THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Sub-Registry San Fernando

Claim No. CV2020-01627

BETWEEN

MUNESH RAMROOP

The Claimant

AND

JERRY HOLDER

The Defendant

Before the Honourable Mr Justice Robin N Mohammed

Date of Delivery: Monday 14th October 2024

Appearances:

Mr. Mustapha Khan instructed by Ms. Kristin Khan for the Claimant

Ms. Kristal Mohan for the Defendant

JUDGMENT

I. INTRODUCTION

[1] This case involves the sale of an excavator. A signed written agreement was entered into between the Claimant and Defendant. The Defendant agreed to purchase the excavator from the Claimant at the purchase price of $160,000.00. He also agreed to pay off for the excavator in 11 instalments at $15,000.00. On 9th February 2019, the Defendant paid $5,000.00. Thereafter, no further payments were made by the Defendant. As a result, the Claimant, on the 30th June 2020, instituted proceedings against the Defendant by Claim Form and Statement of Case, claiming the following:

1. The sum of $155,000.00 being the sum due and owing to the Claimant from the Defendant being the balance of the purchase price for one (1) Komatsu PC 200 Excavator.
2. Alternatively, damages for detinue and/or conversion in the sum of $155,000.00.
3. Exemplary and Aggravated Damages.
4. Costs.
5. Interest pursuant to the Supreme Court of Judicature (Amendment) Act 2000.
6. And such further relief as the court deems fit.

[2] On 8th October 2020, the Defendant filed his Defence and Counterclaim. He is seeking the following:

1. An order that the Claimant pay the Defendant $25,000.00.
2. Costs.
3. Interest.
4. Such further or other relief as the court deems fit.

[3] On 17th November, 2020, the Claimant filed his Defence to the Counterclaim.

[4] During the case management process several attempts were made at settlement without success. Consequently, directions were given for trial.

[5] Witness statements were filed and exchanged. Evidential objections filed by the Claimant were determined at the pre-trial review.

[6] The matter proceeded to trial after which written submissions were submitted by the Claimant. As at the date of this Judgment the Defendant has not complied with the direction for the filing of written closing submissions. The Court now gives its Judgment as detailed below.

II. THE CLAIMANT'S CASE

[7] Around 5th January, 2019, the Defendant and the Claimant entered into an agreement for the purchase and sale of an excavator. The Claimant asserts that on that day the Defendant had several persons with him, one of whom was a mechanic. After the mechanic's inspection, the excavator was moved to the Defendant's work site at Pine Road, Vega de Oropouche. The Claimant avers that the excavator was in good working condition and that it was sold 'as is'. He opines that the Defendant was aware that the excavator was used but also of merchantable quality.

[8] On 9th February 2019, the Claimant entered into a written agreement with the Defendant for the purchase of the machinery at the price of $160,000.00. The agreement stipulated that the Defendant would be given the equipment without a down payment. It was mutually agreed that the Defendant would pay to the Claimant an instalment of $15,000.00, which was to be paid in 11 instalments. The instalments were to be paid every Saturday.

[9] The Defendant made his first payment on 9th February 2019 in the sum of $5,000.00. The Claimant submits that since then no further payments have been

made by the Defendant and $155,000.00 is due and owing. On 11th February 2019, the Claimant contacted the Defendant about the remaining $10,000.00 to make up the first instalment and was told by the Defendant that the excavator's engine was damaged.

[10] The Claimant offered to fix the engine at a cost, which the Defendant refused. The Defendant instead argued that the Claimant should fix the excavator for free. It is the Claimant's view that when he sold the excavator it was in good working condition and the excavator became damaged after being in the Defendant's care. According to the Claimant, around the period September to November, 2019, he attempted to locate the excavator but was unable to do so. The Claimant attempted to meet with the Defendant on several occasions which proved futile.

[11] The Claimant wrote to the Defendant by letter dated 17th February, 2020, informing him that he was to liquidate the outstanding balance. However, the Defendant has not responded to the letter to date.

III. THE DEFENDANT'S CASE

[12] The Defendant avers that the excavator was at Pine Road, Vega de Oropouche and was secured by his security personnel. On or about 11th February 2019, the Defendant attempted to start the excavator in the presence of others. In doing so, a loud explosion was heard and it was recognised that the water ports were blown. The Defendant tried restarting the excavator several times but the same thing kept happening.

