

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2008/0859

BETWEEN:

CHRISTINE SAMUEL

Claimant

and

[1] BERNARD SERIEUX

[2] JAMIE SERIEUX

Defendants

Appearances:

Ms. Esther Greene-Ernest for Claimant

Mr. Al C. Elliot for 1st and 2nd Defendants

2011: August 15.

JUDGMENT

[1] **GEORGES J. [AG.]:** This is a claim in negligence for special damages together with interest and costs which arose as a result of a vehicular accident which occurred about 10:15 p.m. in the Caribbean Cinemas Complex car park at Choc resulting in a collision between Suzuki APV registration number TE 7168 owned and driven by the claimant and a 10-year old Toyota Altezza registration number 268 owned by the first named defendant and driven by his brother the second named defendant.

[2] As a result of the ensuing impact the claimant alleged that her car was thrust three to four feet on to a parked vehicle registration number 7557 in the vicinity. Liability is denied by both defendants who have each filed a defence and counterclaim.

[3] In her statement of claim filed 26th August 2008 the claimant alleged at paragraphs 3 and 4 that at the relevant time and date she was driving her car along the parking area of the cinema compound when the first named defendant driving motor vehicle 268 emerged suddenly from an adjoining path in the parking lot; failed to maintain proper control of his vehicle and drove into the left front side of her vehicle. The impact she alleged thrust her vehicle (sic) causing it to drag and collide with a parked motor vehicle registration number 7557 owned by Kevin Leopold.

The said collision she alleged was caused by the second-named defendant as servant or agent of the first named defendant.

[4] Permit me to point out at this stage that the first named defendant (hereinafter referred to as "Bernard") in his defence averred that whilst the second named defendant (hereinafter referred to as "Jamie") "was albeit with his permission driving motor vehicle registration number 268 it was not as an agent but as an authorized person on a frolic of his own".

[5] Particulars of negligence attributed to Jamie's negligent driving which resulted in the collision are set out at paragraph 4 of the statement of claim thus:

- " (a) Driving at a speed which was excessive having regard to driving conditions in the parking lot.
- (b) Failing to keep proper lookout and to have any or sufficient regard for other motor vehicles reasonably using the parking lot at the material time.
- (c) Failing to stop, slow down, swerve or in any other way control his motor vehicle so as to avoid collision.
- (d) Failing to blow his horn or to give any indication of his approach."

[6] The claimant's witness statement is virtually a repetition of her statement of claim but states at paragraph 6:

"As a result of the collision my vehicle sustained damage to the knuckle, rod, bushing, arm assembly, joint, front bearing, left hand fender, tie rod, fender lining, upper bumper and lower bumper.

I expended the following sums to repair my vehicle

<i>Cost of repairs</i>	<i>\$6,785.00</i>
<i>Loss of use</i>	<i>\$3,800.00</i>
<i>Total</i>	<i>\$10,585.00</i>

Exhibited hereto are the bills and receipts for the costs of hire and repair exhibited as "CS 1"

- [7] The bills and receipts detailing the cost of repairs to the claimant's car and loss of use (representing car rental for 12 days from 18-04-08 to 1-05-08 and an additional 8 days from 9th May 2008 to 15th May 2008) were exhibited with the statement of claim.

- [8] In cross-examination the claimant agreed that at the material time she was driving along a minor road of the cinema car park but was not aware at the time - that is, before the collision, that the defendant (Jamie) was driving along the main road of the cinema car park. The impression is that this was not marked or designated as such. The witness however confirmed that she was approaching "the main road" of the cinema car park.

- [9] On the passenger side she said the window was up and on her side it was down. That window has a very light tint she added. Her radio was off. On reaching the main road she testified that she did not come to a complete stop. There she said a collision occurred between her vehicle and the defendant's vehicle on the main cinema road as a result of which her vehicle hit a parked vehicle. The road she was driving along (a minor road) would have been a road between parked cars and approaching the main road she said. Directly across the main road would have been similarly parked cars. The vehicle that her car hit was parked on the other side of the road.

- [10] The witness frankly admitted that she did emerge from 'the minor road' to the main car park road. If she had stopped at the exit of the minor road it would depend she said on how fast she was driving to have prevented the accident. She concluded by declaring with remarkable candour that she did not come to a complete stop at the intersection with the main road because she was not driving fast. By

“complete stop” she went on to explain she meant she would have had to shut down the vehicle. By that I surmise she would have had to come to a standstill.

