THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2016-03803

Between

GARNETT SIMMONS

First Claimant

DENISE ROLLOCK PHILLIP

Second Claimant

And

CLINTON MOHAN

First Defendant

TONE AUTOMOTIVE LIMITED

Second Defendant

SURESH RAMNARINE trading as "ALARM CITY"

Third Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: December 14, 2018

Appearances:

Ms. S. Singh for the Claimant

Mr. E. Koylass S.C. instructed by Ms. D. Roopchan for the First and Second Defendants

Mr. S. Dodol for the Third Defendant

JUDGMENT

1. This claim is one for breach of a contract to repair a Mitsubishi Challenger motor vehicle, registration number PBN 7127 ("the vehicle"). The second claimant, Denise Rollock Phillip ("Denise") is the owner of the vehicle. The first claimant, Garnett Simmons ("Garnett") who is the husband of Denise was at the material time the driver of the vehicle with the consent of Denise. The determination of the claim is highly dependent on the court's findings of facts on the evidence.

Claim

2. According to the claimants, on January 28, 2014 Garnett took the vehicle to the second defendant, for an alignment and other works associated with the alignment of the vehicle. The first defendant, at all material times held himself out to be the manager and/or owner of the second defendant. The claimants allege that the second defendant through the first defendant agreed to undertake the aforementioned works for the sum of $1,006.25.

3. After the works were completed, Garnett collected the vehicle and drove it home. However upon driving the vehicle, he observed (in his view) that it was not aligned properly and so informed the first defendant of same. The first defendant instructed Garnett to return the vehicle and on February 1, 2014 Garnett returned the vehicle to the first and second defendants and the first defendant promised to rectify the problem at no additional cost. It was agreed between the first defendant and Garnett that the vehicle would be ready for collection the same day.

4. However, when Garnett returned for the vehicle, the repairs were not completed and the first defendant informed him that he should return within two or three days. About two or three days thereafter, Garnett returned and was informed by the first defendant that the vehicle was still not ready and that works were being conducted on the engine. The claimants aver that the works on the engine were done without their consent and/or permission and that Garnett immediately raised an alarm and objected to the works but as the vehicle was in a state of disrepair, he could not do anything but comply with the directions given by the first defendant to return on yet another day.

5. On or about February 21, 2014 upon making further checks for the vehicle, Garnett was informed by the first defendant that the vehicle was taken to the third defendant, an electrician for the purpose of repair. The claimants aver that the vehicle was taken to the third defendant without their consent and that they did not retain the third defendant to do any works on the vehicle.

6. According to the claimants, to date the vehicle has not yet been fixed and/or returned to them and the third defendant remains in possession of the vehicle. The claimants claim that as a result the first and/or second and/or third defendants have breached the contract entered into with Garnett causing the claimants to suffer loss and damages. The alleged breaches of the contract were particularized as follows;

   i. Failing to do the works agreed to on the vehicle;
   ii. Failing to align the vehicle to a satisfactory standard or at all;
   iii. Failing to return the vehicle in a timely manner or at all;

iv. Conducting engine works to the vehicle without the consent of the claimants;
v. Retaining the vehicle for an unreasonable time and/or unacceptable length of time which resulted in depreciation of the value of the vehicle and loss of enjoyment and use by the claimants.

7. The claimants also allege that the actions of the defendants also amounted to negligence. The particulars of negligence alleged against the first and second defendants are as follows;

i. Agreeing to do works on the vehicle without properly trained and/or qualified staff;
ii. Agreeing to do works on the vehicle without any experience with Mitsubishi Challengers, doing electrical and/or work to the engine and/or sensors if they were qualified to do so;
iii. Removing the vehicle from their possession without the permission of the claimants;
iv. Failing to protect the asset of the claimants;
v. Losing possession and control of the vehicle;
vi. Handing over the vehicle to the third defendant without authorization to do so by the claimants;
vii. Failing in all circumstances, in their duty to the claimants to properly secure the claimants' property from damage.

8. The particulars of negligence alleged against the third defendant are as follows;

i. Agreeing to do works on the vehicle without properly trained and/or qualified staff;

ii. Agreeing to do works on the vehicle without any experience with Mitsubishi Challengers;
iii. Failing to repair the vehicle;
iv. Retaining control of the vehicle for an unreasonable length of time;
v. Failing to release the vehicle to the claimants;
vi. Failing to inform the claimants of the status of their vehicle in a timely manner or at all;
vii. Retaining control of the vehicle to date.

9. According to the claimants, as a result of the actions of the defendants, Garnett was compelled to rent a vehicle for is use from February, 2014 to date. As such, by Claim Form filed on November 2, 2016 the claimants are claiming special damages in the sum of $60,150.00 (which sum represents the use of a rental vehicle from February 2014 to present and continuing) as well as the following relief;

i. Damages for breach of contract;
ii. Damages for detinue and/or conversion to the value of the motor vehicle;
iii. Damages for negligence;
iv. The return of motor vehicle in good and proper working condition;
v. Interest;
vi. Costs;
vii. Such further and/or other relief as the nature of the case requires.

Defence

10. By Defence filed on December 15, 2016 the first and second defendants aver that the vehicle is a foreign used roll on roll off seventeen year old vehicle manufactured in 1997, registered in Trinidad in 2002 and used from that date to 2014.

11. According to the first and second defendants, Garnett's delivery of the vehicle to the second defendant's garage on January 28, 2014 was for a wider range of services than its alignment and included other works such as a tune up. The first and second defendants aver that they redelivered the vehicle to Garnett on January 28, 2014 having only completed the alignment works. That Garnett returned the vehicle to the second defendant's garage on January 31, 2014 complaining only of the vehicle's steering having "too much play". Upon the aforementioned complaint the first and second defendants undertook steering works involving the repair of the pitman arm of the vehicle.

12. The first and second defendants claim that Garnett next returned the vehicle to the second defendant's garage on February 10, 2014 for the tune up and other unperformed works from the earlier scope of works. Those unperformed works commenced on February 11, 2014 and was continued over February 14 to 15, 2004 when the employee assigned to the vehicle returned to work.

13. The first and second defendants further claim that on Garnett attending at the second defendant's garage on February 15, 2014 he was advised that the tune up could not be performed due to the vehicle having an electrical problem which works the first and second defendants do not perform. In

an exchange between the first defendant and Garnett, Garnett agreed that the vehicle should be delivered to the third defendant's shop for such attention. The first and second defendants aver that the vehicle was so delivered to the third defendant's shop on February 15, 2014.

14. As such, it is the case of the first and second defendants that thereafter Garnett dealt with the third defendant who was not the first and second defendants' servant and/or agent, as to the vehicle's repair. The first and second defendants aver that they used proper skill in performing the works to the vehicle measuring up at least to the standard of reasonably competent repairers.

15. By Defence and Counterclaim filed on December 5, 2016 the third defendant avers that in February, 2014 the first defendant delivered the vehicle for his garage to check for electrical problems. The third defendant is an independent automotive electrical technician and is not and has never been the employee, servant and/or agent of the first and second defendants.

16. According to the third defendant, the claimants did not initially retain him to do any works on the vehicle. All instructions were initially given to him by the first defendant. Shortly after the first defendant delivered the vehicle to the third defendant's garage, the first defendant brought Garnett to the third defendant's garage to introduce him. The third defendant informed Garnett and the first defendant that he needed a few days to check the vehicle. A few days thereafter when Garnett and the first defendant visited the third defendant's garage, the third defendant informed them that when he started the vehicle, it was back firing and

emitting a lot of smoke. The third defendant then told them that he had to do more checks and that they should return a week later.

17. The third defendant avers that Garnett returned alone to his garage one week later. At this time, the third defendant informed Garnett that further checks to the vehicle revealed that the wire plugs were brittle, broken or cut and joined and also that five of the coil packs did not have bolts to secure same. The third defendant claims that Garnett instructed him to conduct more checks on the vehicle to ensure all electrical problems were detected and solved. The third defendant further claims that Garnett agreed to pay the costs for all the works done by him.

18. The third defendant avers that further checks revealed that the injector wiring was tampered with and wires were incorrectly connected. According to the third defendant, Garnett upon hearing the aforementioned instructed him to run a diagnostic test on the vehicle.

19. The third defendant avers that he completed all repairs to the vehicle as instructed by Garnett and that Garnett has failed and/or refused to collect the vehicle despite the third defendant calling upon him to do so since the end of August, 2014. According to the third defendant, Garnett indicated that the first defendant has to collect the vehicle to do work on the engine and transmission.

20. The third defendant further avers that Garnett has failed to pay him for his services. That the sum of $11,200.00 is owed to him by Garnett. Moreover, the third defendant avers that since August, 2014 the vehicle has been stored in his garage and as a result, he has been deprived of the use of that space for the storage of other vehicles for repairs. The storage of the

vehicle at his garage has been incurring storage costs at $100.00 per day from September 1, 2014 to December 5th, 2016 and continuing. The sum owed from September 1, 2014 to December 5th, 2016 is $82,500.00.

21. As such, the third defendant counterclaimed against the claimants for the following relief;

i. The sum of $93,700.00;
ii. Damages for breach of contract;
iii. Interest;
iv. Costs; and
v. Such other relief as the nature of the case may require.

THE ISSUES

22. The issues to be determined by this court are as follows;

i. Whether Garnett's agreement with the first and second defendants was limited to the performance of alignment works only or did it include a wider range of works including a tune up of the vehicle;
ii. Whether there was a contract between Garnett and the third defendant and if so, whether the third defendant is entitled to any relief sought on his counterclaim;
iii. Whether the first and second defendants obtained the consent and/or permission of the claimants to surrender possession of the vehicle to the third defendant;
iv. Whether the defendants were in breach of the agreement with the claimant and/or were negligent;

v. If it is found that the defendants breached the agreement or were negligent, what is the appropriate measure of damages; and

vi. Whether the claimants are entitled to damages for conversion and/or detinue to the vehicle.

