

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-00182

BETWEEN

ROXANNE DOUGLAS

Claimant

AND

SOUTHERN SALES & SERVICE COMPANY LIMITED

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Wednesday 17 June 2020

Appearances:

Ms. Rekha P. Ramjit instructed by Ms. Gina Nalini Ramjohn for the Claimant

Mr. Ravindra Nanga instructed by Ms. Lydia Mendonça for the Defendant

JUDGMENT

I. Introduction

[1] The Defendant, Southern Sales and Service Company Limited, (hereinafter “SSS”) is a motor vehicle dealer for Kia, Isuzu, Audi and Mazda in the business of selling new motor

vehicles. On 26 April 2013, the Claimant, Roxanne Douglas, (hereinafter “Ms. Douglas”) made a deposit of \$100,000.00 via manager’s cheque to SSS for the purchase of a grey Kia Sorento 2.2L EX 4WD Diesel vehicle. Subsequent to that payment, Ms. Douglas paid a further amount of \$290,062.46 via manager’s cheque to SSS. On 24 May 2013, Ms. Douglas was provided with the certified copy of ownership in respect of the grey Kia Sorento 2.2L EX 4WD Diesel vehicle, motor vehicle registration number PCZ 657¹ (hereinafter “the Vehicle”). SSS provided Ms. Douglas with warranty coverage over the Vehicle for 3 years from the date of first service or 100,000km, whichever came first. The said warranty covered any repair, replacement and/or maintenance of the Vehicle from defects in material or workmanship free of charge to Ms. Douglas.

[2] Ms. Douglas commenced these proceedings by way of Claim Form and Statement of Case filed on 16 January 2017 against SSS for specific performance on guarantee to provide her with a brand new Kia Sorento 2.2 L EX 4WD Diesel motor vehicle. In the alternative, damages in lieu of specific performance.

[3] Ms. Douglas’ case is that the Vehicle would always be filled with diesel according to the instructions in the manual of the Vehicle. The Vehicle would be filled with diesel at 2 specific gas stations, namely, Mahabir Moonan Limited, Rio Claro Unipet Gas Station or National Petroleum (NP), Rio Claro Gas Station.

[4] Ms. Douglas’ case is that on 11 March 2016, she went to the Mahabir Moonan Limited, Rio Claro Unipet Gas Station and filled the Vehicle with diesel fuel. On 13 March 2016, whilst she was driving the Vehicle along Tabaquite Road, the Vehicle came to a sudden halt and lost power whilst overtaking on the road. At the time the Vehicle failed, it was still under warranty by SSS as the Vehicle did not exceed the 100,000km coverage nor the 3 year warranty. Ms. Douglas averred that prior to 13 March 2016, the Vehicle functioned properly and efficiently. It was further averred that the Vehicle maintained a perfect service history with SSS. On 14 March 2016, Ms. Douglas had the Vehicle towed to premises of SSS for repair and maintenance.

¹ Neither party informed the Court of the date upon which Ms. Douglas received the Vehicle.

[5] On 20 April 2016, Ms. Douglas, accompanied by Mr. Ravi Persadsingh, had a meeting with Mr. Stephen Rooplal, Mr. Shiraz Ahamad and Mr. Ferdinand Wong, all servants and/or agents of SSS. At this meeting, Mr. Rooplal informed Ms. Douglas that the engine of the Vehicle was starting, however, it was knocking. SSS requested that the Vehicle be inspected by an independent body.

[6] According to Ms. Douglas, on 25 May 2016, FT Farfan Limited submitted a report on behalf of SSS documenting the results of its inspection of the Vehicle. This report specifically stated as follows:

“Wear materials concentrations are alarming due to the presence of most of the wear metals in this sample. This indicates that the engine is not in a good condition. The fuel concentration is also quite disturbing as its presence may be leading to the degradation of oil. It is evident that the oil was subjected to extreme temperatures due to the rapid decrease in TBN and viscosity. Please investigate the aforementioned as soon as possible.”

[7] On 5 July 2016, Sookhai’s Diesel Service completed a report and provided same to SSS. This report identified the significant issues of the engine of the Vehicle. On 19 July 2016, Ms. Douglas entered into discussions with SSS in order to come to an agreement of the repair and replacement of the engine of the Vehicle. Ms. Douglas entered into further discussions with SSS about viable options to repair and replace the engine of the Vehicle on 22 July 2016. Ms. Douglas informed SSS that she wanted a new engine to replace the defective engine and that this be provided at the cost of SSS.

[8] However, on 28 July 2016, SSS wrote to Ms. Douglas conveying the discussions that transpired from the meeting on 19 July 2016. The letter proposed that in order for Ms. Douglas’ Vehicle to be repaired, she would have to cover 50% of the expenses and labour required to repair the Vehicle. This amounted to the sum of \$87,187.50 which SSS proposed be paid by Ms. Douglas in 2 instalments of equal amounts in the sum of \$43,793.75. SSS also proposed to provide warranty for the repair for 6 months or

10,000km. According to Ms. Douglas, there were no such requirements stated in the warranty manual at the time of the purchase of the Vehicle.

- [9] Ms. Douglas refused the proposal made by SSS since it was not coinciding with the warranty at the time of the purchase of the Vehicle. Accordingly, by letter dated 3 September 2016, Ms. Douglas issued a Pre-Action Protocol Letter to SSS claiming the provision of a brand new vehicle since the Vehicle has not been repaired nor replaced by SSS². As a consequence of the lack of use of a vehicle, Ms. Douglas pleaded that she has encountered substantial financial liability. She further pleaded that she has suffered financial distress and grave personal inconvenience for the past 306 days at the date of filing of the Claim.
- [10] SSS, in response, stated that when Ms. Douglas' Vehicle was towed to its garage on 14 March 2016, a check was carried out which revealed that the Vehicle was filled with gasoline instead of diesel and was therefore driven with the wrong type of fuel. SSS contended that Ms. Douglas did not accompany the Vehicle to SSS's garage on 14 March 2016 as was its policy. SSS denied that Ms. Douglas' Vehicle, prior to 13 March 2016, maintained a perfect service history with SSS. SSS averred that Ms. Douglas' Vehicle was not at all times maintained in accordance with the recommended (mileage) maintenance schedule. However, notwithstanding that Ms. Douglas at times deviated from the recommended maintenance schedule, the Vehicle performed adequately for almost 3 years until gasoline was filled in the Vehicle and the Vehicle was driven with the wrong type of fuel.
- [11] According to SSS, Ms. Douglas reported that the Vehicle had shut down and that the indicators on the instrument cluster became illuminated. Given subsequent observations when the Vehicle was brought in on 14 March 2016, SSS averred that it is unlikely that the Vehicle would have come to a sudden halt. Given the fact that gasoline was wrongly

² Neither party informed the Court of the whereabouts of the Vehicle, whether it was still at the premises of SSS or in Ms. Douglas' possession.

placed in the Vehicle, when the Vehicle was driven, the engine may have begun to knock and the Vehicle would lose power and the temperature gauge would rise.

