

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2021/CLE/gen/01265

BETWEEN

FRANCIS MUSGROVE

Claimant

AND

GERMAN AUTOWORKS

Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Donovan Gibson for the Claimant

Arnold Forbes for the Defendant

Hearing Date(s) 15 October 2024

JUDGMENT

WINDER, CJ

[1.] This is a claim brought by the Claimant (Musgrove) who claims that the Defendant (German) was negligent in its duty to repair her vehicle.

[2.] The action was commenced by Writ of Summons dated 26 October 2021. The Statement of Claim endorsed thereon provides as follows:

1. The Defendant is a company incorporated under the laws of The Commonwealth of The Bahamas and doing business as an auto mechanic repair shop in the said Commonwealth.
2. The Plaintiff is and was at the material time the registered owner of a 2013 BMW 320D (hereinafter referred to as 'the said vehicle')
3. In or around the 22nd June 2021 the Plaintiff presented the said vehicle to the Defendant for a routine service.
4. By a VAT Invoice generated by the Defendant and dated on the 22nd June 2021, the Defendant via its servants or agents outlined thereon that "loud noises from engine (possible damage to fuel pump due to false fuel, or low oil levels)". The Plaintiff will rely on the VAT Invoice at the trial of this matter for its full terms and effect.
5. The Plaintiff obtained a second opinion from D & D Auto and by a Report dated the 2nd September 2021 Mr. Daley of D & D Auto opined that "human error during the vehicle's last service has caused the vehicle to become "inoperable" as the engine was taken completely apart." The Plaintiff intends to rely on the said Report at the trial of this matter for its full terms and effect.
6. Based on the contents of the said Report, the treatment and care provided by the Defendant on the said vehicle fell far below acceptable standards and was reckless and/or negligent.

PARTICULARS OF NEGLIGENCE

The Defendant whether by its agents or servants was negligent and/or in breach of their duty in that:-

- i. The Defendant dismantled the said vehicle's engine and failed to properly put it back together;
7. By reason of the matters aforesaid, the Plaintiff suffered loss and damages.
8. The Plaintiff also claims interest upon such damages as may be awarded to her pursuant to the Civil Procedure (Award of Interest) Act 1992.

AND THE PLAINTIFF claims:

1. The sum of \$11,457.76 which represents the cost of repair;
2. Damages;
3. Interest;
4. Such further or other relief;
5. Costs.

[3.] German denied the claim in a Defence filed on 28 January 2022.

[4.] At trial Musgrove gave evidence in her case and called Damion Daley as her witness. German called Tim Spahn as a witness in its case.

[5.] Musgrove's evidence was contained in her witness statement which was subject to cross examination. Musgrove stated that she is the registered owner of a 2013 BMW 320D. On 22 June 2021 she presented the vehicle to German for a routine service. She says that there was no mechanical complaints before the scheduled service. Upon the vehicle being serviced, German generated a VAT Invoice dated 22 June 2021, indicating "loud noises from engine (possible damage to fuel pump due to false fuel, or low oil levels)".

[6.] Musgrove says that on 25 June 2021, while driving on Market Street, the vehicle began jerking immensely and immediately shut down. She was unable to start the engine or shift the gears with the engine off. The Vehicle was towed to German the same day. After completing their diagnostic testing, German reported that the engine was damaged beyond economic repair. She was asked to remove the vehicle as it could not be stored on German's premises.

[7.] On 28 August 2021 she obtained a second opinion from Damion Daley of D & D Auto who advised that "human error during the vehicle's last service has caused the vehicle to become "inoperable" as the engine was taken completely apart." D & D estimated that the total cost of the repair was \$11,457.76.

[8.] Damion Daley was accepted as an expert in motor vehicle repair on the basis of a 23 year career in the auto repair. Daley did not have any certification with respect to the BMWs or any proof of formal training. He did some vocational training in Jamaica but did not complete the program.

[9.] Daley produced a report to the effect that: "human error during the vehicle's last service has caused the vehicle to become "inoperable" as the engine was taken completely apart.

[10.] Notwithstanding the assertion of the engine being taken completely apart, Daley's oral evidence was that when he examined the vehicle some months after German had worked on it, the engine was not completely taken apart. Daley said that when he viewed the vehicle the engine reflected some parts were disconnected. His evidence was that German was doing some diagnosis, checking the timing area to see what's going on with it. Daley admitted that he did not put the vehicle on a computer to do any diagnosis. He merely examined the oil and turning belt.

[11.] Tim Spahn's evidence was contained in a witness statement which was subject to cross examination. Spahn was deemed an expert in automobile repair employed with German. He holds a Master Craftman's Diploma in Vehicle Mechanics and numerous certificates on the BMW vehicle.

[12.] Spahn says that on 22 June 2021 Musgrove brought her vehicle into the workshop for a service. It was noted that the check engine light was on and an occasional engine noise was observed. Spahn stated that the presence of occasional noise was not unusual so a complete scan was done. A computer scan was performed which did not reveal any permanent damage which warranted further in depth analysis.

