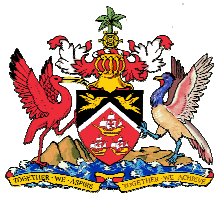

# ST. GEORGE WEST COUNTY

# PORT OF SPAIN PETTY CIVIL COURT

## RULING ON A SUBMISSION OF NO CASE TO ANSWER

**CITATION:** Nigel Bristol & Leslyn Bristol v. Haven Cabrera, Innovative Security Technologies Limited & Colonial Fire & General Insurance Company Limited

**TITLE OF COURT:** Port of Spain Petty Civil Court

**FILE NO(s):** No. 462 of 2011

**DELIVERED ON:** 20th June 2012

**CORAM:** Her Worship Magistrate Nalini Singh
St. George West County
Port of Spain Petty Civil Court Judge

**REPRESENTATION:**

Mr. Jean-Louis Kelly for Nigel Bristol & Leslyn Bristol

Ms. Ekta Rampersad for Haven Cabrera, Innovative Security Technologies Limited & Colonial Fire & General Insurance Company Limited

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## 1. THE INTRODUCTION

1.1 The plaintiffs, Nigel Bristol and Leslyn Bristol, filed an ordinary summons on the 21st December 2011 wherein they claimed against the defendants Haven Cabrera, Innovative Security Technologies Limited and Colonial Fire and General Insurance Company Limited special damages of $7,010.00 arising out of an accident which occurred on the 11th August 2011 on the Mucurapo Road, St. James as a result of the negligence of the first named defendant in driving and/or managing motor vehicle registration number TCR 5729 which belonged to the second named defendant and was insured by the third named defendant.

1.2 At the conclusion of the case for the plaintiffs, Ms. Rampersad invited the Court to entertain and uphold a submission that her clients had no case to answer without being put to their election to call evidence. The hearing on this issue proceeded on the basis of oral and written submissions.

1.3 The hearing on the issue was premised on the fact that the Court could determine whether the plaintiffs had made out a case for the defendants to answer without the need for the defendants to be put to their election to call evidence.

1.4 Before coming to deal with the submission, I will describe the claim and the evidence given at the trial.

## 2. THE PARTICULARS OF CLAIM

2.1 According to paragraph 2 of the particulars of claim, it is pleaded, *inter alia,* that as a result of the negligence of the defendant in changing lanes without first ensuring it was safe to do so, the vehicle driven by the first defendant collided with motor vehicle registration number PBE 8736

which was jointly owned by both plaintiffs and at the material time was driven by the second named plaintiff.

2.2 The plaintiffs, as a result, claimed the following as special damages:

| ITEMS | COST |
|---|---|
| **REPAIRS** | **$6,8100.00** |
| **LOSS OF USE** | **$200.00** |
| **TOTAL** | **$7,010.00** |

## 3. THE EVIDENCE AT TRIAL

3.1 On the 14th March 2012 the trial into this matter commenced. Of the witnesses called by counsel for the plaintiff, I will examine the evidence of Leslyn Bristol, Nigel Bristol and David Felix as it is material to a determination of the application at hand.

*3.2 Leslyn Bristol*

3.2.1 At the hearing of this matter, the second named plaintiff testified on oath that on or about the morning of the 11th August 2011, she was lawfully driving motor vehicle registration number PBE 8736 in an easterly direction along the left lane of the Mucurapo Road, St. James. This road was at the material time, restricted to one way traffic heading east. The first named defendant drove the second named defendant's vehicle in front of her and then, in the vicinity of the Trinidad Hose Company, the first named defendant changed lanes and went over to the right lane. Then, suddenly without signaling by way of indicator, the first named defendant pulled into the path of the plaintiffs' vehicle in the left lane and this resulted in the vehicles colliding with each other.

3.2.2 When the second named plaintiff was cross examined, the Court heard that she was driving at a speed of 40KM/hr and was about one and a half car lengths behind the second named defendant's vehicle before the collision. Further, when the collision occurred, it caused damage to the right front door of her vehicle and the left rear door of the second named defendant's vehicle.

*3.3 Nigel Bristol*

3.3.1 The second witness to testify was the first named plaintiff who gave evidence that he carried the vehicle to a garage called Archer's Auto where the damage to the plaintiffs' vehicle was assessed by a professional one David Felix and an estimate was prepared.

*3.4 David Felix*

3.4.1 The third witness to testify in this case was David Felix. According to him, he utilized the proper tools and procedures to assess the damage that was caused to the plaintiffs' vehicle. He also told the Court that he called several auto parts dealers to source quotations for parts which were necessary to effect repairs to the plaintiffs' vehicle and it was from this information gathered that he was able to estimate that the cost to repair would amount to $6,810.00. A document prepared by him evincing this estimate was tendered into evidence and marked "DF1".

3.4.2 When this witness was cross examined, the witness told the Court that he was a trained auto mechanic with about 18 years experience in the automotive field repairing vehicles. He also explained that the damage to the spindle of the plaintiffs' vehicle was determined with the use of a tool known as a dial gage and he went on to inform the Court that this damage could have been caused even where a vehicle was travelling at speeds of 10KM/hr.

3.4.3 The assessment of the damage sustained by the plaintiffs' vehicle as well as the expertise of the witness himself was never challenged by counsel for the defendants.

## 4. THE COMPETING SUBMISSIONS

*4.1 Submission of the defendants*

4.1.2 At the conclusion of this evidence, Ms. Ekta Rampersad, counsel for the defendants, submitted that the plaintiffs had not proven the special damages claimed. According to her, the plaintiffs' claim for repairs as pleaded in their particulars of claim could not be strictly proven by an estimate of the cost of repairs and consequently the plaintiffs' claim must fail.

