COMMONWEALTH OF THE BAHAMAS **2018 CLE/gen/No. 01502**

IN THE SUPREME COURT

Common Law & Equity Division

BETWEEN

TAVA NEWTON

Plaintiff

AND

DODRICKA BAIN

Defendant

AND

KELSEY PIERRE

Third Party

Before: The Honorable Madam Carla Card-Stubbs

Appearances: Raquel K. S. Huyler for the Plaintiff
Glenda Roker for the Defendant
Kelsey Pierre, Third Party, pro se

Hearing Dates: November 8, 2022; November 23, 2022

Sale of Goods Act, The Bahamas – whether an implied term of an agreement for sale of a car that the title would be free and clear – whether a purchaser is subject to the common law maxim of caveat emptor – measure of damages where Vendor has no title in car in failed sale – whether Third Party liable to indemnify Defendant

Held: Section 14 of the Sale of Goods Act is applicable to a contract for sale of a car. Unless the parties agree otherwise or "*the circumstances of the contract are such as to show a different intention",* the statutory conditions and warranties are not displaced. The common law maxim of *caveat emptor* does not displace the statutory provisions. A party would have to demonstrate that such a consequence was intended by agreement or by

the circumstances of the contract. Where there is a total failure of consideration, the purchaser is entitled to recover the entirety of the purchase price. The measure of damages is the consideration paid to the seller i.e. the purchase price.

RULING

Card-Stubbs, J:

INTRODUCTION

1. This case concerns a suit for breach of contract. The Plaintiff contracted to buy a car from the Defendant. The Plaintiff paid the Defendant the agreed sum and took possession of the car. One month later, a bank seized the car as collateral on a loan said to be in default by the owner of the car. That owner was neither the Plaintiff nor the Defendant. The Plaintiff brought his suit against the Defendant for damages for breach of contract. The Defendant obtained the court's leave to join a Third Party. The Third Party is the person from whom the Defendant had purported to purchase the car before the failed resale to the Plaintiff. The Plaintiff sued for the purchase price of the car and special damages.

2. This Court makes an award in damages in favour of the Plaintiff for the following reasons.

BACKGROUND

3. The Plaintiff and Defendant agree that they entered an agreement for sale of a 2013 Honda Accord in July 2018 for $11,000. The vehicle and sum were exchanged. The Defendant and Third Party agree that in October 2017 they entered an agreement for the sale of the said 2013 Honda Accord which the Third Party delivered to the Defendant in exchange for the Defendant's 2014 Honda Civic and a cash sum of $2,200.00.

4. Tava Newton, the Plaintiff Purchaser, gave evidence that in December 2018, agents of Commonwealth Bank repossessed the vehicle. The Plaintiff was informed that the car was security for a loan by the bank to the 'true owner' and that the loan was in default.

5. Bain, the Defendant Seller, claimed that she was unaware that the vehicle was owned by someone else or that it was encumbered. The Defendant pleaded '*caveat emptor'* as a defence to the Plaintiff's claim. The Defendant was also granted leave pursuant to Order 16 Rule 1 of the Rules of The Supreme Court to issue a Third Party notice to Kelsey Pierre claiming indemnity. The Defendant

Seller says that the Third Party Vendor, who had sold the vehicle to her, failed to disclose the encumbrance to her. The Defence's case is that any loss suffered by the Plaintiff is attributable to The Third Party.

6. Kelsey Pierre is the Third Party. He filed a Defence to the Plaintiff's claim instead of an Answer and a Defence to the Third Party Notice. However, the Third Party's case is clear on the face of his pleadings. The Third Party's case is that he has no contract with the Plaintiff and that the Bank's title predated the Third Party's title. The Third Party also relies on the doctrine *of caveat emptor* and pleaded *caveat emptor* in response to the Defendant's claim.

7. Of note, the Third Party was not the purported lawful owner of the car who had entered, and defaulted on, the loan agreement with the bank. That owner was never added as a party to the proceedings.

8. The Plaintiff alleges that the Defendant breached an implied term in the contract on the basis that the Defendant had no title in the goods. The Plaintiff sues for the return of the purchase price of the car. The Defendant neither agrees nor admits that she had no proper title but instead alleges that she had no knowledge of the encumbrance on the chattel (i.e. the loan) and that any loss lies at the feet of the Third Party. The Defendant relies on the doctrine *caveat emptor* as it pertains to her contract with the Plaintiff.

9. The Third Party submits that he has no contract with the Plaintiff and, further, that he had no title and could have passed no title to the Defendant. He submits that the Defendant did not exercise due diligence in purchasing the car and therefore her claim as against him too must fail under the principle of *caveat emptor*.

ISSUES

10. The issues before the court are:

    1. Whether the Defendant was in breach of an implied term of the agreement for sale that the title would be "free and clear".
    2. Whether the Plaintiff vis-à-vis the Defendant was subject to the principle of caveat emptor.
    3. Whether the Defendant vis-à-vis the Third Party was subject to the principle of caveat emptor.
    4. Whether the Plaintiff is entitled to damages for breach of contract and, if so, the measure of damages.
    5. Whether the Third Party is liable to indemnify the Defendant.

11. I will review these issues seriatim.

ISSUE 1: IMPLIED TERM

12. This court must determine whether there was a breach of contract and what was the nature of that breach. In the absence of a written contract, the Plaintiff relies on statute and the breach of an implied term. The relevant issue here is whether the Defendant was in breach of an implied term of the agreement for sale that the title would be "free and clear".

13. Counsel for the Plaintiff submitted that the contract in this case is governed by the Sale of Goods Act and that s.14(1)(c)is applicable. The Plaintiff submits that in this case there was an implied warranty that the car would be free from any charge or encumbrance in favour of any third party. The Plaintiff relied on the case of *Rowland v Divall* [1923] 2 K.B. 500.

LEGAL DISCUSSION AND ANALYSIS

14. The Sale of Goods Act (Chapter 337) as the name suggests, largely governs contracts for the sale of "goods" by a "seller" to a "buyer" – all terms defined in the Act. A contract for the sale of goods is defined in section 3 as,

> "A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price."

15. Implied into contracts for the sale of goods, subject to displacement by agreement of the parties, are certain terms. Section 14 is of immediate relevance in this case and it provides:

> 14**.** In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is —
> (a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods, and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;
> (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;
> (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

16. The purpose of section 14 is explained by His Lordship Milton Evans in the case of *Renaldo Isaac v Scotiabank (Bahamas) Limited* 2018 1 BHS J 153 at para. 15:

> "Section 14 of the Sale of Goods Act, seen in its proper context, is placed among those provisions relating to warranties and implied conditions. The section can be prayed in aid by a purchaser who seeks to take action against a seller who has not delivered that which was promised. The implied conditions in the section apply where specific warranties are not contained in the contract to fix the seller with liability."