THE CASE FOR THE CLAIMANTS

23. The claimants gave evidence and called three witnesses, Adel Mohammed, Kern Keith and Afraz Mohammed.

The evidence of Garnett

24. Garnett is self-employed as a Real Estate Agent. As mentioned before, Denise is the owner of the vehicle.[1] Garnett normally drives the vehicle and is in charge of its maintenance and upkeep. On January 28, 2014 ("the said date") Garnett took the vehicle to the second defendant, Tone Automotive Limited ("the auto garage") for an alignment and other works associated with the alignment of the vehicle. Garnett testified that prior to taking the vehicle to the auto garage it was in perfect working condition save and except for the alignment problem.

25. On the said date the first defendant, Clinton Mohan ("Clinton") agreed to perform the alignment works for the sum of $1,006.25. Garnett knows Clinton as "Tone". Pursuant to that agreement, Garnett paid the said sum to the garage. Garnett testified that the receipt for the payment of the said sum clearly showed that he paid for alignment, camber and front and to

[1] A copy of the certified extract for the vehicle was annexed to Garnett's witness statement at "GS1".

install one master cylinder kit and a brakes fluid. [2] As such, he testified that he did not pay for any engine works.

26. On the said date, Clinton informed Garnett that he would be able to collect the vehicle on the same day after the works were completed. As such, Garnett left and later returned to the garage, collected the vehicle and drove same home. Whilst driving home, he realized that the vehicle was not properly aligned as it had a pull to the right side and the steering wheel was too soft or had too much play. Garnett made the aforementioned assessment as he has been driving for over forty years and can tell from his experience if a vehicle is pulling to a side. When he reached home, Garnett called Clinton to tell him of the problems he noticed with the vehicle. Clinton instructed Garnett to return the vehicle to the auto garage.

27. On February 1, 2014 Garnett returned the vehicle to the auto garage and met with Clinton who promised to rectify the problem at no additional cost. Clinton further told Garnett that he could return later on the same day to collect the vehicle. As such, Garnett left with the expectation of returning to collect a properly aligned vehicle later that evening.

28. Garnett returned to the auto garage on the same day to collect the vehicle but was unable to do so as the repairs were not completed. Garnett asked Clinton why the work was not completed as Clinton had personally promised him that the work would have been completed that evening. Clinton then told Garnett that he was short staffed and instructed him to return to collect the vehicle in two or three days still at no additional costs.

[2] A copy of the receipt was annexed to Garnett's witness statement at "GS2".

29. About two or three days after, Garnett returned to the auto garage to collect the vehicle and was informed by Clinton that works were not completed on the vehicle. Clinton then told Garnett that work was being done on the engine. As Garnett never gave Clinton or any of his employees permission to perform works to the engine of the vehicle, Garnett was taken by surprise and immediately objected to the works.

30. Upon seeing the vehicle, Garnett became very concerned as the vehicle was in an unsatisfactory state such as the bonnet was opened and the top of the engine was off leaving the injectors exposed. There were also engine wires or harness scattered about. At that point, Garnett had no other option but to comply with Clinton's instruction to return another day.

31. Two or three days thereafter, Garnett returned to the auto garage and noticed that the top of the engine of the vehicle was removed and dismantled. He saw parts of the engine resting on the top of the vehicle while the bonnet was opened. Upon seeing the aforementioned, he spoke to Clinton who informed him that there was an electrical problem with the vehicle. Garnett became alarmed with that news and enquired from Clinton as to how the electrical problem was associated with the alignment of the vehicle. Clinton told Garnett that the vehicle has sensors and that the problem with the alignment was as a result of a malfunctioning sensor that could only be assessed through the engine.

32. On February 21, 2014 upon making further checks on the vehicle, Garnett was informed by Clinton that the vehicle was taken to the third defendant, Suresh Ramnarine of Alarm City ("Suresh"). Garnett testified that he never consented to the vehicle being taken to Suresh for any works to be

performed and that all the works performed by Suresh were done without his consent.

33. To date Garnett has not received the vehicle as it is still in Suresh's possession. By letter dated January 12, 2016 Suresh admitted that the vehicle was still in his possession.[3] The letter reads as follows;

"Suresh Ramnarine states,

…I operate a garage…for the past ten (10) years. That about one (1) year and ten (10) months ago a Mitsubishi Challenger SUV registration number PBN 7127 was brought in by CLINTON MOHAN from TONE ALIGNMENT for repairs. The vehicle could not be checked the said day a few days after extensive checking…it was found that the injector driver computer was damaged. Two (2) days after that the vehicle was brought on the OWNER GARNETT SIMMONS was introduced to me as the owner. The said vehicle is still at the garage."

34. Garnett testified that he has continuously followed up with the progress and readiness of the vehicle and that on each occasion, he has been disappointed. On one occasion when he checked with Suresh, Suresh informed him that he had performed a diagnostic check on the vehicle and that the only problem which arose concerned the barometric sensor. Garnett told Suresh to make sure the vehicle was working properly before he picked it up since prior to it being handled by Clinton and even Suresh, the vehicle was in perfect working condition. As such, it was Garnett's testimony that he expected the vehicle to be returned to him in perfect working condition.

[3] A copy of this letter was annexed to Garnett's witness statement at "GS3".

35. Garnett also asked Suresh if he had informed Clinton about his findings relating to the problems he discovered with the vehicle. Suresh told Garnett that he did and that Clinton told him (Suresh) to keep all the bills for him. Garnett testified that he never asked Suresh to do any works for him on the vehicle and that he never agreed to pay him for anything. That Suresh told him the problem was the injector driver computer and that that could have been only caused from the works done by the defendants and the wrong reconnection of wires.

36. In an attempt to speed up the process of having the vehicle fixed, Garnett tried to source a new injector driver computer from J.Q. Motors in St. Lucia but he was not successful. He then introduced Suresh to someone named Tracy who recently had a similar problem with his motor vehicle and was willing to assist. After he introduced them, they had a conversation. Garnett later found out that Tracy had taken his old computer driver injector for Suresh to use in the vehicle. When Garnett found out the aforementioned, he told Suresh that he did not want any used parts being used on the vehicle and that he should return those parts to Tracy. Garnett testified that he did not agree to pay for any of those parts that Tracy gave to Suresh and further did not agree to pay the cost of Victor Wibby (Wibby") for checking and/or repairing the used injector driver computer.

37. Garnett testified that he has been greatly disadvantaged by the actions of the defendants as he is self-employed and used the vehicle for his employment. As a result of same he was forced to rent vehicles from February, 2014 in order to do his work and move about. He rented the

vehicles when the need arose and when he was able to afford it. He paid different amounts for different periods of time.[4]

38. Garnett made several recordings of conversations between Clinton, Suresh and himself.[5] Garnett testified that the recordings clearly state how the damage was caused to the vehicle and how the delay in fixing it was the defendants' fault. The court has not been addressed on these recordings although it specifically asked the parties so to do and they have not been tested in cross examination. No weight has therefore been given to them by the court.

39. Sometime prior to July 30, 2014 Suresh promised Garnett that he would have brought the vehicle to his (Garnett's) home for a test drive. However, that never happened. Garnett testified that Suresh never informed him that he completed all the repairs and that the vehicle was ready for collection. Every time Garnett visited Suresh at his garage, Suresh always gave him an excuse about why the repairs were not being done.

40. As such, it was the testimony of Garnett that as no one ever informed him that the vehicle was ready for collection, he had no reason to refuse to collect same at the end of August, 2014 or at any time. He testified that it is unfair that he has been deprived of the use and benefit of having a personal vehicle to use and that he even had to spend money to rent another vehicle.

[4] Copies of the receipts for the car rentals were annexed to Garnett's witness statement at "GS4".
[5] Copies of the recordings were annexed to Garnett's witness statement at "GS5".

The cross-examination of Garnett

41. Garnett agreed that the vehicle is a foreign used vehicle and that it was manufactured in 1997. He further agreed that as the vehicle was registered in Trinidad in 2002, it would have been in use in Trinidad for some twelve years prior to being taken to the auto garage. Moreover, Garnett accepted that he did not disclose how much money he expended on purchasing the vehicle and that he did not know the value of the vehicle since a valuation report of same was not done.

42. Garnett admitted to renting private vehicles. He was unaware that renting private and using use on the public road was unlawful.

43. Garnett took the vehicle to the auto garage on the said date because his mechanic had instructed him to have the alignment of the vehicle adjusted and/or repaired. He denied that when he took the vehicle to the auto garage it was for a noise compliant with the suspension box, a tune up and an engine light which was remaining on. He did agree however that the engine light in the vehicle was flickering on and off. The clip which was holding the wires of the engine light was slack and so caused the engine light to flicker on and off.

44. He further denied that when he returned the vehicle to the auto garage for the second time it was for the purpose of completing the works that were unperformed from the first day which were to fix the suspension of the vehicle and other engine works. He reiterated that he returned the vehicle on the instructions of Clinton to have the alignment of the vehicle corrected. Moreover, he denied having knowledge about a defective pitman arm.

45. Garnett testified that although Clinton never prevented him from removing the vehicle, he did not remove the vehicle because he was at the mercy of Clinton. He further testified that he never told persons at the auto garage to stop working on the vehicle and that he was coming to remove the vehicle from the garage.

46. He denied that Clinton informed him that there was an electrical problem with the vehicle. He further denied that he had a conversation with Clinton and that it was agreed that the vehicle would be taken to Suresh's garage to have the electrical problem fixed. According to Garnett, on enquiring about the vehicle, he was informed that it was taken to Suresh's garage. Clinton then informed him to liaise with Suresh.

47. He checked on the vehicle at Suresh's garage at least three to four times a month since the vehicle was taken there on February 15, 2014. Suresh informed him that he was putting the wires in the vehicle in their proper places and that he (Suresh) had to run a diagnostic test. At this point, Garnett did not tell Suresh to stop working on the vehicle and that he wanted the vehicle removed from Suresh's garage.

48. Garnett then placed trust in Suresh to right the wrongs that were done to the vehicle at the auto garage. He developed that trust in Suresh sometime in June, 2014. Sometime in the middle of June, 2014 Garnett told Suresh that he did not know why the vehicle was at his garage, that he did not give anyone authority to bring his vehicle to Suresh's garage and that he wanted the vehicle back.