4.1.3 Counsel for the defendants relied upon the case of **Charmaine Bernard (Legal representative of the Estate of Reagan Nicky Bernard) v. Ramesh Seebalack [2010] UKPC 15 at page 7** where it was stated that it is the claimant's "undoubted obligation to plead and particularize any item of damage which represents out of pocket expenses or loss of earnings, incurred prior to the trial, and which is capable of substantially exact calculation. Following from this since the plaintiffs never incurred any actual "out of pocket expenses" to date since they never repaired their vehicle, it was submitted follows that they were now precluded from claiming special damages in this matter since in reality they suffered no special damage. Ms. Rampersad relied on the case of **Uris Grant v. Motilal Moonan Ltd. & Frank Rampersad CA No. 162 of 1985** to support this proposition as it was stated therein that "… a party claiming damages must prove its case, and to justify an award of these damages he must satisfy the Court both as to the fact of damage and its amount". From this counsel argued that special damages should not only be specifically claimed but must be proven and this according to her, meant proof of actual out of

pocket expenses and loss of earnings down to the date of assessment. The final case put forward by counsel for the defendant in support of her submission was the case of **Anand Rampersad v. Willies Ice Cream Ltd. CA No. 20 of 2002** where according to her, Archie CJ while agreeing with the approach in *Uris Grant v. Motilal Moonan Ltd. & Frank Rampersad (supra),* held the view that a plaintiff in proving his special damages must persuade the judicial officer by evidence led of what was actually paid for the destroyed items since as his Lordship put it, "a judicial officer assessing damages is not to assume the role of adjuster or estimator".

4.1.4 The submission in short was that the estimate of cost of repairs was not proof of out of pocket expenses and therefore the plaintiffs did not prove loss in the form of special damages and in the circumstances the submission of no case to answer should be upheld and the matter accordingly dismissed with costs.

*4.2 Submission of the plaintiffs*

4.2.1 Counsel for the plaintiffs Mr. Jean-Louis Kelly submitted in response that the estimate of the cost to repair was sufficient to sustain the claim for special damages. He stated that where goods were damaged by the tortious conduct of a party, the normal measure of damages that a plaintiff was entitled to recover was the amount by which the value of the goods damaged, was diminished. That measure, he said, was usually ascertained by reference to the cost of repair which could be relied upon even in cases where repairs were not carried out up to the date of trial. In support of this proposition counsel cited the case of **The London Corporation [1935] P 70 at pages 78-79** where his Lordship Greer LJ expressed the view that:

> "the prima facie damage is the cost of repair… it is now clear that a shipowner who claims damages in respect of injuries to his ship, if it turns out that before he has in fact repaired her he has suffered the loss of the ship by something other than the act of the defendant, can still recover the estimated amount of the cost of repairing the ship, which he would have had to incur if she had not been lost". (emphasis added)

4.2.2 Counsel also relied upon the case of **The Kingsway [1918] P 344** which he submitted, was a case which dealt with the issue of damages having to be determined at the trial before any repairs were carried out. Counsel directed the Court to the dicta of Hill J at page 348:

> "…defendants, while saying that nothing at all ought to be allowed, contend in the alternative that what should be allowed is not the estimated cost of repairs which remain to be done, but the difference in value in May, 1915, of the ship repaired as she was and the ship if repaired so as to be restored to the same condition as before the collision…".

At pages 351-352 this is how the matter was resolved by his Lordship:

> "The matter is therefore, in the same position, whether the true test is the probable cost of permanent repairs which remain to be done, or diminution in value by reason that permanent repairs have not been done… For these reasons I think the registrar and merchants were right in allowing a claim in respect of the estimated cost of permanent repairs". (emphasis added)

In same vein, counsel pointed the Court to the views of Pickford LJ at page 354 which were expressed in this way:

"In my opinion the plaintiffs have proved with sufficient certainty that the ship will be laid up for permanent repairs… Of course, that is subject to the chance that she may be lost or that she may suffer other damage, and that the repair of that damage and the execution of the permanent repairs can be effected at the same time. But these chances, while they must e taken into account in fixing the amount of damages to be allowed, do not, in my opinion, make no damages recoverable. If they did, it would be difficult to see how, in any action of negligence whereby a person loses he use of his property or of himself, anything could be awarded for prospective loss, for the property may be destroyed, or he himself may die the next day. But undoubtedly, when proved with that degree of certainty which the law requires, prospective loss is a proper element in damages for negligence causing injury to property or to the person... Now, counsel for the appellants rather shrank from his proposition, that the result was to cut off the whole of the permanent repairs and the whole of the detention, even thought it might, in the opinion of the Court, be likely to be, and almost certainly would be, incurred. They said 'you must prove your actual damage.' It is quite true that in words that argument was applied only to the damages for detention. It seems to me it must apply to both cost of permanent repairs and damages for detention. Actual damage only is recoverable, and if actual damage means damage which can be ascertained in fact, upon circumstances which have already happened to make it ascertainable, both of these heads of damages must be eliminated. As I say, learned counsel shrank from such a proposition as that. It seems to me it cannot be maintained for a moment.

They argued that as regards detention, the claimants must show that a loss had been in fact incurred. That is to say they must show the ship had been in fact detained, and not only that, but had been detained for a time during which she would have been in profitable employment. That, again, means that the wrong-doer, who very properly has asked that the damages should be assessed at once, before the time for doing the permanent repairs has arrived, is to escape liability altogether, although in the opinion of the Court there will be detention during a time in which the ship might be earning, because the time has not yet arrived. That position seems to me to be wholly untenable". (emphasis added)

4.2.3 The final case relied upon by counsel for the plaintiffs was that of **Dodd Properties v. Canterbury City Council [1980] 1 WLR 433.** This case according to counsel, involved damage to a vehicle and the court made the point that when a vehicle is damaged, the owner suffers an immediate loss representing the diminution in its value and the cost of carrying out the repair simply represents prima facie, but not the essential, measure of the loss. Indeed in that case, counsel pointed the Court to the fact that the Court of Appeal found that from the moment of damage, what was suffered was direct loss as opposed to consequential loss which occurred for instance if the injured party contemplated hiring a replacement vehicle.

4.2.4 Against this backdrop Mr. Kelly argued that it could not be right to say that the plaintiffs incurred no actual loss because repairs were not yet effected by the date at which the matter was filed. Counsel stated that the aforementioned cases relied upon demonstrated that courts have consistently ruled in the past that damages were still recoverable in cases of tortuous damage to

property even when repairs had not yet been effected by the date of trial. Furthermore, it was held in these cases that damage to property amounted to a direct loss which occurred immediately upon such damage.

4.2.5 In short, it was submitted that the evidence put forward by the plaintiffs established more than a scintilla of evidence that the plaintiffs suffered loss from the negligent actions of the first named defendant and, applying the above mentioned law, the estimate of the cost to repair was sufficient evidence to sustain the claim of special damages in this case. For these reasons, Mr. Kelly therefore asserted that the submission of no case should be overruled.