17. *Renaldo Isaac v Scotiabank (Bahamas) Limited* cited with approval, the case of *Rowland v Divall* [1923] 2 K.B. 500. In *Rowland v Divall*, The Appellant had bought a motor car from the defendant, used it for several months and then sold it. The car was later seized by the police because it had been stolen by the person from

whom the Respondent had bought it. The Appellant refunded the person whom he had sold the car to and brought an action against the Respondent for the purchase price that he had paid to the Respondent for the car as alleging a total failure of consideration. On appeal, it was held that the Appellant was indeed entitled to the purchase price because the consideration had totally failed notwithstanding that he had had the use of the car.

18. At page 505 of *Rowland v Divall*, Scrutton LJ gave the history and effect of the section in the Sale of Goods Act in that jurisdiction which was later enacted as section 14 Sale of Goods Act in The Bahamas:

> 10. Now before the passing of the Sale of Goods Act there was a good deal of confusion in the authorities as to the exact nature of the vendor's contract with respect to his title to sell. It was originally said that a vendor did not warrant his title. But gradually a number of exceptions crept in, till at last the exceptions became the rule, the rule being that the vendor warranted that he had title to what he purported to sell, except in certain special cases, such as that of a sale by a sheriff, who does not so warrant. Then came the Sale of Goods Act, which re-enacted that rule, but did so with this alteration: it re-enacted it as a condition, not as a warranty. Sect. 12 says in express terms that there shall be "An implied condition on the part of the seller that **....** he has a right to sell the goods." It being now a condition, wherever that condition is broken the contract can be rescinded, and with the rescission the buyer can demand a return of the purchase money, unless he has, with knowledge of the facts, held on to the bargain so as to waive the condition.

At pages 506 – 507 of Rowland v Divall, Atkin LJ also explains the effect of the section:

> 11. It seems to me that in this case there has been a total failure of consideration, that is to say that the buyer has not got any part of that for which he paid the purchase money. He paid the money in order that he might get the property, and he has not got it. It is true that the seller delivered to him the de facto possession, but the seller had not got the right to possession and consequently could not give it to the buyer. Therefore the buyer, during the time that he had the car in his actual possession had no right to it, and was at all times liable to the true owner for its conversion. Now there is no doubt that what the buyer had a right to get was the property in the car, for the Sale of Goods Act expressly provides that in every contract of sale there is an implied condition that the seller has a right to sell….But I think that the answer is that there can be no sale at all of goods which the seller has no right to sell. The whole object of a sale is to transfer property from one person to another. And I think that in every contract of sale of goods there is an implied term to the effect that a breach of the condition that the seller has a right to sell the goods may be treated as a ground for rejecting the goods and repudiating the contract notwithstanding the acceptance…"

LEGAL DISCUSSION AND ANALYSIS

19. The fulcrum of the Plaintiff's complaint is the failure of the Defendant to pass title in the car.

20. The Plaintiff gave evidence that he paid the sum in cash to the Defendant who signed and executed a Certificate of Title and who gave the Plaintiff possession of the vehicle. I note that Counsel for the Defence submitted that the executed Certificate of Title was not entered into evidence. What was presented to the court was the Certificate of Title in the Defendant's name – as included in the Plaintiff's list of documents pursuant to order of the Court per Her Ladyship Madam Justice

Indra Charles dated February 7, 2022. The Plaintiff's evidence, by Witness Statement, was that the Defendant signed the Certificate of Title over to him on payment to her of the purchase price. That evidence was not challenged when the Plaintiff took the stand. Further, this is an agreed fact (paragraph 4) in the Agreed Statement of Facts lodged by the Plaintiff and Defendant. There the parties agreed that "the Plaintiff paid the sum to the Defendant in cash who then transferred the vehicle to the plaintiff by signing and executing the Certificate of Title and giving the Plaintiff physical possession thereof".

21. This Court finds that, based on the totality of the evidence before it, together with the admissions of the Defendant and Third Party, the Defendant executed a Certificate of title as between Plaintiff and Defendant, the purpose of which was to signify the passing of the property in the chattel from the Defendant to the Plaintiff. The failure to produce an executed Certificate in this case where both parties are agreed as to the terms of the sale, is not fatal to the Plaintiff's claim where the claim is based on a total failure of consideration.

22. The Plaintiff's complaint is that he did not get good title and, as such, there is a total failure of consideration. The Plaintiff submits that neither the Defendant nor the Third party had good title and that the Defendant could not sell the vehicle to the Plaintiff per their agreement.

23. The Defendant concedes that, given the course of events, title to the vehicle "would have remained with Commonwealth Bank".

24. The Third Party's submission is that "title remained with Commonwealth Bank because the mortgage had not been satisfied which meant that the Third Party himself had no right to sell the vehicle and could not have vested a legal interest in the Defendant."

25. The Plaintiff contracted for the purchase of the car. The evidence of the Plaintiff is that he had "obtained a chassis check from the Criminal Investigation Department of the Royal Bahamas Police Force which revealed that the vehicle was not stolen." When the car was seized and the Plaintiff became aware of the encumbrance, he contacted the Defendant. The evidence of the Defendant is that she did not have a mortgage with the bank and that she was unaware of the encumbrance.

26. I find that this contract, as agreed between the parties, could only be effected if the Defendant were in a position to pass an unencumbered title to the Plaintiff. The Court accepts the evidence of the parties, based on the witness statements and oral testimony, that there was no agreement or intention to pass on a car with an encumbrance.

27. The parties are agreed as to the terms of the sale. It is the evidence that there is nothing in the contract between the Plaintiff and Defendant that addresses any

implied undertaking as to good title. Merely, a certificate of title was executed. I hold that section 14 of the Sale of Goods Act is applicable in this instance. In this case, there are no specific conditions or warranties in the contract of sale between the Plaintiff and the Defendant that govern or displaces the statutorily implied condition under s. 14(a) or the implied warranty under s. 14(c).

28. I find that there was an implied condition on the part of the Defendant that she had a right to sell the car and that there was an implied warranty that the car would be free from any charge or encumbrance in favour of any third party.

29. By the parties' own admissions, at the time that Tava Newton and Dodricka Bain entered an agreement for sale, the Defendant had no legal title which she could transfer to the Plaintiff. Based on their agreement and understanding, and pursuant to s. 14 of the Sale of Goods Act, the Court finds that the Defendant was in breach of the Section 14 implied terms of the contract.

