

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2016-01933**

**BETWEEN**

**VENTURA ENTERPRISES LIMITED**

**Claimant**

**AND**

**RIZA KHAN**

**Defendant**

**BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES**

**Appearances:**

Claimant: Mr. Ravi Heffes-Doon instructed by Ms. Elena Araujo

Defendant: Mr. Ravi Mungalsingh instructed by Ms. Tara Bairosingh

Date of Delivery: 26th January, 2021

**JUDGMENT**

## **THE CLAIM**

- [1] On or about the 5th December 2013, the Defendant, owner of an Audi R8 luxury motor vehicle registration number PCT8, engaged the Claimant company, which carried on the business of the repair and upgrade of motor vehicles, to repair his car which had been involved in a collision and had been severely damaged.
- [2] The parties initially agreed that the Claimant would provide a list of parts needed to repair the said vehicle.
- [3] Pursuant to the said agreement, the Claimant provided the Defendant with the said quotation from their suppliers in the United States. These prices did not include overheads, freight, insurance, clearance, customs or other related charges. On or around January 2014, the Defendant orally instructed Mr. Annan Rajpaulsingh, the Managing Director of the Claimant to proceed to order the parts for the vehicle from their (the Defendant's) foreign dealer, 'The Collection', as the parts were not available in Trinidad. On or around 4th February 2014, the Defendant paid the Claimant a deposit of one hundred and fifty five thousand six hundred and twenty five dollars and sixty five cents (\$155,625.65) towards the purchase of parts for the repair of the vehicle.
- [4] The Claimant ordered the said parts as well as some additional parts which were not used on the Defendant's vehicle. The Claimant commenced repairing the vehicle in April 2014 when the parts began arriving in Trinidad.
- [5] At various times during the months of May and June 2014, the Defendant attended the Claimant's premises to review the progress of the repairs. During that time, the Defendant made requests orally to the Claimant's said Managing Director to carry out additional work to the said vehicle, which the Claimant agreed to do.

- [6] In particular, the Defendant instructed the Claimant to repaint the vehicle in a different colour, to install carbon blades and door mirrors and to change the headlamps and tail lamps from the 2010 model to the 2013 model. Although the 2013 headlamps and tail lights were supplied by the Defendant, the installation required electrical rewiring of the vehicle.
- [7] On or around August 13th 2015, the Claimant completed the work on the said vehicle and issued an invoice for parts and labour for the repair and upgrading of the said vehicle in the sum of four hundred thousand three hundred and ninety seven dollars and eighty two cents (\$400,397.82) less the deposit of one hundred and fifty five thousand six hundred and twenty five dollars and sixty five cents (\$155,625.65), leaving a balance due and owing of two hundred and forty four thousand seven hundred and seventy two dollars and seventeen cents (\$244,772.17) to be paid by the Defendant.
- [8] The said invoice was sent to the Defendant by the Claimant's Managing Director by email dated 13th August 2015, calling upon the Defendant to pay the outstanding balance.
- [9] On the 15th day of January 2016, the Claimant's Attorneys at law, Araujo Law sent a pre-action letter to Defendant (the Pre-action letter) seeking full payment of the outstanding debt of two hundred and forty four thousand seven hundred and seventy two dollars and seventeen cents (\$244,772.17) and advising that a storage fee of two hundred dollars (\$200.00) per day would be payable from 1st September 2015.
- [10] To date, despite repeated requests, the Defendant has failed and/or refused to pay the balance outstanding on the said invoice and to re-take possession of the said vehicle.
- [11] The Claimant therefore claimed against the Defendant:

- (a) the sum of two hundred and forty four thousand seven hundred and seventy two dollars and seventeen cents (\$244,772.17);
- (b) storage fees in the sum of \$200 per day from 1st September 2015 to present and continuing;
- (c) Costs.