49. Garnett agreed that he introduced Tracy to Suresh to help Suresh fix the vehicle. He tried to assist Suresh although he did not engage Suresh to do

electrical works on the vehicle because he wanted his vehicle back. He then testified that he approved Suresh conducting electrical works on the vehicle because Clinton told him to liaise with Suresh.

50. Suresh never prevented Garnett from removing the vehicle from his garage and Garnett never took any active steps such as hiring a wrecker to remove the vehicle from Suresh's garage. Garnett does not believe that he has to pay Suresh for the works he performed on the vehicle.

51. Garnett did not take the vehicle back from Suresh although Suresh had promised him that he would have the vehicle back to him on June 30, 2014 because the vehicle was in disrepair and could not be moved. Garnett testified that he did not want back his vehicle because it was in a state of disrepair. He further testified that he refused to take the vehicle back from Suresh from June until now because he was not taking the vehicle back unless it was fully repaired.

52. Garnett never took any other electrician or mechanic to Suresh's garage to have a look at the vehicle

53. Garnett agreed that he never alleged that Suresh was responsible for the brittleness of the wires in the vehicle and/or for the missing bolts in the vehicle. Suresh pointed out the aforementioned to him. He testified that he does not believe that Suresh was responsible for the damaging of the wires in the vehicle and that Suresh is responsible and/or liable to compensate him for any damage to the vehicle and/or loss he suffered. Up to the present date, Garnett has not sent any pre-action protocol letter to Suresh alleging that Suresh caused him loss and/or damage with respect to the vehicle.

54. Further, Garnett agreed that he did not plead that Clinton was responsible for the missing bolts, for the wires being reconnected in the wrong place and for the brittle wires in the vehicle. He agreed that in relation to his pleaded case, his only complaint was that the auto garage did not perform a proper alignment to the vehicle.

55. Garnett and Denise have another vehicle. Garnett sometimes used this other vehicle.

The evidence of Denise

56. Denise's testimony by way of her witness statement was essentially the same as Garnett and so there is no need to repeat her evidence.

The cross-examination of Denise

57. Denise does not know where the vehicle is presently. She knew that from February, 2014 to the end of 2017, the vehicle was at Suresh's garage. She has never personally sought to obtain the return of the vehicle. She has also never asked Suresh to return the vehicle. In 2014, although she was not the prime user of the vehicle, she sometimes used same. Her evidence was of no assistance to the court on the material issues to be decided.

The evidence of Adel Mohammed

58. Adel Mohammed ("Adel") is Garnett's friend. He testified that sometime between June, 2014 and July, 2014 he accompanied Garnett to visit Suresh to check on the vehicle. Upon arriving at the Suresh's garage, Garnett enquired about the vehicle and was informed by Suresh that as there were

numerous deaths in his family and he (Suresh) had to visit the doctor, he was unable to carry out the works on the vehicle.

59. Adel testified that in his presence Suresh further informed Garnett that upon doing checks on the vehicle, he realized that numerous parts from the vehicle were missing. Garnett responded by asking Suresh "*What the hell you telling me, what parts?"* Suresh then told Garnett that four out of the six bolts which held the engine in place were missing, most of the electrical wiring was brittle or burnt and incorrectly reconnected. Suresh further informed Garnett that the bolts holding the electronic fuel injectors in place were also missing.

60. Moreover, Suresh informed Garnett that he bought bolts and that he had to cut the bolts in order to fit and stabilize the engine. Adel also heard Suresh say *"Tone is no mechanic, what he doing in the engine?"* Garnett then asked Suresh whether he informed Clinton of his findings to which Suresh assured Garnett that he so did.

61. Before Adel and Garnett left from by Suresh, Suresh assured Garnett that he should not worry about the vehicle as Clinton was responsible for all the damages done to the vehicle. Suresh then promised Garnett that he would return the vehicle to Garnett's home by July 30, 2014 after he (Suresh) completed his fine tuning.

<u>The cross-examination of Adel</u>

62. Adel accompanied Garnett to Suresh's garage because he (Adel) had enquired about the vehicle and Garnett had informed him that he was

going to Suresh's garage to see the vehicle and asked Adel to accompany him.

63. The vehicle is a black SUV. Adel inspected the vehicle. Garnett asked Suresh questions about the repair of the vehicle and Suresh answered the questions that were asked by Garnett.

The evidence of Kern Keith

64. Kern Keith ("Kern") is a businessman. He testified that between the period of May 2, 2014 to May 16, 2014 Garnett rented motor vehicles from him. During the aforementioned time, Garnett rented a Nissan Tida registration number PCY 8745 ("the rental vehicle") from Kern. Garnett rented the rental vehicle for a few days at a time.

65. The price per week for the rental vehicle was $2,000.00. When Garnett rented the rental vehicle for a few days, the price would vary depending on the length of days and the availability of the vehicles Kern had at the time. Kern issued receipts to Garnett any time he rented vehicles from him.[6]

66. During cross-examination, Kern admitted that the vehicle he rented to Garnett carries a private car number and that he does not have insurance for the rental of the private vehicle. He further admitted that the vehicle he rented to Garnett was not registered in his name. The business he ran of renting vehicles was not a registered business but simply a private vehicle he rented out.

[6] Copies of the receipts were annexed to Adel's witness statement at "KK1".

The evidence of Afraz Mohammed

67. Afraz Mohammed ("Afraz") testified that between the period of February 20, 2014 to November 26, 2014 Garnett rented motor vehicles from him. During the aforementioned time the vehicles Garnett rented from Afraz were PBO 8603, PBP 8969 and PBU 3510 ("the rentals").

68. Afraz testified that Garnett would sometimes rent the rentals for a few days and even sometimes for a month. The price per month for the rental vehicle was $6,000.00. When Garnett rented the rental vehicle for a few days, the price would vary depending on the length of days and the availability of the vehicles Afraz had at that time.

69. Afraz issued receipts to Garnett whenever he rented vehicles from him.[7]

70. During cross-examination, Afraz testified that Garnett was one of his main customers. That prior to 2014, Garnett was renting vehicles from him. Afraz's vehicles were not insured for the purposes of business rentals. Some of the vehicles he rented were not registered in his name.

71. The evidence of this witness was surprising to say the least. This witness admitted under oath that he would have engaged in activities that were unlawful such as renting out cars registered for private use without the relevant certificate of insurance. It is somewhat astounding that the witness would file a witness statement admitting to such matters and equally so that the lawyer for the claimant would file such a witness statement and call such a witness. To the court it appears that the practice of renting private vehicles which are uninsured for the propose is so

[7] Copies of the receipts were annexed to Afraz's witness statement at "AM1".

widespread that persons are generally blissfully unaware that the practice is illegal. The effect on the present claim is though that in the event that the claimant is successful in the claim, the claimant ought not to be allowed to benefit from an unlawful act and so will not be awarded any loss of use in the sum of the value of the rental.

CASE FOR THE FIRST AND SECOND DEFENDANTS

72. The first and second defendants called two witnesses, Clinton and Michael Gene.

The evidence of Clinton

73. Clinton is the manager of the auto garage which carries on the business of a mechanic garage repairing and servicing vehicles. Clinton is qualified as a Mechanic having obtained the following certificates;

    i. Auto Mechanic Year One from the University of the West Indies Extra-Mural Studies Unit dated July 16, 1988;
    ii. Auto-Electrical repairs from the University of the West Indies Extra-Mural Studies Unit date July 18, 1987.[8]

74. Clinton is also a qualified Alignment Technician and he holds a certificate as to such training.[9] The auto garage is a certified vehicle testing station for the Ministry of Transport and Clinton is a certified Inspector for the Ministry as to motor vehicle inspection.[10]

[8] Copies of the certificates were annexed to Clinton's witness statement at "CM1".
[9] A copy of the certificated was annexed to Clinton's witness statement at "CM2".
[10] Copies of those certificates were annexed to Clinton's witness statement at "CM3".

75. Prior to being engaged as the Manager of the garage, Clinton worked as a mechanic for seven years at a private garage in Tunapuna. Before Garnett took the vehicle to the auto garage on the said date, Clinton was engaged as the manager of the auto garage for eighteen years and he supervised the performance of the works done at the auto garage as part of his duties. He has worked on all makes of gas powered vehicles and his duties include engine work, alignment works, the repair of suspension systems in vehicles of all makes and tire repairs. Clinton testified that the auto garage has performed repair works on its many customers' vehicles without complaint as to its service.

76. According to Clinton, the claimants' vehicle is a foreign used roll on roll off Mitsubishi vehicle imported from Japan. The vehicle was not a new vehicle purchased from a new car dealer in Trinidad. The vehicle was manufactured in 1997 and was registered to Denise in Trinidad and Tobago on October 22, 2002.[11] Clinton testified that servicing the claimants' vehicle required either the repair of the defective parts or the use of substitute parts where available.

77. On the said date, Garnett drove the vehicle to the auto garage and spoke to Clinton concerning works to be performed on the vehicle which involved an alignment, a tune up, a complaint of noise in the area of the vehicle's suspension box as well as an engine light remaining on, fluctuation of revolution per minute ("RPM") gauge and for checks to the vehicle as to any required repairs. Clinton accepted the job save for the engine light complaint and informed Garnett that such works were electrical in nature which the auto garage not having the expertise does not undertake.

[11] A certified copy of the ownership of the vehicle was annexed to Clinton's witness statement at "CM4".

78. Consequently, Garnett left the vehicle at the auto garage for as much of the requested works to be performed and for his collection later that day. On Garnett's return to collect the vehicle, Clinton advised him of the auto garage's performance of the alignment works and brake works only. The latter works required the purchase of substitute parts to combine with the existing breaking system.

79. Garnett paid for the alignment and brake works and was given a receipt for his payment.[12] Thereafter, Garnett drove the vehicle from the garage.

80. According to Clinton, the alignment works were performed under his supervision using a computerized Hunter System. He testified that at the time of collection of the vehicle on the said date by Garnett, the vehicle was properly aligned with its braking system repaired.