4.3 These submissions have given rise to the following issues.

## 5. THE ISSUES

5.1 The issues which therefore arise to be determined are:

1. Whether the Court has a discretion to rule on a submission of no case to answer without requiring the defendants to elect to call evidence.
2. Whether there is a threshold test that is to be applied by a court exercising a discretion to rule on a submission of no case to answer without requiring the defendants to elect to call evidence
3. Whether the plaintiffs have led a scintilla of evidence to prove special damage with sufficient certainty and particularity as is reasonable to satisfy the Court that the special damage claimed ought to be awarded.

## 6. THE LAW

### *1. Whether the Court has a discretion to rule on a submission of no case to answer without requiring the defendants to elect to call evidence:*

6.1.1 The general rule is that a court ought not to rule on a submission of no case to answer unless the party making it elects to call no evidence. The cases which illustrate this point are **Alexander v. Rayson [1936] 1 KB 169, Laurie v. Raglan Building Co. Ltd. [1941] 3 All ER 332** and **Graham v. Chorley BC [2006] EWCA Civ 92.** Notwithstanding this established principle, there is an exception to the general application of this rule because in some instances, a court has the discretion to rule on a submission of no case to answer notwithstanding the fact that the party making the submission has not been put to his election.

6.1.2 This line of thinking first became apparent with the case of **Mullan v. Birmingham City Council The Times 29 July 1999.** In this case, David Foskett QC, sitting as a Deputy High Court Judge, found that in the light of new case management powers given to the courts under the new regime and the overriding objective, judges now have a greater discretion to entertain and rule on a defendant's submission of no case to answer without requiring it not to call evidence. As he put it:

> "Given the requirements of the 'overriding objective' to deal with the case expeditiously and fairly, allotting to it an appropriate share of the court's resources and taking account of the need to allot resources to other cases and acting in a way designed to save expense, it did seem to me that I would be entitled to adopt a rather more flexible approach to the kind of submission made than might have been the case prior to the implementation of the Civil Procedure Rules.

The court has considerable power under the Civil Procedure Rules to dictate how a case is to be managed both pre-trial and at the trial. Rule 3.1(2)(m) gives the court power:

> "to take any . . . step or make any . . . order for the purpose of managing the case and furthering the overriding objective"

over and above the specific orders and directions specified earlier in that rule. In my judgment, therefore, the court does have the power to hear a submission of this nature without putting the defendant to its election".

6.1.3 Two other cases reflect this line of thinking. The first is **Boyce v. Wyatt Engineering [2001] EWCA Civ 692.** Mance LJ started off by first noting that where a judge decides not to put defendants to their election before dealing with a submission of no case to answer, there is a need for considerable caution for two reasons. One is that the judge would have to put his mind to the facts of only one side of the case, and if he overrules the submission of no case to answer, he will then be expected to hear further evidence and to retain and apply an open mind in relation to all the facts at the end of the trial which could prove an inherently difficult exercise. The second reason is that if no election is extracted before deciding on a submission of no case to answer, there is always the risk that if the claim is dismissed, and a successful appeal follows, a re-trial would inevitably be ordered at a greater cost than that which would have arisen if the other side had been heard during the first trial. This said, his Lordship went on to state at paragraph 5 that:

> "There may be some cases, probably rare, in which nothing in the defendant's evidence could affect the view taken about the claimant's evidence or case, but this is not one of them, and care would be required in identifying them".

6.1.4 These sentiments were echoed in the case of **Bentley v. Jones Harris & Co. [2001] EWCA Civ 1724** where it was said that if a judge concluded that a claimant had no real prospect of success, or was bound to fail, on the judge's assessment of the evidence, the judge would be entitled to give judgment for the defendant in the same way as if there had been an application for summary judgment and so it was held that in that matter, the judge had not been wrong to dismiss the claimant's case, based upon his findings arising out of the facts of the claimant's own evidence. This is what Lord Justice Latham said at paragraph 75:

> "… it will only be in a rare case that the judge should be asked to determine the issues before him before all the evidence has been completed. However, it seems to me that, if a judge concludes at the end of the claimant's evidence, whether on the application of the defendant or of his own motion, that the claimant has no real prospect of success or, in other words, is bound to fail, on his assessment of the evidence before him at that stage, he is in my view entitled to give judgment for the defendant, in the same way as if there had been an application at an earlier stage in the proceedings for summary judgment under CPR Part 24.2. In that way he will be giving effect, in the circumstances of a trial, to the overriding objective and in particular to the need to contain within limits the expenditure of time and costs on the particular case before him". *(emphasis mine)*

6.1.5 It also seems to be the case that if there is some flaw of fact which emerges for the first time during the trial which makes it entirely obvious that the claimant's case must fail and it may save significant costs if a determination is made at that stage then in these types of exceptional circumstances, a judge may rule on a submission of no case to answer without requiring an election.

This was illustrated in the case of **Miller (t/a Waterloo Plant) v. Cawley [2002] EWCA Civ 1100.** In this case, the claimant claimed sums due for work done in 1998 on a property in which the defendant proposed to live. A preliminary issue arose as to whether or not there was a contract between the claimant and the defendant. At the conclusion of the claimant's evidence counsel for the claimant asked the judge to indicate whether if a submission were to be made to him, he would invite the defendant to elect. The judge said that he would as there was authority which said that a judge should put a person submitting no case to answer on his election except in exceptional circumstances. The defendant elected that she and her witnesses would not give evidence. On the submission of no case the judge asked himself whether there was any or any real prospect of the claimant succeeding, or any case fit to go before a jury, or before himself wearing his jury hat. Having decided that there was such a prospect he simply stated, without any further consideration of the matter, that the claimant had proved the preliminary issue and that there was a contract with the defendant. The defendant appealed. It was held that where a defendant was put to his or her election and elected to call no evidence, the issue was not whether there was any real or reasonable prospect that the claimant's case might be made out or any case fit to go before a jury or judge of fact. Rather, it was the straightforward issue, arising in any trial after all the evidence had been called, namely whether or not the claimant had established his or her case by the evidence called on the balance of probabilities. In the instant case, the judge having ruled correctly that the defendant should be put to her election, had applied a test which was too favourable to the claimant. It followed that the judgment entered against the defendant could not stand. The matter would be remitted for the judge to hear further submissions applying the correct test and to determine the outcome of the case. The appeal was accordingly allowed. Instructive is the learning set out at paragraph 12 by Lord Justice Mance:

"But it is clear that in some circumstances a submission of no case to answer at the close of a claimants' case can be appropriate and may, in the exercise of the judge's discretion, be entertained without the defendant being put to his or her election - cf both Bentley itself and Boyce v. Wyatt Engineering [2001] EWCA Civ 692, per Potter LJ at para. 36 (last 31 words). Some flaw of fact or law may, for example, have emerged for the first time, of such a nature as to make it entirely obvious that the claimant's case must fail, and it may save significant costs if a determination is made at that stage". *(emphasis mine)*

6.1.6 Two points therefore surface from a consideration of the foregoing. One is that in the light of new case management powers given to courts under the new regime and the overriding objective, judges now have a greater discretion to entertain and rule on a defendant's submission of no case to answer without requiring them not to call evidence. Secondly, if there is some flaw of fact which emerges for the first time during the trial which makes it entirely obvious that the claimant's case must fail and it may save significant costs if a determination is made at that stage, then, in these types of exceptional circumstances, a judge may rule on a submission of no case to answer without requiring an election.