[12] Upon inspecting the Vehicle on 14 March 2016, the following were revealed: (i) it was found that the Vehicle was filled with gasoline instead of diesel; (ii) the engine oil was below the minimum level; and (iii) the Vehicle suffered major engine damage and required major repairs prior to being serviced.

[13] SSS admitted that the Vehicle was still under warranty, however, Ms. Douglas had breached the terms of the warranty by using gasoline instead of diesel. Upon inspecting the Vehicle and discovering the problem, Ms. Douglas was advised that gasoline was found to have been filled in the Vehicle. Ms. Douglas, therefore, gave authorisation to drain and clean the diesel tank. She was further advised that the incorrect type of fuel had caused damage to the engine and she enquired as to the cost of the repair. An estimate of the cost of repairs was prepared and given to Ms. Douglas. Ms. Douglas also requested that a sample of the gasoline be kept for her. This was done, however, she refused to collect the sample indicating that she could not be sure that the sample was taken from her Vehicle.

[14] At the meeting on 20 April 2016, the Service Advisor of SSS was also present. SSS suggested that the Vehicle be independently inspected due to Ms. Douglas' disagreement with the assessment of the Vehicle by SSS. Ms. Douglas agreed to have the independent assessment done. Consequently, as pleaded by SSS, SSS requested the report from FT Farfan Limited not for its own benefit but for the benefit of both parties.

[15] SSS admitted that Sookhai's Diesel Service prepared a report. However, this report simply detailed the damage that was done to the engine but did not provide an analysis of what could have caused such damage. According to SSS, when Sookhai's Diesel Service arrived at its garage, they were accompanied by Ms. Douglas' representative and they had private conversations while inspecting the engine of the Vehicle. SSS was excluded from

these conversations. As such, SSS complained to Sookhai's Diesel Service about the independence of the report by email dated 3 June 2016.

[16] SSS admitted that a meeting took place on 19 July 2016. However, FT Farfan's personnel also attended this meeting for the purpose of explaining their report as well as Shell's report. The purpose of the meeting was to agree on a way forward with respect to carrying out the repairs that were necessary to Ms. Douglas' Vehicle. According to SSS, Ms. Douglas indicated a willingness to pay towards the repairs, however, the cost of the repairs was not discussed at the meeting. SSS denied that Ms. Douglas indicated that she wanted a new engine to replace the defective engine at the cost of SSS. The discussion which occurred on 22 July 2016 was intended to agree on the best cost option for repairing the Vehicle.

[17] According to SSS, the offer to provide a warranty on the repairs for 6 months or 10,000km was independent of the warranty that was provided upon purchase of the Vehicle. SSS stated that the damage done to the Vehicle was not covered by the Vehicle's warranty and was caused by gasoline being filled in the Vehicle in breach of the warranty. The offer of the 6 months/10,000km was on the repairs only and was done to ensure that the customer was satisfied with the SSS's service and to provide the appropriate level of commitment to the customer.

[18] On the basis that the damage done to the Vehicle did not arise from a manufacturer's defect, Ms. Douglas was expected to pay for the repairs and SSS offered to provide a 50% discount as a sign of good faith and in order to assist Ms. Douglas with repairing her Vehicle and maintaining customer satisfaction. The repairs that were identified as being necessary were to be carried out pursuant to the original warranty due to the nature of the damage that was found.

[19] SSS averred that if Ms. Douglas suffered financial distress and grave personal inconvenience, it is as a result of her action of filling the motor vehicle with gasoline instead of diesel and driving the Vehicle with the wrong type of fuel.

[20] The matter proceeded to trial. Ms. Douglas filed her own witness statement in support of her case. SSS, on the other hand, filed four witness statements of (i) Ferdinand Wong, After-Sales Co-ordinator of SSS; (ii) Sanya Mathura, Managing Director and Senior Consultant at Strategic Reliability Solutions Ltd (previously employed as Distributor Front Line Technical Support at FT Farfan Ltd [Macro Distributor for Shell Lubricants]); (iii) Stephen Rooplal, Service Manager of SSS; and (iv) Terissa Redman, Service Advisor of SSS. The trial was held on 29 June 2018. After trial, the parties filed and exchanged written submissions on 15 October 2018. Submissions in reply were filed by SSS on 23 November 2018.

II. Submissions

[21] Counsel for the Claimant, Ms. Ramjit contended that Ms. Douglas' case is that the Vehicle was still under warranty at the material time since the Vehicle had not yet exceeded 100,000km nor had the 3 year period expired. Since SSS had not challenged that the Vehicle was either over the 100,000km mileage or the 3 year period it was submitted, *prima facie*, that the Vehicle at the time was under SSS's warranty.

[22] Ms. Ramjit submitted that an express warranty is anything that a seller represents to a buyer about the product and becomes part of the sales contract. Therefore, if a seller breaches an express warranty, the buyer has a cause of action against the seller. Ms. Ramjit contended that since the Vehicle was under warranty, SSS's failure to fix the defect in the Vehicle constituted a breach of the warranty.

[23] Ms. Ramjit advanced that the fact that the Vehicle failed to perform as warranted, insofar as the engine stalled, is sufficient evidence of a defect in itself. Counsel relied on the American authority of **Spring Motors Distributors Inc. v Ford Motor Co., Clark Equipment Company and Turnpike Ford Truck Sales**³ which stated that "*the plaintiff in a warranty action need not establish the existence of a defect; the failure of the goods*

³ 98 N.J. 555 (1985)

to perform as warranted is sufficient.” Counsel also relied on another American authority, namely, **Ford Motor Credit Company LLC d/b/a Jaguar Credit v Patricia Mendola v Jaguar Land Rover N.A. LLC, Ray Catena Jaguar of Edison and Modern Auto Body of South Orange Inc., Madison Jaguar, Main Auto Sales Inc. and Bob Orozco**⁴ wherein the Court held “*to prove breach of an expressed warranty...only requires evidence of a non-performance by the warrantor.*”

[24] Ms. Ramjit, however, contended that proof of causation must still be shown in a case of breach of an express warranty, but “*mere failure of promised performance is enough without proof of any defect*”: **Salvatore Realmuto and Jeanette Realmuto v Straub Motors Inc.**⁵. Accordingly, it was submitted that the actual non-performance of the Ms. Douglas’ Vehicle is evidence itself of a defect and Ms. Douglas need not bring expert evidence to prove the Vehicle was defective.

