THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

SLUHCV2015/0601

BETWEEN:

MICHAEL MC COMBIE

Claimant

and

GLEN CHARLES
AMATUS HIPPOLYTE

Defendants

Before:
The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances:
Ms. Cleopatra Mc Donald for the Claimant
Ms. Beverley Downes for the 2nd Defendant

Claimant and Defendants present

2017: June 7, 16.

JUDGMENT

[1] **CENAC-PHULGENCE, J**: The claimant, Mr. Michael Mc Combie, ("Mr. Mc Combie") filed this claim on behalf of his insurer, M&C General Insurance Company Limited by way of subrogation proceedings, the said insurer having made payment to Mr. Mc Combie under his policy of insurance with the insurer

following a motor vehicle collision with the 1st defendant, Glen Charles ("Mr. Charles").

[2] On or about 21st June 2014, at about 1:20 a.m., Mr. Mc Combie, the owner and driver of vehicle registration number PG6219 was travelling along the Sarrot Road in Castries. Mr. Charles, the driver of vehicle registration number PK5297 was travelling in the opposite direction along the said Sarrot Road. The 2nd defendant, Mr. Amatus Hippolyte ("Mr. Hippolyte") is the owner of PK5297. Mr. Mc Combie claims that Mr. Charles negligently drove PK5297 and collided with his vehicle.

[3] Mr. Mc Combie claims special damages, general damages, interest and costs. He claims that Mr. Charles was driving PK5297 as servant or agent of Mr. Hippolyte or alternatively with the permission of Mr. Hippolyte and therefore Mr. Hippolyte is vicariously liable for the negligence of Mr. Charles.

[4] Both Mr. Charles and Mr. Hippolyte were served with the claim. Mr. Charles did not file a response and on 4th December 2015, judgment in default was entered against him for an amount to be decided by the court. Liability in relation to Mr. Charles is therefore not in issue.

[5] Mr. Hippolyte filed a defence in the matter on 3rd December 2015 in which he denied knowing about the accident or being present when it occurred. Mr. Hippolyte's main contention is that Mr. Charles was an independent contractor and that he had no permission to drive or use PK5297 and was on a frolic of his own at the time of the accident. He says that he is not vicariously liable for the negligence of Mr. Charles and prays that Mr. Mc Combie's claim be dismissed with costs.

[6] Permission was granted to the claimant at pre-trial review to issue a witness summons for Mr. Charles, the driver, to give evidence at the trial. Mr. Charles is now an inmate at the Bordelais Correctional Facility for matters totally unrelated to this case.

[7] The issues for the Court's determination are:

(1) Whether Mr. Charles was an independent contractor or was driving PK5297 as the servant or agent of Mr. Hippolyte?

(2) Whether Mr. Charles was driving with the permission of Mr. Hippolyte at the time of the accident or whether he was on a frolic of his own?

(3) Whether Mr. Hippolyte is vicariously liable for the negligence of Mr. Charles?

Evidence of Michael Mc Combie

[8] Mr. Mc Combie's witness statement filed on 28th October 2016, subject to correction made at paragraph 2 (regarding the time of the accident) and amplification of paragraph 3 served as his evidence in chief at trial. He testified that he found out that the vehicle driven by Glen Charles belonged to his uncle, Amatus Hippolyte. He gave evidence of the damage to his vehicle and provided evidence to support the loss claimed.

[9] He testified that when he was about to call the police on the accident scene, Mr. Charles tried to discourage him but he ignored him. He said that Mr. Charles did not produce a driver's licence to the investigating officer at the scene. There was no cross-examination of Mr. Mc Combie.

[10] Mr. Mc Combie's evidence goes to the damages which he claims and is not directly related to the issues to be decided in this matter.

Evidence of Mr. Amatus Hippolyte

[11] Mr. Hippolyte's witness statement filed on 1st November 2016 subject to correction of paragraph 2 (motor omnibus to read motor vehicle) and paragraph 3 (distributor to read transmission) served as his evidence in chief. He testified that he owns motor car PK5297. He said that about 16th June 2014, he took his vehicle to Mr. Glen Charles who he knows to be a mechanic and who operated a roadside garage near his home in Barre Denis, Castries. He gave evidence that Mr. Charles agreed to replace the transmission for him and that the work was to take one week. He says that on 22nd June 2014 he was to collect the vehicle.