6.1.7 Against this backdrop I conclude that the Court has a discretion to rule on a submission of no case to answer without requiring the defendants to elect to call evidence. Accordingly I turn now to the test which is to be used by a court who has so ruled.

2. ***Whether there is a threshold test that is to be applied by a court exercising a discretion to rule on a submission of no case to answer without requiring the defendant to elect to call evidence***

6.2.1 The law is that the test which is to be applied in circumstances where a court exercises its discretion to rule on a submission of no case to answer without requiring the defendant to elect to call evidence is the prima facie or scintilla of evidence test. The case of **Benham Limited v. Kythira Investments Ltd and Another [2003] EWCA Civ 1794** is instructive on this issue. According to the facts of this case, the claimant was a well-known firm of estate agents. The defendants were property companies. The claimants claimed that they had acted as agents for the defendants in connection with certain property transactions and that they accordingly became entitled to commission in respect of them. The trial judge dismissed the claim at the close of the claimant's evidence. In doing so he acceded to the defendants' submission of no case to answer without first putting the defendants to their election. The judge accepted that although generally the defendant would be put to his election, the judge had a discretion not to do so in an exceptional case. He thought that such an exceptional case could arise when two conditions were satisfied: first that nothing in the defendant's evidence could affect the view taken of the claimant's evidence, and secondly that it was obvious that the claimant's case must fail.

6.2.2 The claimants appealed. The appeal was allowed. It was felt that the case crossed the evidential threshold required to defeat a no case submission. If the judge had asked himself the correct question with regard to the evidence adduced, he would have been bound to reject the defendants' no case submission. The point was made that rarely, if ever, should a judge trying a

civil action without a jury, entertain a submission of no case to answer. The test to be applied by the judge if he entertained a no case submission was whether or not on the evidence adduced by the claimant had a real prospect of success. The question to be asked in a case, such as the present, where the defendants' witnesses had material evidence to give on the critical issue in the action could be reformulated variously as follows: have the claimants advanced a prima facie case, a case to answer, a scintilla of evidence to support the inference for which they contended, sufficient evidence to call for an explanation from the defendants. That it might be a weak case and unlikely to succeed unless assisted, rather than contradicted, by the defendants' evidence, or by adverse inferences to be drawn from the defendants not calling any evidence, would not allow it to be dismissed on a no case submission. The claim in the instant case could not be characterised as having only a fanciful, rather than a realistic, prospect of success. In the circumstances the case was remitted for retrial before a different judge. Lord Justice Brown had this to say at paragraphs 31-32:

> "[31] The linking of the two strains of authority in this way to my mind lends added weight to the need for caution at the half way stage of a trial. The disadvantages of entertaining a submission of no case to answer are plain and obvious and have been spelled out already in the cases. Essentially they are twofold. First, as Mance LJ explained both in Boyce and in Miller, the submission interrupts the trial process and requires the judge to make up his mind as to the facts on the basis of one side's evidence only and applying the lower test of a prima facie case with the result that, if he rejects the submission, he must then make up his mind afresh in the light of whatever further evidence has been called and on the application of a different test. This, to say the least, is not a very satisfactory procedure. The second disadvantage,

as again Mance LJ made plain in Boyce and Miller, is that if the judge both entertains and accedes to a submission of no case, his judgment may be reversed on appeal with all the expense and inconvenience resulting from the need to resume the hearing or, more probably, retry the action.

[32] Let me state my central conclusion as emphatically as I can. Rarely, if ever, should a judge trying a civil action without a jury entertain a submission of no case to answer. That clearly was this court's conclusion in Alexander v Rayson and I see no reason to take a different view today, the CPR notwithstanding. Almost without exception the dangers and difficulties involved will outweigh any supposed advantages. Just conceivably, as Mance LJ suggested at the end of para 12 of his judgment in Miller (see para 21), "some flaw of fact or law may . . . have emerged for the first time, of such a nature as to make it entirely obvious that the claimant's case must fail, and it may save significant costs if a determination is made at that stage". Plainly, however, that was not the case here and hardly ever will it be so. Any temptation to entertain a submission should almost invariably be resisted".

6.2.3 It follows that if a Judge concludes at the end of the plaintiff's evidence that he has a discretion to entertain a submission of no case to answer without putting the defendant to his election, the threshold test at that stage is: "have the claimants advanced a prima facie case, a case to answer, a scintilla of evidence to support the inference for which they contended, sufficient evidence to call for an explanation from the defendant?". Once an assessment of the evidence

reveals that there is a prima facie case or a scintilla of evidence to support each ingredient of the cause of action then the submission must be overruled.

6.2.4 The ruling has until now been concerned with the law surrounding submissions of no case to answer in the civil arena. I come now to deal frontally with the matter raised by the defendants in developing their submission of no case to answer.

