

IN THE SUPREME COURT OF BELIZE. A.D. 2010

Claim No. 454 of 2010

YHONY ROSADO

CLAIMANT

AND

GEORGE ORELLANA  
BELIZE MARINE & MOORING SERVICES LTD.  
GABRIEL RODRIGUEZ  
COMPTROLLER OF CUSTOMS  
THE ATTORNEY GENERAL

1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT  
3<sup>RD</sup> DEFENDANT  
INTERESTED PARTY  
INTERESTED PARTY

Before: Hon. Justice Minnet Hafiz-Bertram

Appearances: Mr. Kareem Musa for the Claimant  
Mr. Philip Zuniga SC for the first and second Defendants  
No appearance for the third Defendant  
Mr. Hawke for the Interested Parties

**J U D G M E N T**

**Introduction**

1. The Claimant, Mr. Rosado claims the return of \$40,000.00 being the purchase price of a 2004 Isuzu D-Max motor vehicle (hereinafter referred to as the “motor vehicle”) which he bought from the first and second Defendants. The motor vehicle was subsequently confiscated by the Belize Customs Department as there was a failure to pay custom duties. The Claimant also claims damages and cost.

**Statement of Case**

2. Mr. Rosado claims that on the 1<sup>st</sup> April, 2010 he entered into an agreement with the first and second Defendants for the purchase of the

- vehicle at a price of \$40,000.00 and on the said day he made a down payment of \$20,000.00. On 15<sup>th</sup> April, 2010, he paid the balance of the purchase price being \$20,000.00 and the Defendants delivered the vehicle to him.
3. Mr. Rosado by his amended statement of claim issued on 28<sup>th</sup> October, 2011, claims that on 28<sup>th</sup> May, 2010, the Belize Customs Department took possession of the vehicle as the Defendants had failed to pay customs duties on same. As a result, he was deprived of ownership, use and enjoyment of the motor vehicle.
  4. Mr. Orellana, the first Defendant says by his amended Defence that Mr. Rosado requested the vehicle after he paid the sum of \$10,000.00 on 1<sup>st</sup> April, 2010 and in consideration of his promise to pay the balance of \$30,000.00 by installments, he delivered the vehicle to him. He claims that Mr. Rosado paid two installments of \$5,000.00 each leaving a balance of \$20,000.00. which he has failed to pay.
  5. He denies that the Belize Customs Department took possession of the vehicle and says if it did, it is not his fault. He says that he bought the vehicle from the third Defendant, Mr. Gabriel Rodriguez who was the registered owner of the vehicle and who delivered to him the Certificate of Registration dated 1<sup>st</sup> October, 2009.
  6. Mr. Orellana further says that the Customs Duties payable on the motor vehicle were paid on 14<sup>th</sup> October, 2003 by Bravo Investments Ltd.
  7. He counterclaims \$20,000.00 as he says that Mr. Rosado failed or refused to pay the balance of the purchase price.

8. Mr. Rosado in reply and defence to the counterclaim says that Mr. Orellana acknowledged receipt of the first payment of \$20,000.00 in a Bill of Sale which says that the vehicle would be delivered on the final payment. He further says that on payment of the balance of the purchase price the motor vehicle was delivered to him.
9. Mr. Rosado says that the Customs Department did take possession of the vehicle which is evidenced by a Custody Receipt from that Department. Further, he denied the counterclaim for \$20,000.00 as the full purchase price had been paid for the motor vehicle.
10. The second Defendant, Belize Marine and Mooring says that it had no agreement or business dealings with Mr. Rosado. Further, that if the Belize Customs took possession of the motor vehicle, it could not have been any fault of Belize Marine and Mooring.
11. The third Defendant, Mr. Gabriel Rodriguez did not file a defence to the claim. An Ancillary claim was filed by Mr. Orellana against Mr. Rodriguez in the event he is liable to Mr. Rosado for the return of the purchase price of \$40,000.00, damages, interest and cost. Mr. Orellana further claims against Mr. Rodriguez, the sum of \$28,000.00 which he paid to him as the purchase price of the motor vehicle and loss of profit of \$12,000.00.

Witnesses

12. Mr. Rosado gave evidence on his own behalf. Mr. Orellana and Mr. Jose Gomez gave evidence for the first and second Defendants. Mr. Adrian Gibson gave evidence on behalf of the Belize Customs Department.