[25] Ms. Ramjit contended that the responsibility of proof to show that the Vehicle does not fall within the scope of the warranty lies with SSS. If the warrantor seeks to rely on any exclusion or exemptions within the warranty, the burden of proving same rests with the warrantor. Counsel relied on the authority of **Pegler Limited v Wang (UK) Ltd**⁶ in support of this submission.

[26] Counsel for the Defendant, Mr. Nanga, however, submitted that from preliminary observations, Ms. Douglas’ Claim is not precisely clear. This is so because Ms. Douglas’ primary claim is for specific performance to compel SSS to provide her with a brand new vehicle and in the alternative, she is claiming for damages in lieu of specific performance. Therefore, it was submitted that Ms. Douglas has acknowledged that this is a case where damages is an adequate remedy. As a consequence, Ms. Douglas’ claim for specific performance must fail since specific performance is an equitable remedy and a Court will decline to grant an equitable remedy in cases where damages is an appropriate remedy.

⁴ Docket No. A4675-10T1 [Decided: July 24, 2012]

⁵ 65 N.J. 336 (1974)

⁶ 2000 BLR 218

Nevertheless, SSS submitted that there is nothing on the pleadings that will establish why specific performance ought to be awarded to Ms. Douglas. In any event, this is a case where damages, in the form of reasonable cost of repairs, is the most appropriate remedy.

[27] Mr. Nanga submitted that it is incumbent on a Claimant to prove his claim. Thus, only when a Claimant proves his Claim, does a Defendant have a case to answer. Therefore, the Claimant has both a legal and evidential burden. When the Claimant has satisfied both the legal and evidential burden, the Defendant will then have the evidential burden, if he chooses, to call evidence.

[28] Mr. Nanga contended that when the terms of the warranty over the Vehicle are examined, it is clear that there are limitations to the warranty. Accordingly, in order to succeed with her Claim, Ms. Douglas must prove that the damage done to her Vehicle is covered by the warranty. Mr. Nanga submitted that it is not sufficient for Ms. Douglas to simply state that the Vehicle stopped working. She must go further, she ought to prove what actually caused the damage to the Vehicle for the Vehicle to stop working and that the type of damage was covered by the warranty. However, this she failed to prove.

[29] Mr. Nanga contended that the Vehicle belonged to Ms. Douglas and she was free to retrieve the Vehicle at any time for the purposes of testing the engine. However, she did not request for the Vehicle to be released. Counsel relied on the authority of **Trinidad and Tobago Electricity Commission v Lindsay**⁷ wherein the Court of Appeal examined the issue of evidence in the possession of the Defendant. The Court of Appeal in that case refused to draw adverse inferences from the Appellant's removal of the electric meter and electrical wire where there was no attempt by the Respondent to request these items for testing.

[30] Mr. Nanga submitted that Ms. Douglas' contention that the failure by SSS to fix the defect in the Vehicle constituted a breach of warranty, ignores the full terms of the warranty

⁷ Civil Appeal No 33 of 2008

where not all damage is covered by the warranty. It also ignores the evidence of Ms. Douglas where she accepted that all damage was not covered by the warranty.

[31] Mr. Nanga contended that Counsel for the Claimant relied on decisions emanating from New Jersey, United States of America, which were decided based on specific Codes. Those Codes are part of American Law and are not applicable to this jurisdiction nor are there any equivalents that are *prima materia*. It was further contended that when dealing with cases of breach of warranty in New Jersey, there appears to be an additional cause of action founded on strict liability which is not the common law position in Trinidad and Tobago. Furthermore, the **Sale of Goods Act, Chap 82:30** does not create any such strict liability in this jurisdiction. As a consequence, the authorities relied upon by the Claimant are of no assistance.

[32] Mr. Nanga submitted that Ms. Douglas' contention that she need not bring expert evidence to prove that the Vehicle is defective is not the state of law in this jurisdiction and she has to prove her claim. Counsel relied on the authority of **Frank General Contractors Limited v M Rampersad Auto Supplies Limited**⁸ where the Court found that it was incumbent upon a Claimant to prove his case and upheld a no-case submission on the basis that the Claimant failed to prove its case for breach of warranty.

[33] Mr. Nanga agreed with Ms. Ramjit's submission that it is for the warrantor to prove any exclusion or exemption relied upon. However, this submission ignores the burden that is placed on a Claimant. The Claimant has the legal burden to prove her claim, after which, the Defendant will have an evidential burden to prove an exclusion or exemption. Mr. Nanga submitted that in determining what was wrong with the Vehicle when Ms. Douglas brought it to the garage, cannot give rise to SSS accepting the legal burden of proof in legal proceedings. Furthermore, it cannot reasonably be said that a party in determining what caused the damage and whether it was covered by the warranty, accepted the legal burden placed on the Claimant in legal proceedings. Ms. Ramjit cannot argue that the

⁸ CV2015-04013

steps SSS took in diagnosing the problem with the Vehicle transferred the legal burden to SSS in these proceedings.

III. Issues

[34] Having examined the pleadings, the evidence and the submissions of both the Claimant and the Defendant, the Court is of the view that the following issues arise for consideration:

- 1. Was the Vehicle under warranty as supplied by the Defendant as at 14 March 2016?*
- 2. Was the damage to the Vehicle covered under the warranty as supplied by the Defendant?*
- 3. Was there a breach of an express warranty by the Defendant?*
- 4. Is the Claimant entitled to damages, and if so, what is the appropriate quantum?*

IV. Law and Analysis

Issue 1: Was the Vehicle under warranty as supplied by the Defendant as at 14 March 2016?

[35] Both the Claimant and Defendant have pleaded that at the material time, 14 March 2016, the Vehicle was under warranty as supplied by the Defendant since the Vehicle had not exceeded 100,000km nor had the 3-year period expired from the first date of service. However, neither party has informed the Court of the first nor the last date of service of the Vehicle. Nonetheless, it was not disputed that the Vehicle was under warranty as supplied by the Defendant.