***3. Whether the plaintiffs have led a scintilla of evidence to prove special damage with sufficient certainty and particularity as is reasonable to satisfy the Court that the special damage claimed ought to be awarded.***

6.3.1 In determining this issue, I have found, after a perusal of the law on proof of special damages, that the following principles are relevant. Some of these principles may be characterized as trite[1] but bear repeating. They are:

*(a) The nature of special damages*

6.3.2 Special damages have been described at **paragraph 812 of The Halsbury's Laws of England volume 12(1) Reissue** as follows:

> "A distinction is frequently drawn between the terms 'general' and 'special' damages, which terms have different meanings according to the context in which they are used. In the context of liability for loss (usually in contract), general damages are those which arise naturally and in the normal course of events, whereas

[1] Per Master Alexander in **Razack Mohammed v. The AG of Trinidad and Tobago & PC Michael Charles No. 10208 Claim No. CV2009-02792 at page 19.**

special damages are those which do not arise naturally out of the defendant's breach and are recoverable only where they were not beyond the reasonable contemplation of the parties (for example, where the plaintiff communicated to the defendant prior to the breach the likely consequences of the breach). The distinction between the two terms is also drawn in relation to proof of loss: here, general damages are those losses, usually but not exclusively non-pecuniary, which are not capable of precise quantification in monetary terms, whereas special damages, in this context, are those losses which can be calculated in financial terms. A third distinction between the two terms is in relation to pleading: here, special damage refers to those losses which must be proved, whereas general damages are those which will be presumed to be the natural or probable consequence of the wrong complained of, with the result that the plaintiff is required only to assert that such damage has been suffered. Finally, the expression 'special damage' may be used alone, not in conjunction with the term 'general damage'. Here it may refer to the particular damage which an individual member of the public must prove to succeed in a private action based on a public nuisance; or to the damage to reputation which must be proved in most actions in slander".

6.3.3 From this it can be discerned that damages will be categorized as special damages if the following can be said:

- They are damages which do not arise naturally and will therefore only be recoverable in instances where they are not beyond the reasonable contemplation of the parties.
- They are damages which can be precisely quantified.

- They are damages which the law will not infer as a natural or probable consequence of the act of the defendant and must be proven.

6.3.4 Having ascertained precisely what is meant by the term 'special damages', there is learning to suggest that a claim for special damages must be particularized. I turn now to an examination of this concept.

*(b) Particulars of special damage must be pleaded.*

6.3.5 One of the objects of pleadings is that it requires each party to give fair and proper notice to his opponent of the case he has to meet to enable him to frame and prepare his own case for trial[2]. This was the point which was made by Swinfen Eady J in **Palmer v. Guadagni [1906] 2 Ch 494 at page 497** where he said:

> "…The pleadings must contain fair and proper notice of the issues intended to be raised. This is essential to prevent the other party being taken by surprise".

6.3.6 It stands to reason therefore that since special damages by definition do not arise naturally out of the defendant's breach but depend for the most part on the special circumstances of each case, it must be explicitly claimed in pleadings. Bowen LJ made this very point when he was discussing the distinction between general and specific damages in the case of **Ratchliffe v. Evans (1892) 2 QB 524[3].** This is what he said at page 528:

[2] Pleadings: Principles and Practice by Sir Jack Jacob; Sweet & Maxwell; London (1990) at pg. 12

[3] Alluded to in **Bernadette Williams & Kerry Williams v. Sylvester Joseph Lezama & National Union of Government and Federated Workers HCA No. 935 of 1979 at pg. 3,** and followed in **Dave Ramlackhan v. Austin Mohammed & Caroni (1975) Limited No. 1447 of 1979 at pg. 24, Ramsawak Maharaj & Heamdai Maharaj v. Abraham Nahoum HCA No. 3696 of 1983 at pg. 10, Veshcham Harricharan v. Leonard Benjamin HCA No. Cv. 2275 of 1992 at pg. 7, Sharif Mohammed v. Furness Trinidad Limited & Furness Ice and Cold Storage Limited CvA. No. 46 of 1993 at pg. 15, Everard Carter v. Rambaran Nandlal HCA No. Cv. 2363 of 1995 at pgs. 8-9** and

"Lest we should be led astray in such a matter by mere words, it is desirable to recollect that the term "special damage," which is found for centuries in the books, is not always used with reference to similar subject-matter, nor in the same context. At times (both in the law of tort and of contract) it is employed to denote that damage arising out of the special circumstances of the case which, if properly pleaded, may be superadded to the general damage which the law implies in every breach of contract and every infringement of an absolute right: see Ashby v. White. (1) In all such cases the law presumes that some damage will flow in the ordinary course of things from the mere invasion of the plaintiff's rights, and calls it general damage. Special damage in such a context means the particular damage (beyond the general damage), which results from the particular circumstances of the case, and of the plaintiff's claim to be compensated, for which he ought to give warning in his pleadings in order that there may be no surprise at the trial. But where no actual and positive right (apart from the damage done) has been disturbed, it is the damage done that is the wrong; and the expression "special damage," when used of this damage, denotes the actual and temporal loss which has, in fact, occurred". *(emphasis mine)*

6.3.7 This point was also made by his Lordship Mr. Justice Kangaloo in **Mario's Pizzeria Ltd v. Hardeo Ramjit CA 146 of 2003** when he said:

"the general rule is that general damages are such as the law will presume to be the direct natural or probable consequences of the action complained of while special

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**Kent Hector v. Indranie Bhagoutie & Reinsurance Company of Trinidad and Tobago Limited No. 1115 of 2000 at pg. 3.**

damages are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and therefore, they must be claimed specifically and proved strictly".

6.3.8 This principle has been set out in the **18th edition of the McGregor on Damages at paragraph 43-016** as follows:

"On a strict view, the claimant will be debarred from proving special damage not only where he fails to plead it at all but where he fails to plead it with sufficient particularity. Sufficient particularity normally requires that specific instances should be pleaded".

6.3.9 And it is a concept which finds its illustration from early as 1618 in the case of **Hunt v. Jones (1618) Cro.Jac. 499.** The facts of this case were that a widow who claimed to be of "good name and fame" and having been for a number of years a baker by trade, had intentions of marrying "an honest man". The defendant, who knew this, said to the plaintiff in the presence of others: "away, you pick-pocket, thou art a scurvy pocky whore". The plaintiff sued the defendant for slander. It was held that the claim for special damages for loss of suitors through slander failed because it was supported only by a general statement of this loss and no specifics of actual suitors were disclosed on the face of the pleadings. In the words of the court, "it is not shewn that she was in communication with any for marriage, and thereby had lost her marriage".

6.3.10 In more modern times, the principle still appears to be followed. So in **Charmaine Bernard (Legal representative of the Estate of Reagan Nicky Bernard) v. Ramesh Seebalack**

**[2010] UKPC 15 at page 7**[4] the Privy Council cited Lord Donovan at page 485I in **Perestrello v. United Paint Co. Ltd. [1969] 3 All ER 479** where he made the point that it is the plaintiff's

> "…undoubted obligation to plead and particularize any item of damage which represents out of pocket expenses or loss of earnings, incurred prior to the trial, and which is capable of substantially exact calculation. Such damage is commonly referred to as special damage…".

