

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2009-02160 (S1225/2005)**

**BETWEEN**

**GLORIA RAMPERSAD**

**PLAINTIFF**

**AND**

**JOSEPH GABRIEL**

**(Trading as ABDOEL and GABRIEL Roll On-Roll Off)**

**DEFENDANT**

**Before the Honourable Mr. Justice A. des Vignes**

**Appearances:**

Ms. Kizzy Subero for the Claimant

Ms. Sasha Singh and Mr. Azeem Mohammed for the Defendant

**JUDGEMENT**

**Issues**

1. The following issues arise for determination in this matter:
  - I. What was the purchase price of the vehicle agreed upon between the Claimant and the Defendant?
  - II. What was the Chassis number for the vehicle which the Claimant agreed to purchase and the Defendant agreed to supply?

- III How much did the Claimant pay to the Defendant on account of the purchase price of the vehicle?
- IV Did the Defendant import into Trinidad the vehicle which the Claimant agreed to purchase?
- V Is Claimant entitled to recover from the Defendant the sum of \$17,359.72 paid to the Comptroller of Customs and Excise?
- VI Is the Claimant liable to the Defendant for the payment of \$10,000.00 as his fee for importing the vehicle?

### **The purchase price of the vehicle**

2. The Claimant alleges that there was an agreement for the purchase of a White Toyota Corolla for \$49,000.00. The Defendant contends in his Defence that the agreement was for the sale of that vehicle for \$63,000.00. It is instructive that when I look at the documentation as to the price of the vehicle that the Defendant agreed to import from Japan, it is evident that the price of that vehicle was, in fact, US\$6,300.00 which converts to between TT\$36,000 and \$39,000.00 that the Defendant agreed to pay for this vehicle from the Japanese supplier. Document 12 of the Agreed Bundle is the Commercial Invoice dated February 26, 2003 for US\$6,300.00. That evidence appears to me to support the Claimant's statement that the cost that she agreed to pay was \$49,000.00 because if one adds the converted TT equivalent of US\$6,300.00 to the TT\$10,000.00 fee that the Defendant said he was entitled to be paid, the aggregate comes up to just about TT\$49,000.00.
3. However, more importantly, there is a letter written by the Defendant's Attorney-at-Law, Mr. Neebar which has been referred to in the correspondence. (Document 10 in the Agreed Bundle) This document reveals that on the 17<sup>th</sup> of July, 2003, shortly after this agreement had been entered into, Mr. Neebar indicated that his instructions were that there was an agreement for the purchase of this vehicle from Japan to Trinidad and that "*it was further agreed that yours would pay mine the sum of \$49,000.00 for the cost of the vehicle, the shipping and freight expenses and my client's fees.*" That is a particularly damning

document written by the Defendant's Attorney which in no way supports the Defendant's contention that the purchase price for the vehicle was TT\$63,000.00.

4. Therefore, to the extent that there is a difference between the Claimant and the Defendant as to the price of the vehicle, I accept the evidence of the Claimant that the price of the vehicle agreed to be purchased by the Claimant from the Defendant was TT\$49,000.00 and not TT\$63,000.00.

**II What was the Chassis number for the vehicle which the Claimant agreed to purchase and the Defendant agreed to supply?**

5. The evidence is clear that the chassis number on the first receipt issued by the Defendant to the Claimant for the initial down-payment made on the 18<sup>th</sup> November, 2002 was not the Chassis number that is shown on the Import Licence. Further, there are different Chassis numbers shown on the subsequent receipts and there is a different number on the Import Licence. The Defendant seeks to rely on the number on the Import Licence to establish that that is what he agreed to supply. However, in my opinion, that document, coming as it does some several months after the initial down-payment, cannot be relied upon by the Defendant to vary the terms of the initial agreement. The evidence of the Defendant is that the number on the first receipt was inserted thereon by a member of his staff. To my mind, this is consistent with the Claimant's evidence that the number of the vehicle that she saw on the internet was this number. Therefore, in my opinion, the Chassis number as indicated on the first receipt is the Chassis number of the vehicle that the Claimant agreed to purchase. When one looks at the Agreed Bundle, that is the document "CE6" and the chassis number shown thereon is AE110-5298139.

6. I do not accept the Defendant's evidence that there was any agreement made with the Claimant to purchase a vehicle with a different Chassis number and, more particularly, the Chassis number shown on the Import Licence. The Defendant, in his evidence, accepted that the chassis number on the vehicle that

was imported into Trinidad is different than the Chassis number shown on the first receipt and that, as he put it, '*I know a white Corolla was imported into the country*'. But that does not determine the issue. The Claimant did not agree to buy a white Corolla without a chassis number. She agreed to buy a white Corolla with a particular Chassis number and the Defendant was given every opportunity to compare the information that are stated in the Statement of Case with the information contained on the receipts and he accepted that the chassis numbers on the receipts are different to the chassis number of the car that he delivered. Further, he stated that '*I know a white Toyota Corolla come for Ms. Rampersad. We had a problem with the Chassis No. That is not in my Witness Statement.*'

7. Accordingly, on this issue, to the extent that there is a discrepancy between the evidence of the Claimant and the Defendant, I prefer the evidence of the Claimant and I hold that the chassis number shown on the first receipt is what the Claimant agreed to buy and not the chassis number shown on the Import Licence.
8. In any event, I do not accept that the chassis number shown on the Import Licence was on that document at the time when it was signed by the Claimant. The evidence of the Defendant is that he was not the person who filled out that form. Therefore, I do not have any evidence from anyone on behalf of the Defendant to the effect that that document was fully completed prior to execution by the Claimant. I accept the evidence of the Claimant that at the time when she signed the document it was not filled out completely and I believe that that number was inserted subsequently.
9. Therefore, on this issue, I find that the Chassis number of the vehicle that the Claimant agreed to purchase was Chassis number AA 110-5298139.