[13] He contacted the Claimant, who visited the site. While there, the Claimant informed the Defendant that he knew that the engine was defective and that he had another engine for sale. According to the Defendant, the Claimant was

willing to sell it to him at a cost of $10,000.00. The Defendant, refused, telling the Claimant that he wilfully sold him a defective engine. The Defendant argues that the Claimant told him that he would take back the excavator as he was unwilling to repair the defective engine.

[14] From that day onwards, the Defendant insists that he and the Claimant were in regular communication concerning the repair of the excavator or reimbursement of his payment. He asserts that he did not hear from the Claimant again until around February 2020 when he received a letter from the Claimant's attorney. The letter stated that he owed the Claimant an outstanding balance of $155,000.00.

[15] The Defendant reiterates that he told the Claimant that he was no longer interested in the transaction if the Claimant was not repairing the defective engine. Additionally, the Claimant told him that he would repossess the excavator if the Defendant did not make any further payments or purchase the new engine. The Defendant insists that he never scrapped or sold the excavator. He opines that the Claimant knows that the excavator is at Pine Road.

[16] It is the view of the Defendant that he does not owe the Claimant any money. In fact, he claims that the Claimant owes him $5,000.00, which represents the payment made towards the purchase of the excavator. He also claims that the Claimant owes him for the losses that he would have suffered in securing the excavator and also for being unable to carry out any work due to the non-functioning excavator.

IV. LAW AND ANALYSIS

[17] Based on the pleadings, evidence at trial and the submissions by Counsel for the Claimant, the issues to be determined are as follows:

1. **Whether there had been a breach of contract on the part of the Claimant and therefore the Defendant is entitled to damages?**

2. **Alternatively, whether there had been a breach of contract on the part of the Defendant and therefore the Claimant is entitled to damages?**

3. **Whether the Claimant is entitled to damages for breach of contract or, in the alternative, to detinue and or conversion in the sum of $155,000.00?**

1. Whether there had been a breach of contract on the part of the Claimant and therefore the Defendant is entitled to damages?

[18] To prove that there had been a breach of contract, it must be established that there is a contract in place between the parties. It is settled law that for a contract to be legally enforceable, there must have been an offer, acceptance, intention to create legal relations, and consideration. The parties agree that they would have signed an agreement dated 9th February, 2019 which they have both submitted. There is a contention as to the actual date that the Defendant would have received the excavator. Nevertheless, it is without a shadow of a doubt that it is clear that the Defendant did receive the excavator. Upon receiving the excavator, the Defendant made a payment of $5,000.00 on 9th February, 2019 when the agreement was signed.

[19] The agreement stipulated the following:

1. Machinery given to Mr. Jerry Holder without any down payment to Munesh Ramroop.
2. Mr. Jerry Holder must make payment of installment of equipment of TT$15000.00.
3. Monies for equipment must be paid in 11 installments.
4. Monies for equipment must be paid on every Saturday.

Both parties presented copies of the receipt which showed the payment of $5,000.00. The Defendant argues that he did complain to the Claimant that the excavator had broken down in that the engine was not working on or around 11th February, 2019. The Claimant avers that the Defendant knew that the excavator was used and was being sold 'as is' at the time of purchase and was of merchantable quality.

[20] As the authors of Practical Law put it, 'as is' means that the goods are being sold: in its current condition, with any existing faults, and without representations or warranties from the seller. "In an 'as-is' transaction, the buyer is typically given the right to inspect the property during a due diligence period before deciding whether to purchase it." In this case, the Defendant would have been given an opportunity to inspect the excavator before purchase. In fact, it is undisputed that he had several persons with him on the day the excavator was inspected, one of whom was a mechanic. After the mechanic's inspection, the excavator was moved to the Defendant's work site at Pine Road, Vega de Oropouche. The inescapable inference was that the Defendant would only move the equipment to his work site if he was satisfied, after the inspection, that it was in good working condition and of merchantable quality.

[21] **Section 16 of the Sale of Goods Act, Chapter 82:30** provides that:

16. (1) Except as provided by this section and section 17 and subject to any other written law, there is no implied condition or warranty about the quality or fitness for any particular purpose of goods supplied under a contract of sale.

(2) Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality, except that there is no such condition—

(a) as regards defects specifically drawn to the buyer's attention before the contract is made; or

(b) if the buyer examines the goods before the contract is made, as regards defects which that examination ought to reveal.

(3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known—

(a) to the seller, or

(b) where the purchase price or part of it is payable by instalments and the goods were previously sold by a credit broker to the seller, to that credit broker,

any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit (and where appropriate reasonably durable) for that purpose whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit broker.