[12] The replacement of the transmission was to have taken place on site and that at no time did Mr. Charles intimate to him that he intended to use the vehicle for any purpose. He said he never authorised Mr. Charles to use his vehicle and was unaware that he was doing so. Mr. Hippolyte said he collected the vehicle from Mr. Charles on 22nd June 2014 and there were no visible signs of any damage to the vehicle and it appeared to be in the same condition as it was when he delivered it to Mr. Charles.

[13] Mr. Hippolyte's evidence is that at no time did Mr. Charles mention to him that he had driven the vehicle or that it had been involved in an accident. He said he only knew of the accident when he was served with the claim on 5th November 2015. He testified that Mr. Charles was not acting as his agent when he drove the car on the date of the accident and he did so without his knowledge and consent.

[14] Mr. Hippolyte said he did not delegate to Mr. Charles any task which necessitated the use of his vehicle and Mr. Charles' actions are wholly unconnected with his interests. Mr. Charles was on a frolic of his own. In cross-examination, Mr. Hippolyte said he knew Mr. Charles for about six to seven years and that he knew him as a good mechanic. Mr. Hippolyte testified in cross-examination that Mr.

Charles had expressed an interest in buying the vehicle but that he had not agreed to sell; they had not agreed a price and he told him they would talk about it. Mr. Hippolyte also testified that he was relying on his mechanic to do what was necessary to get the job done but he was very clear that that did not entail driving the vehicle.

Evidence of Glen Charles

[15] The evidence of Mr. Glen Charles is quite compelling. At the time of the accident, he had been a mechanic for two years and operated a roadside garage at Barre Denis. He testified that Mr. Hippolyte brought his vehicle to him because the transmission was not working properly and there was an issue with the reverse function and requested that it be changed from an automatic to a manual vehicle. That meant changing the transmission to a gear box. Mr. Charles said he finished the work on the Thursday prior to the accident.

[16] This is the exchange which took place at the trial between counsel for the claimant, Ms. Mc Donald and Mr. Charles.

Ms. Mc Donald: "When you finished the work, you started the vehicle and put it gear, in reverse and you drove it around to ensure that the gearbox was working properly
Mr. Charles: Yes but not for a long distance
Ms. Mc Donald: You spoke with Mr. Hippolyte and told him that the work was done
Mr. Charles: Yes
Ms. Mc Donald: At the time did you tell Mr. Hippolyte that you would need to test drive the vehicle
Mr. Charles: I did not have to tell him that I had to test drive it. I know my work. It is obvious that after the work I would have to test drive the vehicle. When I told him that the work was done he told me since he was busy he would come and check me when he got the chance
Ms. Mc Donald: So you took the vehicle out to test drive it
Mr. Charles: Yes."

[17] In evidence, Mr. Charles testified that he referred to Mr. Hippolyte as 'uncle' but he was not his uncle. He called him 'uncle' because he was his favourite customer.

[18] In cross-examination by counsel for Mr. Hippolyte, Ms. Beverley Downes, Mr. Charles gave evidence that he worked for himself and had his own business. In the words of Ms. Downes, 'he did not take instructions from any boss'. Mr. Charles testified that he did not have a driver's licence but had a permit.

[19] The following exchange between Mr. Charles and Ms. Downes is instructive:

Ms. Downes:	"Did you have any discussion about driving the vehicle with him
Mr. Charles:	No. He never knew that I went that distance. I normally test drive the vehicles, depends on the type of work I do.
Ms. Downes:	By Thursday, you had already test driven the vehicle
Mr. Charles:	I did not really drive it. I just reversed it and I parked it lower off so I could do something else on another vehicle
Ms. Downes:	When did you call him and tell him the work was done
Mr. Charles:	I cannot really recall what day
Ms. Downes:	By Thursday, you had already driven the vehicle to know it was working properly
Mr. Charles:	I reversed it and I figure that it was working properly
Ms. Downes:	So when you told him the work was done what did you mean
Mr. Charles:	That he could come and collect it."