### **THE DEFENCE**

- [12] The Defendant denied that he was liable to the Claimant for the sum of two hundred and forty four thousand seven hundred and seventy two dollars and seventeen cents (\$244,772.17) or storage fees from the 1st September 2015 to present at the rate of two hundred dollars a day (\$200.00).
- [13] The Defendant pleaded that on the 5th December 2013 his car was involved in an accident, as a result of which it sustained damage to the front right corner including the front right light, hood and bonnet. On the 6th December 2013, the Defendant brought the said vehicle to the Claimant's garage in order for the latter to inspect the damage and submit a quotation for repairs to same.
- [14] It was agreed between the parties that after the inspection of the said vehicle, a list of parts would be provided by the Claimant to the Defendant. The Defendant subsequently obtained a quotation for parts from its suppliers in the United States, 'The Collection'. Upon receipt, the Defendant obtained discounted prices on the said parts from said supplier with whom he had a working relationship.
- [15] The Defendant pleaded that he paid the sum of one hundred and fifty five thousand six hundred and twenty five dollars and sixty five cents (\$155,625.65TTD) which said sum was inclusive of VAT in the sum of twenty thousand two hundred and ninety nine dollars (\$20,299.00USD).

The Defendant contends that the said sum was paid towards quotation number Q120910 and the cover on the quotation number Q120849. With respect to quotation number Q120910 the sum to be paid for the parts amounted to eighteen thousand nine hundred and forty two dollars and twelve cents (\$18,942.12USD). With regard to quotation number Q120849, the price of the cover was quoted to be in the sum of two thousand one hundred and forty five dollars and one cent (\$2145.01USD). The total sum due to be paid pursuant to the said quotations was the sum of twenty one thousand eighty seven dollars and thirteen cents (\$21,087.13USD) or one hundred and thirty five thousand three hundred and twenty six dollars and sixty five cents (\$135,326.65 TTD).

[16] The Defendant contended that the sum paid towards the quotations was not a part payment but rather the payment of the total sum of twenty one thousand and eighty seven dollars and thirteen cents (\$21,087.13USD) or one hundred and thirty five thousand three hundred and twenty six dollars and sixty five cents (\$135,326.65 TTD).

[17] The Defendant averred that in or around 2014, the said vehicle was parked inside the Claimant's compound at Sea Lots when there was a shooting incident. During this shooting incident, the Defendant's vehicle was hit with bullets as a result of the improper storage of the said vehicle.

[18] The Defendant contended that the Claimant failed to secure the said vehicle while it was in its possession, thereby occasioning damage to the car. As a result, the car had to be repainted and the items purchased in quotation number 120849 had to be replaced<sup>1</sup>.

[19] The Defendant averred that since the car had to be repainted as a result of the shooting incident, he instructed the Claimant Company to repaint the car in a different colour; additionally, the right head lamp had to be

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<sup>1</sup> Paragraph 12 of the Defence

changed as a result of the accident, however the tail lamps had to be changed as a result of the shooting. The Defendant put the Claimant to strict proof of the cost of the electrical wiring of the said vehicle.

- [20] The Defendant commissioned the services of Mr. Mike Staley to supply and install an APR supercharger kit and a new clutch; all expenses incurred by Mr. Staley were borne by the Defendant.
- [21] The Defendant asserted that since March 2015 he has made repeated requests for a statement of balance from the Claimant unsuccessfully.
- [22] The Defendant alleged that he was assaulted by Annan Rajpaulsingh, Managing Director of the Claimant on the 12th August 2015, when he went to check on the progress of repair work on his car.
- [23] The Defendant contended that the work has not been completed on the said vehicle. On the 13th August 2015, the Defendant was issued an invoice for the sum of two hundred and forty four thousand seven hundred and seventy two dollars and seventeen cents (\$244,772.17TTD). The Defendant pleaded that the Claimant has claimed for parts which were not installed on the said vehicle:

(a) four car parts (brackets) in the sum of five hundred and eighty two dollars and forty cents (TT\$582.40) each on invoice number 11683 and on invoice number 11687.

(b) the cost of a ballast in the sum of four thousand seven hundred and forty five dollars and ninety eight cents (TT\$4,745.98)

(c) gas bulbs in the sum of two thousand three hundred and eighty six dollars and ninety four cents (TT\$2,386.94)

totaling nine thousand five hundred and thirty one dollars and ninety six cents (\$9,531.96 TTD) together with the cost of labour to install the aforementioned car parts.