81. On January 31, 2014 Garnett returned to the auto garage with the vehicle and expressed that the vehicle's steering had too much play. The auto garage received the vehicle as to such concern and on checking the vehicle it was found that the pitman arm which is located under the vehicle was defective and needed to be replaced. The defect concerned worn parts. As Garnett was unable to produce a replacement pitman arm and as such part was not available for the make of the vehicle, the auto garage performed repair works to the defective pitman arm. The cost of the works was $575.00.[13]

82. On the evening of February 10, 2014 Garnett returned the vehicle to the auto garage to leave it for the tune up works and other works that were to

[12] A copy of the receipt was annexed to Clinton's witness statement at "CM5".
[13] A copy of the job card and the invoice were annexed to Clinton's witness statement at "CM6".

be done. Clinton advised Garnett to return for the vehicle the evening of February 11, 2014. When Garnett returned to the auto garage on February 11, 2014, Clinton advised him that the works had not yet been completed and to return on February 12, 2014.

83. Garnett returned on February 12, 2014 and Clinton again informed him that the works had not yet been completed as the employee who was working on the vehicle did not come out to work. The employee did not report to work until February 14, 2014 and so the works were done on February 14 and 15, 2014. On each of the new collection days, Garnett went to the auto garage and was appraised of the situation.

84. During the period the vehicle was at the garage, the auto garage only performed such works as were required for the specific service repair it had undertaken and removed only such parts as such works required for such service or repair.

85. Clinton testified that it is untrue that the vehicle's engine was removed while at the garage. The uppermost part of the engine (the intake) was removed to perform the tune up works. The aforementioned was required to get to the injectors which lay directly under the intake.

86. On Garnett's return to the auto garage on February 15, 2014 Clinton informed him that on working on the tune up it was determined that it could not be completed as the vehicle exhibited as having an electrical problem. Clinton further informed Garnett that the auto garage does not perform electrical works. On Garnett's enquiry, Clinton recommended Suresh's garage. Clinton indicated to Garnett that if he wanted him to, he (Clinton) could have the vehicle delivered to Suresh's garage.

87. Clinton testified that Garnett agreed to have him arrange for the vehicle to be delivered to Suresh's garage for Suresh to look into the problem. Consequently, Clinton caused the vehicle to be removed from his auto garage and be driven to Suresh's garage on February 15, 2014. He then took Garnett to meet Suresh concerning the repair of the vehicle.

88. After the vehicle was delivered to Suresh's garage, Clinton and the auto garage had no further business with the vehicle's repair or with Garnett except Clinton maintained a listening ear of whatever Garnett told him concerning the vehicle and of its non-repair at Suresh's garage. Clinton testified that in so doing, he did not assume any responsibility for the vehicle as to its required repair and had no possession or control over the vehicle.

89. Clinton testified that whilst the vehicle was at the auto garage, the employees there performed all works as to the requested repair or service using proper skill and competence and timely surrendered the vehicle to Suresh's garage and until such surrender performed only authorized works upon it and kept the vehicle safe and free from damage.

90. Clinton further testified that the auto garage employs mechanics who are well qualified by training and experience to perform repair and servicing works (mechanical works) to the vehicles it accepts for such repair or service and that the non-repair of the vehicle was not due to a mechanical defect but rather involved its electrical circuitry.

91. According to Clinton, Garnett has not suffered any loss due to the auto garage and him and any loss claimed is fictitious and exaggerated. He testified that in receiving the vehicle for service, Garnett never indicated

that he was a real estate agent or a farmer and/or that he used the vehicle as to such interest. He further testified that Garnett never informed him that he rented any vehicle while the vehicle was at Suresh's garage.

92. Garnett informed Clinton that during the time the vehicle was at Suresh's garage, he (Garnett) regularly attended the garage to speak to Suresh about solving the vehicle's problems. Clinton was aware that Suresh told Garnett that the problem concerning the vehicle was beyond his ability to solve and that Suresh had sought the opinion of other electrical mechanics as to the vehicle's problem.

93. Clinton testified that Suresh gave Garnett the option of taking the vehicle to another repairer but Garnett declined to so do. Clinton became aware that from December, 2013 Garnett had taken the vehicle to several other repair shops in an attempt to remedy the engine light problem to no avail.

<u>The cross-examination of Clinton</u>

94. Clinton is the director and the shareholder of the auto garage. The auto garage specializes in wheel balancing, brakes repairs, wheel alignment, suspension repairs etcetera.

95. Clinton got the information that the vehicle was manufactured in 1997 from the vehicle's certified copy. He testified that he did try to source parts for the vehicle. One of the parts he attempted to source was a master cylinder to fix the hydraulics on the braking system of the vehicle. However, he could not source the master cylinder and so the inner parts of the master cylinder of the vehicle was removed and rebuilt using

substitute and/or similar parts. Clinton sourced those parts for the master cylinder on the instructions of Garnett.

96. On the first day Garnett visited the auto garage, he informed Clinton that the vehicle was parked up for a while and that he wanted the vehicle to be totally road worthy. Garnett informed Clinton that he wanted an alignment done on the vehicle, that there was a braking problem in the vehicle and that he also wanted a tune up done on the vehicle amongst other things. The works that were done on Garnett's first visit to the auto shop included the alignment and repairs to the master cylinder. No tune up was done on the vehicle on the first day Garnett visited the auto garage. The alignment works included the checking of the suspension of the vehicle.

97. The level of tune up Garnett asked to be performed and which was performed on the vehicle was a level three tune up. A level one tune up is a basic tune up which includes the changing of oil, the oil filter and the air filter. A level two tune up includes those works in a level one tune up and also includes the changing of the cabin filter, checking the brakes and suspension. A level three tune up includes the works in levels one and two and further includes the removing of plugs and changing as necessary, cleaning of the throttle body, injectors and airflow sensors.

98. Although, it is customary for bills to be prepared for a customer when works are executed on their vehicles, a bill was never produced for the tune up. Monies were collected from Garnett for the works he asked to be performed on the vehicle. Clinton agreed that no bills have been produced to the court in relation to 1) the tune up that was done on the vehicle, and 2) the works that were done to the fluctuating RPM of the vehicle.

99. When a customer goes into the auto garage, a job card on what works has to be done is produced and placed on a clip board in the auto garage. Whichever employee is free and able to perform the job would take up the job. As such, if something is not on the job card it would not be done.

100. According to Clinton, when a check engine light illuminates on the dash board of a vehicle, it is usually an indicator that there is an electrical problem with the vehicle. As such, he did not do any diagnostic scans on the vehicle prior to informing the claimant that the illuminated check engine light was an electrical problem. He has never encountered a vehicle with a check engine light on that was as a result of a mechanical problem.

101. Clinton did not personally deliver the vehicle to Suresh's garage. A former employee of the auto garage, Adrian Davidson ("Adrian") drove the vehicle to Suresh's garage. Clinton spoke to Suresh prior to sending the vehicle to his garage and informed Suresh that he had a customer for him. He further informed Suresh that when the vehicle was brought into the auto garage, it was spattering, missing and backfiring. That at the auto garage checks were made on the plugs and injectors of the vehicle but the problem was not solved. As such, he told Suresh that there is an electrical problem with the vehicle. Clinton and Suresh have a good working relationship.

<u>The evidence of Michael Gene</u>

102. Michael Gene ("Michael") was an employee of the auto garage for over two years. He was employed at the auto garage when Garnett brought the vehicle on the said date for works to be performed. On the said date, Michael saw Garnett speak with Clinton. Michael was then directed to drive the vehicle to take Garnett out to the Union Road, Junction so that

Garnett could get transport. After Michael delivered Garnett to the junction, he drove the vehicle back to the auto garage. While at the garage, he was aware that his co-workers performed alignment works on the vehicle.

103. On January 31, 2014 Garnett brought the vehicle back to the auto garage. Repairs to the vehicle's pitman arm was performed. Michael was not involved in that repair.

104. On the evening of February 10, 2014 Garnett took the vehicle back to the garage. Michael was assigned to work on the tune up of the vehicle on February 11, 2014. He was absent from work from February 12, 2014 to February 14, 2014. On his return to work on February 14, 2014 he continued working on the vehicle until February 15, 2014. During the course of the repair of the vehicle, the manifold was removed to give access to the injectors as is required in a tune up.

105. Michael testified that despite performing all the works involved in a tune up, the engine was still not working properly. He determined that the problem involved more an electrical defect and so he informed his employer.

106. On February 15, 2014 Garnett returned to collect the vehicle. Michael heard Clinton inform Garnett that the vehicle's engine had an electrical defect and that the auto garage does not perform such works. Michael testified that he knows that the vehicle was taken to Suresh's garage after discussions between Garnett and Clinton.

107. Michael further testified that after February 15, 2014 he continued seeing Garnett at the auto garage and that it was common knowledge that the problem with the vehicle's engine could not be sorted out.

The cross-examination of Michael

108. Michael worked at the auto garage during 2013 and 2014. Although he did not perform the alignment works on the vehicle, he knew that those works were conducted on the vehicle as he saw the vehicle being aligned. His co-worker, Adrian was assigned to perform the alignment works on the vehicle. Adrian no longer works at the auto garage.

109. Michael took out the pitman arm from the vehicle, a machine shop repaired it and when it was repaired, he re-installed it into the vehicle.

110. Michael testified that Garnett personally asked him to perform the tune up on the vehicle. Prior to performing the tune upon the vehicle, diagnostic scans were ran on the vehicle. As a result of those scans, multiple cylinders misfired. When a cylinder misfires, checks are made to ensure the coil packs and the injectors are functioning properly. As such, when Michael performed the tune up on the vehicle, he serviced the injectors, the throttle body and changed the plugs in the vehicle.

111. When he was performing the tune up, he noticed that a lot of the wires in the vehicle had been cut and replaced on the harness. He further noticed that the vehicle did not have the original harness for the engine. He did a basic test on the wires to ensure that there was electricity and there was electricity but he recommended that a proper testing using a multi-meter had to be done by an electrician.