6.3.11 A corollary to this point is another pertinent notion which is that special damages must be specifically proved. This is developed below.

*(c) Special damages must be proved.*

6.3.12 According to the **18th edition of the McGregor on Damages at paragraph 44-013** it is stated that "evidence in proof of special damage must show the same particularity as is necessary for its pleading". This is a point which is illustrated in the case of **Riding v. Smith (1876) 1 Ex.D. 91.** The facts were that the defendant falsely stated that the claimant's wife, who assisted him in his business, had committed adultery with the parish incumbent. It was held that evidence of the general falling off of the claimant's business was sufficient proof of special damage.

6.3.13 The requirement that special damages be proved is a point which has been made in a number of authorities. Lord Macnaghten for example stated in **Stroms Bruks Bolag v. Hutchinson [1905] AC 515** that:

> "General damages… are such as the law will presume to be the direct natural or probable consequence of the action complained of. 'Special damages,' on the other

[4] **Shamshudeen Haitula v. Chris Mahabir & Capital Insurance Limited Claim No. CV2009-04776 at para. 39.**

hand, are such as the law will not infer from the nature of the act. They do not follow in ordinary course. They are exceptional in character and, therefore, they must be claimed specially and proved strictly".

Similarly, Lord Dunedin in **The Susquehanna [1926] AC 655 at 661** underscored the need to prove special damages when he said:

"If there be any special damage which is attributable to the wrongful act that special damage must be averred and proved, and, if proved, will be awarded".

And, in same vein, Lord Goddard CJ in **Bonhan Carter v. Hyde Park Hotel (1948) 64 TLR 178 at 179**[5] stated that:

"Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage, it is not enough to write down the particulars, and so to speak throw them at the head of the Court saying 'this is what I have lost, I ask you to give me damages'".

6.3.14 These sentiments have been echoed in local jurisprudence as well. This was the case in the matter of **Uris Grant v. Motilal Moonan Ltd. & Frank Rampersad CA No. 162 of 1985**[6] where

[5] Followed in **Ramdeo Dabideen v. BerylWorrell No. 1648 of 1979 at p. 3, Gladys Sankar v. Deopersad Seunarine & The Public Transport Service Corporation No. 798 of 1979 at pg. 7, Dave Ramlackhan v. Austin Mohammed & Caroni (1975) Limited No. 1447 of 1979 at pg. 24, Christopher Lucas v. Bisnath Boodram Civ. App. No. 10 of 1982 at pgs. 6 and 8, Sharif Mohammed v. Furness Trinidad Limited & Furness Ice and Cold Storage Limited CvA. No. 46 of 1993 at pg. 16, Kent Hector v. Indranie Bhagoutie & Reinsurance Company of Trinidad and Tobago Limited No. 1115 of 2000 at pg. 3, Anil Reds v. Nyan Rattan & Inshan Salim Claim No. CV 2007-00903 at para. 25, Nimrod Joseph v. Roy Edwards & Presidential Insurance Company Limited Claim No. CV 2008-00500 at para. 26** and **Shamshudeen Haitula v. Chris Mahabir & Capital Insurance Limited Claim No. CV2009-04776 at para. 25.**

[6] Followed in **Bernadette Williams & Kerry Williams v. Sylvester Joseph Lezama & National Union of Government and Federated Workers HCA No. 935 of 1979 at pg. 3, Dave Ramlackhan v. Austin Mohammed & Caroni (1975) Limited No. 1447 of 1979 at pg. 25, Ramsawak Maharaj & Heamdai Maharaj v. Abraham Nahoum HCA No. 3696 of 1983 at pg. 10, Mildred Alexander & Albert Alexander v. Ken Clarke & Maureen Eminess HCA No. 1734 of 1986 at pg. 4, Sonny Mungroo v. Trinidad and Tobago Electricity Commission HCA S1255 of 1988 at pg. 18, Kanta Persad v. Leekhandath Dube HCA No. Cv1271 of 1990 at pg. 7, Krishna Balkaran v. Ramyad Rampersad HCA No. S355 of 1990 at pg. 5, Ramnarace Ramdath v. David Sookhoo &**

a claim was made for special damages to cover the cost of replacing furniture and other household items which had been damaged or destroyed. The claim was supported by a list which was prepared by the plaintiff which particularized the items which had been damaged or destroyed and next to each item particularized was a figure which was described as a "price". The Court of Appeal held that this evidence on its own –which was not supported by evidence from a qualified valuer, was sufficient proof of special damages to allow an award to be made. In arriving at this decision, Bernard CJ emphasized the need not only for special damages to be pleaded and particularized but stated that it was imperative that same be proved. At page 11 of the judgment this is what he had to say on the matter:

> "I quite agree that special damage, if sought, must be pleaded and particularized –see Ilkiw v Samuel (1963) 2 All ER 870 –and that it must be "strictly" proved. In regard to the latter requirement the question which necessarily arises, in my view, is what is the degree of this "strictness" that is required? The nearest answer to this seems to be that which Bowen LJ gave in the leading case of Ratcliffe v Evans supra where at page 532-533 he said this:

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**Austin Sookhoo HCA No.Cv. S54 of 1991 at pg 5, Veshcham Harricharan v. Leonard Benjamin HCA No. Cv. 2275 of 1992 at pgs. 6-8, Sharif Mohammed v. Furness Trinidad Limited & Furness Ice and Cold Storage Limited CvA. No. 46 of 1993 at pg. 16, Celea Parillon-Ogiste v. Eleanor Smith No. 3735 of 1993 at pg. 5, Esther Cole Sammy v. Jaleel Fyzool & Mohanlal Nandlal HCA 2178 of 1993 at pg. 4, Andrew Lee Kit & Ryan Hosein v. Carol Charles HCA Cv. 3870 of 1995 at pg. 12, Everard Carter v. Rambaran Nandlal HCA No. Cv. 2363 of 1995 at pg. 9, Lalchand Ramoutar in his Personal capacity and the said Lalchand Ramoutar in his capacity as Administrator of the Estate of Phyllis Ramoutar, deceased v. Trinidad and Tobago Electricity Commission HCA No. S822 of 1996 at pgs. 25-26, Keron Christopher v. Clarance Rampersad & Merle Rampersad HCA No. SCv1063 of 1996 at pg. 13, David Sookoo & Auchin Sookoo v. Ramnarace Ramdath Cv. App. No. 43 of 1998 at pg. 3, Nimrod Joseph v. Roy Edwards & Presidential Insurance Company Limited Claim No. CV 2008-00500 at para. 26, Newton Elliot et al v. Roderick Joefield & Kurt Joefield Claim No. T90 of 1988 at para. 35, Lewis Jack v. Sookraj Seepaul HCA No. 212 of 2001 at pg. 8, Narine Charles v. Mohan Rampersad, Amalgamated Sanitation Company Limited & The Beacon Company Limited HCA No. 2128 of 2003 at pg. 11, Shirley Jones Rajkumar v. Merle Taurel John Claim CV 2005-00439 at pg. 9, Siewnarine Buchoon, Johnny Buchoon & Nicole Webber v. The AG of Trinidad and Tobago CV 2006-01846 at para. 19, Anil Reds v. Nyan Rattan & Inshan Salim Claim No. CV 2007-00903 at paras. 26 and 30 a**nd **Shamshudeen Haitula v. Chris Mahabir & Capital Insurance Limited Claim No. CV2009-04776 at para. 25.**