ISSUES 2 AND 3: CAVEAT EMPTOR

30. It is efficient to deal with the following two issues together.

    2. Whether the Plaintiff vis-à-vis the Defendant was subject to the principle of *caveat emptor*.

    3. Whether the Defendant vis-à-vis the Third Party was subject to the principle of *caveat emptor*.

31. The gist of the arguments of the Defendant and of the Third Party is that the buyer in each case should have undertaken the relevant investigations to ensure that the seller had clear title to sell the car and, that, in the absence of such investigation, the buyer assumes the risk of the bargain thus estopping them from recovering compensation.

32. The Defendant sought to rely on the legal principle of caveat emptor "in totality as a Defence" to the Plaintiff's claim. The Defendant relied on the local cases of *Renaldo Isaac v Scotiabank (Bahamas) Limited* [2018] 1 BHS J 153 and *Denalee Penn t/a Evergreen Mortuary v Kevin Saunders v Bank of The Bahamas Limited* 2011/CLE/gen/1554 for the principle that a purchaser bears the duty of investigating title to a vehicle. The Defendant submits that a purchaser takes the risk that the seller may not have good title if he chooses not to conduct investigations.

33. The Defendant further submitted that she had no knowledge of the encumbrance, that at all material times was of the view that she had good and marketable title to the vehicle and that "it was the duty of the Plaintiff to conduct investigations to ensure that the vehicle was free and clear."

34. Similarly, the Third Party decries the Defendant's failure to responsibly gather the information to make an informed purchase" and points to the Defendant's willingness to take possession of the vehicle from the Third Party without the Certificate of Title as her willingness to assume the risk of no clear title. The Third Party submits that in those circumstances the Defendant cannot attribute blame to the Third Party. No cases were prayed in aid of those submissions.

35. The Plaintiff disputes that the principle of *caveat emptor* is applicable in this situation. The Plaintiff submits that the common law maxim does not apply to issues of contract and that the Sale of Goods Act governs the contract. Counsel for the Plainitff sought to distinguish *Renaldo Isaac v Scotiabank (Bahamas) Limited* and *Denalee Penn t/a Evergreen Mortuary v Kevin Saunders v Bank of The Bahamas Limited* which she argued did not relate to issues between a buyer and seller and terms of contract but rather with the issue of negligence.

LEGAL DISCUSSION AND ANALYSIS

36. The case of *Renaldo Isaac v Scotiabank (Bahamas) Limited [2018] 1 BHS J 153* concerned a claim in negligence brought by a purchaser of a car against a bank who held the car as security for a loan to the prior owner. The purchaser failed to establish a good title as against the bank. It is in this context that the Court of Appeal affirmed the findings of then Justice Ian Winder as it relates to the duty of a purchaser:

> 25 As we understood the rationale of the learned judge, he was of the view that having regard to the fact that the registry system will not easily reveal a chattel mortgage a purchaser takes a calculated risk in purchasing a vehicle from someone who is not able to produce title documents for the vehicle. The risk is that the car may have been stolen or, as in this case, mortgaged. We agreed. The fact that the appellant obtained a Carfax report and also obtained a report from the Central Detective Unit could only suffice to show previous damage to the vehicle and whether it was reported stolen. As in this case the absence of the title documents proved fatal. As a result, we found no fault with the judge's finding that the appellant was not a bona fide purchaser for value without notice.

37. The case of *Renaldo Isaac v Scotiabank (Bahamas) Limited* is about the Plaintiff attempting to set up a competing title with the bank. Where a party tries to defeat the title of another, that party cannot be treated as a bona fide purchaser for value without notice if that party has notice that something may be amiss. It is my view that different considerations applied there and that it is distinguishable from the instant case.

38. Similarly, the case of *Denalee Penn t/a Evergreen Mortuary v Kevin Saunders v Bank of The Bahamas Limited* 2011/CLE/gen/1554 confirms that a purchaser bears the duty of investigating title to a vehicle and that a purchaser takes the risk

that the seller may not have good title if he chooses not to conduct investigations. However, that too concerned a suit in negligence brought by a purchaser-mortgager against the mortgagee bank.

39. In *Denalee Penn t/a Evergreen Mortuary v Kevin Saunders v Bank of The Bahamas Limited*, the Plaintiff had bought 2 cars from the First Defendant and held loans on them with the Second Defendant. The Plaintiff abandoned the suit against the First Defendant and continued a suit in negligence against the Second Defendant alleging that the Second Defendant was negligent in not alerting her as to problems with the title. That claim failed. The trial judge determined that a mortgagee does not owe a duty to the mortgagor to investigate title and disclose their findings for the purpose of satisfying the mortgagee's interests. In reaching her decision, Justice Charles reviewed *Isaacs v Soctiabank* and made the observation at paragraph 43 that

> 43. It is plain that a purchaser bears the duty of investigating the title to a vehicle he considers purchasing. He takes a risk if he chooses not to conduct such investigations, specifically where he has not obtained the original title documents.

40. And again at paragraph 46 that

> 46. The Court of Appeal in Isaac said that even obtaining a Carfax report and a report from Central Detective Unit was not a satisfactory title investigation because they would only show whether there was previous damage or was reported stolen. The only investigation that would have indicated that a buyer was not willing to accept risk would have been to request back title document including the original title documents. Accordingly, the fact that Mrs. Penn-Mackey embarked on absolutely no title investigation of her own meant that she was willing to accept every risk.

41. In *Denalee Penn t/a Evergreen Mortuary v Kevin Saunders v Bank of The Bahamas Limited*, the trial judge found that the Plaintiff "embarked on absolutely no title investigation" and inferred from that that the buyer was willing to accept risk. On the other hand, the Second Defendant's own investigation had led to a discovery of an issue with the title that a similar investigation by the Plaintiff presumably would have found. The Plaintiff's complaint was that the Second Defendant did not tell the Plaintiff what they had discovered by virtue of their own investigations. That was a case founded in negligence. The trial judge found that there was no duty of care owed to the Plaintiff who should have embarked on such investigations herself and, in the absence of that, took the risk of no title.

42. The cases of *Renaldo Isaac v Scotiabank (Bahamas) Limited* and *Denalee Penn t/a Evergreen Mortuary v Kevin Saunders v Bank of The Bahamas Limited* are not, in my view, authority concerning the liability of the seller vis-à-vis a purchaser. For the reasons already stated, I find that the correct approach in the current case is to be found in the Sale of Goods Act. Unless some contractual term, or other

circumstance, displaces the statutory implied conditions and warranties, a seller cannot avail herself of a common law maxim to escape the consequences of the statutory provisions.