**III How much did the Claimant pay to the Defendant on account of the purchase price of the vehicle?**

10. It is not in dispute that the Claimant paid and the Defendant issued receipts for \$5,000.00 on 18<sup>th</sup> November, 2002, \$13,000.00 on 11<sup>th</sup> December, 2002 and \$6,426.00 on the 16<sup>th</sup> January, 2003. With respect to the last payment of \$16,739.79, there has been some dispute as to whether that payment was made but the evidence of the Defendant is clear that this money was paid by the Claimant and that he remitted it to the supplier in Japan. His evidence was that, *“on the 1<sup>st</sup> May, 2003 the Claimant paid to FCB \$16,739.00 on my instructions as a further payment towards the purchase of the vehicle. I wired it to Japan”* Therefore, the amount that was paid by the Claimant to the Defendant on account of the purchase price of the vehicle was \$41,165.79.

**IV Did the Defendant import into Trinidad the vehicle which the Claimant agreed to purchase?**

11. In the light of my earlier findings that the vehicle that the Claimant agreed to buy bore a different Chassis number than the vehicle mentioned on the Import Licence, the evidence of the Defendant is clear. The vehicle that he imported coincided with the chassis number on the Import Licence but did not coincide with the number on the first receipt. He also made it very clear in his evidence that what he stated in his Witness Statement and the chassis number on the vehicle that he imported was different than the chassis number stated on the first receipt. Therefore, the answer to this question is clear. The Defendant did not import into Trinidad the vehicle which the Claimant agreed to purchase. He brought in a vehicle with a different Chassis number and he sought to convince this Court that the Claimant had agreed to purchase the vehicle with the chassis number on the Import Licence. However, that was not pleaded in his Defence and he did not give any evidence to support that the Claimant had, at any time, agreed to purchase the vehicle with that later or different Chassis number.

12. In those circumstances, I am of the opinion that the Defendant's evidence was fabricated in his attempt to justify that the vehicle that he imported into Trinidad

bore a different Chassis number than the chassis number that he originally agreed to import for the Claimant.

**V Is the Claimant entitled to recover from the Defendant the sum of \$17,359.72 paid to the Comptroller of Customs & Excise**

13. It is my understanding of the Claimant's Attorney's submissions that this aspect of the Claim was not being pursued. In any event, it is obvious that this payment, not having been paid to the Defendant but to the Comptroller of Customs and Excise, the Claimant would have had to pursue the Customs Department for the refund of those monies. That claim is not before this Court and it cannot be that the Defendant could be held liable for monies that were not paid to him but were paid to the Comptroller of Customs. There is no evidence before me that the money that was paid to the Comptroller of Customs found its way into the hands of the Defendant. Accordingly, that aspect of the Claimant's claim cannot succeed.

**VI Is the Claimant liable to the Defendant for the payment of \$10,000.00 as his fee for importing the vehicle?**

14. The letter from Mr. Neebar previously referred to is very instructive on this issue. It is clear that the fee of \$10,000.00 was included in the \$49,000.00 referred to by Mr. Neebar. The Claimant has paid more than that amount because when you add the amount of \$41,000.00 to the \$16,739.00 paid to the Customs and Excise Department, it is clear that the Claimant has, in fact, disbursed somewhere in the vicinity of \$57 - \$58,000.00 in order to purchase a car for \$49,000.00. When you add what she paid to the Comptroller of Customs to what she paid to the Defendant she paid more than the agreed purchase price of \$49,000.00. Therefore, in so far as the Defendant's Counsel sought to suggest that she had short-paid the purchase price of \$41,000.00, I do not accept that submission. In fact, she paid more than what she had contracted to do. She was persuaded by the Defendant that she had to make these additional payments and she made

them in order to get the vehicle. Therefore, to that extent, the Defendant's counterclaim for the payment of an additional sum of \$10,000.00 cannot succeed.

15. The Claimant is therefore entitled to succeed in her claim for damages for breach of contract against the Defendant for the sum of \$41,165.79 together with interest thereon at the rate of 6% per annum from the date of the commencement of these proceedings, which was 4<sup>th</sup> July, 2005, to the date of judgement. The Defendant's Counterclaim fails and is hereby dismissed.

**Costs**

16. On the issue of costs, this matter was converted in 2009 and therefore is governed by the regime for costs contained in the Civil Proceedings Rules. It is therefore to be determined by reference to the amount awarded by the Court pursuant to Rule 67.5 of the Civil Proceedings Rules, inclusive of the interest. Therefore, there must be a computation of the judgement debt and interest to today's date and a calculation of her entitlement to costs based on that figure.

17. With respect to the dismissal of the Counterclaim I will make no order as to costs and grant a stay of execution for 6 weeks.

**Dated this 18<sup>th</sup> day of December, 2012**

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**André des Vignes**  
**Judge**