[11] On further cross-examination the claimant confirmed that in April 2008 her brakes were functional and working satisfactorily. Her feet were on the brakes at the time she said. She thought her foot brakes were fully applied. This is what driving instructors would call a complete stop she declared adding that the expression “complete stop” was relative.

[12] In response to the Court the witness said that she did not see the defendant’s vehicle before it struck her. She was in the process of crossing over to the other side of the main road. The defendant’s car was probably on her right side she imagined because she never saw it. They were on the same side of the compound she added and never saw from which side of the compound the defendant driver came before the collision.

[13] This witness I venture to say impressed as a witness of truth who spoke with remarkable candour. I accept her evidence as reliable and trustworthy.

[14] Bernard Serieux’s (the first named defendant) testimony largely centered on the cost of repairs to his 10-year old Toyota Altezza a 4-door Sedan and quality car for which brand new replacement parts had to be sourced from overseas by Beachcomber Ltd. at a cost of \$10,000.00. It was not a sports car he said nor had it been altered to enhance its performance.

[15] Cost of repairs according to an estimate form dated 25th April 2008 from Andre’s Auto Repair Services is put at \$12,267.00 and loss of use for car rental totaling \$3,013.00 for a period of 21 days (unspecified) making a grand total of \$15,280.50 together with interest is claimed by him by way of counterclaim. This constitutes special damages.

[16] According to the particulars of damage sustained by his vehicle registration number 268 the following parts were listed at paragraph 7 of his counterclaim as being necessary to repair his car as a result of the claimant's alleged negligence:

- (a) Bonnet
- (b) Fender
- (c) Bumper
- (d) Grill
- (e) Radiation
- (f) Headlamps

A cursory glance of the above list clearly shows that it was the front of the defendant's car which collided with the claimant's car.

[17] On that issue the independent testimony of PC 436 Glen Charlery who was providing armed security at the cinema on the night in question is instructive and most helpful. At the material time he stated in his witness statement he was in the vicinity of the Domino Pizza outlet when he heard the sound of screeching tyres. When he looked he saw motor vehicle registration number 268 which pushed off from a parked position at a fast speed and within minutes he saw it collide with the claimant's vehicle. The impact he added pushed the claimant's car into collision with a parked vehicle which was on the left side of the parking lot.

[18] And in answer to a question from the Court at the conclusion of his cross examination PC Glen Charlery had this to say:

"The defendant's vehicle struck the left front side of the claimant's vehicle. The front of the defendant's vehicle collided with the left front side of the claimant's vehicle. The claimant's vehicle was pushed three to four feet on to a third vehicle as a result of the impact of the defendant's vehicle with the claimant's vehicle." (My emphasis)

[19] In my view PC Charlery's testimony strikes me as a truthful and plausible account of how the accident occurred and by and large lends credence to the claimant's own account.

- [20] The main thrust of the second named defendant's case is that the claimant negligently drove from the minor road on to the main road of the car park without stopping and indeed she did find herself at pains explaining that she did not come to a complete stop which expression she submitted was relative.
- [21] Nonetheless as I see it on a balance of probabilities the preponderance of the evidence points to the fact that the dominant effective cause of the accident was unquestionably the negligent and indeed perilous 'taking off' by the defendant from a parked position at very high speed (with his car tyres screeching) in a crowded car park at night. Brake impressions on the road attest to the high speed at which the defendant was driving over a relatively short distance and the nature and extent of the ensuing damage to the respective vehicles is silent irrefutable evidence that he was plainly negligent and culpably liable.
- [22] It is my considered view that the preponderance of the evidence clearly shows and I find as a fact that the second defendant is wholly liable in the circumstances for the special damage and loss suffered by the claimant on the night of 17th April 2008 at the Caribbean Cinema Complex car park at Choc.
- [23] I accordingly enter judgment for the claimant against the second defendant Jamie Serieux in the amount of \$10,585.00 special damages with interest at the rate of 6% per annum pursuant to Article 1008 et seq. of the Civil Code of St. Lucia Revised Laws from 17th April 2008 to date of payment and costs of \$1,500.00. I also order that the defendants counterclaims do stand dismissed with costs to be agreed.



Ephraim Georges
High Court Judge [Ag.]