[20] I reproduce in full this excerpt of the testimony of Mr. Charles as follows:

Mr. Charles:	"When I did not see him come and check me the Friday, I had a next move on a next vehicle which I needed a part for and at the time I ended up using the car.
Ms. Downes:	So you were using this car to go and collect a part to do work on someone else's vehicle
Mr. Charles:	Yes. I had already got the part and on my spare time I went strolling with the man's vehicle
Ms. Downes:	What would have happened if Mr. Hippolyte had come to collect the vehicle on the Friday
Mr. Charles:	I would have expected to get paid and I would give the man his vehicle
Ms. Downes:	When you took the vehicle in the evening you were not test driving the vehicle

Mr. Charles: I choose to test drive the vehicle when I choose to. It's all my decision.
Ms. Downes: You are your own boss
Mr. Charles: Yes
Ms. Downes: In that case, had he collected the vehicle on the Friday, you would not have test driven the vehicle
Mr. Charles: No
Ms. Downes: It was not necessary for it to be test driven
Mr. Charles: No it is not necessary. I took it on my own to do it.
Ms. Downes: That is why after the accident you did not want the police to be called
Mr. Charles: Yes
Ms. Downes: You admitted that Mr. Hippolyte knew nothing about you driving the vehicle at that time
Mr. Charles: No he did not know
Ms. Downes: So you offered to pay for the damages all on your own.
Mr. Charles: Yes. Cause I took an agreement with him (Mr. Mc Combie) that I would repair his vehicle. That in two weeks deadline, I would repair his vehicle and give it back to him. He signed the agreement in the presence of the officer.
Ms. Downes: All of this was done without Mr. Hippolyte knowing anything of this
Mr. Charles: Yes. The reason I did not inform him is because the vehicle had no body damages.
Ms. Downes: You were served with a claim
Mr. Charles: At the Facility
Ms. Downes: And you did not inform Mr. Hippolyte that you were served with a claim
Mr. Charles: No. Like I told you I made an agreement with Mr. Mc Combie. He never gave me the opportunity. They towed the vehicle to Sean's Wrecker Service. When I got there, they told me that he had left with the vehicle.
Ms. Downes: So you repaired Mr. Hippolyte's vehicle and you never told him
Mr. Charles: Yes."

[21] In answer to a question by Ms. Mc Donald as to whether it was necessary for him to test drive the vehicle to know whether it was working properly, Mr. Charles said yes. He admitted that he did not tell Mr. Hippolyte that he needed to test drive the vehicle. But he admitted in earlier testimony that he did not test drive the vehicle by the date when he called Mr. Hippolyte to tell him that the work had been

completed. He also very interestingly said 'I used the test driving as an excuse to go the distance I went'. In answer to a question posed by the Court, Mr. Charles said that it was not necessary to test drive the vehicle. He had also said in answer to Ms. Downes that it was his choice if he did or did not test drive the vehicle.

[22] The Court has no reason not to believe the testimony of all the witnesses in this case. They were all forthright in their responses. It is now a matter of applying the law to the facts as gleaned from the testimony of the witnesses.

Whether Mr. Charles was an independent contractor or was driving PK5297 as the servant or agent of Mr. Hippolyte?

[23] Counsel for Mr. Hippolyte referred to the Ugandan case of **Lukunga v Lobia**[1] which whilst not binding is instructive. In this case, the respondent had taken his vehicle to a garage for repairs. During that period, the garage owner unknown to him drove the vehicle and was involved in a collision with the appellant's mini-bus. The trial judge found that possession of the vehicle was authorised by the defendant and driving of the vehicle was foreseeable as the repairs would involve or culminate in the driving of the vehicle and the defendant was found vicariously liable.

[24] The Court of Appeal however allowed an appeal by the respondent and held (1) that the appellant (the driver of the mini-bus) had failed to prove that the garage owner was a servant of the respondent and that he was not an independent contractor and (2) it was not possible to infer that the garage owner was road testing the vehicle at the time of the accident. On appeal to the Supreme Court, the Court dismissed the appeal and held that it was necessary to show that either the driver was the owner's servant or that **at the material time of the accident**, the driver was acting on the owner's behalf as agent. The Court held that to establish the agency relationship, it was necessary to show that the driver was

[1] Supreme Court of Uganda, Civil Appeal No. 4 of 2001.

using the vehicle at the owner's request, express or implied or on his instructions, and was doing so in performance of the task or duty thereby delegated to him by the owner.

[25] Counsel, Ms. Downes submitted that as an independent contractor, Mr. Charles was not under the control of Mr. Hippolyte. In supplemental submissions filed on 9th June 2017, Ms. Downes submitted that the evidence of Mr. Charles clearly supports the 2nd defendant's case that Mr. Charles was an independent contractor. Counsel referred to Mr. Charles' testimony on cross-examination that he operated his own private garage, had his own tools and made his own decisions. In other words, counsel submitted, 'he was his own boss.'

