

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
PORT OF SPAIN**

Claim No. CV2016-03360

BETWEEN

ANTHONY AMOROSO CENTENO

Claimant

AND

VICTOR JATTAN

1st Defendant

AND

K3G AUTO LIMITED

2nd Defendant

AND

ALPHA MARINE WEST INDIES LIMITED

3rd Defendant

Before: The Hon. Mr. Justice Christopher Sieuchand

Date of Delivery: January 14th 2025

Appearances: **For the Claimant-** Vashist Seepersad
For the Defendant- Simon de la Bastide instructed by Glen Bhagwansingh

DECISION

Introduction

1. The Claimant first commenced this claim by claim form and statement of case filed on October 5th 2016. Following several amendments, the Claimant, by his re-amended claim form and statement of case filed on March 7th 2019, sought the following relief against the Defendants:
 - a. A declaration that the Defendants are indebted to the Claimant in the sum of \$2,254,713.86 as at October 5th 2016 pursuant to an order of the Hon Mr. Justice Kokaram (as he then was) dated December 19th 2011 (“the 2011 Judgment”) made in that claim numbered CV 2010-01240 together with statutory interest thereupon at a rate of 12% to the date of satisfaction;

- b. An order that the Defendants do pay the sum of \$2,254,713.86 which represents the principal sum due and interest owing to the Claimant and to which the Claimant is entitled as at October 5th 2016;
 - c. A declaration that the sum of \$2,254,713.86 was due and owing to the Claimant from the Defendants in the circumstances that the Claimant had threatened and was about to take legal proceedings for the recovery of the judgment sum of money and interest and thereupon, in consideration that the Claimant would forbear from taking such proceedings for an agreed time, the Defendants and Ms. Gitanjali Gopeesingh promised to pay the Claimant the sum of \$1,589,910.60 by instalments ("the Forbearance Agreement");
 - d. An order that pursuant to the Forbearance Agreement, the Claimant is entitled to the principal sum of money and interest thereon due and owing by the Defendants herein, their servants and/or agents in the sum of \$2,254,713.86 as at October 5th 2016 and continuing in default at a rate of 12% to the date of payment;
 - e. Damages for breach of the Forbearance Agreement;
 - f. An order that the Notice of Full Satisfaction of February 1st 2013 be set aside;
 - g. An order that the removal of the Judgment registered as No. JS201200093966 be reinstated for its full meaning and effect;
 - h. \$2,254,713.86 together with interest until payment in full;
 - i. Damages for Fraud and/or Misrepresentation; and
 - j. Costs
2. I agree with the Defendants that the reliefs sought by the Claimant must be claimed in the alternative as the Claimant cannot at one and the same time claim enforcement of the 2011 Judgment on the one hand and the Forbearance Agreement on the other. This is because the alleged consideration for the Forbearance Agreement was the cancelling of the 2011 Judgment.
3. Though the pleadings of the parties are extensive and relate in large measure to facts and matters preceding the 2011 Judgment, it is in this Court's view clear that the gravamen of the Claimant's case in contract, fraud and misrepresentation arises from the allegations set out at paragraphs 4 to 10 of the Claimant's re-amended statement of case, *to wit*:
- a. On certain days in **February 2013**, the 1st Defendant and Ms. Gopeesingh approached Mr. Scoon and the parties agreed that in consideration of the Claimant refraining from enforcing and cancelling the Judgment, in order to allow 1st and 2nd Defendants to conclude a financial transaction that was extremely important to their financial well-

being, the Defendants admitted to and promised to pay the outstanding sum of money due and owing to the Claimant from the proceeds of the said financial transaction;

- b. The First Defendant and Ms. Gopeesingh told the Claimant and Mr. Scoon that the 1st Defendant was a shareholder and director of the 3rd Defendant and, in good faith, the 3rd Defendant would act as guarantor;
 - c. The 1st Defendant and Ms. Gopeesingh agreed with the Claimant and Mr. Scoon to repayments of the outstanding sums of money and that a promissory note **be** prepared outlining the agreed terms and conditions of payments;
 - d. In reliance upon the Defendants' undertaking, the Claimant filed a Memorandum of Satisfaction cancelling the 2011 Judgment;
 - e. In breach of the said promises, the Defendants failed and/or refused to pay the outstanding debt; and
 - f. The representations set out at (a), (b) and (c) above were untrue and knowingly and fraudulently made in order to induce the cancelling of the 2011 Judgment
4. It is this pleaded case which the Claimant bears the burden of proving. For the reasons which follow, I am not satisfied that the Claimant has proven this case on a balance of probabilities:
- a. The meetings alleged to have taken place between the 1st Defendant, Ms. Gopeesingh, Mr. Scoon and the Claimant could not have taken place in February 2013 as pleaded because the Notice of Satisfaction was filed on February 1st 2013;
 - b. The 2011 Judgment was entered against the Defendants, including Alpha Marine and, as such, there was no material advantage to the Claimant for Alpha Marine to be a guarantor of the anticipated promissory note;
 - c. Ms. Gopeesingh's contemporaneous letter of February 1st 2013 refers to the 1st Defendant engaging in discussions with the Claimant, and there is no other contemporaneous document which supports the allegation that Ms. Gopeesingh was part of any meeting with the Claimant, the 1st Defendant and Mr. Scoon;
 - d. It was in my view improbable that the Claimant, who appeared adamant that, at the time of the filing of the Notice of Full Satisfaction that the 1st Defendant was dishonest and indeed a "dartful dodger", and who had been disappointed by the 1st Defendant's prior non-compliance with terms of earlier promissory notes, would instruct his Attorney-at-Law to effectively cancel a registered judgment which was itself premised on the 1st Defendant's breach of a promissory note, and agree to replace same with an **oral agreement** for the 1st Defendant to enter into promissory note;
 - e. In any event, I consider it unlikely that, if the Forbearance Agreement was only made orally at a meeting with a man whom the Claimant did not trust, Mr. Scoon would have