112. Whilst performing the tune up, Michael marked all the jacks that were going to the injectors so that same could be re-connected in the correct order. He testified that if the wires were re-connected wrongly, the wrong message can be sent to the "brain box" of the vehicle which may cause the vehicle to misfire. He further testified that in his experience, the re-connection of the wires wrongly could not blow the brain box but that anything is possible.

113. Michael has some electrical experience from courses he did in NESC and other institutions. Using that experience he did what he had to do with the wires in the vehicle which was to re-connect the wires in the correct manner. It was put to him that he interfered with the electricals in the vehicle when he was not supposed to do so. He testified that he was supposed to do that because in doing the tune up he had to remove the coil pack.

114. He did not determine the electrical problem the vehicle had. He came to the conclusion that the vehicle had an electrical defect because the car was working properly mechanically.

THE CASE FOR THE THIRD DEFENDANT

115. Suresh gave evidence for himself. He is employed as an Automotive Electrical technician with Alarm City which is a garage located at #131, St. James Street, Battoo Avenue, Marabella. Suresh's skill includes mechanical repairs to the engine of motor vehicles.

116. Suresh testified that in February, 2014 Clinton drove the vehicle to Alarm City for him to check for electrical problems in the vehicle. The vehicle was

backfiring and smoking. Clinton told Suresh that he serviced the injectors but that the vehicle was still giving problems. When Suresh looked at the engine, he observed that there was only one bolt instead of twelve bolts in the six coil packs. He also observed that the wires going to the coil packs, injectors and throttle body were brittle and exposed.

117. Shortly after Clinton delivered the vehicle to Alarm City, he brought Garnett to introduce him to Suresh. At that time, Clinton inquired from Suresh if he had checked the vehicle as he (Clinton) had so directed him to do. Suresh informed Clinton in the presence of Garnett that he needed a few days to check the vehicle.

118. A few days thereafter when Garnett and Clinton visited Alarm City, Suresh informed them that when he started the vehicle, same was back firing and giving out a lot of smoke. Suresh further informed that them that he had to do more checks and that they should return a week later.

119. One week later, Garnett returned to Alarm city alone. Suresh informed Garnett that further checks to the vehicle revealed that the wire plugs were brittle, broken or cut and joined and also that five of the coil packs did not have bolts to secure same. Garnett instructed Suresh to conduct more checks on the vehicle to ensure that all electrical problems were detected and solved. Suresh testified that Garnett agreed to pay the costs for all the works done by him so far and also for the repairs that had to be done. Garnett promised to return for an update.

120. After conducting further checks on the vehicle, Suresh informed Garnett that he discovered numerous other electrical problems including the injector wiring were tampered with and the wires were connected directly

from the ignition switch to the coil packs which was a major defect. Garnett upon hearing the aforementioned instructed Suresh to run a complete diagnostic test on the vehicle and again agreed to pay the costs for same.

121. After speaking to a number of persons including technicians from Diamond Motors and Shannon from Shannon's Electrical (who was the automotive electrical technician that previously did work on the vehicle for Clinton) it was discovered that the injector driver computer of the vehicle was defective and that same had to be repaired and/or replaced with a new one. Suresh informed Garnett of the aforementioned and Garnett agreed to source a new injector driver computer for the vehicle.

122. Garnett tried sourcing a new injector driver from J.Q. Motors in St. Lucia but was not successful in obtaining same. Garnett's cousin Tracy brought three computers he had from an old Mitsubishi challenger vehicle similar to the vehicle but same did not work.

123. Around the beginning of August, 2014 Suresh suggested that the existing injector driver computer be taken to Wibby for checking and repairs. Garnett agreed to have the injector driver computer being taken to Wibby and further agreed to reimburse Suresh for the costs of same being repaired. In the middle of August, 2014 Suresh took the injector driver computer to Wibby who repaired same a week later at the cost of $1,200.00. Suresh paid the sum of $1,200.00 and received a receipt from Wibby.

124. Garnett visited Suresh's garage regularly to meet Suresh and get updates on the progress of the work being done on the vehicle. On at least four occasions, Suresh visited the home of Garnett to discuss the problems and

possible repairs to the vehicle. On each of those occasions, Garnett agreed to pay Suresh for his services.

125. Suresh testified that he did all the all repairs to the vehicle as instructed by Garnett including repairing the injector driver computer and installing same. That Garnett has failed and/or refused to collect the vehicle despite Suresh calling upon him to do so since the end of August, 2014. Suresh testified that Garnett indicated that Clinton has to collect the vehicle to do work on the engine and transmission.

126. Garnett has not only refused to collect the vehicle from Suresh's garage since the end of August, 2014 but he has also failed and/or refused to pay Suresh for his services to date in the sum of $10,000.00 for fifty hours of work at the rate of $200.00 per hour. Garnett has also failed to refund Suresh the sum of $1,200.00 which was paid to Wibby for the repair of the injector driver computer.

127. Since August, 2014 the vehicle has been stored in Suresh's garage and as a result, Suresh has been deprived of the use of that space for the storage of other vehicles for repairs. The storage of the vehicle at Suresh's garage has been incurring storage costs at $100.00 per day from September 1, 2014 to December 5th, 2016 and continuing. The sum owed from September 1, 2014 to December 5th, 2016 is $82,500.00.

<u>The cross-examination of Suresh</u>

128. Suresh does not have any formal certification but he has eighteen years' experience in doing electrical works on vehicles. Prior to 2014, Suresh never conducted electrical repairs on an engine of a Mitsubishi Challenger.

He has however conducted electrical repairs to a Mitsubishi Pajero which is similar to a Mitsubishi Challenger.

129. Suresh could not recall whether Clinton himself drove the vehicle to Alarm City but he testified that someone from the auto garage brought the vehicle to Alarm City. He then agreed that Clinton drove the vehicle to Alarm City and that Clinton told him to fix the backfiring problem with the vehicle.

130. When the vehicle was brought to Alarm City, Suresh did not ask Clinton if he was going to make arrangements to pay him. Further, Suresh never told Garnett that he owes him $10,000.00 for his labour and $1,200.00 for the repair of the injector driver computer.

131. Clinton brought Garnett two days after the vehicle had arrived at Alarm City. On Suresh's first meeting with Garnett, he informed him that he would not be able to begin working on the vehicle immediately. As such, it was the testimony of Suresh that if Garnett did not want him to work on the vehicle, he could have stated so at their first meeting.

132. The coil pack is an electrical component of the vehicle. As such, Suresh testified that not having sufficient bolts to hold the coil packs in place was an electrical problem as opposed to a mechanical problem. The wires that Suresh observed were brittle and exposed were plainly visible. The wires were so brittle, it crumbled in his hands when he touched it. The wires that were cut and rejoined were not soldered together but simply taped together. Further, the wires were connected wrongly. The wrong connection of the wires could have caused the vehicle to backfire. Further, the wrong connection of the wires could have caused the brain box to burn

on the circuit board. A qualified technician is required to replace and/or repair the wires.

133. Suresh rectified the problem with the bolts and the wires in the vehicle. Prior to Garnett asking Suresh to run a diagnostic scan on the vehicle, Suresh had already ran a diagnostic scan on the vehicle. Garnett asked Suresh to run over the scan because he wanted a print out of the scan.

134. The car is currently working. However, it is experiencing issues with its idling which can be fixed by the running of the engine of the vehicle.

ISSUE 1 - *whether Garnett's agreement with the first and second defendants was limited to the performance of alignment works only or did it include a wider range of works including a tune up of the vehicle.*

The submissions of the first and second defendants

135. The first and second defendants submitted that the evidence of Clinton that Garnett returned the vehicle to the auto garage on January 31, 2014 when the vehicle's pitman arm was repaired was supported by documentary evidence of the job card and an invoice. The first and second defendants further submitted that the evidence of Clinton in this regard was corroborated by Michael.

136. According to the first and second defendants, Michael also corroborated Clinton's evidence that Garnett next returned the vehicle to the auto garage on February 10, 2014. The first and second defendants submitted that Michael's evidence in this regard was not challenged and that he was

in fact cross-examined on his tune up efforts and works to the vehicle's engine.

137. The first and second defendants submitted that once the court accepts Michael's evidence of the vehicle's return to the auto garage on January 31, 2014 when the vehicle's pitman arm was repaired, such acceptance would undermine Garnett's truthfulness not only as to the true date of the vehicle's return to the auto garage but more significantly as to the nature of the works the first and second defendants were called upon by him to perform on the vehicle.

138. According to the first and second defendant, the repair of the vehicle's pitman arm is totally absent from Garnett's account of his dealings with the auto garage and cannot be discounted as an oversight or failed memory.

139. The first and second defendants further submitted that once the court accepts Michael's unchallenged evidence that the vehicle was returned on February 10, 2014 for the tune up, that evidence would irretrievably impair Garnett's credibility as a witness and the truthfulness of his account as to having returned the vehicle to the auto garage only once.

140. The first and second defendants submitted that the claimants' timeline is implausible. According to the first and second defendants, on Garnett's account he would have left the vehicle unattended at the auto garage for some fifteen days before returning to enquire about the vehicle.

141. The first and second defendants submitted that their timeline on the other hand of the occasions of the vehicle's return to the auto garage and the

events of how they dealt with the vehicle on its second return to its removal to Alarm City on February 15 2014 is more probable and gives further credence to Clinton's account of the works that were agreed to be performed. As such, the first and second defendants submitted that the court should find as a fact that Garnett's agreement with the first and second defendants concerning the vehicle was for the first and second defendants to perform the range of works asserted by Clinton.

The submissions of the claimants

142. According to the claimants, this is an issue of fact which the court is required to determine based on the evidence of Garnett and Clinton. The claimants submitted that the court, in deciding this issue, must take into account which version of the events is more probable.

143. The claimants relied on the case of ***Jorsling E. Guide (trading as Guide's Funeral Home) et al –v- Richard Guide et al***[14] wherein Madam Justice Pemberton at page 15 had the following to say;

"In this matter the Court is called upon to determine critical issues of fact. Its ability to do so lies in the weight to be attributed to the evidence provided by the parties. When the factual picture painted by the parties differs, the weight that a Court would attach to the evidence before it, is usually determined by cross examination."