43. Section 14(c) of the Sale of Goods Act provides:

> 14. In a contract of sale, *unless the circumstances of the contract are such as to show a different intention*, there is —
> (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made. [my emphasis]

44. Therefore, unless the parties agree otherwise or "*the circumstances of the contract are such as to show a different intention",* the seller is liable for breach of warranty if the goods are not from free from any charge or encumbrance in favour of any third party which charge or encumbrance was not declared or known to the buyer before or at the time when the contract is made. An agreement or circumstances could be demonstrated by written agreement or by conduct of the parties.

45. The Plaintiff's submission is that this is not a case of *caveat emptor*. I accept the Plaintiff's submission that the appropriate principle and approach in this case is the application of section 14 of the Sale of Goods Act.

46. The application of *caveat emptor* in these circumstances is misconceived. The principle of *caveat emptor* is a vestige of the common law. It has been taken to mean "buyer beware" and its consequence in contract law generally has been that the buyer assumes certain risks in the absence of implied or express terms relating to a sale agreement. It emanates from a time when a buyer was obliged to inspect goods purchased and, in the absence of fraud, could not afterward complain or avoid a contract because of defects he could have detected had he made relevant inquiries and conducted the necessary inspection or protected himself by an express warranty. If the buyer purchased goods without relevant inspection, then he could not later reject the goods because it did not meet with his expectation. As a result, the buyer was precluded from rescinding the contract. However, in such cases, the legal interest in the goods could pass, and did pass, to the buyer from a seller who held title. This suit is not that case.

47. What is alleged in this matter is that (i) the Defendant had no interest to pass to the Plaintiff and (ii) the Third Party had no interest to pass to the Defendant. *Caveat Emptor* will not avail the Defendant or the Third Party in this instance because the substratum of the contract – the right of the seller to sell – did not exist. *Caveat emptor*, though, well-entrenched in English law, is displaced in circumstances such as these. It would be correct to assert that a buyer ought to take reasonable steps to ascertain the nature and condition of the thing he is bargaining for. A court will not dissolve a contract on mere buyer's remorse or regret of a bad bargain. Very often, in these sorts of every-day transactions, the

consequences of *caveat emptor* is effected as "sold as is". That would be a *"circumstance of the contract … such as to show a different intention*". The buyer takes the goods in the form as sold and there are no warranties.

48. When, as in the present case before the court, the defect is one of title, that is, the seller does not own the good that he purports to sell and therefore cannot pass the good whether in defective form or otherwise, then *caveat emptor* cannot shield the seller. A buyer of goods is entitled to rely on the seller's lawful right to sell the goods - unless, of course, the buyer has notice of some fact that would lead a reasonable person to enquire as to the seller's title and property in the goods and, who, by words or conduct, waives the right to good title. The mere acceptance of the goods by the buyer cannot absolve the seller of liability where the seller has no right to sell the goods and this is unknown to the buyer. The case of *Rowland v Divall* is authority for this point.

49. In this case there was a clear intention to pass an unencumbered car. Indeed, the evidence of the Defendant is that she was unaware of the mortgage at the time of the contract of sale. Therefore she could not, and did not, communicate that information. She is in breach of Section 14 (c). That provision displaces the *caveat emptor* principle in this case.

50. In any event, it is also my finding that the Plaintiff in this case made reasonable enquiries in the context of this contract.

51. Renaldo Isaac v Scotiabank (Bahamas) and Denalee Penn t/a Evergreen Mortuary v Kevin Saunders v Bank of The Bahamas Limited Limited were cited for the principle that a purchaser takes a risk when the purchaser is willing to buy a vehicle without the receipt of the proper title documents. It is my view that those cases turn on the absence of the production of the proper title documents. In such cases, it ought to be clear that the purchaser is put on notice that he/she is taking a risk in proceeding with the transaction and one risk is that there is no proper title. However, it seems to me that the risk assumed by a purchaser who completes a sale without enquiry or without sight of the proper title documents is different than any risk assumed by a purchaser who receives what are said to be proper title documents and who makes reasonable enquiries. In the latter case, there is nothing to put them on notice that further investigations are called for.

52. In the instant case, the Plaintiff's evidence was that on purchase of the vehicle, he "obtained a chassis check from the Criminal Investigation Department of the Royal Bahamas Police Force which revealed that the vehicle was not stolen." He paid for insurance coverage of the car and received a certificate of title from the Road Traffic Department. His evidence is that "sometime in early December 2018 officers of the Royal Bahamas Police Force along with agents of the Commonwealth Bank took possession of the vehicle." He said that he became aware of the loan "when a representative from the bank came on my job and they said this car was owed to the bank by -- it was just owed to the bank and they had

to repossess it." Since he did not have a loan on the vehicle, he reached out to the Defendant on the matter. His evidence is that the Defendant advised him that she did not have a loan on the vehicle either and she refused to return the purchase price to him.

53. On cross-examination, the Plaintiff testified that he did not search the Registrar General's Department to see if there was a shadow mortgage over the vehicle. He reiterated that he went to the Criminal Investigation Department and found that there was no criminal record on it. In responding to the question whether he asked the Defendant about any liens and about queries he made of the Defendant, the Plaintiff testified that he did make those enquiries of the Defendant who "said the same thing it was no criminal record or anything on the vehicle" and that she did not tell him about a mortgage on the vehicle. When asked whether the Defendant had a mortgage on the vehicle, he responded, "I am not sure who had the mortgage on the vehicle."

54. The Defendant's evidence was that she knew the person who sold her the car, the Third Party, Kelsey Pierre, for over 10 years as someone "in the industry of automobile sales". She entered into an agreement with him by which she traded her car and paid $2,200 to him in exchange for the vehicle in issue. Her evidence is that she asked Pierre to have the vehicle registered at Road Traffic Department in her name and to supply her with the disk. That never happened and she "had to make the necessary arrangements to register the said vehicle in my name with the Department of Road Traffic."

55. The Defendant's evidence under cross-examination is instructive. The essence of it is that in order for her to complete the purchase from Pierre and to get the disk for the car, she had to pay off money that he, Pierre, owed to one Jeremy Minnis for the vehicle.