- [24] The Defendant put the Claimant to strict proof of the cost of import duties, freight and customs clearance, labour and repairs for the said vehicle occasioned by the accident. The Defendant also requested an account for the works done for repairs consequent upon the accident and not the shooting.
- [25] The Defendant disputed the claim for storage fees on the ground that the Claimant has prevented him from taking possession of his car which has been in its custody since December 2013 and the Claimant has failed to complete repair works on the said vehicle.
- [26] By way of Counterclaim the Defendant claimed:
- (i) loss and damage incurred to the said vehicle as a result of the improper storage of the said vehicle by the Claimant;
  - (ii) cost of servicing the said vehicle to ensure that the said vehicle starts upon ignition and runs;
  - (iii) Interest;
  - (iv) Costs.

## **REPLY**

- [27] In reply, the Claimant admitted that there had been a shooting in the area of the garage which caused damage to the Claimant's vehicle but denied that it had failed to secure the Defendant's vehicle. The Claimant asserted further, that it repaired the said vehicle at no cost to the Defendant.
- [28] The Claimant denied that:
- (i) the repainting of the car and replacement of its headlamps and taillights were as a result of damage caused by the shooting incident.

- (ii) that there had been any arrangement with Mr. Staley to utilize the Claimant's staff and tools.
- (iii) that the Defendant ever requested a statement of account from the Claimant Company.
- (iv) that car parts on Invoice Numbers 11683 and 11687 were not used on the Defendant's vehicle. The four brackets were used on the Defendant's car but the model lights could not be used since the Defendant instructed that the 2013 model lights be used. The ballast and gas bulbs purchased for the 2010 assembly are still available upon the settlement of outstanding balances by the Defendant.

## **EVIDENCE**

[29] The Claimant's Managing Director Annan Rajpaulsingh and Derek Chai and gave witness statements and were cross-examined on behalf of the Claimant, while the Defendant and his witnesses Mike Staley and Stephen Francis Smith gave witness statements and were also cross-examined.

### ***Annan Rajpaulsingh***

[30] Mr. Rajpaulsingh testified that he garaged the Defendant's car securely behind two roll-up steel gates at the entrance to the building and one sliding gate at his premises at Concession Drive, Sea Lots, Port of Spain. On the 8th January 2014, as a result of a shooting incident in the area, bullets penetrated the Claimant's steel roll-up gate and damaged the tail light, rear windscreen and right side mirror on the said vehicle. He asserted that he replaced parts damaged in the shooting even though they had been previously damaged in the accident.



- [31] The Claimant testified that it was made clear to Mr. Khan that quotation numbers 120849 and 120910 covered the cost of parts only and did not include the customs duties, freight or handling charges; further that a downpayment was requested on these invoices. The Defendant agreed to this and paid a downpayment of one hundred and fifty five thousand six hundred and twenty five dollars and sixty five cents (\$155,625.65) for said parts on the 4th February 2014.
- [32] During the repair to the vehicle the Defendant demanded several modifications which the Claimant executed. One such modification was the installation of an APR Supercharger which required the input of a Specialist from the USA, because the Claimant could not undertake such complicated work.
- [33] The Claimant's expert, Mr. Staley duly visited the Claimant's premises where he installed the Super Charger over a period of three days in January 2015 and in June 2015 from the 7th to the 17th.
- [34] The Claimant sent to the Defendant an invoice for parts and labour but the Defendant refused to pay the balance due. Other parts ordered by the Defendant were received by the Claimant after the final invoice was sent to him.
- [35] Mr. Rajpaulsingh stated that the Defendant also refused to collect his car which has remained on the Claimant's premises to date.
- [36] In answer to Counsel, the Claimant admitted that some items on the quotation and Invoice No. 11691 were not for the Defendant but for the Claimant's expenditure:
- (a) a cover for \$14, 643.26
  - (b) a cover for \$7,321.63
  - (c) a cover for \$2,521.92