[26] Counsel for the claimant, Ms. Mc Donald in closing submissions filed on 9th June 2017 submitted that Mr. Hippolyte is vicariously liable because (i) at the time of the accident, he had authorised Mr. Charles to drive for the purpose of performing the task or duty for or on behalf of the owner or partly for the owner's purposes and (ii) at the time of driving, the driver was acting in performance of the said task or duty or in pursuit of the said purposes. Counsel referred to the case of **Nicholls v Tutt**[2] which she submitted is dissimilar to the case at bar as in **Nicholls**, the Court looked at whether it was necessary to test drive the vehicle to check installation of a water pump. I understand her to be saying that in the case at bar this is not an issue as it was necessary to test drive the vehicle given the nature of the work.

[27] Ms. Mc Donald further submitted that Mr. Hippolyte gave implied authorisation to Mr. Charles to test drive the vehicle. She referred to the testimony of Mr. Hippolyte that he expected Mr. Charles to do what was necessary to fix the vehicle. However, the Court notes that Mr. Hippolyte in answer to a question whether he expected Mr. Charles to test drive the vehicle, said no and indicated that he knew about vehicles and if it did not work well when he took it from the mechanic, he

[2] (1992) 41 WIR 140.

would just bring it back. Counsel further submitted that if Mr. Charles had asked Mr. Hippolyte whether he could test drive the vehicle to ensure correct installation of the gearbox that Mr. Hippolyte would have agreed. However, this submission flies in the face of Mr. Hippolyte's testimony that he did not expect Mr. Charles to test drive the vehicle.

[28] Ms. Mc Donald also submitted that the fact that Mr. Hippolyte left the vehicle with Mr. Charles under an agreement to sell, it was therefore for Mr. Hippolyte to ensure that he left the vehicle with a qualified person who intended to purchase the vehicle. She acknowledged that there was no agreed price. Counsel referred to Mr. Charles' testimony stating that he admitted that he also took the opportunity to ensure that if he wished to buy the vehicle it was in proper working condition. This counsel submitted is evidence that Mr. Charles was driving the vehicle for Mr. Hippolyte's purpose of selling the vehicle.

[29] I must admit having some difficulty following this argument especially in light of the very clear testimony from both Mr. Charles and Mr. Hippolyte. Mr. Charles in his evidence on examination by counsel for the claimant said that he had had an agreement to purchase the vehicle from Mr. Hippolyte. However, in cross-examination, he testified that before he worked on the vehicle he had indicated to Mr. Hippolyte that he was interested in buying the vehicle but he could not really say that they 'got to an agreement'. He could not remember how long before Mr. Hippolyte brought the vehicle to him that was. Mr. Charles also testified that he never discussed a price with Mr. Hippolyte but that Mr. Hippolyte had said that he would 'check him'. He could not say whether Mr. Hippolyte had agreed to sell the vehicle or not.

[30] When asked in cross-examination whether he had agreed to sell the vehicle to Mr. Charles, Mr. Hippolyte's testimony was that he had not and had said to him that they would talk about it. He also said that no offer of a price was made to him by Mr. Charles.

[31] Ms. Mc Donald also submitted that Mr. Hippolyte did not take any steps to assure himself that Mr. Charles was qualified to test drive the vehicle in that he did not verify that Mr. Charles had a driver's licence and so he must bear some liability for his failure to do so. No authority was presented for this submission.

Analysis

[32] As counsel for the 2nd defendant rightly submits, where there is proof that a motor vehicle is owned by another, there is an inference or presumption that the driver of that motor vehicle is driving a servant or agent of the owner. But this can be rebutted by the circumstances in which the vehicle was actually being driven.[3]

[33] A servant may be defined as any person employed by another to do work for him on terms that he, the servant, is to be subject to the control and directions of his employer in respect of the manner in which his work is to be done[4]. An independent contractor on the other hand is one who carries on independent employment, in the course of which he contracts to do certain work[5].

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[3] Barnard v Sully (1931) 47 TLR 557.
[4] The Common Law Library No. 6-Charlesworth & Percy on Negligence, 7th ed. Para 2-98.
[5] Ibid, para 2-99.