(4) An implied condition or warranty about quality or fitness for a particular purpose may be annexed to a contract of sale by usage.

(5) Subsections (1) to (4) apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the

course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made.

(6) Goods of any kind are of merchantable quality within the meaning of subsection (2) if they are fit for the purpose or purposes for which goods of that kind are commonly bought (and where appropriate as durable) as it is reasonable to expect having regard to any description applied to them, the price if relevant, and all the other relevant circumstances.

[22] Legislation provides that goods that are of merchantable quality must be devoid of latent defects (a) which would render the goods unfit for use and (b) in respect of which the buyer would demand either a reduction in price or special terms.[1] In **Australian Knitting Mills v Grant[2],** Lord Reid developed the following definition at the Privy Council hearing:

> *'Merchantable' does not mean that the thing is saleable in the market simply because it looks all right; it is not merchantable . . . if it has defects unfitting it for its only proper use but not apparent on ordinary examination.'*

The case of **Debarros v Quality Auto Sales Ltd[3]** highlighted that the issue of merchantable quality depended upon the facts of each case. It goes on to show that the expectations of the purchaser must be taken into account when considering merchantability. The Defendant in this case would have expected to have a proper working excavator in order that he might do the work which he was contracted to do.

[23] The court is of the view that at the time of purchase the excavator was of merchantable quality. To all appearances, it would have fulfilled the purpose for

[1] Commonwealth Caribbean Contract Law
[2] (1930), 50 CLR 387, at 418
[3] (1990) Supreme Court, The Bahamas, No 1227 of 1983, unreported [Carilaw BS 1990 SC 18]

which the Defendant wanted it. Even after inspection, it appeared to be of merchantable quality. Any defect manifested itself when the Defendant was using it for a while. There is no direct evidence as to how it was being used. Upon saying this, an important point should be made, that is -

> *"The legislation makes clear that where the buyer has examined the goods, there will be no implied condition in relation to defects which the buyer's examination ought to have revealed. This provision reflects the caveat emptor (buyer beware) rule".*[4]

The Claimant alleges in his witness statement and in evidence that a mechanic was present on 5th January, 2019 along with another man and the Defendant to inspect the excavator. In evidence, he stated that the Defendant and the man who he believed was the mechanic tested the excavator by driving it around. He denied that the Defendant took possession of the excavator on 5th February, 2019. He also denied ever telling the Defendant that he would re-possess the excavator, in fact, in evidence he stated that attempts were made to contact the Defendant for him to make further payments which were unsuccessful.

[24] The Defendant in evidence stated that the excavator was started by the operator. He admitted that the excavator was checked out by the operator by starting it, lifting the boom etc. This would have been on the 5th January 2019. The Defendant stated that the water ports blew on 11th February, 2019. This is more than a month after the inspection and use by the Defendant.

[25] In its final analysis, the court is of the view that the Claimant had not breached the contract with regards to the implied condition of merchantable quality.

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[4] Sale of Goods Act, Ch 82:30

2. Alternatively, whether there had been a breach of contract on the part of the Defendant and therefore the Claimant was entitled to damages?

[26] **Sections 35 and 36 of the Sale of Goods Act Chap. 82.30 state**:

> *35. (1) Where the goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.*
>
> *(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.*
>
> *36. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or except where section 35 otherwise provides, when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.*

[27] From the evidence presented, it is clear that the Claimant and the Defendant had reached an agreement before the written agreement was drawn up. This is so when looking at the agreement presented. Though dated 5th February, 2019, it also has the date 5th January, 2019. The date 5th January, 2019, according to the Claimant, reflected when the agreement was made and when the Defendant took possession of the excavator. The date 9th February, 2019, reflected when he

made a payment towards the purchase price. Certainly, the two dates have created some confusion as the Defendant asserted that he received the excavator on the 9th February, 2019.

[28] If the court accepts that the Defendant received the excavator on 5th January, 2019, then it would mean that the Defendant would have had more time to examine the excavator and to reject the excavator. If the court accepts the Defendant's version of events surrounding possession then it would mean that the Defendant had a shorter time period to reject the excavator.

[29] The agreement also did not give a description of the vehicle. Albeit the Claimant stated in evidence that it was a Hitachi brand, when in fact it was a Komatsu PC 200. He stated also that the machine was used and that it was ten years old. The agreement did not state that it was used nor that it was examined by the Defendant. It also did not state that the machine was being sold 'as is' as the Claimant stated.

