IN THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2011/0449

BETWEEN:

1. PHILEMOND ALEXANDER
2. ANDREA ALEXANDER

Claimants

and

1. QUENTIN SON
2. NIAM CHARLES

Defendants

SLUHCV2011/0450

BETWEEN:

1. HAROLD PROSPERE
2. EDGITA PROSPERE

Claimants

and

1. QUENTIN SON
2. NIAM CHARLES

Defendants

SLUHCV2011/0451

BETWEEN:

1. CYRIL SMITH

Claimant

and

1. QUENTIN SON
2. NIAM CHARLES

Defendants

SLUHCV2011/0520

BETWEEN:

1. JACKSON CLEMENT

Claimant

and

1. QUENTIN SON
2. NIAM CHARLES

Defendants

Appearances:

Mrs. Petra Nelson for the Claimants
Mr. Dexter Theodore for the Defendant Quentin Son
Mr. Daasrean Greene for the Defendant Niam Charles

2014: December 3rd;
2018: October 31st.

JUDGMENT

[1] BELLE, J.: On 14th February 2009 at about 9.40 p.m. Joan St. Croix (deceased) was driving motor vehicle bearing registration number PG 5197 along the La Fargue /River Doree Road travelling in the direction of Laborie when motor vehicle bearing registration number PE 5858 collided with PG 5197 and caused an impact between PG 5197 and another vehicle FAR 1396 driven by Vern Emmanuel. While PE 5858 was being driven by the Second Named Defendant.

[2] The said collisions caused personal injury and death to a number of persons travelling in or driving the vehicles involved. These persons or their dependants and personal representatives have filed claims to recover damages for the losses suffered as a result of the personal injuries or deaths caused in the accident. The Claims have been consolidated.

Background Facts

[3] It is remarkable in this matter that the First Defendant Quentin Son has pleaded that he was not the owner of the vehicle bearing registration number PE5858 on the night of 14th February 2009. Mr. Son stated that:

> "…this Defendant admits only that on 14th February 2009 he was the registered owner of the black left-hand drive Ford Explorer registration number PE5858 but denies that the Second-named Defendant is, or was at any time material thereto, either his servant or his agent and states as follows:
> (1) "In or around the end of January 2009 he entered into a written agreement to sell the said vehicle to one Jason for $140,000;
> (2) Immediately after signing the agreement Jason took delivery of the said vehicle and to the best of the First Defendant's knowledge kept it in his possession thereafter;
> (3) The First Defendant does not know the Second Defendant and did not at any time material hereto ever authorise or permit the Second Defendant to drive the said vehicle.
> (4) The First Defendant was entirely unaware that the said vehicle was being driven by the Second Defend at the time of the accident."

It follows logically that being unaware of the driver of the vehicle on the night of the accident he would not admit to negligence or liability for loss for personal injury or death. He therefore denied any such liability. The matter came to trial on 3rd December 2014 and ended on 4th December 2014.

[4] Witnesses gave evidence in this matter and unfortunately the case was tried over a period of about two years to accommodate both the litigants and the court. At the end of the day the crucial facts and legal issues in the case revolve around the issues.

1. Was the First Defendant vicariously liable for the loss and damage suffered by the Claimants in this case?
2. Was the Second Defendant, the driver of the vehicle at the time of the accident? This is a matter of fact that goes to the issue, who was liable for negligent driving.

[5] On the first issue, I am of the view that the registered owner is not vicariously liable for the loss and damage caused in the accident. Indeed, based on the

authorities cited it is not possible to tie the incident to any purpose which the Claimant had for the use of the vehicle. The evidence leads to the conclusion that one Lance Charles was responsible for keeping the vehicle for the proposed purchaser and he failed to do so, instead lending the vehicle to a third person who in turn may have allowed a fourth person to drive the vehicle.

[6] I must say that I find these circumstances very suspicious, but I cannot arrive at an adverse conclusion based on suspicion alone. The alternative scenario raised in the evidence is that the First Defendant gave one Lance Charles permission to allow anyone else to drive the vehicle. But this permission was covered by a caveat which was that the person should have a drivers licence. There is no evidence that the person who is named as the Second Defendant had a drivers licence. Hence, he would have been outside of the scope of the First Defendant's permission for a third party to drive the vehicle.

Article 986 of the Civil Code

[7] I address one aspect of the submission made by counsel for the Claimant on the liability in the following way.

[8] Counsel has argued that vicarious liability does not apply to the law of Saint Lucia and that the law of Saint Lucia is different by virtue of Article 986 of the Civil Code reads as follows in its entirety:

> "He or she is responsible for damage caused not only by himself or herself, but by persons under his control and by things under his or her care. The father, or, after his decease, the mother, is responsible for the damage caused by minor children. Tutors are responsible in like manner for their pupils. Curators or others having the legal custody of persons of unsound mind, for their wards. Schoolmasters and artisans, for the damage caused by their pupils or apprentices while under their care. The responsibility attaches in the above cases only when the person subject to it fails to establish that he or she was unable to prevent the act which has caused the damage. Masters and employers are responsible for damage caused by their servants and workmen in the performance of the work for which they are employed."

[9] It is clear to me that the First Defendant was unable to prevent the act which has caused the damage in this case. The act was that of a driver who was authorised to drive by a third party. This is not a case where a vehicle is left on a slope and the hand-bake fails and it rolls down the slope and causes damage. The reality was that someone was in control of the vehicle when damage was caused and that someone was not the First Defendant.