[36] In that regard, there is no need to consider issue 1 in any greater detail.

Issue 2: Was the damage to the Vehicle covered under the warranty as supplied by the Defendant?

[37] In order to establish that SSS breached an express warranty, Ms. Douglas must first show that the damage to the Vehicle was covered by the warranty as supplied by SSS. It is a well-established rule of law that “*he who asserts must prove*”. In this case, therefore, the burden of proof lies on Ms. Douglas to prove her claim that SSS is liable to cover the damage caused to the engine of the Vehicle. Accordingly, Ms. Douglas ought to adduce evidence to that effect in support of her Claim.

[38] The Court is of the view that any evidence of the damage to the engine in the Vehicle is in the province of an expert. However, Ms. Ramjit, Counsel for Ms. Douglas, relied on New Jersey authorities in support of the proposition that Ms. Douglas is not required to adduce expert evidence because the failure of the engine to perform as warranted is evidence of a defect in itself and is sufficient. The Court finds it necessary to briefly examine the New Jersey authorities relied on by the Claimant.

[39] In **Spring Motors Distributors Inc.** (*supra*), a decision from the Supreme Court of New Jersey, the fundamental issue on appeal concerned the rights of a commercial buyer to recover for economic loss caused by the purchase of defective goods. More specifically, the question was whether the buyer should be restricted to its cause of action under the Uniform Commercial Code or should be allowed to pursue a cause of action predicated on principles of negligence and strict liability. In this case, the buyer instituted the action beyond the 4-year period provided for by the Uniform Commercial Code⁹ (“UCC”), N.J.S.A.¹⁰, 12A:2-725 but within the 6-year period applicable to tort actions, N.J.S.A. 2A:14-1. The Defendants were a motor vehicle manufacturer, its dealer and a supplier of transmission. The gravamen of the complaint is that defects in the transmissions, which were installed in commercial trucks, caused the buyer to sustain a loss in the benefit of its bargain and consequential damages. The trial court perceived the matter as sounding in

⁹ This legislation constitutes a comprehensive system for determining the rights and duties of buyers and sellers with respect to contracts for the sale of goods.

¹⁰ New Jersey Statute Annotated

contract and found that the plaintiff had not instituted its action within the 4-year period provided by the UCC N.J.S.A 12A:2-725. In an unreported decision, the Court granted summary judgment for the defendants. However, the Appellate Division reversed on the ground that the action was more appropriately characterized as one in strict liability in tort, not contract, and the 6-year period of limitations applicable for tort actions had not expired.

[40] The Supreme Court found that a commercial buyer seeking damages for economic loss resulting from the purchase of defective goods may recover from an immediate seller and a remote supplier in a distributive chain for breach of warranty under the UCC but not in strict liability or negligence. The Court also found that the buyer need not establish privity with the remote supplier to maintain an action for breach of express or implied warranties. Therefore, the 4-year period of limitation provided by the UCC, N.J.S.A 12A:2-725, not the 6-year general statute limitations N.J.S.A 2A:14-1, determines the time within which an action must be commenced against the immediate seller and remote supplier. The Supreme Court in its decision stated that *“a plaintiff in a suit for breach of warranty against a remote seller, like a plaintiff in a strict liability action need not establish privity with or negligence by the Defendant... One significant difference, of course, is that the plaintiff in a warranty action need not establish the existence of a defect; the failure of the goods to perform as warranted is sufficient.”*

[41] In **Ford Motor Credit Company LLC d/b/a Jaguar Credit** (supra), a decision on appeal from the Superior Court of New Jersey, the precise and limited issue being whether the Claimant must present expert testimony to support her causes of action against several defendants in the automotive business for damages sustained when the engine of her leased automobile seized. At the conclusion of discovery, no party had produced an expert report. The third party defendants moved for summary judgment based on the lack of expert report supporting Mendola’s claims. Mendola, however, argued that the third party defendants had the initial burden of producing an expert witness and report because their assertion that she caused the engine failure was an affirmative defence. However, the trial court dismissed Mendola’s claims on the basis that her claims (breach of express and

implied warranties and negligent repair and negligent inspection) were premised on a finding of product defect and required an expert witness to explain the defect and the cause of the engine failure. Mendola appealed from this order of the trial court. Mendola contended that the trial court erroneously shifted the burden of proof to her to disprove the affirmative defence of the third party defendants and it mistakenly required expert evidence from her to prove that a defect caused the engine to seize. The Appellate Court affirmed in part and reversed in part.

[42] The Appellate Court affirmed the trial court's decision to dismiss Mendola's negligent repair and inspection claims; they found that in order to establish a prima facie case, Mendola needed to produce expert evidence that would help a jury determine whether the third party defendants performed their functions negligently and whether that negligence caused the car's engine to seize. However, as it related to the contract claim (breach of express and implied warranties), the Appellate Court held that while Mendola could not prove a defect without the aid of expert testimony, such expert testimony was not required to prove a breach of express warranty because proving a defect was not central to that claim; a prima facie case for breach of express warranty only requires evidence of non-performance by the warrantor. In this case, Mendola supplied evidence of non-performance and was able to shift the burden of proof to the third party defendants to show that the engine failure "was not caused by a defect while the car was in their control, and, therefore, they did not breach the warranty they allegedly issued to Mendola."

[43] **Realmuto v Straub Motors** (*supra*) was a decision from the Supreme Court of New Jersey concerning a product liability case which involved the sale of a used automobile. The suit was for personal injuries to the buyer, with a *per quod* claim by his wife due to an accident claimed to have resulted from malfunction of the car's accelerator-carburettor mechanism. The plaintiffs' case was that the work done by the defendant (installing a rebuilt carburettor prior to the sale which required disconnection and reconnection of the mechanism) had in some way been done so as to result in a defect which caused the malfunction. The plaintiffs provided no expert testimony and the evidence was entirely circumstantial. The trial court granted the defendant's motion for judgment at the end of

the case on the ground that under any theory of action, the plaintiffs had shown only the occurrence of an accident and that there was insufficient evidence of “the proximate cause of the accident” to take the case to the jury. The Appellate Division, however, reversed the decision of the trial court by a divided vote. The majority held the evidence was sufficient to withstand the motion for judgment, apparently treating the case as an action based on breach of an express warranty. The dissent agreed with the trial judge, but dealt with the case principally as one grounded in strict liability in tort.