[30] In evidence the Defendant stated that he did not respond to the pre-action protocol letter nor did he write to the Claimant stating that the Claimant owed him money. He also stated that he knew that the excavator was used. The fact that it was used meant that the Defendant could not reasonably expect the excavator to operate like a new one. From the evidence coming out at the trial, it was clear that the Defendant had a chance to examine the excavator, even if he were to disagree as to the date when the excavator came into his possession.

[31] Additionally, the Defendant kept the excavator, securing it with security until the end of February, 2019. In this Court's estimation, the Defendant would have acted in a way that showed that he accepted the excavator. The Defendant averred that when the Claimant visited the site where the excavator was located,

the Claimant told him that he would repossess it. The Defendant also submitted that he does not know what happened with the excavator after February 2019. It is the Defendant's evidence that the Claimant would have made arrangements with a man called Garvin to have the excavator removed from Pine Road, Vega de Oropouche.

[32] The Defendant went on to say that he informed the Claimant's brother that he would remove the security. It was then that another engine was offered to him. He told the Claimant's brother that he could not afford the engine and he was told by the Claimant that he would repossess it. The Defendant argues that he rejected the excavator at this point and that he removed his security and that the Claimant could organise to repossess the excavator. However, this was not in his witness statement. This has led to the Court drawing an adverse inference that what he was saying was not true.

[33] On 11th February, 2019, after receiving the excavator, the Defendant submitted that the water ports blew and the engine of the excavator began giving trouble. The Defendant contends that he spoke to the Claimant from February to March 2019 concerning the repair of the excavator and the reimbursement of his payment if the Claimant could not do any repairs.

[34] The Defendant insisted that the Claimant was aware that he was no longer interested in the excavator. Up to the date of the trial neither the Claimant nor the Defendant was aware of the location of the excavator. As time elapsed, the Defendant, though he claimed that he was no longer interested, made no attempts to return the excavator. He was therefore responsible for its safe keeping since he collected the excavator and even paid one instalment.

[35] As a result, the Defendant breached the contract not having continued making the payments. To reiterate, he neither placed in writing that he was no longer

interested in the purchase of the excavator. He never made any attempts to return the equipment. No attempts were made to continue further discussions beyond March 2019. According to the Defendant, communications had broken down. When he received the pre-action protocol letter in 2020, no attempts were made by him to respond to the claims of the Claimant.

3. Whether the Claimant is entitled to damages for breach of contract or in the alternative to detinue and or conversion in the sum of $155,000.00?

[36] Having established that a contract existed between the parties and a subsequent breach occurred, the issue to be determined is whether the Claimant should be awarded the outstanding debt or be provided with damages for the civil wrong related to wrongful possession of property (detinue and conversion).

[37] **Section 49 (1) of the Sale of Goods Act** provides that –

> ***"Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods."***

In the case at bar, the Defendant has failed to pay for the goods after the initial $5,000.00 down payment. As such the Claimant has a remedy against the Defendant for the outstanding purchase price.

[38] In **Rattansingh v The Attorney General of Trinidad and Tobago and Doopan**[5] (which the Privy Council later approved), Warner JA stated at **pages 7-8**:

> "***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."*

[39] In in **Gerard Mootoo v The Attorney General**[6] Stollmeyer J (as he then was) stated the distinction between Detinue and Conversion 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 too remote. Where conversion*

[5] Civ. App. No. 105 of 2000
[6] H.C.A. Cv. 431 OF 1997

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.

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."

[40] John G. Flemming, in **The Law of Torts 8th edition**, at page 58 (cited in **Onika Modeste v AGTT CV2016-0951** at para 11), stated:

"Merely being in possession of another's goods without his authority is not a tort. If lawfully acquired, detention alone does not become a wrong in the absence of some manifestation of intent to keep them adversely or in defiance of his rights. (See: Spackman v Foster (1883) 11 QBD 99)... To establish that the detention has become adverse and in defiance of his rights, the claimant must prove that he demanded return of the chattel and that the defendant refused to comply...but such refusal must be categorical; if qualified for a reasonable and legitimate purpose,

without expressing or implying an assertion of dominion inconsistent with the plaintiff's rights, it amounts to neither detinue nor conversion. One does not always act unreasonably in refusing to deliver up property immediately on demand but may inquire first into the rights of the claimant. Moreover, a mere omission to reply to a letter of demand cannot itself be construed as a refusal (see: Nelson v Nelson [1923] QSR 37...."