144. The claimants submitted that Garnett maintained throughout his cross-examination that he took the vehicle to the auto garage for an alignment. The claimants further submitted that Clinton accepted that Garnett

[14] CV2006-00214

brought the vehicle to the auto garage for an alignment and for other works associated with the alignment of same. Moreover, the claimants submitted that none of the defendants took issue with the receipt that Garnett received as proof of payment for the alignment and the other works associated with same.

Findings

145. It is undisputed that alignment works were executed on the vehicle. As such, the court finds that the initial agreement between Garnett and the first and second defendants was for alignment works and other works associated with the alignment of the vehicle. However, the vehicle was returned to the auto garage. The evidence of the claimants was that whilst driving home, Garnett realized that the vehicle was not properly aligned as it had a pull to the right side and the steering wheel was too soft or had too much play. That Garnett contacted Clinton to inform him of the problems he noticed with the vehicle and Clinton instructed him to return the vehicle to the auto garage. On February 1, 2014 Garnett returned the vehicle to the auto garage and met with Clinton who promised to rectify the problem at no additional cost.

146. The evidence of Clinton was that on January 31, 2014 Garnett returned to the auto garage with the vehicle and expressed that the vehicle's steering had too much play. Consequently, the court accepts the evidence of Garnett that whilst driving the vehicle home, he noticed that it had a pull to the right side and the steering wheel was too soft or had too much play, that he informed Clinton of same and that Clinton agreed to rectify the problem with the alignment at no further cost.

147. According to evidence of the claimants, Garnett returned to the auto garage the evening after he returned the vehicle to collect same but was unable to do so as the repairs were not completed. Garnett asked Clinton why the work was not completed and Clinton told Garnett that he was short staff and instructed him to return to collect the vehicle in two or three days still at no additional costs.

148. About two or three days after, Garnett returned to the auto garage to collect the vehicle and was informed by Clinton that the works were not completed on the vehicle. Clinton then told Garnett that work was being done on the engine. As Garnett never gave Clinton or any of his employees permission to perform works to the engine of the vehicle, Garnett was taken by surprise and immediately objected to the works. During cross-examination however, Garnett testified that he never told persons at the auto garage to stop working on the vehicle.

149. Two or three days thereafter, Garnett returned to the auto garage and noticed that the top of the engine of the vehicle was removed and dismantled. He saw parts of the engine resting on the top of the vehicle while the bonnet was opened. Upon seeing the aforementioned, he spoke to Clinton who informed him that there was an electrical problem with the vehicle. Garnett became alarmed with that news and enquired from Clinton as to how the electrical problem was associated with the alignment of the vehicle. Clinton told Garnett that the vehicle has sensors and that the problem with the alignment was as a result of a malfunctioning sensor that could only be assessed through the engine. During cross-examination, Garnett denied that Clinton informed him that there was an electrical problem with the vehicle. As such, it was clear to this court that Garnett's testimony was inconsistent in several respects on that issue. Further it is

highly plausible that the first and second defendants would have told the claimant that there was an electrical problem and would not have returned the vehicle without informing him of same.

150. The court therefore finds that Garnett did take the vehicle back to the auto garage due to the pull on the steering and that he was initially surprised when he saw engine works being conducted on the vehicle but that Clinton duly informed him that there was an electrical problem with the vehicle and that the problem with the alignment was as a result of a malfunctioning sensor. That after Clinton so informed him, Garnett did not object to the works being performed on the engine of the vehicle and thereby agreed with the first and second defendants that they should fix the problems with the vehicle which included tune up engine works.

151. As such, the court finds that the agreement between Garnett and the first and second defendants was initially limited to the performance of alignment works but that when it was discovered that the problems with vehicle were more than the alignment, the works increased to include tune up engine works.

ISSUE 2 - *whether there was a contract between the Garnett and the third defendant and if so, whether the third defendant is entitled to any relief sought on his counterclaim*

The submissions of the third defendant

152. The third defendant submitted that Garnett during cross-examination testified that he left the vehicle at his garage because he had confidence in him to repair the vehicle. According to the third defendant, the

aforementioned showed that Garnett by his conduct agreed to leave the vehicle at his garage for him to effect repairs to same and that being the case, Garnett is liable to compensate him for his services on a quantum meruit basis as set out in the case of ***Gordon Winter Co. Ltd. v NH International (Caribbean) Ltd.***[15]

153. As such, the third defendant submitted that the claimants should be ordered to pay him the sum paid $1,200.00 paid to Wibby for the repair of the injector driver computer and also the sum of $10,000.00 for the services rendered by him in the repair of the vehicle. The third defendant further submitted that his claim for storage fees is within the discretion of the court.

The submissions of the claimants

154. The claimants submitted that the third defendant failed to produce any documentary evidence such as a receipt to prove that he paid Wibby the sum of $1,200.00 for the repair of the injector driver computer. The claimants further submitted that the third defendant has failed to provide any evidence to show how he calculated how many hours was spent fixing the vehicle. No timesheets were attached to his pleadings and no evidence was adduced with respect to his hourly rate.

155. Moreover, the claimants submitted that the third defendant's claim for storage costs fails as he did not provide any evidence with respect to same. According to the claimants, the third defendant also never indicated to them that there would have been a cost attached to the storage of the vehicle and even if same was provided, the claimants ought not to bear the

[15] CV2006-03875.

cost of same, as the third defendant never informed them that the vehicle was ready to be collected.

156. As such, the claimants submitted that the third defendant's counterclaim ought to be dismissed.

Findings

157. The evidence of Garnett was that after he found out that the vehicle was transferred to the garage of the third defendant, he continuously followed up with the progress and readiness of the vehicle. During cross-examination, Garnett testified that he visited the third defendant's garage to check on the vehicle at least three to four times a month since the vehicle was delivered there on February 15, 2014.

158. In his witness statement, Garnett testified that he never asked Suresh to do any works for him on the vehicle and that he never agreed to pay him for anything. During cross-examination, Garnett testified that when he visited the third defendant's garage, the third defendant informed him that he was putting the wires in the vehicle in their proper places and that he (the third defendant) had to run a diagnostic test. At this point, Garnett did not tell the third defendant to stop working on the vehicle and that he wanted the vehicle removed from his garage. Further during cross-examination, Garnett testified that he approved of the third defendant conducting electrical works on the vehicle because Clinton told him to liaise with the third defendant.

159. Moreover, during cross-examination Garnett testified that he placed trust in the third defendant to right the wrongs that were done to the vehicle at

the auto garage. In an attempt to speed up the process of having the vehicle fixed, Garnett attempted to assist the third defendant by trying to source a new injector driver computer from J.Q. Motors in St. Lucia and by introducing the third defendant to someone named Tracy who recently had a similar problem with his motor vehicle and was willing to assist.

160. The evidence of the third defendant was that in February, 2014 Clinton drove the vehicle to Alarm City for him to check for electrical problems in the vehicle. The vehicle was backfiring and smoking. Shortly after Clinton delivered the vehicle to Alarm City, he brought Garnett to introduce him to the third defendant. At that time, Clinton inquired from the third defendant if he had checked the vehicle as he (Clinton) had so directed him to do. The third defendant informed Clinton in the presence of Garnett that he needed a few days to check the vehicle.

161. A few days thereafter when Garnett and Clinton visited Alarm City, the third defendant informed them that when he started the vehicle, same was back firing and giving out a lot of smoke. The third defendant further informed them that he had to do more checks and that they should return a week later.

162. One week later, Garnett returned to Alarm city alone. The third defendant informed Garnett that further checks to the vehicle revealed that the wire plugs were brittle, broken or cut and joined and also that five of the coil packs did not have bolts to secure same. The third defendant testified that Garnett instructed him to conduct more checks on the vehicle to ensure that all electrical problems were detected and solved. The third defendant further testified that Garnett agreed to pay the costs for all the works done

by him so far and also for the repairs that had to be done. Garnett promised to return for an update.

163. After conducting further checks on the vehicle, the third defendant informed Garnett that he discovered numerous other electrical problems including the injector wiring was tampered with and the wires were connected directly from the ignition switch to the coil packs which was a major defect. Garnett upon hearing the aforementioned instructed the third defendant to run a complete diagnostic test on the vehicle and again agreed to pay the costs for same.

164. After speaking to a number of persons including technicians from Diamond Motors and Shannon from Shannon's Electrical it was discovered that the injector driver computer of the vehicle was defective and that same had to be repaired and/or replaced with a new one. The third defendant informed Garnett of the aforementioned and Garnett agreed to source a new injector driver computer for the vehicle.

165. Garnett tried sourcing a new injector driver from J.Q. Motors in St. Lucia but was not successful in obtaining same. Garnett's cousin Tracy brought three computers he had from an old Mitsubishi challenger vehicle similar to the vehicle but same did not work.

166. Around the beginning of August, 2014 the third defendant suggested that the existing injector driver computer be taken to Wibby for checking and repairs. Garnett agreed to have the injector driver computer being taken to Wibby and further agreed to reimburse the third defendant for the costs of same being repaired. In the middle of August, 2014 the third defendant took the injector driver computer to Wibby who repaired same a week

later at the cost of $1,200.00. The third defendant paid the sum of $1,200.00 and received a receipt from Wibby.

167. The third defendant testified that Garnett visited his garage regularly to meet him and get updates on the progress of the work being done on the vehicle. That on at least four occasions, the third defendant visited the home of Garnett to discuss the problems and possible repairs to the vehicle. On each of those occasions, Garnett agreed to pay the third defendant for his services. The court finds that the evidence of the third defendant was extremely plausible and credible.

168. It is pellucid on the evidence that during the preliminary period of time the vehicle was at the third defendant's garage, there was no contract between Garnett and the third defendant. It is further clear to this court that as the time passed, the third defendant discovered that the vehicle had many problems and informed Garnett of same. It therefore accords with common sense, and plausible that upon being informed of the many problems the vehicle exhibited, Garnett would have instructed the third defendant to conduct more checks on the vehicle to ensure that all electrical problems were detected and would have further contracted him to resolve the issues. In the court's view, it is more likely than not that it is at this point that Garnett would have contracted the services of the third defendant and the court so finds.