[44] The Supreme Court agreed with the Appellate Division that the trial court had improperly dismissed the plaintiffs’ complaint since the evidence was sufficient to withstand a motion for judgment. The Court found that the evidence before the trial court was clearly enough to take the case to the jury, without any expert testimony on the subject, on the theory of negligence and on the theory of strict liability in tort the Court held that a used car dealer could be subject to strict liability in tort with respect to a mishap resulting from defective work, repairs or replacements made on the used vehicle before sale. The Court stated as follows: *“Even less is required to reach the jury in a breach of express warranty case. While the causal relation of the end result to the breached guarantee must be shown, mere failure of promised performance is enough without proof of any defect.”* in relation to the evidence that was led at the trial Court in this case.

[45] Having examined the above New Jersey authorities, the Court is of the view and agrees with Mr. Nanga that these authorities are irrelevant and are of no assistance to the Court. These authorities refer to the Uniform Commercial Code in New Jersey and strict liability in tort in that jurisdiction. These cases essentially refer to breach of an express warranty whereby if a product does not work as promised that is sufficient evidence of a defect in itself and a likely breach of an express warranty, therefore, there is no need for expert testimony on the part of the claimant. The central issue in a breach of express warranty action is that the product failed to perform as warranted by the seller/dealer not the defect itself. Therefore, these New Jersey authorities are not applicable. In this jurisdiction, it is the duty of the Claimant to prove her case against the Defendant on a balance of probabilities and so must produce evidence in support of her case. At this point, Ms.

Douglas must prove that the damage to the engine in the Vehicle was covered under the warranty in order for SSS to be held liable.

[46] The warranty and maintenance booklet for the Vehicle at page 3 illustrates the warranty coverage and term by months and kilometres. At page 4 of the document, it reads as follows:

“Kia warrants that your new Kia Vehicle is free from defects in material or workmanship subject to the following terms and conditions. An authorized Kia Dealer will make necessary repairs, using new or remanufactured parts, to correct any problem covered by this limited warranty without charge to you.”

[47] Under the heading, “Warranty Coverage” and the sub-heading “Basic Warranty Coverage”, it stated as follows:

“Except as limited or excluded below, all components of your new Kia Vehicle are covered for 36 months from the Date of First Service or 100,000 kilometres, whichever comes first.”

Under the heading, “Limited Liability” on page 4, part of the document was not visible. Accordingly, the Court could not decipher what liability was limited.

[48] Nevertheless, as pleaded by Ms. Douglas, the warranty of the Vehicle covered any repair, replacement and/or maintenance of the Vehicle from defects in material or workmanship at no cost to her. Ms. Douglas, in her witness statement, confirmed this averment and maintained her pleaded case, she simply reiterated her Statement of Case. She did not seek to embellish her witness statement.

[49] Ms. Douglas, however, does not specifically plead in her Statement of Case that the damage caused to the engine was covered under the warranty as supplied by SSS. Neither did she contend this in her witness statement. From the pleadings, evidence and

submissions, it appears that Ms. Douglas' main contention is that the Vehicle itself was still under the warranty at the material time. As stated above, this is not disputed. However, the Court is of the opinion that the main fact in contention is whether the damage to the engine was covered by the warranty.

[50] During cross-examination, Ms. Douglas agreed with Mr. Nanga that having read the warranty for the Vehicle, she understood that to some extent, there were some things that were not covered by the warranty¹¹ and that not everything that malfunctioned with the Vehicle was covered by the warranty¹². Ms. Douglas, however, remained unshaken during cross-examination and maintained that she would always fill the Vehicle with diesel fuel and that she did so on 11 March 2016 at the Mahabir Moonan Limited, Rio Claro Unipet Station. She did, however, accept that if she were to put gasoline in the Vehicle instead of diesel, the resulting damage would not be covered by the warranty¹³.

[51] Ms. Douglas testified that she knew from 14 March 2016, SSS's position was that gasoline was found in the fuel tank of the Vehicle and not diesel. However, she did not attempt to get a sample of the diesel fuel from the gas station after the 14 March 2016 to have same tested¹⁴. Mr. Nanga probed Ms. Douglas on the fuel sample collected from the Vehicle. She did not accept that the receptionist at SSS informed her that she could have collected a sample of the fuel¹⁵. She, however, stated that when she visited SSS's office to get something tangible, she was being offered some substance in a green bottle purporting to be fuel which the receptionist said had already been dumped. Therefore, she had no assurance that it was fuel from the tank of the Vehicle so she did not accept it¹⁶.

[52] Ms. Douglas stated that she did not know what caused the Vehicle to lose power and come to a sudden halt. She testified that she did not have the Vehicle tested but instead she sent the Vehicle to SSS the very next day. Even though Ms. Douglas did not accept SSS's reason (that gasoline was in the Vehicle's fuel tank), she did not bother to have the

¹¹ Notes of Evidence dated 29 June 2018: pg. 6, lines 7-10

¹² *Ibid*: pg. 8, lines 24-28

¹³ *Ibid*: pg. 8, lines 18-23

¹⁴ *Ibid*: pg. 10, lines 32-36

¹⁵ *Ibid*: pg. 11, lines 7-12

¹⁶ *Ibid*: pg. 11, lines 18-26

Vehicle tested because the Vehicle was at SSS and the lady told her that the fuel tank had already been drained and cleaned¹⁷. Mr. Nanga asked Ms. Douglas why she did not have her engine tested to see what caused the damage after she knew that there was engine damage. She replied as follows:

*“My vehicle was always maintained at Southern Sales; I tried to keep a perfect service record for the said fact of the warranty that we went through before, because I understood clearly that for me to have the warranty to be valid, I have to service there. Southern Sales is the onliest person that ever interfered with that engine and my vehicle was serviced not too long before that. So if something went wrong with my vehicle, I then sent it to Southern Sales. I am then dependent on them, as the only person who would have had any interaction with my vehicle, to tell me what the problem is. To tell me what is wrong.”*¹⁸

[53] Mr. Nanga continued to question Ms. Douglas on why she did not seek to have the engine of the Vehicle tested on her own and she replied, *“At that point, after it having been at Southern Sales compound for so long, I don’t think there is any test, anything could have been done at my vehicle while it was there.”*¹⁹ Ms. Douglas, though she disagreed with SSS’s reason, she stated there were independent verifications by two reputable persons which were requested by the company as her reason for not taking any steps to verify on her own what caused the damage to the engine of the Vehicle²⁰. The following line of questioning ensued:

Q: ...but Southern Sales’ positon is that those two reports did not say what caused the damage to the engine?