[41] Regarding conversion, the authors of **Winfield and Jolowicz on Tort 20th Edition** at 18-011 to 18-022 state:

18-011 *"Conversion at common law may be committed in so many different ways that any comprehensive definition is probably impossible but the wrong is committed by dealing with the goods of a person which deprives him of the use or possession of them (though to "deprive" the owner does not necessarily require that the defendant should himself take the goods from him). Thus it may be committed by wrongfully taking possession of goods, by wrongfully disposing of them, by wrongfully misusing them, by wrongfully destroying them or simply by wrongfully refusing to give them up when demanded. At common law there must be some deliberate act depriving the claimant of his rights: if this element was lacking there was no conversion."*

18-021 [Destruction or alteration]
"The destruction of goods amounts to conversion and so does the alteration of their nature. If I make an omelette out of your eggs or a statue out of your block of marble, that is conversion."

18-022 [Demand and Refusal]

> *"..Where there is a demand, there is no conversion if the refusal is conditional and the condition is reasonable. An example would be a refusal to give up a banknote you found in the street to the first stranger who alleges it to be his, on the ground that either he must authenticate his claim or you must make further inquiries. [Alexander v Southey (1821) 5 B. & Ald. 247; 106 E.R. 1183; Clayton v Le Roy [1911] 2 K.B. 1031.]... However, the defendant cannot justify a refusal on the ground that compliance with the demand may have unpleasant consequences for him."*

The Claimant must prove that the excavator was kept to hold adversely or in defiance of the claims of the Claimant.

[42] From the evidence submitted, around the period September to November 2019, the Claimant attempted to locate the excavator but was unable to do so. The Defendant stated that he kept the excavator securing it with security until February 2019. He stated that the Claimant told him that he would repossess the excavator if the Defendant did not make any further payments or purchase the new engine. The Defendant insisted that he never scrapped or sold the excavator. He was of the view that the Claimant knew that the excavator was at Pine Road.

[43] From the cross-examination, the Claimant stated that the excavator was not where the Defendant said it was. He said that he never repossessed the excavator. He said that he kept asking the Defendant to make payments. In paragraph 7 of his witness statement, he stated that there was no conversation between him and the Defendant about the return of the excavator.

[44] As such, the Court finds that the Claimant has not proven that the Defendant held the excavator adversely of in defiance of his claims. He has not shown that

he wrongfully took possession of the excavator, wrongfully disposed of it, nor wrongfully destroyed or refused to give it up when demanded. The Claimant has not shown that he demanded the excavator. As mentioned before, he stated that he never had a conversation about repossessing the excavator and so there was no demand on the part. As there was no deliberate act depriving the Claimant of his rights, there can be no conversion or detinue.

Exemplary and Aggravated Damages

[45] Exemplary damages, otherwise known as punitive damages are awarded to punish the Defendant for the manner in which he treated the Claimant. "The purpose of awarding damages is to compensate the innocent party not to punish the party in breach."[7] However, in **Khaimraj Seepersad v Seenath Deonarine and another[8],** referred to **Aron Torres v Point Lisas Industrial Port Development Limited** in which the Court of Appeal considered whether exemplary damages could be awarded in breach of contract cases.

[46] At paragraph 48, Mendonça, J.A stated:

> *"In tort, cases do arise where compensatory damages are inadequate to achieve a just result between the parties. The defendant's conduct demands a further response from the courts in the form of exemplary damages. So too in contract, cases can arise from time to time where by reason of the defendant's outrageous conduct the normal measure of damages may be perceived to be an inadequate response to achieve justice between the parties. In such cases the courts should be in a position to grant an award of exemplary damages."*

[7] Lexis Nexis
[8] CV2020-01017

Warner, J.A. had this to say:

> *"I think that the proper approach would be to focus on the conduct of the defendant as a whole: Do the facts disclose reprehensible conduct tending to take advantage of every chance of success to the plaintiff's disadvantage? Was it outrageous, highhanded and egregious? Was the misconduct planned and deliberate? Did the defendant try to conceal the misconduct? If the breach was committed in such a manner in disregard of the plaintiff's rights, then an award of exemplary damages would be appropriate."*
>
> It is the view of this Court that exemplary damages should not be awarded in this case as the actions of the Defendant were not high-handed, outrageous, or egregious.