taken so significant a step as cancelling the 2011 Judgment without some contemporaneous record having been made of that Agreement;

- f.** Despite the assertions that the promissory note was drawn up shortly after the alleged meeting and there were several iterations of same (as stated by Mr. Scoon under cross-examination and as referenced in the Claimant's letter to Mr. Scoon dated November 26th 2013), the only version of the promissory note before the Court is one dated October 2013, some eight months after the alleged meeting, which was in fact pleaded (and confirmed by Mr. Scoon under cross-examination) to have been the promissory note drawn up by Mr. Scoon;
- g.** The Claimant's November 26th 2013 letter to Mr. Scoon refers to a far more contemporaneous April 6th 2013 memorandum which was not disclosed before this Court;
- h.** The Claimant's statement of instructions to Mr. Scoon dated October 28th 2016, more than three years after the date of the cancellation of the 2011 Judgment, alleged that the Claimant was "informed" of certain representations made to Mr. Scoon by Ms. Gopeesingh during meetings between them and the 1st Defendant. This is contrary to the assertion of Mr. Scoon that the Claimant participated in those said meetings by telephone;
- i.** In his letter dated October 7th 2013, Mr. Scoon refers to the 1st Defendant having previously given the Claimant his undertaking to repay the registered judgment sum, but the Claimant, under cross-examination, maintained that he did not previously speak to the 1st Defendant in relation to this issue;
- j.** No mention is made in the October 7th 2013 letter from Mr. Scoon as to any promise or undertaking made to him by Ms. Gopeesingh, despite the clear assertions of such undertakings having been given by Ms. Gopeesingh referred to in the July 8th 2016 pre-action letter;
- k.** The Claimant's November 26th 2013 letter to Mr. Scoon only refers to the "word" of the 1st Defendant and not to any promise given or made by Ms. Gopeesingh, and in fact refers to contact being made with Ms. Gopeesingh consequent upon the 1st Defendant's refusal to sign the promissory note;
- l.** The July 8th 2016 pre-action letter makes no mention of any promise having been made by Ms. Gopeesingh or the 1st Defendant to enter into a promissory note;
- m.** Having regard to the circumstances set out at sub-paragraphs (ii) to (v) above, I am unable to accept the Claimant's invitation to draw a negative inference against Ms. Gopeesingh arising from her alleged failure to respond substantively to the Claimant's correspondences;

- n. The Claimant's evidence given under cross-examination that Mr. Scoon was not to cancel the 2011 Judgment until the promissory note was signed, which mirrors the assertion made by him in his January 22nd 2014 letter to Mr. Scoon, is inconsistent with:
 - i. His pleaded case set out at paragraph 4 of the RASOC that Ms. Gopeesingh agreed with the Claimant and Mr. Scoon to repayments of the outstanding sums of money and that a promissory note be prepared outlining the agreed terms and conditions of payments;
 - ii. his evidence in chief contained at paragraph 22 of his witness statement to the effect that Mr. Scoon was to file the notice of full satisfaction and "in the interim" draw up a promissory note; and
 - iii. The Claimant's October 28th 2016 statement of instructions to Mr. Scoon suggests that based on the 1st Defendant's undertaking to sign the promissory note, the Claimant gave Mr. Scoon instructions to file the Notice of Satisfaction.
- 5. Throughout his evidence, the Claimant was quick-tempered and short in his responses. This in and of itself did not reflect overly poorly on my assessment of the Claimant's veracity as I considered his temperament to be largely a symptom of his age, ill-health and personality.
- 6. Applying the principles to be derived from Lord Ackner's judgment in *Horace Reid v. Dowling Charles and Percival Bain* Privy Council Appeal 36 of 1987 at page 6, the decision of our Court of Appeal delivered by Bereaux JA in *The Attorney General v. Anino Garcia* Civ. App. 86 of 2011 and taking all relevant considerations into account, however, including specific instances where the Claimant was inconsistent in his responses on several incidental matters, such as his quality of health (which despite clear evidence to the contrary in his pleadings, the contemporaneous documents filed in this case and under cross-examination, he insisted was good) and having regard to the facts and matters set out above, I could not conclude that the Claimant discharged the burden of proof upon him.
- 7. In my view, the Claimant appeared uncertain at best as to what he alleged to have been agreed by the 1st Defendant in consideration of the cancellation of the 2011 Judgment. In fact, when it was put to him under cross-examination that the First Defendant never agreed, either in 2013 or at all, to sign a promissory note to pay him the sum which he was entitled to be paid under the default judgment, the Claimant said in response "I have to say, I don't know."
- 8. This uncertainty is also echoed in the fact that the Claimant does not plead what terms and conditions were agreed at the alleged meeting between the Claimant, the 1st Defendant, Mr. Scoon and Ms. Gopeesingh. The Claimant only pleads at para. 4 of the RASOC that the Claimant agreed to repay the "outstanding sums of money" and that a promissory note be prepared outlining the agreed terms and conditions of payments. I also note that the Claimant's pleading at paragraph 4 of the RASOC appears inconsistent with the third relief sought by the Claimant for a declaration that, among other things, the Claimant's consideration for the agreement was forbearance from taking enforcement proceedings "for an agreed time," to which no reference has been made in the Claimant's evidence.