169. Having so contracted the services of the third defendant, the court finds that it is more likely than not that consideration on the contract would have been and was that of payment by Garnett to the third defendant for his services rendered and for parts obtained. The court therefore accepts the third defendant's evidence that Garnett agreed to pay him the costs

for all the works done by him and labour. As Garnett failed to pay the third defendant for his services, Garnett breached the contract which was formed with the third defendant. Consequently, the third defendant is entitled to compensation on a quantum meruit basis as well as damages for breach of contract.

170. In relation to the third defendant's counterclaim for storage fees, the third defendant led no supporting evidence that the space in which the car was stored can be rented for the sum of $100.00 per day. His opinion was the only evidence in that regard and that carries no weight. Consequently, the court would be engaging in speculation if it orders the claimants to pay storage fees of $100.00 per day. The court will however, award the third defendant nominal damages in the sum of $7,500.00 for the storage of the vehicle at his garage.

ISSUE 3- *whether the first and second defendants obtained the consent and/or permission of the claimants to surrender possession of the vehicle to the third defendant*

The submissions of the first and second defendants

171. According to the first and second defendants, the evidence of Clinton that the vehicle was delivered to Suresh with the consent of Garnett was corroborated by Michael.

172. The first and second defendants submitted that based upon their witnesses' unchallenged evidence, the court should find that the removal of the vehicle to the Alarm city was with Garnett's agreement for Suresh to attend to the vehicle's electrical problem.

173. The first and second defendants further submitted that Garnett's attending to Alarm City, not objecting to the vehicle being there and continuing to engage Suresh in undertaking the vehicle's repair all support that he had consented and approved the vehicle being transferred to Alarm City.

The submissions of the third defendant

174. The third defendant submitted that it was clear that Clinton brought the vehicle to Alarm City without informing the claimants but that Garnett subsequently visited Alarm City and allowed and never objected to Suresh doing the repairs on the vehicle.

The submissions of the claimants

175. According to the claimants, in their pleadings and in the witness statement of Garnett, it was stated that at no time did Garnett consent to the vehicle being delivered to Alarm City. The claimants submitted that even during cross-examination, Garnett was adamant that he never gave Clinton consent and/or permission to deliver the vehicle to Alarm City.

176. The claimants further submitted that the court ought to take into consideration the reason that Garnett took the vehicle to the auto shop was for an alignment and so there was no need for any electrical works to be done. According to the claimants, the only time Garnett became aware that the vehicle was sent to Alarm City was two days after it was done. The claimants submitted that that evidence was supported by Clinton who stated during cross-examination that an employee of the auto garage had taken the vehicle to Alarm City on February 15, 2014 and that he took

Garnett to meet Suresh at Alarm City two days after the vehicle was delivered.

Findings

177. As the court found that Clinton did in fact inform Garnett that there was an electrical problem with the vehicle, it is highly plausible that upon being so advised, Garnett would have enquired as what the next step was and Clinton would have informed him that he is unable to remedy the problem and recommended the third defendant's garage. As such, the court finds that Garnett did consent to the vehicle being taken to the third defendant's garage in an attempt to remedy the problems with the vehicle. Even if the court is wrong in finding that Garnett's consent was obtained for the vehicle to be transferred to the third defendant, it was pellucid on the evidence that Garnett visited the third defendant's garage after the vehicle was delivered on numerous occasions and did not object to the works being conducted. Consequently, the court finds that Garnett did consent to his vehicle being at the third defendant's garage.

Issue 4 - *whether the defendants were in breach of the agreement with the claimant and/or were negligent*

The submissions of the first and second defendants

178. According to the first and second defendants, the determination of this issue is dependent on what the works were under the agreement between the claimants and the first and second defendants. The first and second defendants submitted that if the work was simply the alignment of the vehicle, that work was certainly performed on the facts and that without

the claimants calling a witness with the relevant expertise, Garnett's concern of the pull and soft steering is of no moment to challenge the performance or proper performance of such works. The first and second defendants further submitted that their evidence of the need for repair to the vehicle's pitman arm could itself have been the source of Garnett's complaint and not the alignment works.

179. The first and second defendants submitted that if the court should find that the contract involved all the works that they stated that they undertook, then they performed the works and the failure to complete the tune up has been accounted for by reason of the vehicle's electrical defect.

180. The first and second defendants submitted that the issue of the non-return of the vehicle is more relevant to the issue of conversion as opposed to a breach of the agreement. The first and second defendants further submitted that in any event on the claimants' evidence, Garnett left the vehicle at Alarm City because he had no interest in having it back unless it was repaired. As such, the first and second defendants submitted that the non-return of the vehicle cannot properly be complained of as a breach of the agreement by them and that the claimants have not established any breach of contract by them.

181. According to the first and second defendants, for the claimants to succeed in negligence, they must prove that the first and second defendants failed to perform the agreed works on the vehicle to the standard of a reasonably skilled mechanic. The first and second defendants submitted that the claimants did not lead any evidence from any person holding the relevant qualifications and/or experience to be treated as an expert in the repair of vehicles who could have expressed an opinion as to the standard of the

works performed by the first and second defendants on the vehicle whether as to the alignment or the other works.

182. The first and second defendants submitted that in the absence of such evidence, the claimants have failed to prove any negligence on their part as to the works done on the vehicle.

The submissions of the third defendant

183. The third defendant submitted that as there was no written or oral agreement between the claimants and him, he is not liable for breach of contract. The third defendant further submitted that Garnett during cross-examination solely put the blame on the first and second defendants for the defects, damage and non-repair of the vehicle. During cross-examination, Garnett also testified that the third defendant was not responsible for damaging the wires in his vehicle and that the third defendant was not responsible to compensate the claimants for any loss or damage to the vehicle.

184. As such, the third defendant submitted that it is clear that the claimants' claim for breach of contract was against the first and second defendants and that the first and second defendants are solely liable to the claimants for the repairs and/or damage done to the vehicle.

The submissions of the claimants

185. The claimants submitted that a valid contract existed between the first and second defendants and that the first and second defendants breached the contract. The claimants further submitted that when the contract was

entered into, an implied term existed that the services provided by the first and second defendants would be of a satisfactory quality and that the defendants would exercise reasonable care and skill in the delivery of their services.

186. According to the claimants, the first and second defendants were hired to do an alignment and other works relating to the alignment of the vehicle. In consideration for the first and second defendants' services Garnett paid the sum of $1,006.00 and received a receipt for same. On the evidence of the first and second defendants works were performed on the vehicle.

187. The claimants submitted that it was only after Garnett picked up the vehicle from the auto garage and was driving same home that a problem arose in that the vehicle had a pull to the right and the steering wheel was too soft or had too much play. According to the claimants, the evidence of the first and second defendants was that repairs were done to the vehicle's pitman arm and that as the difficulties presented after Garnett picked up the vehicle, it could have been a result of the pitman arm. The claimants submitted that although Clinton adduced that evidence, he failed to call any witnesses with the relevant expertise to determine same.

188. As such, the claimants submitted that based on the above, the defendants have breached the contract and as such the award of damages should match the losses incurred.

189. The claimants submitted that there is a body of law that has developed with respect to the duty of care that a repairman owes to his customers.

In so submitting, the claimants relied on the English case of ***Haseldine v CA Daw & Son Limited***[16] wherein Lord Goddard had the following to say;

"...I believe that this is the first time the question has come before an appellate court, and accordingly, we must examine with care the principle on which Donoghue v. Stevenson depends.
It is to be observed that the two noble and learned Lords who formed the minority in that case thought that the decision must necessarily apply to a repairer. I think that it may be said that this appears to have been one of the reason for their dissent. Lord Buckmaster said: "The principle contended for must be this: that the manufacturer, or indeed the repairer of any article, apart entirely from contract, owes a duty to any person by whom the article is lawfully used to see that it has been carefully constructed" and Lord Tomlin expressed the same view.…To render the contractor or repairer liable, there must be, first a want of care on his part in the performance of the work which he was employed to do…It would. I venture to think, be a strange and unjust result if the plaintiff who has been injured directly by the careless performance of the work is to be left without a remedy."

190. The claimants further relied on the case of ***Stewart v Reavell's Garage***[17] wherein Sellers J found as follows;

"… the effect of what was said and done when the parties entered into the contract was that the plaintiff did rely on the defendants as experienced repairers to repair the brakes of the Bentley in a suitable and efficient manner and it was left to them to obtain suitable sub-contractors to do the

[16] (1941) 2 K.B. 343 at pages 375 to 380
[17] (1952) 2 QB 545 at page 551

lining of the drums and to arrange for a suitable time of drum lining to be fitted…It was their duty, in the circumstances, to provide good workmanship, materials of good quality and a braking system reasonably fit for its purpose and they failed to do so…"

191. In light of the foregoing, the claimants submitted that the defendants owed a duty of care to them.

192. The claimants relied on the case of ***Appleyard of Bradford Limited v Gibson***[18], wherein Lord Justice Brandon considered what is involved in the duty of care owed by repairmen. The learned Judge had the following to say;

"…The duty of a car repairer under the law is a duty to exercise reasonable skill and care of a reasonably competent person in that trade, and that is the duty which he has in relation to diagnosing faults and in relation to the repair of faults. No more no less."

193. As such, the claimants submitted that the defendants breached the duty of care owed to them by failing to exercise reasonable skill and judgment. That on the evidence, it was clear that the vehicle was taken to the auto garage in perfect working condition and while in the auto garage, the vehicle became in a state of disrepair due to the first and second defendants agreeing to perform works which they were not properly trained and/or qualified to do.

194. The claimants submitted that Garnett was adamant in his evidence that he never consented to the vehicle being delivered to Alarm City. As such, the

[18] [1981] Lexis Citation 783

claimants submitted that the first and second defendants were further negligent in that they lost possession of the vehicle and exposed it to damage.