[47] With regards to aggravated damages, Seepersad J in **Thema Williams v Trinidad and Tobago Gymnastics Federation and others**[9] had this to say:

> *"…the position is that damages for mental distress and aggravation which is a result of a breach of contract are not recoverable unless the object of the contract was for the purposes of pleasure, peace of mind and relaxation. The exceptions to this rule are indeed deliberately narrow to protect the commercial intention of contracts as a policy consideration…"*

It is settled law that aggravated damages are not awarded for breach of contract. Additionally, the case at bar, is not an exception to this rule.

[9] CV2016-02608

Interest

[48] The Claimant has claimed interest pursuant to the provisions of the Supreme Court of Judicature Act. This Court is of the opinion that the Claimant is entitled to interest on the damages awarded and proposes to award interest at the rate of 2.5% per annum on the outstanding debt from the date of the filing of the Claim (i.e. 30th September 2020) to the date of this judgment. This in the Court's view is appropriate and reasonable and in keeping with the decision of the Court of Appeal in **The Attorney General of Trinidad and Tobago v Fitzroy Brown et al No. CA 251 of 2012.** Pre-judgment interest will therefore be computed as follows: $155,000.00 x 2.5% per annum x 4 years and 6months = **$155,000.00 x 2.5% x 1554 ÷ 365 = $$16,497.95.**

Costs: Entitlement and Quantification

[49] The general rule is that costs follow the event **CPR Rule 66.6(1)**. The unsuccessful party must therefore pay recoverable costs to the successful party except in exceptional circumstances: **CPR Rule 66.6(2), (4), (5) and (6)**. I can find no justification for departing from the general rule.

[50] This claim was determined after a full trial, therefore, costs are to be quantified on the prescribed scale of costs pursuant to **CPR Rule 67.5(1)**. The **"value"** of the claim must first be determined. Since the successful party is the Claimant, to quantify the prescribed costs the value of the claim must be ascertained having regard to **CPR Rule 67.5(2)(a)**. However, on the authority of the Privy Council Appeal in **Benoit Leriche v Francis Maurice [2008] UKPC 866** the **"amount ordered to be paid"** by the Court for the purposes of determining the **"value"** of the Claim, **must include** the amount ordered as **pre-judgment interest**. The value of the Claim will therefore be calculated as follows: **$155,000. + $16,497.95 = $171,497.95**. Full prescribed costs after trial would are quantified

in the sum of **$34,650.00** in accordance with **Appendix B of the Scale of Prescribed Costs.**

[51] The Claimant is also entitled to costs on the Counterclaim. The Claimant would have been in the position of a Defendant in the Counterclaim and therefore CPR Rule **67.5(2)(b)(i)** which provides that the value of the Counterclaim would have been the amount claimed by the Defendant in the Counterclaim. The Defendant claimed damages in the sum of **$25,000.00** together with interest and costs.

[52] If Defendant had been declared the winner, he would have been entitled to pre-judgment interest on the sum of $25,000.00 at the rate of 2.5% per annum from the date of filing of the Counterclaim (i.e. 8th October 2020) to the date of this judgment calculated as follows: **$25,000.00 x 2.5% x 4 years = $2,500.00**. For the purposes of determining the **value of the Counterclaim** to quantify costs on the prescribed scale, the pre-judgment interest ($2,500.00) must be added to the damages sought ($25,000.00) which amounts to **$27,500.00**. Prescribed costs on the counterclaim would therefore be calculated as follows: **$27,500.00 x 30% = $8,250.00**. The Claimant will therefore be entitled to costs on the Counterclaim quantified in the sum of **$8,250.00**.

Disposition

[53] Given the reasoning, analyses and findings above, the Order of the Court is as follows:

ORDER

1. **Judgment be and is hereby awarded to the Claimant in the terms hereunder.**

2. **The Defendant shall pay to the Claimant the sum of $155,000.00 as damages for the outstanding balance on the excavator.**

3. **The Defendant shall pay pre-judgment interest on the said sum of $155,000.00 at a rate of 2.5% from the date of filing of the claim (30th September 2020) to the date of this judgement quantified in the amount of $16,497.95.**

4. **The Defendant's counterclaim be and is hereby dismissed.**

5. **The Defendant shall pay costs of the Claim to the Claimant in the sum of $34,650.00 in accordance with the Scale of Prescribed Costs in Appendix B of CPR Part 67.**

6. **The Defendant shall also pay costs of the Counterclaim to the Claimant quantified in the sum of $8,500.00 in accordance with the Scale of Prescribed Costs in Appendix B of CPR Part 67.**

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Robin N Mohammed
Judge