56. The Defendant testified as follows:

> "When I gave Mr. Pierre my vehicle, which was a 2014 Honda Civic in return for the 2013 Honda Accord, I also gave Mr. Pierre cash amount of $2,200.00. After the negotiation and after we had did the transaction he made me aware at the given time afterwards that he did not had [sic] the disk in possession. Mr. Pierre also stated that the disk was in his girlfriend's house and that he would bring it to me the following day. When I contacted Mr. Pierre the following day Mr. Pierre gave me the run around for nearly a month saying that he could not find the disk; and then he came to me afterwards and brought me an incomplete bill of sale and that's when I was notified that he was not the only owner of his vehicle when he brought me an incomplete bill of sale with Jeremy Minnis name attached to it. At the given time he brought that to me, I did my own research and I looked up this Jeremy Minnis person on Facebook and I saw the vehicle was in the profile photo. I reached out to this gentleman myself on Facebook and that's when I was notified. He said that Mr. Pierre does not have the disk for the vehicle,

that he is holding the disk as leverage because Mr. Pierre still had funds for him for the vehicle. I explained to him that I am the new owner of the vehicle now and I need the disk to license and insure the vehicle. He pretty much told me that he's not giving me the disk because Mr. Pierre has funds for him. Whatever transaction that they had made on behalf I cannot tell you. I did not made direct contact with this gentleman to purchase this vehicle. I got it from Mr. Pierre. So Mr. Pierre allowed me to do a transaction with him knowing very well that he was still owing for this vehicle. When I gave Mr. Pierre my 2014 Honda Civic my vehicle was not tied to my mortgage, loans, anything. I had direct contact with Mr. Minnis once and that was to retrieve the disk that I had to pay off Mr. Pierre's loan, the rest of his balance from Mr. Minnis in order to retrieve the disk in order to license and insure that vehicle. So when I gave that vehicle over to Mr. Newton all proper documentations was written over in my name when I sold him the vehicle."

57. The Defendant also testified that "the first time that I was made aware of a Jeremy when Mr. Pierre brought me an incomplete bill of sale with just this person's name on it and he stated that he had gotten it signed from elsewhere." The evidence, therefore, is that the Defendant was put on notice when the Third Party could not produce the disk and was giving her the run around and then gave her an incomplete Bill of sale. I accept her evidence that her response to this was to find Jeremy Minns and pay off the debt that the Third Party owed. She later received the disk.

58. It appears that the Defendant thought that that was the end of the matter. The Defendant's evidence is that the first time that she learnt about the Commonwealth Bank mortgage was when the Plaintiff spoke to her about the car being repossessed. She said that the Plaintiff "asked me to help him to purchase the vehicle from back from where ever the car lot was and I told Mr. Newton that I was in the middle of actually getting married that same month and I did not have any involvement with my bank. When he provided the name for me he did call me and he said if the bank took the car from him and that Jeremy Minnis was the person that had owed the bank and that is what he told me." Her evidence is that she only found out about the loan when the Plaintiff told her. To the question, "Did you do anything with that information?", the Defendant's answer was, "No, I just pretty much let my lawyer answered back to the filed that he complained [sic]."

59. The Third Party's evidence was that at the close of his transaction with the Defendant, the disk requested by the Defendant "remained in the possession of Mr. Jeremy Minnis, the person who I'd bought the car from." His evidence is that "a contact for Jeremy Minnis was given to the Defendant and the sale was completed." The Third Party claims not to have known about the loan until the Defendant requested his help with this case and told him that the car was the subject of a chattel mortgage. His evidence by Witness Statement is that "I am not the mortgagee on the chattel mortgage for the Honda, and I had no knowledge of the mortgage at the time of the sale."

60. Under cross-examination, the Third Party admitted purchasing the subject vehicle from a Jeremy Minnis but not paying him in full. He admitted "trading" the vehicle with the Defendant and receiving cash from her knowing that he had not completed payment to Minnis. He testified that he never did have the disk and that the Defendant received the disk from Minnis.

61. In their transaction, the Third Party gave the Defendant "an incomplete bill of sale that I received from Mr. Minnis." The following exchange in cross-examination of the Third Party is also instructive:

> Q. At the time when you sold the vehicle to Mrs. Bain-Romer you weren't the legal owner, were you?
> A. I wasn't the full owner of the vehicle, no, ma'am.
> Q. So why would you sell a car if you're not the full owner of the vehicle?
> A. I didn't have full custody of the vehicle yet because I never finish my payment.
> Q. If you didn't have full custody of the vehicle how were you able to revert possession to Ms. Bain-Romer?
> A. Because I was going to give him the balance for the vehicle and receive the disk.

62. Mr. Pierre later tried to retract his statement about not fully owning the vehicle although he reiterated that he owed money to Minnis who withheld the disk from him pending payment of the outstanding balance.

63. Having heard the evidence and observed the witnesses, this court comes to the following conclusions.

64. This court finds the Plaintiff to be a credible witness. Indeed, his allegations remain substantially unchallenged.

65. The Defendant admitted encountering problems in the transaction with the Third Party. The court accepts that her investigations uncovered a defect in title to her and that she thought that she had overcome the defect in her transaction with the Third Party by tracking down and paying off the Third Party's outstanding balance. The court accepts her evidence that she thought that by doing so, she owned the car. The Defendant thought that she had done all that needed to be done because she had "all proper documentation" in her name.

66. On the question of knowledge of who had the loan, I prefer the evidence of the Plaintiff to the Defendant. The Plaintiff's evidence is that the Defendant told him that she did not have a loan on the vehicle and that she did not know who had the loan. The Defendant testified the Plaintiff told her that Jeremy Minnis had the loan. Had the Plaintiff had information about Jeremy Minnis, it is not likely that he would have enquired from her whether she had the loan or mortgage. Further, on the

evidence, the Third Party had already introduced the Defendant to Jeremy Minnis in order to get the disk. The Defendant is either forgetful or mistaken on this point.

67. I also find the evidence of the Defendant that she did not know of the loan at the time of her contract with the Plaintiff credible.

68. What is apparent is that none of the parties in this action knew of the encumbrance on this car. As far as the Defendant and Third Party were concerned, the only obstacle to title was the outstanding payment to be made by the Third Party and which was duly made by the Defendant. They had not, according to their evidence, learnt of the mortgage prior to the Plaintiff being dispossessed of the car. Both the Defendant and the Third Party knew of the existence of Jeremy Minnis but were ignorant of the bank's interest in the car.

69. The Defendant submitted that "she did not fraudulently misrepresent her ownership of the vehicle nor did she induce the Plaintiff to purchase the vehicle. Based on the knowledge she had at the time of sale, the vehicle was not encumbered and no details relating to a Commonwealth Bank Loan were known to her. The Defendant at all material times was of the view that she had good and marketable title to the vehicle and it was the duty of the Plaintiff to conduct investigations to ensure that the vehicle was free and clear." In essence, the Defendant's position is that she discharged her duty in satisfying herself that she had a good marketable title but that the Plaintiff did not do due diligence to take steps to find out that she, the Defendant, did not in fact have a good and marketable title.