13. **Issues for determination**

- 1) Whether Mr. Rosado paid the full purchase price of \$40,000.00 for the motor vehicle.
- 2) Whether the claim against the second defendant should be dismissed.
- 3) Whether Customs duties was paid on the motor vehicle.
- 4) Whether Mr. Rosado is entitled to the return of the purchase price of \$40,000.00 paid to Mr. Orellana.
- 5) Whether Mr. Orellana is entitled to \$20,000.00 on the counterclaim.
- 6) Whether Mr. Orellana is entitled to damages on the ancillary claim.

**Issue 1: *Whether Mr. Rosado paid the full purchase price of \$40,000.00 for the motor vehicle.***

14. Mr. Rosado's evidence is that Mr. Orellana was introduced to him at his place of business on the Western Highway, Belize City by Jose Gomez. During the said visit, Mr. Orellana mentioned to him that he was selling the motor vehicle at a purchase price of \$40,000.00. Mr. Rosado stated that he informed Mr. Orellana that he would not be able to pay the full purchase price of \$40,000.00 in one lump. However, he can make the payment in two installments of \$20,000.00 and Mr. Orellana had no problem with the payment schedule. He informed him that he would provide him with a Bill of Sale upon the first payment and would deliver the vehicle, the title and open transfer upon the second payment.

15. The evidence of Mr. Rosado is that Mr. Orellana went to his business place on 1<sup>st</sup> April, 2010 with the Bill of Sale which he read over and being satisfied with the terms, he executed same and paid to Mr. Orellana the first installment of \$20,000.00. He exhibits as “YR 1” a copy of the Bill of Sale.
16. Mr. Rosado stated that on 15<sup>th</sup> April, 2010 Mr. Orellana returned to his business place and he paid the balance of the purchase price being \$20,000.00 and the motor vehicle was delivered to him. As per agreement, Mr. Orellana delivered to him the Original Certificate of Registration for the vehicle in the name of Gabriel Rodriguez and also an open transfer executed by the said Rodriguez. The Certificate is exhibited as “YR 2” and the Open Transfer is exhibited as “YR 3”.
17. Mr. Orellana’s evidence is that on 29<sup>th</sup> March, 2010, Jose Gomez told him that Mr. Rosado was looking to buy a pick-up truck. He enquired whether Mr. Orellana would like a “D-Max” or a “Mitsubishi” and he was informed that Mr. Rosado wanted the D-Max. He stated that he drove the D-Max with Jose as his passenger to Mr. Rosado’s house. The said vehicle was inspected by Mr. Rosado who liked it and he offered to sell for the sum of \$40,000.00.
18. At paragraph 6 of his witness statement, Mr. Orellana stated that Mr. Rosado said that he would purchase the vehicle but he did not have the money and he offered \$5,000.00 as down payment. At paragraph 7, he stated that he told Mr. Rosado that if he had \$20,000.00 he would accept that amount and he could pay the balance of 20,000.00 later.
19. Mr. Orellana at paragraph 8 of his witness statement stated that Mr. Rosado again told him that he had only \$5,000.00 and he let him know

that if he gave him the \$20,000.00, he would deliver the vehicle to him and then pay him the balance by installments of \$5,000.00 per week.

20. At paragraphs 9 and 10 of his witness statement, he said that on 1<sup>st</sup> April 2010, Mr. Rosado asked him to go over to his house for the down payment. However, when he arrived Mr. Rosado had only \$5,000.00 and not \$20,000.00 which he expected. He stated that the following day, Mr. Rosado called him by telephone and told him that he really need the vehicle in order to transport his workers but, that he had only \$10,000.00 which he would pay immediately and thereafter he would pay \$5,000. per week until he paid the \$20,000.00 after which he would pay \$5,000.00 every other week until he paid the full purchase price. He stated that he invited Mr. Rosado to go over to him and he did so.
21. Mr. Orellana further stated that he made up a Bill of Sale before he met Mr. Rosado and signed it because he expected the money. He said that after Mr. Rosado paid him the \$10,000.00 he gave him the Bill of Sale because he already signed it. He stated that he was convinced that Mr. Rosado was a good man because Mr. Gomez had recommended him. Thereafter, he delivered to Mr. Rosado the Bill of Sale, an Open Transfer signed by the previous owner Mr. Rodriguez, the keys to the vehicle and a customs entry showing that Bravo Motors had paid the duty.
22. He further stated that when he gave the open transfer to Mr. Rosado he told him that he should not register the vehicle in his name until he had paid off the full purchase price. However, Mr. Rosado informed him the following week that he wanted to insure the car in his name and he told him that he should wait as agreed and so the insurance remained in his name.