- [37] He admitted that the Defendant sourced some of the parts for the vehicle. He also stated that his bill included profit and 'handling charge' which were not itemized. He revealed that his markup was twenty five percent (25%). He admitted errors in the numbering of parts on Invoice No. 11691. He did not produce bills showing the price that he paid for the parts before the Court although such bills were in his possession. This witness also admitted that the price of some parts were increased and explained that there was a price increase. The Claimant's witness admitted that he had charged twice for items with the same number but indicated that the parts were wrongly assigned the same number. Mr. Rajpaulsingh admitted, when confronted with the evidence, that he had increased the price for the said parts and charged different prices for the same parts.
- [38] The Claimant's witness admitted further that he billed the Defendant for more parts that previously invoiced without giving an explanation for the difference.
- [39] Even though he had the information relative to the brokerage fees that he paid to bring in the parts from the United States to Trinidad, this was not disclosed. He also failed to disclose the customs duty and vat payable on said parts even though he was also in possession of same. Mr. Rajpaulsingh also acknowledged that he had failed to give to the Defendant an estimate of the labour cost to repair the vehicle.
- [40] He agreed that it was unjust to demand payment from the Defendant in light of the discrepancies in his Invoice. He later claimed to have verbally 'discussed' the labour cost with the Defendant.
- [41] He stated that his Witness Statement<sup>2</sup> was incorrect and a mistake since he did not agree that the Claimant would purchase the paint for repainting of the car and the Defendant pay for the labour cost of painting.

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<sup>2</sup> Paragraph 21 of the witness statement of Annan Rajpaulsingh

[42] The Claimant's witness also admitted that the following labour costs for which he charged the Defendant were really for his account:

(1) the rear bumper

(2) the right front rear view mirror

***Derek Chai***

[43] Derek Chai, Adjuster and Manager of Clariclaims Investigators and Adjusters Limited (Clariclaims) testified on behalf of the Claimant.

[44] Mr. Chai testified that with respect to specialist vehicles with major damage (as in the case of the subject vehicle), Cariclaims would estimate reasonable hourly rates for labour between \$400.00 to \$500.00. In arriving at an hourly rate for the repair of the Audi R8 vehicle, Mr. Chai also took into consideration the UK hourly rate for Audi Specialist vehicles, which is approximately 100 pounds per hour. He asserted that in his view, an hourly rate of TTD\$450.00 in respect of the Frame, Refinish and Mechanical works and an hourly rate of TTD\$500.00 in respect of the works to the Frame is fair and reasonable for the repair of a vehicle of this nature and in line with reasonable fees for work of this nature charged in Trinidad and Tobago.

[45] Based on his examination of the invoices, photographs and the established practices of Cariclaims, he generated a Time Based Electronic Estimate from the Mitchell System on the 26th July 2017 and assessed the cost to repair an Audi TT vehicle with the same damage as that suffered by the subject vehicle in the sum of eighty two thousand two hundred and forty five dollars (\$82,245.00TTD) The said estimate report was thereafter submitted to Mr. Smith.

[46] Mr. Chai admitted in cross examination that he did not use the estimate for labour provided by the Claimant even though it would have been

useful to do so. He also stated that there is no established rate for repair of vehicles in Trinidad and Tobago. He acknowledged that it would have been helpful to have the Claimant's estimate for repair work done on the Defendant's vehicle when preparing his report. In further answer to Counsel Mr. Chai agreed that Ventura's estimate of \$250.00 an hour for the painting of the car was more reasonable than his estimate of four hundred and fifty dollars an hour. Mr. Chai accepted that Ventura's estimate of \$250.00 an hour for labour on the body of the car was accurate while his estimate of \$450.00 an hour for body work was not.