> In all actions accordingly on the case where the damage actually done is the gist of the action, the character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must ne insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be he vainest pedantry."

6.3.15 This point has been more recently emphasized by Archie CJ in the case of **Anand Rampersad v. Willies Ice Cream Ltd. CA No. 20 of 2002**[7]**.** At page 8 of that judgment, His Lordship made the point that:

> "The rule is that the Plaintiff must prove his loss."

Then, at page 10, he went on:

> "…in the absence of any admissible evidence as to value, there was no basis upon which the loss could be assessed.

[7] Followed in **Newton Elliot et al v. Roderick Joefield & Kurt Joefield Claim No. T90 of 1988 at para. 35, Esther Cole Sammy v. Jaleel Fyzool & Mohanlal Nandlal HCA 2178 of 1993 at pgs. 3-4, Kent Hector v. Indranie Bhagoutie & Reinsurance Company of Trinidad and Tobago Limited No. 1115 of 2000 at pg. 3, Siewnarine Buchoon, Johnny Buchoon & Nicole Webber v. The AG of Trinidad and Tobago CV 2006-01846 at para. 19** and **Anil Reds v. Nyan Rattan & Inshan Salim Claim No. CV 2007-00903 at para. 25.**

A lesser degree of strictness would apply to proof of the value of smaller items such as kettles, mops, brooms, mop pails, stainless steel trays and glasses that had to be replaced. In accordance with **Uris Grant** the Master, in the absence of any evidence to the contrary, would have been entitled to accept a reasonable figure. The Plaintiff/Respondent would have to persuade him by evidence led, that it was not simply plucked out of the air but based on an actual cost of replacement or what was actually paid for the item. A judicial officer assessing damages is not to assume the role of adjuster or estimator".

6.3.16 With these principles in mind I come now to consider the specific issue of whether an estimate of the cost of repairs would constitute sufficient proof of special damages.

*(c) Estimated cost of repair as proof of special damages*

6.3.17 The law is that an estimate of the cost of repair is prima facie, a correct measure of a plaintiff's loss. This principle can be seen from the case of **Darbishire v. Warran [1963] 1 WLR 1067.** The facts of this case were that the plaintiff was the owner of a Lea Francis 1951 shooting brake, which he kept in good repair. In July 1962, the car was damaged by the negligence of defendant. The market value of the car at that time was £85, and plaintiff received £80 compensation from his insurance company. Notwithstanding the fact that the plaintiff was advised that the repair of the car was uneconomical, he had it repaired at the cost of £192. The plaintiff did not attempt to find a similar car in the market although similar estate cars could be had for £85–£100. He claimed damages from defendant amounting to the difference between the repair costs and the compensation received from plaintiff's insurance company. It was held that the plaintiff

had not, as between himself and defendant, taken all reasonable steps to mitigate the damage from a practical business or economic point of view, as the car was not an irreplaceable article. What was instructive in this case however was the fact that Harman LJ stated at page 1071 that

> "…it has come to be settled that in general the measure of damage is the cost of repairing the damaged article".

6.3.18 A more extreme illustration of this principle can be found in cases where repairs were effected at no cost to the plaintiff and the court still awarded the special damages claimed in the form of the estimated cost to repair the damaged item notwithstanding that no actual "out of pocket expenses" were expended by the plaintiff. So in **The Endeavour (1890) 6 Asp Mar Law Cas 511** the SS Endeavour was damaged in a collision with another ship, which was found to be solely to blame. Repairs were carried out to the Endeavour, but its owners went bankrupt before paying for the repairs. Whilst the decision of the Hon. Sir James Hannen was directed to the entitlement of the shipwright to recover the unpaid fruits of his labour, it was said at page 512 that:

> "The Endeavour has been injured. Her owners are entitled to be paid the amount of such injuries. It has been ascertained that the amount is [£]464... That is the measure of the defendants' damages, and is the amount they are entitled to recover. If somebody out of kindness were to repair the injury and make no charge for it, the wrongdoer would not be entitled to refuse to pay as part of the damages the cost of repairs the to the owner". *(emphasis mine)*

6.3.19 The same point has been made in more recent English authorities. One is the case of **Jones v. Stroud District Council [1986] 1 WLR 1141**. This was a case which involved negligent

approval of building plans by a local planning authority. The owner of the property sued the local authority. Whilst there was evidence of the cost of repairs, there was no evidence of any payment or liability to pay the builders. At page 1150 Neil LJ had this to say:

> "The plaintiffs failed to provide any documents relating to the work carried out by Marlothian Ltd and there is no evidence that the plaintiffs had paid or are liable to pay any sum to Marlothian in respect of that work. It was submitted on behalf of the plaintiffs, however, that if the repairs were necessary and were carried out it was not to the point that the plaintiffs had not proved that they had paid for the repairs themselves…"

More pertinent is what his Lordship had to say at pages 1150-1151 which I consider to be particularly instructive. It is as follows:

> "It is true that as a general principle a plaintiff who seeks to recover damages must prove that he has suffered a loss, but <u>if property belonging to him has been damaged to an extent which is proved and the court is satisfied that the property has been or will be repaired I do not consider that the court is further concerned with the question whether the owner has had to pay for the repairs out of his own pocket or whether the funds have come from some other source</u>". *(emphasis mine)*

