said vehicle and the Defendant told him that he was working on the said vehicle.

[8] The Claimant said that on or about the 29th December 2008 he came home and found the said motor vehicle at the side of the public road near his house. The Defendant in cross examination sought to deny that there was a contract between him and the Claimant. In

cross examination by Mr. Brandt the Defendant said "I did not enter into any agreement with Claimant. I told him I would look at the vehicle and assess it because I was busy with a client."

[9] However learned counsel for the Defendant in his oral submission admitted that there was a contract between Claimant and the Defendant. Learned counsel in my view had no choice having regard to the overwhelming evidence in support of a contract between the parties; in addition the Defendant billed the Claimant for work done on the vehicle.

[10] The Defendant has given reasons why he was unable to effect the repairs to the Claimant's vehicle. Basically what the Defendant said was that after the Claimant delivered the vehicle in front of his gate he was unable to make contact with the Claimant and because of lack of finance he, the Defendant, was unable to source the parts from abroad to carry out the repairs.

[11] In fact in his defense paragraph 9 the Defendant pleaded, that after completing the examination on the vehicle he did his best to repair it but he was unable to do so because (a) of the extremely poor condition it was in (b) it needed new parts that he could not source and with which the Claimant did not corporate in sourcing and (c) the removal there from by the battery thus making it very difficult for the claimant to do his work.

[12] The Defendant also pleaded that starting in early 2008 he apprised the Claimant of the several problems he had encountered in repairing the said vehicle and asked him to visit his place of business to discuss them. The Claimant failed to do so. (Paragraph 10 of the defense)

[13] Under cross examination he said that he started to do the repairs but was unable to complete because he could not get the chassis number. The Defendant however, admitted that in licensing a vehicle one is required to supply the chassis number. He also admitted that he has for several years had to licensed vehicles.

[14] The Defendant then admitted that he had gone to one Mr. Clifford Ryan at the licensing department and obtained the chassis number for the Claimant's vehicle.

[15] The Defendant said in cross-examination that he formed the impression that the vehicle could be repaired but not by him because he does not do body work because, as he put it, that was outside of his "capabilities". He further said in cross-examination that the body of the vehicle was in a state of disrepair.

[16] The Defendant insisted under cross examination that the Claimant did not go to see him when he was asked by him to do so. The Defendant gave many other reasons why he, the Defendant, was unable to complete the repairs.

[17] In my considered opinion the Defendant has paid scant regard for the truth. I have come to that conclusion for the following reasons:
The Defendant insisted that he had no contract to repair the Claimant's vehicle. He said that the Claimant left the vehicle by the side of the road in front of his gate. The Defendant said that he did not tell the Claimant to leave his vehicle in front of his gate. Yet the Defendant admitted under cross examination that he took the Claimant's vehicle into his garage. The Defendant said that the vehicle was moved to his garage by means of a jack. His witness Tristan Jeffers who works for Defendant said in cross examination "... the vehicle was removed, someone went into the vehicle ..."freeing" it back into the yard i.e. pushing the vehicle. This witness demonstrated how this was done. Then it was put to this witness by learned counsel for the Claimant that the vehicle was driven into the yard. After a long pause Mr. Jeffers said "yes". This testimony contradicts the Defendant's testimony.

[18] The Defendant said in cross examination "I did not really started (sic) to repair it. I started to do some repairs on it. To do an assessment you have to remove parts"

[19] I pause here, to say, this, in my considered opinion was in order to support his contention that he did not do any repairs, he said that he removed parts in order to do the

assessment. However he went on to say: - "I bought parts for the vehicle. I said I could not complete the repairs because I could not get the chassis number."

[20] However, he admitted in cross examination:
"I went to Clifford Ryan (at the licensing department) and obtained the chassis number for the claimant's vehicle."