[47] Significantly Mr. Chai admitted that at the time of preparation of his report he was not aware that the said vehicle had been damaged in a shooting incident

## **EVIDENCE FOR THE DEFENDANT**

### ***Riza Khan***

[48] Mr. Khan testified that after he received the Claimant's quotation from suppliers in the United States, 'The Collection', he contacted the American company directly since he had a relationship with them; as a result, he was able to obtain the parts at discounted prices.<sup>3</sup>

[49] He asserted that the Claimant informed him that the total sum due to be paid pursuant to quotation numbers Q120910 and Q120849 was US twenty one thousand eighty seven dollars and thirteen cents (\$21,087.13 USD) or TTD one hundred and thirty five thousand three hundred and twenty six dollars and sixty five cents (\$135,625.65 TTD). The Defendant claimed that this figure, which he paid in full was "the full payment towards the price of the parts and not a part payment."<sup>4</sup> Upon full payment aforesaid, a tax invoice was issued to him by Ventura.

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<sup>3</sup> Paragraph 6 of the Witness Statement of Riza Khan

<sup>4</sup> Paragraph 7 of the Witness Statement of Riza Khan

- [50] The Defendant stated that the Claimant never informed him about the damage to the car caused by the shooting when it occurred; he found out about it when he paid a visit to the Claimant's garage to check on the progress of its repairs.
- [51] The bullet hole in the muffler clamp which caused damage to the clamp was repaired by Mr. Mike Staley and not Ventura. The damage to the vehicle caused by the shooting was still evident and noted by Mr. Staley in January 2015, approximately one year after the shooting incident, which according to Ventura occurred on the 8th January 2014.
- [52] As a result of the accident the right head lamp had to be changed, however as a result of the shooting, both tail lamps had to be changed. The vehicle is a 2010 model. As it was difficult to obtain the 2010 lights, the Defendant decided to purchase the 2013 model lights because that model was readily available. The lamps came with their own new control ECU so extensive rewiring was not required. The Defendant asserted that that it was the Claimant's responsibility to bear the cost of the tail lamps and the labour to install same since they were damaged as a result of the shooting.
- [53] The Defendant testified that since additional panels of the car had to be repainted as a result of the shooting incident, he instructed Ventura to repaint the car in a different shade of black. If the shooting incident had not occurred the entire car would not have had to be repainted but only one-third. He therefore argued that the cost of labour for repainting the entire car, ought not to be borne completely by him since he was not responsible for all of the damage to the vehicle due to improper storage.
- [54] With respect to the parts listed in Quotation number Q120849 from 'The Collection', the Defendant testified that all of the parts save and except the cover in the sum of two thousand one hundred and forty five dollars and one cent (\$2145.01) had to be replaced as a result of the shooting and not because of the accident; as a result Mr. Khan denied

responsibility for the parts listed in that quotation. The Defendant pointed out that he had not included the cost of the new exhaust and two new tail lamps in the approximate sum of forty five thousand dollars (\$45,000.00TTD) occasioned by the negligence of the Claimant in failing to store the vehicle properly.

[55] Mr. Khan testified that on the 12th August 2015, while on a visit to the Claimant’s compound to check on his vehicle, Mr. Amman Rajpaulsingh asked him to make a further payment; in response he requested a statement and attempted to walk away when he was threatened and physically assaulted by Mr. Rajpaulsingh. Mr. Khan claimed that “at no time did he dispute that he had to pay something towards the repair of the vehicle”<sup>5</sup> .

[56] On the 13th August 2015, the Claimant issued an invoice for the sum of two hundred and forty four thousand seven hundred and seventy two dollars and seventy one cents (\$244,772.71). Mr. Khan disputed the sums claimed by the Claimant under said invoice and in particular:

- (i) labour and parts for Quotation number 120849 as these parts were damaged as a result of the shooting.
- (ii) the Claimant did not use the parts in the said invoice on his car and Ventura retained possession of them.