A: So then have they provided me with something that said what caused, a report or something tangible that says to me what caused the problems with my engine?

Q: But didn’t they tell you what their view was that caused it?

¹⁷ *Ibid*: pg. 12, lines 22-25

¹⁸ *Ibid*: pg. 13, lines 31-47

¹⁹ *Ibid*: pg. 14, lines 5-12

²⁰ *Ibid*: pg. 14, lines 33-38

*A: View, but the reports that were put forward to me by two independent, reputable people, said something different. So at that point I don't think there were any other options. Who else do you go to to test a vehicle that has been sitting on Southern Sales compound for so long?*²¹

[54] Ms. Douglas stated that she understood that all damages will not be covered and that it is incumbent upon her to prove that the damage that was done falls within the warranty document but she also understood that Southern Sales has not proved otherwise²². Ms. Douglas, however, did not accept that she was free to collect the Vehicle because as far as she was aware, the engine was out of the Vehicle and dismantled²³.

[55] Ms. Douglas testified that she did not take FT Farfan's report to her own person to interpret the contents of same because she considered Southern Sales to be her own person since the Vehicle was maintained there²⁴. She later stated that she did take the report and spoke to some mechanics²⁵. However, this was not stated in her Statement of Case or her witness statement.

[56] Mr. Nanga, thereafter, questioned Ms. Douglas on the contents of the Shell report – FT Farfan's report. In response to what she understood when it stated "the engine was exposed to extremely high temperatures," and if she knew what could have caused the engine to be exposed to such high temperatures, she replied, "*I feel they were not changing my oil and the oil ran very thin*"²⁶. She testified that she did not have proof of this belief, all she had was the report²⁷. Ms. Douglas rejected that gasoline in the tank could have caused her engine to be subjected to such extreme temperatures because she does not have the experience to say that²⁸.

²¹ *Ibid*: pg. 14, lines 46-47 to pg. 15, lines 1-6

²² *Ibid*: pg. 15, lines 16-21

²³ *Ibid*: pg. 15, lines 32-46

²⁴ *Ibid*: pg. 18, lines 44-46 to pg. 19, lines 1-2

²⁵ *Ibid*: pg. 20, lines 10-13

²⁶ *Ibid*: pg. 24, lines 2-24

²⁷ *Ibid*: pg. 24, lines 26-29

²⁸ *Ibid*: pg. 24, lines 32-38

[57] From the line of questioning above, it appears that Ms. Douglas was suggesting that the damage to the engine was a result of poor workmanship on the part of SSS during the scheduled services. If this is so, the damage to the engine would be covered under the warranty and SSS would be held liable. The Court, however, notes that this is not her pleaded case and she ought not to rely upon this fact at trial. This was a material fact that ought to have been pleaded so that SSS would have gotten an opportunity to respond to such an allegation.

[58] In opposition, the Defendant's witnesses maintained the pleaded case of SSS. They all maintained that when the Vehicle was brought into SSS on 14 March 2016, after examination, gasoline was found to be present in the fuel tank.

[59] Ms. Mathura, in her witness statement, stated that on 28 April 2016, she took an oil sample from the engine. She stated that the findings of FT Farfan's report indicated that the wear metals were in high concentrations suggesting that there was a predominant wear within the engine. Additionally, there was a high concentration of 3.9% fuel dilution present in the oil sample from the engine; this was close to the minimum upper warning limit of 4.0% for diesel engine. She concluded that even though fuel was present in the oil sample, the nature of the fuel could not be determined.

[60] In cross-examination, Ms. Mathura stated that her report was restricted to the characteristics of the oil found in the engine. She indicated that the oil sample can tell the condition of the engine at that point in time. Ms. Mathura, however, testified that she could not say why there was a presence of fuel in the oil sample because this is a mechanical question which she could not answer but only speculate. She, however, stated that the presence of fuel in the oil decreases the viscosity or the thickness of the oil which can lead to damage²⁹. Ms. Mathura also indicated that you cannot tell from the oil sample whether the fuel was gasoline or diesel because it was not a fuel sample and in order to prove the type of fuel you would need at least a litre of fuel³⁰.

²⁹ *Ibid*: pg. 32, lines 5-16

³⁰ *Ibid*: pg. 32, lines 36-40

[61] Ms. Redman, in her witness statement, did not expressly state the problem SSS had discovered in the Vehicle. She simply stated that she informed Ms. Douglas of what was discovered. Nonetheless, Ms. Redman stated that Ms. Douglas gave approval for the recommended work to be done. She stated that on 14 March 2016, Ms. Douglas had requested a sample of the fuel from the Vehicle because she wanted to query it with the Service Station. Ms. Redman informed Ms. Douglas that a sample would be made available to her but she had to collect it within a day as SSS is unable to store fuel due to the Health and Safety Policy. According to Ms. Redman, Ms. Douglas could not collect it that very day. Mr. Rooplal, however, decided that the sample would be kept for a couple of days and she informed Ms. Douglas of this decision but Ms. Douglas was no longer interested in obtaining a sample. After a couple of days, Ms. Redman informed Ms. Douglas that it was found that the engine had been damaged by the incorrect type of fuel used and as a result, SSS would have to prepare an estimate for repairs.

[62] In cross-examination, however, Ms. Redman stated that she had discussed the findings of the Vehicle with Ms. Douglas that there was gasoline in the Vehicle's tank³¹. In response to whether the findings was that there was premium gasoline in the tank, she replied yes³². The Court notes that this is the first indication of the type of gasoline that was found in the Vehicle's fuel tank. It was revealed that Mr. Rooplal informed Ms. Redman that the tank was drained and that premium fuel was found³³.

[63] Ms. Ramjit questioned Ms. Redman about the job card which she opened when the Vehicle was brought in to SSS. Ms. Redman accepted that everything that is done to the vehicle and all findings would be recorded on the job card. Ms. Redman, however, did not see the completed job card for the Vehicle. She indicated that Ms. Douglas' job card was not completed as yet because they did not do anything, it is only when repairs or corrections are done, would the job card be completed³⁴.