6.3.20 Then, in **<u>Burdis</u> v. <u>Livsey</u> [2003] QB 36** the English Court of Appeal gave detailed consideration to a claim for the cost of repairs to a motor vehicle. The facts of the case were that the plaintiff's motor vehicle was damaged in a collision. The repairer restored the vehicle to its pre-collision state. The plaintiff entered into a credit repair agreement with a financier which provided for payment to the repairer for the cost of the repairs. However, the credit agreement was

subsequently held to be unenforceable against the plaintiff as it failed to comply with the relevant consumer credit legislation. The Court of Appeal held that the recovery of damages was unaffected by the fact that the repairs were carried out at no cost to the plaintiff. Aldous LJ delivered the judgement of the Court and this is what he said on the matter at page 74:

> "Thus at the moment when the accident occurred Miss Burdis suffered a direct and immediate loss, the measure of which was the cost of the repairs which were in fact carried out (£2,981.19). But it was not a condition precedent to the recovery of compensation for that loss that the car be repaired: Miss Burdis's cause of action for the recovery of damages representing the diminution in the value of her car caused by Mr Livsey's negligence was complete when the accident occurred: see The Glenfinlas (Note)... and The London Corporation.... Similarly, a claimant's damages will not be affected by the fact that, in the event, the repairs are carried out at no cost to him: see The Endeavour... where the vessel was repaired but, due to the bankruptcy of the owner, the repairer was never paid". *(emphasis mine)*

6.3.21 The fact that it is not fatal to a claim for special damages that the estimated cost of repairs be tendered in evidence as opposed to actual proof of purchase of parts to replace the damaged ones in the form of receipts etc. was a view which was expressed by Master Carlton Best (as he then was) in the matter of **Robin Ramgulam v. Hardath Gokool HCA No. S.1584 of 1984 at page 5**[8]**.** This is what was said on the matter:

> "Further, I do not accept the submission of counsel for the defendant that because the plaintiff did not put in evidence bills or receipts for parts purchased, the plaintiff had not strictly proved his case… The Honourable Chief Justice in Uris Grant v.

[8] Followed in **Jessee Mahabir v. Kalipersad Singh, Mervyn Stoute & Nagib Hosein HCA No. 602 of 1987 at pg. 8.**

Motilal Moonan & Frank Rampersad Civil Appeal No. 162 of 1985 has indicated quite candidly that the proof of special damages is dependent upon the circumstances and I am of the view in the special circumstances of this case there was no need to produce bills or receipts for purchased parts…".

Similar sentiments were expressed in the matter of **Veshcham Harricharan v. Leonard Benjamin HCA No. Cv. 2275 of 1992 at page 8** where his Lordship Mr. Justice Mendonca made the point that:

"…the normal measure of damage is the cost of putting the vehicle in the same condition as it was before the collision. Prima facie this is the cost repairs".

6.3.22 Finally, it is worth citing the learning set out in the **18th edition of the McGregor on Damages at paragraph 32-007** where the following is said by the learned authors which I find to encapsulate the current state of the law on the issue. It is as follows:

"The fact that the repairs have not yet been executed before the hearing of the action or will never be executed at all does not prevent the normal recovery. Since damages may on general principle be given for prospective loss, it is immaterial that the repairs are not yet executed".

6.3.23 The cumulative effect of the aforementioned cases as well as those cited by counsel for the plaintiffs, appear to be this. The cost of making good, or repairing, is merely one way of putting a dollar figure on the specific damage that the plaintiff has suffered, for the purpose of carrying through the compensatory principle. There are circumstances, of which the present case is one, when money has not been spent on repairs that would need to be done to restore the car to its pre-

damage condition. There are other cases where for one reason or another, no money was spent on effecting repairs as they may have been done gratuitously by a third party for example. It is overwhelmingly plain however, that the fact that the plaintiff may not have, for one reason or another, incurred actual "out of pocket expenses" to effect repairs, is a natter which does not detract from the reality that specific damage was occasioned by the act of a defendant. Direct and immediate loss is what is compensable in an award of damages. In some cases it is represented by the cost of repairing the damaged vehicle. That loss crystallizes and becomes prima face recoverable when negligent driving causes an accident resulting in damage. For this reason it is irrelevant in law whether or not repairs have been executed by the date of the filing of the matter or at all. On this basis I accordingly find that an estimate of the cost of repairing is an appropriate tool to be relied upon in giving effect to the compensatory principle.

6.3.24 There is a pressing logic to the submissions of counsel for the plaintiffs. The submissions put forward by counsel for the defendants is based in an interpretation which turned out not to be sound in light of the number of authorities which covers the point advanced by counsel for the defendants. In my judgment, the estimated cost to repair the vehicle in this case is prima facie evidence of proof of special damages.

6.3.25 Further, having appraised myself of precisely what is meant by the terms "prima facie case" and "scintilla of evidence", and having directed my mind to the evidence led by the plaintiffs I find that at its lowest, an atom or a fragment of evidence has been led on every material ingredient of this cause of action which could warrant judgment for the plaintiffs if believed on a balance of probabilities. Put another way, this Court finds that a case supporting the claim for relief could be

found on the evidence before the court. The matters raised by Ms. Rampersad do not affect my finding in this regard.

## 7. ORDER

7.1 I am of the view that on an assessment of the evidence led the ultimate question of whether the plaintiffs have advanced a prima facie case or a scintilla of evidence of their claim is a question correctly answered in the affirmative.

7.2 In these circumstances the Court orders that:

1. The plaintiffs have established a prima facie case or a scintilla of evidence of their claim against the defendants.

2. The submission of no case to answer fails.

## 8. CONCLUSION

8.1 In concluding I wish to remind counsel of the guidance offered by MA de la Bastide CJ in **David Sookoo & Auchin Sookoo v. Ramnarace Ramdath Cv. App. No. 43 of 1998 at page 4**:

> "…one would expect that if receipts and bills or estimates are produced, then unless there is some good reason for the other side disputing the figures shown in these documents, they will be accepted and agreed. Failure to act reasonably in this regard should attract some sanction in costs. I would have thought that by now there would

be in running-down actions a well-established and well-known routine in relation to proof of special damage, which would reduce the time taken in trying these actions and obviate the need for the time of this Court to be taken up in hearing appeals of this sort". *(emphasis mine).*

**……**

**Her Worship Magistrate Nalini Singh**

**Petty Civil Court Judge**