195. With respect to the third defendant, the claimants submitted that it was clear that he never performed works on any Mitsubishi Challengers prior to the claimants' motor vehicle. As such, the claimants submitted that the third defendant was negligent from the onset as he knew that he did not have the skill and/or expertise to work on the vehicle. Further, the third defendant admitted that he had no formal training with respect to this trade.

196. The claimants submitted that if the court accepts that the third defendant was negligent from the onset, then the prolonged detention of the vehicle was also negligent. The claimants further submitted that the third defendant's evidence during cross-examination that the vehicle could not have been driven or used and that Garnett was unaware of what was wrong with the vehicle supports the claimant's case that he failed to inform them of the status of the subject vehicle in a timely manner.

Findings

197. The court found that the agreement between Garnett and the first and second defendants included the engine tune up works. It is clear that when it was discovered that the problem was indeed larger than at first thought and involved engine electrical problems, Clinton informed the claimant that the vehicle had to be taken elsewhere as the problems were beyond him. In those circumstances there could have been no breach of the agreement with Garnett.

198. Further, and on the same basis the court finds that there was no negligence on the part of the first and second defendants since when they recognized that they could not fix the engine problem, they referred Garnett to the third defendant and transferred the vehicle to the third defendant's garage with the consent of Garnett. The court further finds that the third defendant was not negligent although he admitted that he did not have any experience with Mitsubishi Challengers since Garnett agreed and approved the works he was conducting on the vehicle. Also, the court accepts the evidence of the third defendant that he executed all the necessary repairs on the vehicle, that the vehicle is currently working, that he informed Garnett of same and that he called upon Garnett to collect the vehicle but Garnett refused to collect the vehicle.

ISSUE 5 - *if it is found that the defendants breached the agreement or acted negligently, what is the appropriate measure of damages*

199. Having regard to the finds supra, this issue is no longer relevant.

ISSUE 6 - *whether the claimants are entitled to damages for conversion and/or detinue to the vehicle*

Law

200. In the Court of Appeal decision of ***Rattansingh v The Attorney General of Trinidad and Tobago and Doopan***[19], which was later approved by the Privy Council,[20] Warner JA stated as follows;

[19] Civ. App. No. 105 of 2000
[20] [2004] UKPC 15

"The claim in detinue

This action lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in possession of the goods and who on proper demand, fails or refuses to deliver them up without lawful excuse. (See dictum of Donaldson J. in Alicia Hosiery v Brown Shipley and Co. Ltd. [1969] 2 All E.R. 504 at 510). I think this aptly encapsulates the relevant law.

The claim in conversion

To constitute conversion, there must be a positive wrongful dealing with the goods in a manner inconsistent with the owner's rights and an intention in so doing to deny the owner's rights or to assert a right inconsistent with them. The gist of the action is inconsistency. There need not be any intention to challenge the true owner's rights. A demand and refusal is sufficient evidence of conversion."

201. In ***Gerard Mootoo v The Attorney General***,[21] Stollmeyer J (as he then was) stated as follows;

"Conversion is a purely personal action for pecuniary damages resulting in judgment for a single sum, generally measured by the value of the chattel at the date of judgment together with any consequential damage flowing from the conversion which is not to remote.

Where conversion cannot be directly proved, it may be inferred from proof of a demand for the item and the refusal to hand it over.

Detinue is more in the nature of an action in rem because the Plaintiff seeks the return of the item or payment of its value assessed at the date of judgment, together with damages for its detention. This effectively gives a defendant a choice of whether to return or pay for the item.

[21] H.C.A. CV. 431 OF 1997 at pages 3 & 4

It is immaterial whether a defendant obtained the item by lawful means because the injurious act is the wrongful detention, not the original taking or obtaining of possession. Detinue is usually evidenced by a failure to deliver an item when demanded.

Damages for detinue are intended to compensate a plaintiff for his loss, not to punish a defendant. Consequently, the fall in value of an item subsequently recovered can be recovered only if the loss is proved. Otherwise, only nominal damages are recoverable. Loss of use is not generally regarded as a separate head of damage because the mere capacity for profitable use is part of the value of the item, and loss of use would represent pro tanto recovery twice over (see Clerk & Lindsell on Torts 15th Ed. para. 21–104). Where the item is usually let out on hire by a plaintiff and is used by the defendant, the plaintiff is entitled to a reasonable sum for the hire of the chattel (see Clerk & Lindsell at para. 21-105)...."

The submissions of the first and second defendants

202. The first and second defendants submitted that once the court determines that the transfer of the vehicle to the third defendant was with the agreement of Garnett, no question of conversion by them can arise by such act. The first and second defendants further submitted that while the vehicle was at the auto garage, it was there through Garnett's delivery of it for repair and that there was no evidence of the first and second defendants having made any use of it inconsistent with the purpose of its delivery to them as would amount to its conversion by them.

203. According to the first and second defendants, Garnett's evidence was that in the context of his voluntary surrender of the vehicle, he never made any demand of the defendants for the return of the vehicle. The first and second defendants submitted that the fact that Garnett did not demand a return of the vehicle showed that he agreed to the vehicle remaining in the possession of the defendants and/or the third defendant as repairers and that the defendants' possession did not involve dealing with the vehicle inconsistent with Garnett's possession or right to possession of it so as to amount to its conversion.

204. The first and second defendants submitted that Garnett's involvement with the third defendant at his garage when the vehicle was transferred is a powerful indication of Garnett's approval as to the vehicle's transfer and of the third defendant's dealing with it as its repairer.

205. As to the claim in detinue, the first and second defendants submitted that based upon Garnett's surrender of the vehicle to the defendants and the claimants' failure to prove that the defendants retained the vehicle against his will on a demand made of the defendants for its surrender, no claim in detinue can be established.

206. The first and second defendants further submitted that Garnett's evidence was clear that he had no interest in receiving the vehicle unless it was put in proper working condition. As such, the first and second defendants submitted that the vehicle remained in the third defendant's possession by Garnett's election to leave the vehicle at his garage for his attention and repair.

The submissions of the claimants

207. The claimants submitted that it was undisputed that Denise was the owner of the vehicle and that Garnett was her agent and acting on her behalf. As such, the claimants submitted that the court ought to accept that they would have a right to immediate possession of the vehicle based on Denise's ownership of the vehicle. The claimants further submitted that it was undisputed that the vehicle was initially in the first and second defendants' possession until same was delivered to the third defendant's garage without the claimants' knowledge and consent. According to the claimants, the first and second defendants' delivery of the vehicle to the third defendant's garage was inconsistent with the instructions received from the Claimant.

208. The claimants submitted that whilst Garnett testified that he made no formal demand for the vehicle, the court ought to take into consideration that by letter dated November 13, 2014 which was sent to Clinton pursuant to pre-action protocols, there was a formal demand for the vehicle to be returned to the claimants. However, even after Clinton received the letter, the vehicle was never returned to the claimants.

209. Further, as shown in the excerpt from the transcript of the audio recording, Garnett did in fact demand that Clinton return the vehicle to him within two weeks' time. The claimants submitted that the court should also take into consideration that Garnett made several checks with the defendants and continuously asked about the status of the vehicle and when would it be returned to him.

210. Consequently, the claimants submitted that as there was a formal demand for the vehicle and that after demand was made, the defendants refused and/or neglected to return the vehicle to them, they are entitled to recover damages for dentinue and/or conversion.

Findings

211. As the court found that the first and second defendants transferred the vehicle to the third defendant with the agreement of Garnett, no question of conversion by them can arise by such act. Further, the courts agrees with the submission of the first and second defendants that while the vehicle was at the auto garage, it was there through Garnett's delivery of it for repair and that there was no evidence of the first and second defendants having made any use of it inconsistent with the purpose of its delivery to them as would amount to its conversion by them. Moreover, there was no evidence that while the vehicle was at the third defendant's garage, the third defendant dealt with the vehicle in a manner which was inconsistent with the rights of the claimants to the vehicle to constitute to conversion.

212. Although the claimants by letter dated November 13, 2014 made a formal demand for the vehicle to be returned to them, this demand was made of Clinton. At that point in time the claimants were well aware that the vehicle was at the third defendant's garage and no such demand was made to the third defendant. During cross-examination, Garnett testified that none of the defendants ever prevented him from taking back possession of the vehicle. As such, no claim in detinue can be established as the claimants' failed to prove that the defendants retained the vehicle against their will on a demand made of the defendants for its surrender.

213. Further, during cross-examination Garnett testified that he did not want back the vehicle because it was in a state of disrepair. He further testified that he refused to take the vehicle back from the third defendant from June until now because he was not taking the vehicle unless it was fully repaired. As such, it was clear to this court that the vehicle remained in the garage of the third defendant by Garnett's election.

214. Moreover, as mentioned above, the court accepts the third defendant's evidence that the vehicle is fixed and that he called upon Garnett to collect same but that Garnett refused to collect the vehicle. The third defendant would have no reason to keep the vehicle unless it was the case that the claimant refused to pay to him what he was owed under the contract and refused to take possession of the vehicle which the court finds to be the case here. Consequently, as Garnett refused to collect the vehicle there can be no detinue and/or conversion of the vehicle. The court also finds that it more likely than not that Garnett refused to accept the vehicle because he wanted the first and second defendants to pay for the works done by the third defendant. The claimant is therefore responsible for the consequences of his own inaction.

DISPOSITION

215. The order of the court is as follows;

i. The claims against the first, second and third defendants are dismissed.

ii. Judgment for the third defendant against the claimants on the counterclaim for breach of contract;

iii. The claimants shall pay to the third defendant the costs of his labour on a quantum meruit basis;

iv. The claimants shall pay to the third defendant damages for breach of contract including special damages for replacement parts purchased;

v. The claimants shall pay to the third defendant nominal damages in the sum of $3,500.00 for storage;

vi. The claimants shall take possession of and remove the vehicle from the premises of Alarm City situate at #131, St. James Street, Battoo Avenue, Marabella;

vii. The claimants shall pay to the first, second and third defendants the prescribed costs of the claim;

viii. The claimants shall pay to the third defendant the prescribed costs of the counterclaim;

ix. Damages are to be assessed and costs quantified by a Master on a date to be fixed by the Court Office.

Ricky Rahim

Judge