³¹ *Ibid*: pg. 38, lines 1-7

³² *Ibid*: pg. 38, lines 46-47 to pg. 39, line 1

³³ *Ibid*: pg. 40, lines 41-46 to pg. 41, lines 1-7

³⁴ *Ibid*: pg. 37, lines 18-22

[64] Mr. Rooplal, in his witness statement, stated that when a sample of fuel was drawn from the Vehicle, he observed the fuel and found that it was not diesel which the Vehicle is designed to use. He indicated that the fuel can easily be distinguished by observation due to its high pungent smell and its colour. Based on his observation, he concluded that the fuel was clearly gasoline and not diesel. Mr. Rooplal stated that he noticed that there was an engine oil spill near and into the air cleaner box and the turbo charger unit and that the engine oil level was found to be below the minimum level. He added that based on his observations of the incorrect type of fuel in the Vehicle, the oil spill and the low oil level, there could have been some engine damage. Mr. Rooplal confirmed that Sookhai's Diesel Service was one of the independent companies engaged to dismantle and inspect the engine and its components in order to provide its professional opinion. The other independent company was FT Farfan Limited who drew an oil sample from the Vehicle and sent same to Shell's lab in Texas to conduct an oil analysis. Mr. Rooplal stated that when Sookhai's Diesel Service opened the engine, he observed scorched marks which were consistent with the very high temperature generated by gasoline fuel ignition as opposed to diesel fuel ignition which does not generate as high a temperature. Mr. Rooplal, in fact, stated that if there was a manufacturer's defect in the engine, it would have presented itself much earlier in the life of the vehicle. He added that even if there was a manufacturer's defect which caused the damage to the engine, he would have been able to determine such a defect. He maintained that the damage was consistent with the incorrect type of fuel used in the Vehicle.

[65] Ms. Ramjit questioned Mr. Rooplal on the job card for the Vehicle. Mr. Rooplal testified that it was not the practice to record the checks done on a vehicle on the job card. When the job card is completed, what was done on the vehicle would be reflected on an estimate³⁵. He admitted that there would be a service history for the vehicle which would contain all that was done to the Vehicle. However, he did not attach the service history for the Vehicle to his witness statement. Mr. Rooplal indicated that if the job is authorized by the customer, then SSS would order parts on the job card so that it is billed to SSS. If

³⁵ *Ibid*: pg. 85, lines 22-46

no job is performed on the Vehicle, nothing would be written on that job card³⁶. This evidence supported the evidence of Ms. Redman at paragraph [63] above.

[66] Under cross-examination, Mr. Rooplal stated that the gasoline found in the tank of the Vehicle was super³⁷. This evidence contradicts Ms. Redman's evidence where she said that Mr. Rooplal informed her that it was premium fuel in the tank. He indicated that he did not have to do any test to determine that it was super. He said as follows:

*"No I I could look at the fuel, from my experience over the years, with engines, vehicles, automobiles, I can tell, once is genuine fuel in a bottle, I can tell you that straight, this is the different colour, because the manufacturers put it in there to identify fuel, for these purposes."*³⁸

Mr. Rooplal indicated that he is aware that there are scientific tests to prove whether fuel is gasoline or diesel where it involves testing for certain properties³⁹. This, however, was not done in his office because when he saw the fuel sample, he could have identified it.

[67] Mr. Rooplal stated that SSS had not made the determination that the fuel caused the damage to the engine when the tank was drained. He was only able to determine for the first time what was going on inside the engine when Sookhai's Diesel Service dismantled the engine⁴⁰. Mr. Rooplal stated that an independent company was engaged to give their opinion based on SSS's findings⁴¹. He confirmed that at the end of Shell's report, there was no confirmation of whether it was gasoline, super or diesel and that SSS did not conduct any further investigation regarding the oil sample⁴².

[68] Mr. Wong, in his witness statement, stated that Ms. Douglas informed him that Ms. Redman told her that the Vehicle had "premium" fuel in its tank. The Court notes that

³⁶ *Ibid*: pg. 94, lines 17-24

³⁷ *Ibid*: pg. 89, lines 25-27

³⁸ *Ibid*: pg. 89, lines 35-40

³⁹ *Ibid*: pg. 103, lines 39-46

⁴⁰ *Ibid*: pg. 96, lines 11-15

⁴¹ *Ibid*: pg. 98, lines 36-39

⁴² *Ibid*: pg. 103, lines 7-14

Ms. Douglas did not refer to the type of gasoline that was in the fuel tank. Nonetheless, this evidence is in support of Ms. Redman's evidence where she stated that Mr. Rooplal informed her that it was premium found in the fuel tank. Mr. Wong said that although Ms. Douglas disputed that she had put premium into the Vehicle, she gave approval for the tank to be cleaned and the fuel filter to be changed. He further stated that it was explained to Ms. Douglas that the warranty repair does not cover damage to vehicles which does not result from the manufacturer of the vehicles and/or parts. Therefore, as the damage to the engine was as a result of incorrect fuel being used, such damage would not be covered by warranty. Mr. Wong attempted to have the fuel sample tested to confirm the presence of gasoline. However, he was informed that the available sample of approximately 200ml was not sufficient for proper testing to provide positive results. He stated that Sookhai's Diesel Services was selected to evaluate the engine of the Vehicle. Mr. Wong stated that SSS maintained its position of the repair not being warrantable and informed Ms. Douglas that they had examined the components of the engine and could not conclude that there was any malfunction of the components.

[69] However, under cross-examination, Mr. Wong stated that he could only relay that gasoline was found in the fuel tank based on what he was told by Ms. Redman and Mr. Rooplal⁴³. In response to whether it was the responsibility of Southern Sales Services to determine what caused the damage to the engine, Mr. Wong replied, "*It is our responsibility to our customers*"⁴⁴ and the reason for doing so is to determine whether or not Southern Sales is responsible for covering the cost of the repairs⁴⁵.

[70] Mr Wong testified that in determining what caused the engine to seize, SSS believed that it was as a result of gasoline in the tank instead of diesel. Mr. Wong stated that he attempted to find a company to test the fuel sample to confirm the presence of gasoline because he was not able, in his capacity, to say whether or not the Vehicle had diesel or gasoline⁴⁶. Mr. Wong confirmed that although the FT Farfan's report stated there was

⁴³ *Ibid*: pg. 50, lines 4-15

⁴⁴ *Ibid*: pg. 56, lines 24-31

⁴⁵ *Ibid*: pg. 56, lines 36-42

⁴⁶ *Ibid*: pg. 58, lines 2-6

presence of fuel in the oil sample, it does not state whether it was gasoline or diesel. He accepted that there was no confirmation that the fuel was gasoline, either super or premium, in the Shell Report⁴⁷. Mr. Wong stated that although the report stated that SSS should do further investigations, this was not done by SSS⁴⁸. Mr. Wong admitted that having received Sookhai's Diesel Services' report, SSS still did not have an independent report as to what caused the damage to the engine⁴⁹. He further testified that he did not seek to get any further reports from any other company.