70. It is a spurious argument for the Defendant to posit that she did due diligence and that that did not lead to the discovery of the encumbrance but that the Plaintiff, to whom she sold the car, was in a better position to obtain more information than she did and had a greater burden to conduct investigations. It seems to me that if the fact of the encumbrance was unknown to the Defendant and the Third Party and had not been discovered by them, then it was less likely to be discovered by the Plaintiff, furthest removed from Jeremy Minnis, in the chain of transactions.

71. It seems to this Court, that failing the disclosure by the seller, it would be difficult for a buyer, in the absence of a registry for this purpose, to determine whether a chattel mortgage is held on a particular vehicle without pursuing a roll call of various banks. The purchaser, in each of the contracted arrangements in this case, first the Defendant and then the Plaintiff, made independent checks plus enquiries of the seller as to title. The Plaintiff's uncontroverted evidence is that he checked on the chassis and also enquired of the seller whether there was anything amiss. The Defendant at that stage, having thought that she had clear title, assured the Plaintiff that everything was in order. For herself, the Defendant, once put on notice that the title she received from the Third Party was defective, sought to cure the defect based on the information that she had. It is this Court's view that the risk that she took at that stage was that the Third Party had not perfected

his title and so she, having notice of that, was fixed with the costs of remedying the defect.

72. It is also this Court's view that the Defendant's acceptance of the car in those circumstances, after her attempt at remedying the defect, did not mean that she anticipated that the Third Party had no title that he could pass.

73. If the maxim *caveat emptor* did in fact apply to the contract between Plaintiff and Defendant, then it would equally apply to the contract between Defendant and Third Party. Indeed, the evidence of the Defendant is that the Defendant gave her the run around for a month before producing a disk with the name of another person on the disk. She learnt that the Third party owed one JM money on the car. She found JM on Facebook, paid him what he said the Defendant owed him so that she could register the car in her name. In the Defendant's dealing with the Third Party, the failure to produce the disk put her on a track of enquiry. When she learnt that the Third Party owed money on the car, she paid it off. As far as the Defendant was concerned, she had addressed that matter and had title. It seems to me then, that by the time she entered a contract with the Plaintiff, there was nothing amiss that would have caused the Plaintiff to embark on enquiries as to title. Indeed, the Defendant herself thought that the issue was settled and represented to the purchaser that she was the true owner.

74. It is my view that even if this Court were to find that the respective purchasers in these circumstances took on a risk by proceeding with the transaction to purchase the car, that the risk-taking does not preclude a remedy. What it does do is limit the nature of the remedy of the purchaser and it limits who the purchaser may successfully launch an action against. As the Court of Appeal observed at paragraph 25 in *Renaldo Isaac v Scotiabank (Bahamas) Limited*, "the risk is that the car may have been stolen, or, as in this case, mortgaged." In such an instance, the buyer risks that there may be someone with a better title or, more accurately, the only valid title such as 'mortgagee' where there is a mortgage or such as 'true owner' where the car was stolen. In *Renaldo Isaac v Scotiabank (Bahamas) Limited*, the Plaintiff could not show a better title than the bank and could not successfully mount an action against that mortgagor. In *Denalee Penn t/a Evergreen Mortuary v Kevin Saunders v Bank of The Bahamas Limited Limited*, the Plaintiff could not successfully mount an action in negligence against the bank who did not owe her a duty of care to disclose information and whose failure to disclose such information did not ultimately lead to her loss i.e. the loss of the vehicles. However, the assumption of that real risk does not preclude an action against *the seller*.

75. In those two cases, the buyers did not proceed against the sellers i.e. the other parties to the contract. Further, in those cases, there was nothing that demonstrated that the Plaintiffs waived their right to a good title. In *Renaldo Isaac v Scotiabank (Bahamas) Limited*, the Plaintiff went after the bank, a stranger to her contract, hoping that her title was better than that of the bank. In *Denalee Penn*

t/a Evergreen Mortuary v Kevin Saunders v Bank of The Bahamas Limited Limited, her complaint was that she failed to secure a good title but the breach of duty unsuccessfully alleged was that of the bank, a stranger to the contract.

76. In the instant case, there was nothing in the action of the Plaintiff, or in the conduct of the transaction of the Defendant with the Third Party, that suggested that the buyers had waived their right to a good and transferrable title from the sellers. In fact, their actions dictate just the opposite.

77. I find it sufficient in this case that the Plaintiff and the Defendant in their respective transactions made reasonable and relevant enquiries concerning the right of the seller of the car. They took reasonable steps to make an informed purchase. In the case of the Plaintiff, there was nothing to put him on notice that something was amiss. In the case of the Defendant, she took reasonable steps to cure the defect known to her so that she would be able to hold the car freely and to, subsequently, pass the car on freely.

78. The principle of caveat emptor would not, in this case, estop the Plaintiff from recovering damages nor would it estop the Defendant from recovering compensation for breach of contract vis-à-vis the Third Party. I find that the breach in each case entitled the innocent party to rescind the contract. There has been a total failure of consideration in each instance.

ISSUE 4: MEASURE OF DAMAGES

79. Whether the Plaintiff is entitled to damages for breach of contract and, if so, the measure of damages.

80. The Plaintiff's claim is for the purchase price of $11,000 plus special damages. The Plaintiff relies on the cases of *Rowland v Divall*, supra and *Balcombe and Another v da Breo* (1992) 44 WIR 180.

81. The Defendant argues that the Plaintiff had use of the vehicle and that there is no evidence of the condition of the vehicle when it was repossessed in order "to determine the value of the said vehicle." The Defendant submits that those are matters to be taken into account on any assessment of damages.

82. The Third Party submits that the Defendant failed to gather the information to make an informed purchase and that she took possession of the vehicle without a title. The Third Party submits that this failure disentitles the Defendant to an indemnity from the Third Party.

LEGAL DISCUSSION AND ANALYSIS

83. The object of the award of compensatory damages is to compensate the plaintiff for damage, loss or injury suffered by him i.e. to put him in the position he would have been in as if the contract had been performed. Had the contract been performed as between the Plaintiff and Defendant, the Plaintiff would have been in possession of a vehicle, which as agree between those parties, had a value of $11,000. That was the purchase price, viz. the consideration paid.