[34] The learned authors, Charlesworth and Percy put it this way:

> "It follows that the test of this distinction is whether or not there exists a right of control over the person in respect of the manner in which the work is to be performed; thus a servant is a person who has to work under the directions and supervision of his master, whilst an independent contractor is a person who is his own master for all practical purposes."[6]

[35] The guiding principle for vicarious liability which is well-known was laid down in **Morgans v Launchbury et al**[7] where Lord Wilberforce said:

> "For I regard it as clear that in order to fix vicarious liability on the owner of a car in such a case as the present, it must be shown that the driver was using it for the owner's purposes, under delegation of a task or duty. The substitution for this clear conception of a vague test based on 'interest' or 'concern' has nothing in reason or authority to commend it. Every man who gives permission for the use of his chattel may be said to have an interest or concern in its being carefully used, and, in most cases if it is a car, to have an interest or concern in the safety of the driver, but **it has never been held that mere permission is enough to establish vicarious liability**."

[36] Lord Pearson stated the law in the following terms in **Morgans**:

> "My Lords, in my opinion, the principle by virtue of which the owner of a car may be held vicariously liable for the negligent driving of the car by another person is the principle qui facit per alium, facit per se. (he who acts through another does the act himself) If the car is being driven by a servant of the owner in the course of the employment or by an agent of the owner in the course of the agency, the owner is responsible for negligence in the driving. **The making of the journey is a delegated duty or task undertaken by the servant or agent in pursuance of an order or instruction or request from the owner and for the purposes of the owner. For the creation of the agency relationship it is not necessary that there should be a legally binding contract of agency, but it is necessary that there should be an instruction or request from the owner and an undertaking of the duty or task by the agent.** Also the fact that the journey is undertaken partly for purposes of the agent as well as for the purposes of the owner does not negative the creation of the agency relationship…" (My emphasis)

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[6] Ibid. para 2-99.

[7] [1972] 2 All ER 606.

[37] Lord Salmon in **Morgans** said that mere permission to drive is not enough to create vicarious responsibility for negligence. Nor is one responsible for the negligent driving of an independent contractor without more.

[38] In **Harry Rambarran v Gurrucharran**,[8] the Privy Council held that the evidence for the appellant (a) that the occasion was not one of those specified by the appellant as being an occasion when, for one of the appellant's own purposes, a son would drive the car for him; (b) that he was ignorant of the fact that the son had taken the car out that day, and (c) that he did not hear of the accident until a fortnight after it happened, destroyed any presumption of agency and raised a strong inference that the son was not driving as the appellant's servant or agent.

[39] In **Nicholls v Tutt**, the appellant engaged the services of a motor mechanic to install a new water-pump in his car. On the appellant's own admission, it was not necessary after installing the pump to test drive the vehicle; but he nevertheless asked the mechanic to do so. In the course of driving the vehicle the mechanic had an accident and damaged the vehicle of a third party (the respondent) and caused personal injuries to the respondent. The trial judge found the mechanic to have been negligent and to have been driving at the time as the agent of the appellant. The Court of Appeal dismissed the appeal and held that trial judge found that the appellant had authorized the mechanic to drive the car for the appellant's purposes; and accordingly, **as the purpose of the driving was the appellant's rather than the mechanic's the judge had properly found the appellant vicariously liable for the mechanic's negligence.**

[40] In the **Nicholls** case, the appellant who was the owner of the vehicle had said that it was not reasonable to expect a mechanic to take the vehicle to test it after putting in a water-pump and that it was not necessary. Floissac CJ therefore found that it was not necessary for the mechanic to test drive the vehicle to

[8] [1970] 1 WLR 556.

ascertain whether the water pump was properly installed. His Lordship held further that **if such necessity had been established, it would have been evidence that the driver drove the car in performance of his own task or duty or in pursuit of his own purposes.**

Findings

[41] The claimant has not shown that Mr. Hippolyte gave any express instruction to Mr. Charles to drive PK5297. Mr. Hippolyte from his testimony did not expect the vehicle to be driven. By Mr. Charles' own admission, he decided whether to test drive the vehicle or not and if he made a decision to do so, it was solely his choice. There is clear evidence to rebut any presumption that Mr. Charles was the servant or agent of Mr. Hippolyte. There is no evidence to suggest that Mr. Charles operated under the control or instruction of Mr. Hippolyte. Mr. Charles' evidence clearly destroys any such presumption and favours a finding that he was acting as an independent contractor.