<b>Part</b>	<b>Sum</b>	Invoice Page
Wheelhouse liner 420-810-172-B	\$288.00	1
Bracket 420-611-846-B	\$294.40	1
Cover 420-821-169-L-OIC	\$136.64	1
Cover 420-821-170-L-OIC	\$136.64	1

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<sup>5</sup> Paragraph 15 of the Witness Statement of the Defendant

Ballast No. 8JO-907-391	\$4,745.98	2
Two gas bulbs number N-105-661-03	\$2,386.94	2
7 Balls 420-807-739	\$167.23	2
Lining 420-825-101-A	\$1882.56	3
Bracket 420-806-420	\$625.80	3

[57] The Claimant claimed twice for a number of parts and twice the labour for installation of said parts; the duplicated parts include:

- (a) invoice 11683, a Plate bearing serial number 420-805-204-B in the sum of \$768.00 and again at invoice 11685 at the sum of \$852.48;
- (b) invoice 11683 a bracket bearing serial number 420-821-460 at the sum of \$288.00 and again at invoice 11686 at the sum of \$302.40;
- (c) invoice 11683, the cast of a bracket bearing serial number 420-407-457-M in the sum of \$582.40 and again invoice 11687 at the sum of \$698.88;
- (d) invoice 11683, a bracket bearing serial number 420-407-458-H in the sum of \$582.40 and again at invoice 11687 at the sum of \$698.88;
- (e) invoice 11683, a bracket bearing serial number 420-611-846-B in the sum of \$294.40 and again at invoice 11687 at the sum of \$309.12;
- (f) invoice 11683, a bracket bearing serial number 420-407-458-F in the sum of \$582.40 and again at invoice 11587 at the sum of \$309.12;
- (g) invoice 11683, the cost of a cover bearing serial number 420-821-169-E in the sum of \$1136.64;

(h) invoice 11683, a cover bearing serial number 420-821-170-E in the sum of \$1136.64 and again at invoice 11685 at the sum of \$1,504.25.

[58] The Defendant pointed out that the Claimant had not provided any particulars of the cost of import duties, freight and customs clearance, labour and repairs of the vehicle with respect to damage caused by the accident.<sup>6</sup>

[59] He also acknowledged that there are monies due the Claimant for work done on the vehicle, but he disputed the sum of two hundred and forty four thousand, seven hundred and seventy two dollars and seventeen cents (\$244,772.17) claimed by Mr. Rajpaulsingh who has retained possession of his car.

[60] The Defendant accepted that duty and freight charges were payable on the imported parts for his car and that he owed the Claimant the labour cost for repairing the car; he however disputed the balance claimed by Ventura for labour and other charges.

[61] He disagreed that work on the car was completed save for minor repairs for which he had to purchase parts.

### ***Michael Staley***

[62] Mr. Staley, an Audi Specialist resident in the United States, was hired by the Defendant to effect repairs and upgrades to the said car.

[63] He testified that Mr. Khan hired him to program a supercharger installation and clutch replacement on the subject car. He was informed by Mr. Rajpaulsingh that the car had suffered damage due to a shooting in the area and inspected the car for damage from bullets.

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<sup>6</sup> Paragraph 20 of the Witness statement of the Defendant



- [64] He observed that some repairs had been done. A bullet had passed through the muffler and there was damage to the S-tronic transmission high pressure line. The muffler had been welded closed and the transmission line repaired. Damage to the body of the car caused by bullets had already been repaired.
- [65] On a second trip to the garage in June he completed repairs after he paid import duties to the Claimant for the fuel pumps which it had ordered. He asserted that he advised the Defendant not to drive the car which had not been driven for several years since the old fuel could damage the engine.

### ***Stephen Francis Smith***

- [66] Mr. Smith, an adjuster disputed the rate for labour used by the Claimant's adjuster and testified that it ought to be \$250.00 an hour and not \$450.00 an hour<sup>7</sup>. He estimated that the sum of forty thousand two hundred dollars (\$40,200.00) was due for labour for body work, refinishing and installation of parts on the said vehicle.
- [67] In cross examination Mr. Smith revealed that at the time of preparing his report he did not have data for the Audi R8; he based his report on the locally available Audi Sedan. Mr. Smith revealed that he had neither seen the said vehicle in its damaged state nor received photographs of the damaged vehicle.