84. In *Rowland v Divall* 1923] 2 K.B. 500, the remedy of the buyer in a case such as this is to rescind the contract and recover the purchase price paid to the seller per Scrutton, LJ at page 506

> "… I think that the plaintiff is entitled to recover the whole of the purchase money as for a total failure of consideration…"

This is echoed by Atkin LJ at page 507:

> It seems to me that in this case there must be a right to reject, and also a right to sue for the price paid as money had and received on failure of the consideration, and further that there is no obligation on the part of the buyer to return the car, for ex hypothesis the seller had no right to receive it. Under those circumstances can it make any difference that the buyer has used the ear before he found out that there was a breach of the condition? To my mind it makes no difference at all. The buyer accepted the car on the representation of the seller that he had a right to sell it, and inasmuch as the seller had no such right he is not entitled to say that the buyer has enjoyed a benefit under the contract. In fact the buyer has not received any part of that which he contracted to receive - namely, the property and right to possession - and, that being so, there has been a total failure of consideration.

85. The facts of *Balcombe and Another v da Breo* (1992) 44 WIR 180 are very similar to those of the instant case. In *Balcombe and Another v da Breo*, the Appellants sold a vehicle to the Respondent for $37,000 which the Respondent resold at $44,000. The vehicle was subject to a mortgage and was eventually repossessed by the bank. At the time of the transactions none of the parties had been aware that the vehicle was subject to a mortgage. The Respondents were successfully sued by their purchasers for $44,000 and sought an indemnity from the Appellants who they had joined as Third Party. Judgment was entered against the Appellants who appealed the measure of damages. Allowing the appeal in part, the Court of Appeal held that the remedy for a breach of the Sale of Goods Act (in this case, the breach of the implied condition that the seller had the right to sell the goods) was damages and not an indemnity.

86. After reviewing the statements of law set out in *Benjamin on Sale of Goods* on the measure of damages in chain transactions where goods are sold many times over

in breach of section 14(*a*), (similar to section 14(a) under consideration here) Bryon JA held, at page 184, that

> "... In the first place the measure of damages would be (a) the purchase price, or (b) the sum which the respondent has become liable to pay his sub-purchaser (Errol Bullock), less the profit (if any) made on the re-sale."

87. In this instance, I conclude that the true measure of damages is the purchase price paid to the seller. It is a principle of compensatory damages that the compensation ought to put the Plaintiff back in a position as if the breach of contract had not occurred. The Plaintiff is to be compensated for his loss of bargain. Here, the Plaintiff bargained for a car at $11,000. His bargain was for the title and ownership of the car. The Defendant did not have a good title and could not pass ownership to the Plaintiff.

88. It does not matter that the Plaintiff was able to use the car for a period. That was not the nature of his bargain – his contract was not for the mere use of the car. The Defendant knew that the purpose of the contract was for the Plaintiff to own the car. That did not happen. There was a total failure of consideration.

89. It is also of no moment that there is no evidence of whether the car was damaged prior to the seizure by the bank. If the Defendant's case was that there was damage to the chattel, then that was an evidential burden on her that she failed to discharge. The Plaintiff led no evidence of deterioration in the condition of the car and none was proven.

90. In any event, the Plaintiff is entitled to the purchase price. I hold that the Plaintiff is entitled to treat the contract as rescinded and is entitled to the entirety of the purchase price that he paid to the Defendant.

91. No special damages were specifically pleaded nor was any evidence led of special damages. No award is made for special damages.

ISSUE 5: THIRD PARTY LIABILITY

92. Whether the Third Party is liable to indemnify the Defendant.

93. The Defendant relied on Order 16 of the Rules of the Supreme Court and submitted that any judgment or claim for damages ought to be satisfied by the Third Party, who acted as the Defendant's agent and was the immediate predecessor of the vehicle in question." The submission is that "if the Court makes a finding for damages in favour of the Plaintiff, that the Third Party ought to be responsible for payment of same." In particular, the Defendant relies on Order 16 Rule 7(1) of the Rules of the Supreme Court.

94. The Plaintiff also made submissions in this regard in favour of the liability of the Third Party to the Defendant. The Plaintiff relied on authorities previously mentioned as well as the case of *Butterworth v Kingsway Motors Ltd; Hayton, Third Party; Kennedy, Fourth Party; Rudolph, Fifth Party* [1954] 2 All ER 694, [1954] 2 All ER 694.

LEGAL DISCUSSION AND ANALYSIS

95. Order 16 Rule 7, Rules of the Supreme Court (R.S.C. 1978, as amended), provides:

> 7. (1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on an application by summons or motion, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.
>
> (2) Where in an action judgment is given against a defendant and judgment is given for the defendant against a third party, execution shall not issue against the third party without the leave of the Court until the judgment against the defendant has been satisfied.

96. *Butterworth v Kingsway Motors Ltd* (cited supra) as well as *Rowland v Divall* (cited supra) are both authorities for the principle that the proper measure in damages in the case of a chain of sellers is, for each breach of contract, the relevant purchase price. The effect of this is that there is no blanket or true indemnity of the Defendant by the Third Party. The Defendant, having been exposed to a successful suit by the Plaintiff, is entitled to recover, from the Third Party, the damages awarded against him with the ceiling being the contract price between The Defendant and the Plaintiff. This principle was explained in *Balcombe and Another v da Breo (cited supra*). In that case there was a claim for indemnity for damages awarded where those damages represented a resale purchase price that included a profit. The Defendants had sold the vehicle at a profit and sought an indemnity from the Third party. The Third Party had sold a vehicle to the Defendants for $37,000 which the Defendants resold at $44,000. The trial judge had ordered the Third Party to pay an indemnity of $44,000. The Third Party appealed and the appeal was allowed in part. Byron, JA, having reviewed several authorities, came to the position that the profit made on resale was not recoverable as it was unforeseeable – not having been communicated to the Third party. In that case, Bryon JA held, at page 184, that

> In my view this statement of the law is sound and I would apply it. In the first place the measure of damages would be (a) the purchase price, or (b) the sum which the respondent has become liable to pay his sub-purchaser (Errol Bullock), less the profit (if any) made on the re-sale. Applying the principles just expressed the record shows that there was no evidence from which it could be held

that the appellants contemplated the possibility of the re-sale of the truck at the time of the sale to the respondent. Therefore the proper award would be the purchase price of $37,000.