[71] It ought to be noted that Mr. Wong, during cross-examination, stated that if Ms. Douglas had picked up the engine from SSS's compound and carried it for someone else to examine, SSS would "*not be able to warranty any job that is done by another company*"⁵⁰. He, however, later stated that if Ms. Douglas were to take the engine on her own, without a representative of SSS being able to assess alongside the third party, SSS would not be able to honour the warranty⁵¹. Nonetheless, Mr. Wong stated that it was within Ms. Douglas' right as the owner of the Vehicle to collect the vehicle. Mr Wong stated that if Ms Douglas wished to pick up the vehicle for a third party to examine the engine, SSS would have honoured the warranty once there was an agreement between Ms. Douglas and SSS and that a representative of SSS be present to confirm the diagnosis⁵². However, there was never any discussion that Ms. Douglas would take the engine off SSS's premises⁵³.

[72] The Court notes that there is no independent evidence before the Court as to what caused the damage to the engine. As stated above, the evidence of the damage to the engine is in the province of an expert. This evidence is crucial as it will determine whether the damage is covered by the warranty. The only way upon which the damage to the engine would be covered by the warranty is if there is a defect in the engine or there was poor workmanship

⁴⁷ *Ibid*: pg. 64, lines 13-17

⁴⁸ *Ibid*: pg. 65, lines 21-29

⁴⁹ *Ibid*: pg. 67, lines 31-34

⁵⁰ *Ibid*: pg. 71, lines 14-19

⁵¹ *Ibid*: pg. 72, lines 17-20

⁵² *Ibid*: pg. 73, lines 15-37

⁵³ *Ibid*: pg. 74, lines 38-43

on the part of SSS. This is what Ms. Douglas has to prove to the Court on a balance of probabilities in order to be successful and move on in her Claim.

[73] Ms. Douglas has admitted that she has no way of knowing whether the damage to the engine was as a result of the gasoline found in the fuel tank. There was no attempt made by Ms. Douglas to produce the opinion of a qualified mechanic to demonstrate that the main problem with the engine was as a result of a defect in the engine or poor workmanship on SSS's part. Ms. Douglas stated in cross-examination that she did not have the use of the vehicle to have it independently examined because the Vehicle was in the possession of SSS. The Court is of the opinion that this is not sufficient; Ms. Douglas has pleaded a particular case and she ought to prove same. In fact, Mr Wong indicated that if Ms. Douglas wished to have the Vehicle examined independently, she could have done so, all she had to do was come to an agreement with SSS and have a representative present. This action would not have voided the warranty in place. Ms. Douglas failed to take this step.

[74] Nevertheless, there was no pleaded case that the damage to the engine was caused either as a result of defect in the engine or poor workmanship by SSS. This was not the case that the Defendant was called upon to answer. It is imperative that Ms. Douglas plead all material facts on which she intends to rely: **Part 8.6 of the Civil Proceedings Rules 1998**. She cannot, during the course of trial, introduce a new allegation.

[75] In spite of having not pleaded defect in the engine or poor workmanship by SSS, there is no evidence from Ms. Douglas, save her own testimony, of any damage to the engine which was covered by the warranty. Ms. Douglas must prove that the damage was covered by the warranty in order for SSS to be held liable for breach of any express warranty and thereafter, damages.

[76] Even though the reports before the Court do not state that the incorrect type of fuel caused damage to the engine nor what is the exact cause of the damage to the engine, the onus still lies on Ms. Douglas to prove her case. The Court is of the view that such evidence could have been easily obtained by having another expert in the field examine the engine

and produce that evidence to the Court. The Court is of the opinion that the burden does not rest on SSS in this case to prove that the damage to the engine was not covered under the warranty. SSS may have the responsibility of determining the cause of damage to the engine for the purposes of warranty. However, the burden does not rest on SSS to prove to the Court that the damage is covered by the warranty, this burden rests solely on Ms. Douglas.

[77] The Court is of the view that Ms. Douglas failed to bring forward any credible evidence to establish on a balance of probabilities that the damage to the engine was covered under the warranty as a result of a defect in the engine or poor workmanship on the part of SSS.

Issue 3: Was there a breach of an express warranty by the Defendant

[78] Breach of an express warranty was not pleaded by Ms. Douglas in her Statement of Case. Ms. Douglas ought to have included this allegation in her Statement of Case in accordance with **Part 8.6 of the CPR**. Having failed to plead this issue, Ms. Douglas cannot now rely on this argument. It would be unjust to SSS for the Court to consider this argument as SSS would not have had the opportunity to respond to this new issue in its pleadings and witness statements. As such, the Court makes no finding on this issue.

[79] Nevertheless, since the Court has found that the damage to the engine was not covered under the warranty as supplied by SSS, there is no need to consider whether SSS breached an express warranty. Consequently, issue 4 has also been rendered otiose.

V. Disposition

[80] In light of my analyses and findings above, the Claimant's claim shall be dismissed. The general rule that costs follow the event shall apply in this case as I can see no justification for departing from the principle set out in **Part 66.6(1) CPR 1998**. Accordingly, the Claimant shall be ordered to pay the Defendant's costs to be quantified on the prescribed scale. Before such costs can be quantified the **value of the claim must first be determined** in accordance with **Part 67.5(2) of the CPR 1998**.

[81] On the basis that (i) the Defendant is the successful party; (ii) the claim is for damages with no fixed monetary amount claimed; (iii) there was no agreed amount between the parties as to the value of the claim; and (iv) the Court has not stipulated an amount as the value of the claim, the claim is therefore deemed to be a claim for **\$50,000.00** in accordance with **Part 67.5(2)(c) of the CPR 1998** as amended by **Legal Notice No. 126 of 2011**. The matter having been determined after a full trial, the prescribed costs are quantified in the sum of **\$14,000.00** in accordance with the **Scale of Prescribed Costs in Appendix B of Part 67 CPR 1998**.

[82] Accordingly, the order of this Court is as follows:

ORDER:

1. The Claimant's Claim filed together with Statement of Case on 16 January 2017 be and is hereby dismissed.
2. The Claimant shall pay to the Defendant costs to be quantified on the prescribed scale pursuant to **Part 67.5(2)(c) of the CPR 1998**.
3. The said costs have been quantified in the sum of **\$14,000.00** in accordance with the Prescribed Scale of Costs in Appendix B of Part 67 of the CPR 1998.

Robin N. Mohammed
Judge