23. At paragraph 16 of his witness statement, Mr. Orellana stated that after Mr. Rosado paid him the first \$10,000.00 he should have paid him \$5,000.00 every week but he did not do so. He asked for a chance as things were too tight for him.
24. He stated at paragraph 17 that the payments made to him by Mr. Rosado were \$10,000.00 on the 1<sup>st</sup> April, 2010, \$5,000.00 on the 19<sup>th</sup> April, 2010 and \$5,000.00 on 15<sup>th</sup> May, 2010. At paragraph 18, he said that Mr. Rosado told him that the tourist season was low so it was hard for him to keep up with the payments.
25. Mr. Jose Gomez, witness for Mr. Orellana, in his witness statement stated that he introduced Mr. Rosado to Mr. Orellana and he accompanied Mr. Orellana to Mr. Rosado's house where the offer was made to sell the motor vehicle. He stated that during the negotiations between them, Mr. Rosado said that he could pay \$5,000.00 every other week and Mr. Orellana said that he wanted \$20,000.00 down payment and \$5,000.00 installments every other week. At paragraph 5 of his witness statement, he stated that on the following Monday, the 5<sup>th</sup> April, 2010, he saw Mr. Rosado driving the motor vehicle.
26. Mr. Gomez further stated that two weeks after the first conversation between Mr. Rosado and Mr. Orellana, he received a telephone call from Mr. Orellana who was in Melchor, Guatemala who requested that he collect a second payment of \$5,000.00 from Mr. Rosado. He stated that when he spoke to Mr. Rosado, as requested, he informed him that he had already spoken to Mr. Orellana and that he would personally collect the money from him.

27. In cross-examination, Mr. Rosado denied that he made an offer of \$5,000.00. and that he needed the vehicle to take his workers to work. He said that he bought the vehicle because he was getting a good deal. Further, that Mr. Gomez did not go to him to collect any money as he had no right to do so.

Submissions by Mr. Musa for the Claimant

28. Learned Counsel, Mr. Musa submitted that the testimony of the Claimant and the supporting documentation of the Bill of Sale is overwhelming in favour of Mr. Rosado's case that the full purchase price was paid to the First and Second defendants.
29. Learned Senior Counsel, Mr. Zuniga submitted, by referring to paragraphs 11 to 19 of Mr. Orellana's witness statement, that Mr. Orellana gave a good and credible explanation for the creation and delivery of the Bill of sale. Further, that the evidence of Mr. Orellana is supported by the evidence of Mr. Gomez who confirmed that Mr. Rosado could be trusted. He contended that Mr. Rosado should pay to Mr. Orellana \$20,000.00 demanded in the counterclaim plus costs.

Determination

30. The evidence of Mr. Rosado includes documentary evidence and I find him to be a credible witness. He said that Mr. Orellana went to his business place on 1<sup>st</sup> April, 2010 with the Bill of Sale which he executed and paid to Mr. Orellana the first installment of \$20,000.00. He exhibits as "YR 1" a copy of the Bill of Sale. This Bill of sale which is dated April 01, 2010 is written on the letter head of '**Belize Marine & Mooring Service Ltd.**' It states:

.....

*April 01, 2010*

***BILL OF SALE***

*George Orellana  
3 ½ Miles Northern Highway  
Belize City, Belize*

*Yhony Rosado  
2 ½ Miles Western HWY  
Belize City, Belize*

*a Dear Mr. Rosado, I George Orellana Director of BMMS, am selling  
2004 ISUZU D-Max, Automatic Transmission, Four Door Pick-up  
Truck for the amount of \$40,000.00 As Is, Where Is.*

*I received on 1<sup>st</sup> April, 2010 a deposit of \$20,000.00 CASH. And  
the balance will be paid in full on 15 of April.*

*I guarantee that I will hold the Vehicle in the same condition until  
full payment is received.*