[42] The **Nicholls** case is distinguishable in my view from the case at bar since the owner in **Nicholls** gave specific instructions for the vehicle to be test driven. There is no evidence before this court that Mr. Hippolyte gave any such instructions. In fact he was very clear that he did not think that it was necessary to test drive the vehicle to know if it was working properly. If Mr. Charles chose to test drive the vehicle, he did this in performance of his own task or duty and not on any instructions express or implied from Mr. Hippolyte.

[43] Like in the **Rambarran** case, Mr. Hippolyte did not know of the accident until he was served with the claim form and at the time of the accident, the vehicle was not being used for any purpose of Mr. Hippolyte's. This also in my opinion goes to rebut any presumption of servant or agent relationship between Mr. Charles and Mr. Hippolyte.

[44] As stated in **Morgans**, mere permission is not sufficient to establish vicarious liability. Even if it can be said that there was implied permission given to a mechanic to drive a vehicle brought in for repairs, it would be permission to drive the vehicle in circumstances connected with the repairs being undertaken. If this were not the case, this would in essence mean that a garage or mechanic would never be liable for any damage caused whilst the vehicle in their possession.

[45] A drive at that hour of the night could hardly be said to be for the purpose of test driving and connected to the repairs. In fact, by Mr. Charles' own admission, said he used the test driving as an excuse. That evidence clearly destroys any implied permission which the claimant may wish to argue.

Whether Mr. Charles was driving with the permission of Mr. Hippolyte at the time of the accident or whether he was on a frolic of his own?

[46] Counsel, Ms. Mc Donald submitted that the case law is silent as to whether at the time of driving it is impermissible that there was a collateral purpose for driving in addition to checking to ensure correct installation of the part. The case of **Morgans** appears to support the fact that a journey could be undertaken partly for purposes of the agent as well as for the purposes of the owner. However, Mr. Charles' testimony is clear and unambiguous that his main mission was not test driving on the night of the accident but rather going to get the vehicle part and so this would rebut any presumption of an agency relationship.

[47] Counsel, Ms. Downes submitted that the fact that Mr. Charles was not licensed to drive and never informed Mr. Hippolyte of the accident supports the contention that he was on a frolic of his own and was not acting on behalf of Mr. Hippolyte.

[48] Mr. Charles admitted that at the time of the accident he was not driving with Mr. Hippolyte's knowledge. In fact, he said in his testimony that he used the test driving as an excuse to go to get a vehicle part and then in his words, he went 'strolling with the man's vehicle'. He said he normally test drove the vehicles depending on the nature of the work he had to do. In his testimony Mr. Charles at one point said that it was necessary to test drive the vehicle to ensure it was working properly and at another point he said that it was not necessary to do so and that he made that choice.

[49] It is clear from the evidence that Mr. Charles did not want Mr. Hippolyte to know of the accident. He tried to come to some agreement with Mr. Mc Combie to fix his vehicle thereby accepting liability for the accident. At no time did he ever try to contact Mr. Hippoyte or even direct Mr. Mc Combie to him.

[50] It is also clear from the evidence that Mr. Charles used the idea of test driving as an excuse to go get his business done. While it may be arguable that the vehicle got test driven through his excursion to get the vehicle part, I find based on Mr. Charles' evidence that at the time of the accident, he was not driving with the permission of Mr. Hippolyte nor was his main aim to test drive the vehicle. He was clearly on a frolic of his own. As Floissac CJ put in it **Nicholls**, the purpose of the driving was Mr. Charles' rather than Mr. Hippolyte's. That is patently clear from the evidence.

Whether Mr. Hippolyte is vicariously liable for the negligence of Mr. Charles?

[51] Based on the evidence, I find that Mr. Hippolyte is not vicariously liable for the negligence of Mr. Charles. In the premises, the claim against Mr. Hippolyte is dismissed.

Costs

[52] On the issue of costs, Ms. Mc Donald submitted that the appropriate order is that there is no award as to costs or that Mr. Charles should pay Mr. Hippolyte's costs. Counsel's submission is based on the fact that the claimant was not privy to the evidence of Mr. Glen Charles ahead of the trial and there was no other choice but to proceed with the trial. I cannot find any persuasion in this submission. The decision to pursue a claim is a matter for the claimant and Mr. Hippolyte cannot be penalised in any way for the claimant's decision.

[53] I therefore award prescribed costs to Mr. Hippolyte in the sum of $2,188.19 being 15% of $14,587.90 to be paid by Mr. Mc Combie.

Justice Kimberly Cenac-Phulgence
High Court Judge

By the Court

Registrar