9. The promissory notes upon which the Claimant purports to rely in this matter sets out a schedule of payments and there is no evidence that this was agreed to between the parties. Indeed, it appears that the schedule evident in that promissory note could not have been agreed between the parties at the alleged meetings between the Claimant, 1st Defendant, Mr. Scoon and Ms. Gopeesingh because the Claimant asserts that, pursuant to the agreement, the 1st Defendant made payments between April and July of 2013, when the promissory note refers to a payment schedule commencing in November 2013.
10. Furthermore, contrary to the representation that the promissory note was to be reflective of the 1st Defendant's alleged agreement to repay all outstanding sums of money to the Claimant, the promissory note only refers to the principal sum of \$1,512,759.39, despite the registered judgment being in the sum of \$1,589,910.60 and the Claimant's evidence in chief (at para. 21 of his witness statement) being clear that this is the sum the 1st Defendant agreed to pay, a difference of approximately \$77,151.21. There is no explanation for this difference. Even if this draft of the promissory note was updated to reflect the position at October 2013, when payments of \$54,600.00 were alleged to have been made by the 1st Defendant to the Claimant, this still leaves a sum of \$22,551.21 unaccounted for.
11. As for the 1st Defendant's evidence, I have found little basis upon which I can conclude that his evidence is false. His evidence remained largely unchallenged or undermined during cross-examination and, for the reasons set out above, I considered that there was no sufficient basis upon which I could criticize Ms. Gopeesingh's evidence, notwithstanding the lack of clarity or detail in some responses relating to the specific circumstances surrounding the effecting and delivery of the Notice of Full Satisfaction.
12. While the fact that payments might have been made to the Claimant by the 1st Defendant post the filing of the Notice of Full Satisfaction could have operated to undermine the 1st Defendant's case that the judgment had been fully satisfied without conditions, In the absence of the Claimant making any effort to specifically prove the fact of those payments, notwithstanding the disclosure of a receipt issued to the 1st Defendant in the sum of \$400.00 in December 2013 for "monies owed", I am unable to conclude on a balance of probabilities that such payments were made pursuant to an agreement between the parties. Even if I were to accept that they were, such payments would have been inconsistent with the terms which the Claimant asserts were agreed as reflected in the promissory note which called for monthly principal payments of \$50,000.00 per month as well as monthly interest payments which were yet to be calculated.
13. In the circumstances, particularly where there is clear evidence before this Court that the Claimant gave instructions to his Attorney to file the Notice of Full Satisfaction, I do not consider it just and/or reasonable to set aside same, particularly in circumstances where there is evidence before me that a 3rd party has relied on same. I am also unable to accept that the Claimant has discharged the burden which rests upon him to prove the existence of the collateral agreement which he asserts was the *raison d'être* for the Notice of Full Satisfaction/Discontinuance.

14. In these circumstances, I dismiss the Claimant's claim and direct the Claimant to bear the Defendants' costs quantified on the prescribed scale in the sum of \$165,367.85.
15. The 1st Defendant counterclaimed against the Claimant for certain reliefs but has elected not to pursue same on the advice of Counsel. In those circumstances, I dismiss the counterclaim and order the 1st Defendant to bear the Claimant's costs thereof quantified on the prescribed scale since I am of the view that the counterclaim was unsustainable.

Orders

16. In all of the circumstances of this case, I order as follows:
- a. The Claimant's claim be and is hereby dismissed;
 - b. The Claimant shall bear the Defendants' costs of the claim quantified on the prescribed scale in the sum of \$165,367.85;
 - c. The 1st Defendant's counterclaim be and is hereby dismissed;
 - d. The 1st Defendant shall bear the Claimant's costs of the counterclaim quantified on the prescribed scale in the sum of \$57,500.00;
 - e. There shall be a stay of execution of 42 days from the date of this decision.

**Christopher Sieuchand
Judge**