### **ANALYSIS AND CONCLUSION**

- [68] It must first be pointed out that I found the Defendant to be a more believable witness than the Claimant's Mr. Rajpaulsingh. I note that the Claimant did not disclose in its statement of Case that the Defendant's

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<sup>7</sup> Witness Statement of Stephen Francis Smith paragraph 9

vehicle had incurred further damage while on its compound as a result of a shooting incident which occasioned further repair to the said vehicle. It was only after the Defendant pleaded this fact and the damage sustained to his car by bullet holes and the resultant additional repair work that the Claimant admitted that this incident occurred. Mr. Rajpaulsingh was often argumentative and his evidence under cross-examination was often contradictory. I assessed him as being unreliable and lacking in creditworthiness.

[69] My assessment of the pleadings and the evidence outlined above has led me to the following conclusions:

- (a) that the Defendant owed to the Claimant the labour cost for repairing the vehicle. On this head I accepted the evidence of Mr. Smith and hold that the sum due for labour based on Mr. Smith's calculation ought to be forty thousand two hundred dollars(\$40, 200.00).
- (b) while it is undisputed that the Claimant would have incurred customs duty and freight costs in importing the motor vehicle parts to be installed in the Defendant's vehicle, the onus lay on the Claimant to prove what those costs were. Mr. Rajpaulsingh admitted during his cross-examination that he had in his possession the prices that he had paid for the parts as well as the duty and freight charges that he had incurred in respect of same. He however failed to disclose these figures to the Defendant, and more importantly, to the Court even though the Defendant had put him to strict proof on this issue. As a result, I am unable to allow the Claimant's Claim for fifty one thousand seven hundred and twenty eight dollars and thirty six cents (\$51,728.36) for custom duty and freight costs in the sum of nine thousand five hundred and sixty one dollars (\$9,561.00).
- (c) during the course of his cross-examination, the Claimant admitted that the cost of several parts were inflated, duplicated or wrongly assigned to the Defendant's account. In the circumstances I hold that the Defendant

had paid in full for parts in the sum of one hundred and thirty five thousand, six hundred and twenty five dollars and sixty five cents (\$135,625.65TTD).

- (d) I also disallow the Claimant's Claim for storage fees on the ground that the Claimant, without explanation, failed to give to the Defendant a breakdown of the cost of parts, customs and freight costs so as to afford him an opportunity to settle same, while holding onto the Defendant's car. I accept the Defendant's evidence that he demanded a statement of account from the Claimant which the latter failed to produce and deliver to the Defendant before instituting this Claim. In my view this course of action adopted by Mr. Rajpaulsingh was unreasonable given his failure to hand over copies of the receipts for payment for additional parts as well as customs duty and freight charges.
- (e) there is no evidence that the Claimant and Defendant agreed to the Claimant imposing a handling charge as Mr. Rajpaulsingh described it for parts purchased and installed on the Defendant's vehicle. The additional charges included in the Claimant's invoice dated 13th August 2015 are therefore not allowable.

[70] I dismiss the Defendant's counter-claim for loss and damage occasioned to his vehicle whilst stored at the Claimant's garage because I am of the view that the vehicle was properly stored behind two steel gates. There was nothing further in my view which the Claimant could have done to secure the vehicle from the damage that it incurred. The Defendant was well aware at the time that he engaged the Claimant's services that its garage was located in a high crime area with frequent shooting incidents. With respect to the Defendant's claim for the cost of servicing his vehicle before its return to him, I hold that this Claim is disallowed on the ground that no particulars with respect to the damage sustained by the vehicle as a result of its lengthy storage as well as the cost of servicing the engine have been provided.

[71] In the circumstances, I Order:

- (i) The Claimant's Claim for two hundred forty four thousand seven hundred and seventy two dollars and seventeen cents (\$244,772.17TTD) is disallowed;
- (ii) The Claimant's Claim for storage fees for \$200.00 a day from the 1st September 2015 to present is also disallowed;
- (ii) The Defendant to pay to the Claimant the sum of forty thousand two hundred dollars (\$40,200.00TTD) for repair work effected on the Defendant's car by the Claimant;
- (iv) The Claimant to return the Defendant's vehicle to him forthwith upon receipt of this sum;
- v) The Defendant's Counter-claim is dismissed;
- (v) Each party to bear their own Costs.

**Joan Charles**

**Judge**