[13.] Spahn says that the vehicle was towed back into the workshop for damage inspection two days after the service. The inspection of the vehicle, which required the removal of the valve cover, revealed a failure of the engine timing drive which caused catastrophic engine damage. Repair of the engine was not advised due to the excessive costs and replacement of the engine was suggested. The engine was not taken completely apart during the service. After the vehicle had broken down two days later, the valve cover and fuel quality control valve were removed for engine damage assessment.

[14.] Spahn says that the engine was run for 90km between the time it was serviced and towed back to German Auto Works.

Analysis and Disposition

[15.] Counsel for Musgrove stated in his brief opening statement that this case concerns a narrow issue to be determined by the court as the Claimant was seeking the sum of \$11,457.76 for the

damage suffered as a result of the negligence of German. The particulars of that claim, he stated, are laid out in a Statement of Claim that was filed on the 21st of December, 2021.

[16.] The Statement of Claim referred to, however, simply asserts that :

6. Based on the contents of the said Report, the treatment and care provided by the Defendant on the said vehicle fell far below acceptable standards and was reckless and/or negligent.

PARTICULARS OF NEGLIGENCE

The Defendant whether by its agents or servants was negligent and/or in breach of their duty in that:-

i. The Defendant dismantled the said vehicle's engine and failed to properly put it back together.

[17.] The sum of \$11,457.76 identified as the costs of repair appears to be the value of the replacement and installation of a new engine for the BMW.

[18.] There is no pleaded claim that any work done on the vehicle by German was somehow the cause of the inoperability of the engine and its need to be replaced. The pleaded claim is simply negligence for having dismantled the vehicle's engine and failing to properly put it back together.

[19.] The evidence, even from Daley, does not support the claim of the vehicle's engine being dismantled when the vehicle was towed back to German. Daley's evidence supported Spahn's evidence that certain parts were removed to accommodate diagnostic testing. If the dismantling was being alleged to have taken place during the service on 22 June 2021, neither Musgrove nor Daley was present for this to be able to make such a claim in the face of German's denial. Even if this factual assertion had been proven, there is no evidence as to how this sum of \$11,457.76 is attributable to German's alleged failure to properly put it back together.

[20.] It is no surprise therefore that German submits that:

4. ... [Musgrove] on a balance of probabilities has failed to prove that [German] was negligent in the servicing of her vehicle. Moreover, [German] submits that [Musgrove] is bound by its pleadings and as such it cannot be said that a failure to re-assemble a defective engine can properly be said to constitute negligence nor is such a claim sufficient for damages to accrue.

Proof of causation

5. As stated, [Musgrove] must show that, on the balance of probabilities, it was [German's] breach that caused the loss. However, [Musgrove] by her pleadings have failed to articulate any loss or any act done by [German] which would constitute a loss and the accrual of damages.

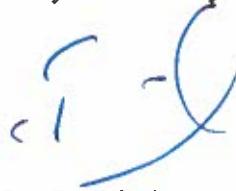
[21.] I accept this submission as parties are indeed bound by their pleadings which establish the four corners of a dispute. (See **Ervin Dean v Bahamas Power & Light** [2024] UKPC 20, and **Coleby v BSI Trust Corporation et al** SCCivApp & CAIS No. 128 of 2012).

[22.] Musgrove's claim, at its highest, is a failure of German to properly reassemble the vehicle. I am not satisfied that Musgrove has proven a breach of a duty of care which resulted in a loss to Musgrove. This was an engine which all the parties seem to accept was no longer operable and had to be replaced. What would be the utility it completing the assembly of this engine if its ultimate fate was its eventual removal? In any event, German does not accept the assertion that the engine had been disassembled, as alleged. It would have indeed been remarkable that this could have occurred in the short time frame that she had it serviced on 22 June 2021 or when it was inspected on 25 June 2021.

[23.] Although not pleaded, Musgrove sought through her expert Daley, to assert that the damage to the engine was as a result of German's actions. Having observed both experts as they gave their evidence, I did not accept Daley's opinion and preferred Spahn's. This preference is not merely because Daley's training on the vehicle was far inferior to that of Spahn's, but because he did no real diagnostic testing other than examine the timing belt and engine oil for quality and contaminants. Further, there is no evidence to support Daley's premise that the vehicle's engine was completely taken apart during the last service. Spahn on the other hand, did a proper diagnostic on the vehicle which revealed the challenge with the engine. This was a 2013 vehicle of which Musgrove was not the original owner and which came into German's facility with a history of a complaint of a noise in the engine. I therefore could not find that Daley's assertions were proven on balance or that any causal link was made between the damaged engine and German.

[24.] In all the circumstances therefore Musgrove's claim is dismissed with costs to German. Having considered the circumstances of the claim, including the several adjournments arising from German's challenges in securing legal counsel, I assess costs at \$5000.

Dated this 5th day of February 2025

A handwritten signature in blue ink, appearing to be 'I. R. Winder', with a large flourish at the end.

Sir Ian R. Winder

Chief Justice