And again at page 188:

In my attempt to formulate an answer to the real issue in dispute I refer to two paragraphs of 41 *Halsbury's Laws of England* (4 Edn). Paragraph 871 deals with effect on damages of sub-contracts by a buyer. It states in part:

> ' … However, the rule as to remoteness of damages is often effective to prevent the sub-contract being taken into consideration in estimating the loss directly and naturally resulting from the seller's breach. This rule as applied to breaches of contract is that the damages to be awarded must be such as may reasonably have been supposed to have been in the contemplation of both parties when they made the contract as the probable result of a breach of it. The courts will not presume when a contract is made for the sale of goods that it is contemplated by both buyer and seller that the buyer will contract to sell the identical goods to a third person before delivery. Thus, if the buyer does make such a sub-contract, the loss of his profit on his sub-contract cannot be treated as the loss naturally and directly resulting from the seller's breach. However, if it is proved that, at the time of the original contract for the sale of goods, both buyer and seller contemplated that the goods would be re-sold by the buyer before delivery and that the buyer's loss upon non-delivery by the seller would be his loss of profit upon re-sale, such loss of profit will be the true measure of damages. But in order to bring the measure of damages within this exception, it is not sufficient that at the date of the contract the seller was aware that the buyer might re-sell; it must be shown that both parties contemplated that he would re-sell.'

Paragraph 890 is also relevant. It deals with re-sales. The paragraph states:

> 'Where a buyer purchases goods which he subsequently re-sells, it is often difficult to determine whether he can recover from the seller as damages for breach of warranty the actual loss to which he has been put as a result of his liability to his sub-purchasers. Where the buyer's liability to his sub-purchasers is no greater than the loss which he would have suffered if he had used the goods himself, no difficulty arises, but the general rule is that the buyer's sub-contracts cannot be used to increase or minimise his damages, as the sub-contracts are incidental matters with which the seller has nothing to do.'

97. In *Balcombe and Another v da Breo,* the Appellate court held that the proper measure of damages was the lesser of (a) the purchase price and (b) the amount which the buyer had to pay his sub-purchaser less any profit made on the sub-sale. It was that sum that the Third Party was liable for plus the costs of the Defendant.

98. Therefore, the law is that the Third Party is liable for either (a) the purchase price as between him and the Defendant or (b) the amount of damages payable by the Defendant to the Plaintiff, less any profit made on the resale.

99. In the matter before me, the Defendant's case was that the Plaintiff is subject to the principle of *caveat emptor* and thus prevented from recovering any damages.

I have already dealt with that. *Caveat emptor* does not absolve the Defendant in this instance. It does not lie in the mouth of the Defendant to say, "Oh well. I did not have title either." As the seller and a party to the contract with the Plaintiff, she is liable for the loss of bargain.

100. The Defendant joined the third party. The Defendant submitted that the Third Party caused the conundrum. From the evidence led, it was discovered that the Third Party did not have title in the car because he bought it from the elusive original owner who had taken out a loan from the bank for the car. That original owner defaulted on the loan and thus the bank seized the asset, the subject of the loan, presumably according to their loan agreement with the original owner. Direct evidence of that was not led and is not necessary for this court's decision. It is sufficient to say that the Third Party had no proper title in the car either.

101. There is no privity of contract between Mr. Pierre and the Plaintiff and no cause of action has be instituted against Mr. Pierre by the Plaintiff. Any submission in this regard is misconceived.

102. The evidence is that the Third party and the Defendant entered a contract for the car. It was only after the Defendant's purported sale of the car to the Plaintiff, that it was discovered that the Plaintiff held no proper title to the car. There is a cause of action between the Defendant and the Third Party. Indeed, the purpose of joining the Third Party is for the indemnification of the Defendant in the event that the court finds the Defendant liable to the Plaintiff. That liability would have its roots in a legal wrong suffered by the Defendant at the hands of the Third party. The Third Party failed to pass title in the car to the Defendant as he had none. He breached the contract as between himself and the Defendant.

103. The consideration advanced between the Defendant and the Third Party in their contract was $2000 and a 2014 Honda Civic motor car. No evidence was given in relation to the value of the 2014 Honda Civic. The Defendant and the Third Party contracted in October 2017. The Plaintiff and Defendant entered a contract for the same car in July 2018. Given the short intervening time between both contracts and in the absence of any evidence to the contrary, I will treat the $11,000 contract price between the Plaintiff and the Defendant as the equivalent value of the contract between the Defendant and the Third Party. In these circumstances, the Third Party is liable to the Defendant for the value of the contract between the Plaintiff and Defendant i.e. $11,000.

CONCLUSION

104. Section 14 of the Sale of Goods Act is applicable in this instance. Caveat emptor is not applicable in this case. There were no specific conditions or warranties in the contract of sale between the Plaintiff and the Defendant that govern or

displaces the statutorily implied condition under s. 14(a) or the implied warranty under s. 14(c). There was an implied condition on the part of the Defendant that the Defendant had a right to sell the car and there was an implied warranty that the car would be free from any charge or encumbrance in favour of any third party. The Defendant was in breach of the Section 14 implied terms of the contract.

105. Even if *caveat emptor* were applicable, I find that the Plaintiff and the Defendant in their respective transactions made reasonable and relevant enquiries concerning the right of the seller of the car. I find that there was nothing in the action of the Plaintiff, or in the conduct of the transaction of the Defendant with the Third Party, that suggested that either buyer had waived their right to a good and transferrable title from the seller. The principle of *caveat emptor* would not, in this case, estop either the Plaintiff or the Defendant from recovering damages for breach of contract. There has been a total failure of consideration in each instance.

106. The Plaintiff is entitled to treat the contract as rescinded and is entitled to the entirety of the purchase price that he paid to the Defendant.

107. No special damages were specifically pleaded nor was any evidence led of special damages. No award is made for special damages.

108. The Third Party is liable to the Defendant for the value of the contract between the Plaintiff and Defendant i.e. $11,000.

COSTS

109. The Plaintiff is entitled to costs payable by the Defendant, to be taxed if not agreed.

110. The Defendant is entitled recover the costs payable in this action from the Third Party.

ORDER

111. The Court makes the following order:

1. Judgment for the Plaintiff as against the Defendant as follows:
   (i) Damages awarded in the sum of $11,000.
   (ii) Costs to be taxed, if not agreed.

(iii) Interest at the rate of 6.25% per annum from the date of Judgment to the date of payment made pursuant to the Civil Procedure (Awards of Interest) Act, 1992;

2. Judgment for the Defendant as against the Third Party as follows:

(i) Damages awarded in the sum of $11,000.

(ii) The Third Party is to reimburse the Defendant for any costs which the Defendant may be called upon to pay to the Plaintiff pursuant to Paragraph 1 above.

Dated this 13th day of March 2024

Carla D. Card-Stubbs, J