[21] The Defendant also gave as one of his reasons for being unable to complete the repairs to the Claimants vehicle that he was not able to get in contact with the Claimant and that he needed money to source the parts to repair the vehicle. I make the observation and in so doing I take judicial notice that Montserrat is a very small community and there should be no difficulty for someone to make contact with another person on island.

[22] However the Defendant said in cross examination:
"I never determined that I could not repair the vehicle. I needed the corporation of the Claimant. I needed money for parts. I was not economically able to source the parts and I felt that it was not worth spending the money on that vehicle. I did not ask him to order the parts. I asked him to come in to see me. He never came. I met him on several occasions on the road."

[23] I again make the observation that if the Defendant met the Claimant on several occasions on the road, he also said that he spoke to the Claimant on several occasions, then in my view it would have been easy to tell the Claimant that he, the Defendant needed money to carry out the repairs."

[24] But the Defendant explained:
"I did not think it was appropriate place [on the road] to let him know that the vehicle was not worth repairing."

[25] I find as a fact that this Claimant took his vehicle for repairs to the Defendant. Parked the vehicle outside of the Defendant's gate, the Defendant after a day or two took the vehicle

into his garage carried out some examination on the vehicle then decided that it was not worth spending money to repair the vehicle. The Defendant never informed Claimant of this fact. Instead the Defendant kept the Claimant's vehicle from October 2007 to January 2009 when the Defendant towed the vehicle back to the Claimant's premises. The vehicle was kept out in the open. The vehicle, I find as a fact when it was delivered to the Defendant was in a bad condition. However, having being kept out in the open the vehicle deteriorated further.

[26] Tristan Jeffers, a mechanic, the Defendant's witness said in cross examination "when I took back the vehicle to the Claimant's premises it was all rotten down. If a vehicle stays out in the rain and ash for a year it will rotten. The Claimant's vehicle was out in the open."

[27] The vehicle when it was towed back to the Claimant's premises must have worth something. The Claimant in his Claim Form alleges that the vehicle was worth $12,500.00 when it was delivered to the Defendant. There is no evidence of this as the Claimant was not allowed to give evidence. However the Defendant in cross examination admitted: - "His car was not valued $12,500.00 when it was delivered. It was not worth more than $4,000.00.

[28] The Defendant in his Counter Claim claims 427 days storage at $10.00 per day. This is equal to $4,270.00. I am at a loss to appreciate how the Defendant could unilaterally claim this sum. Moreover he was at fault in not informing the Claimant that he would not be repairing his vehicle because the costs did not worth it. Had he done so, I have no doubt that the Claimant would have collected his vehicle, if he was told by the Defendant that he would not be repairing his vehicle. If the Claimant had failed to do so within a reasonable time, then the defendant could have informed him that he would be liable for storage fees at $10.00 per day. But none of that happened. As a matter of fact the Defendant admitted in cross examination that it was an error on his part that he did not tell the Claimant to come back for his vehicle. The Defendant cannot recover this amount or any sum for storage fees. To allow any sum under this head is, in my view, to allow the Defendant to profit from his wrong.

[29] The Defendant claims a total of $6,657.00 the balance which is $2,387.00 I suppose, it is the charge for examination of the Claimant's motor vehicle because he said that "early 2008 to when he sent back the vehicle, I did no work on it. I sent it back 19th March 2009 after I got writ from him (Claimant). It is not that I did not do any work at all. If I just look at it, cash would have incurred. If for instance if you are sourcing a part you cannot charge by the hour. Normally I do not charge for assessing a job, I do not charge if I am doing the job."

[30] In my judgment the Defendant did no more than to assess, examine or diagnose the problem with the Claimant's vehicle. He therefore cannot recover the sum of $2,387.00. There will be judgment for the Claimant in the sum of $4,000.00.

[31] The Defendant's Counter Claim is hereby dismissed.

[33] Costs for the Claimant on a prescribed costs basis.

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Albert Redhead
HIGH COURT JUDGE (Ag)