Vicarious Liability

[10] Although there are elements of Article 986 which encompass the concept of vicarious liability I do not believe that Article 986 is intended to be a substitute for vicarious liability or should be applied as such. Sir Vincent Floissac's dictum on Article 986 is not exhaustive but cannot be interpreted to determine that liability can be ascribed to the First Defendant in cases such as this where it is clear that the First Defendant could not have prevented the said accident.

[11] Vicarious liability when properly applied had nothing to do with the ability of the owner of a vehicle to prevent injury or loss. It ascribes responsibility for injury and loss (a tort) where the person who caused the accident acted as an agent or on the behalf and with the permission of the owner. In my view vicarious liability addresses the problem of the "man of straw" actor being used to shield the deeper pocket of the owner who benefits from the man power or skill of the "man of straw" and therefore should accept responsibility for the actions of the man of straw. Vicarious liability is most useful in employment cases and cases where the vehicle is covered by a policy of insurance which also covers the act of the agent or driver of a vehicle.

[12] Clearly neither Article 986 nor vicarious liability should be applied to circumstances where the actor who caused the accident is, for example, a thief. But applying the Claimant's counsel's submission, as applied to the facts, the law would require the Defendant to prove that the vehicle was stolen or taken by an unauthorised

person, in such a case, even when that unauthorized person confesses that he/she was unauthorized to drive the vehicle. This submission is not acceptable.

[13] Sir Vincent Floissac CJ in Northrock Ltd v Jardine Civil Appeal No.12 of 1991, (1992) 44 WIR 160 pronounced that Article 986 creates a presumptive or defeasible liability on the part of the Defendant and exempts the plaintiff from proving fault. The onus is then on the Defendant to rebut the presumption or to defeat the defeasible liability by proving that he was unable to prevent the damage by reasonable means.

[14] In my view based on the facts of this case the First Defendant has discharged that burden. He had permitted Lance Charles to use the vehicle or lend it to anyone. Lance Charles lent the vehicle to Michelle Mingo. But Michelle Mingot was not authorised to permit Niam Charles to drive the vehicle and Niam Charles is the Second Defendant not Michelle Mingot.

[15] There is nothing in the evidence that permits the court to presume that the First Defendant could have prevented Michelle Mingot from permitting Niam Charles to drive the vehicle, presuming that Niam Charles was indeed the driver.

[16] The Claimants have to prove their respective cases and they have failed both on the facts and the law based on both scenarios discussed above, to prove the case against the First Defendant.

[17] As far as the Second Defendant is concerned there is a conflict in the evidence between the Second Defendant and his girlfriend Michelle Mingot. The court has to determine on a balance of probabilities, who is telling the truth.

[18] One aspect of the matter which has an impact on the determination of fact is that the Second Defendant was not permitted to file a witness statement and give evidence in at the trial because he had failed to comply with case management

directions and subsequently also failed to apply for relief from sanction. Part 11.9 of the CPR was therefore applied, and he was not permitted to give evidence at trial.

[19] The allegation against him is therefore undefended but nevertheless still has to meet the evidential burden of proving the case against the Second Defendant on a balance of probabilities.

[20] What is the evidence against the Second Defendant? First there is the evidence of Martin Riviere. Martin Riviere states that he saw the vehicle, referring to the "big van" which was on its back, earlier that day and noticed that the driver was a man with dreadlocks. He said he could recognize him if he saw him again. He saw him outside the Criminal Court in 1st May 2012. He had attended court with Philemond Alexander.

[21] CPL Mohan Julien then said that his investigations revealed that Niam Charles was the driver of vehicle. He later says that based on his investigations he found Niam Charles to be responsible for the collision. He also discovered that the Second Named Defendant is not the holder of a Saint Lucian Driver's Licence.

[22] I have noted that the witness Martin Riviere who said that a man with dreadlocks was driving the big black vehicle earlier in the day could not verify the time at which he saw the man driving the vehicle. He saw a man being pulled from the vehicle. However, the police investigation which was exhibited with the witness statements reveals that the other passengers who gave evidence recall that Michelle Mingo was driving the vehicle at the time of the accident when they were also removed from the vehicle. Michelle Mingo therefore has a reason to be untruthful about the facts of the case.

[23] Based on the state of the evidence I am unable to say that the case has been proved against the First Defendant on a balance of probabilities. While the Second

Defendant has offered no defence the weight of the evidence before the Court points to Michelle Mingot being the driver of the vehicle at the time of the accident.

[23] This being my finding of fact the court cannot hold Niam Charles responsible for paying the damages resulting from the accident on 14th February 2009 even though he entered no defence to the Claims against him.

Assessment of Damages

[24] Part 16.4 of the CPR 2000 provides for assessment of damages after directions for trial of the issue of quantum. However, for trial of the issue of quantum to proceed there must be a finding of the court that a defendant has been held liable for the damage caused to the claimant(s). Based on the facts of this case the court cannot make a finding that the first or second defendant is held liable for the damage caused to the claimants. Indeed, in spite of the default judgment entered against the second defendant the claimants have failed to prove that the second defendant is liable for any damage caused. The second defendant therefore cannot be called upon to pay any damages to the claimants and therefore there can be no assessment of damages in this case pursuant to Part 16.4 of the CPR 2000.

[25] In the circumstances the claimants' case against both defendants is dismissed. The claimants are to pay the costs of the First Defendant only. The Second Defendant who did not comply with case management orders is not awarded any costs.

Francis Belle
High Court Judge

By the Court

Registrar