*Sincerely:*

*Sgd.  
George Orellana, Director*

*Sgd.  
Yhony Rosado (605-1575)*

31. The court finds that Mr. Orellana and his witness Mr. Gomez were very untruthful in giving their testimonies. This Bill of Sale is consistent with Mr. Rosado's evidence throughout the trial. He said that he could not pay the full purchase price of \$40,000.00 in one lump but in two payments of \$20,000.00 and Mr. Orellana informed him that he would provide him with a Bill of Sale upon the first payment and would deliver the vehicle, its title and open transfer upon the second payment. As can be seen by the Bill of Sale, Mr. Orellana acknowledged that he received the \$20,000.00 on 1<sup>st</sup> April, 2010. The said Bill was signed by both Mr. Rosado and Mr. Orellana.
32. I did not find the evidence of Mr. Orellana credible that Mr. Rosado offered him \$5,000.00 as down payment and that he told Mr. Rosado if he gave him \$20,000.00, he would deliver the vehicle to him and he could pay him the balance by installments of \$5,000.00 per week. The Bill of Sale shows clearly that Mr. Orellana intended to hold the vehicle until he received the full purchase price. He stated in the said Bill that "*I guarantee that I will hold the Vehicle in the same condition until full payment is received.*" Further, Mr. Orellana's tale that he made up the Bill of Sale before he met Mr. Rosado and signed it because he expected the \$20,000.00. is not believable. He could have made a new Bill of sale or take a pen and make an amendment to the \$20,000.00. to read \$10,000.00. Mr. Orellana used his own computer to make that Bill of Sale. He could have easily made an amendment, if it was necessary. In cross-examination, he agreed with Mr. Musa that he had ample time to change the Bill of Sale.
33. The Bill of Sale also shows that the final payment of \$20,000.00 was to be paid on the 15<sup>th</sup> April. It says that, "*I received on 1<sup>st</sup> April, 2010 a*

*deposit of \$20,000.00 CASH. And the balance will be paid in full on 15 of April.* I find Mr. Rosado's evidence credible that he did pay the balance on the 15<sup>th</sup> April, and as per the agreement as shown by the Bill of Sale, Mr. Orellana delivered to him the Original Certificate of Registration of the vehicle in the name of Gabriel Rodriguez and also an open transfer executed by the said Rodriguez. The Certificate of Registration exhibited as "YR 2" shows that the vehicle had been registered in the name of Gabriel Rodriguez. The Open Transfer which is exhibited as "YR 3" is the *City of Belize, Notification of Transfer of Ownership of a Motor Vehicle*. It shows that Gabriel Rodriguez was the owner of the vehicle and he disposed of same on 18<sup>th</sup> January, 2010. However, it did not state the name of the person to whom it was transferred. This is regarded as an "Open Transfer" which accorded to the evidence was an acceptable practice at the time. Further, it is shown by the evidence that Mr. Orellana was able to get Insurance for the vehicle although he did not have a Certificate of Title. According to Mr. Orellana, he did not take the time to get the title of the vehicle in his name. As such, the title remained in the name of Rodriguez. He did however, take the time to get the vehicle insured in his name.

34. I accept the evidence of Mr. Rosado that the Bill of Sale shows the true position as to the payments made to Mr. Orellana. I do not believe Mr. Orellana's evidence that he received three payments totaling \$20,000.00. Further, I do not find Mr. Gomez who is a friend of Mr. Orellana, to be a credible witness. I accept the evidence of Mr. Rosado that there was never any money transaction between himself and Mr. Gomez who has accepted under cross-examination that he was not present at all whenever any payment was made to Mr. Orellana. I find that Mr. Rosado paid Mr. Orellana \$40,000.00 being the full purchase price for the motor vehicle.

**Issue 2: Whether the claim against the second defendant should be dismissed**

35. Learned Senior Counsel, Mr. Zuniga in written submissions contended that no evidence was presented by the Claimant to suggest that he had any dealings with the second defendant, Belize Marine and Mooring Services Ltd. Further, that the testimony of Mr. Orellana is that the agreement between him and the Claimant is unchallenged. As such, Learned Senior Counsel submitted that the claim against the second defendant should be dismissed with cost.
  
36. The court respectfully disagrees with Learned Senior Counsel, Mr. Zuniga's argument that the claim should be dismissed against the second defendant. The documentary evidence is quite compelling and overwhelming. Although, the negotiations were always being Mr. Rosado and Mr. Orellana, it can be seen by the documentary evidence that Mr. Orellana signed the Bill of Sale as Director of Belize Marine & Mooring Services Ltd. The Bill of Sale was also on the letter head of the said Company. The Bill of Sale also states that, *I George Orellana Director of BMMS, am selling a 2004 ISUZU D-Max, Automatic Transmission, Four Door Pick-up Truck for the amount of \$40,000.00 As Is, Where Is.* This evidence clearly shows that Mr. Orellana was selling as Director of the Company. As such, the court finds that the claim against the second Defendant, Belize Marine & Mooring Services Ltd. is properly before the court. Accordingly, the claim will not be dismissed against the second Defendant .

**Issue 3: Whether Customs duties was paid on the motor vehicle seized from Mr. Rosado.**

37. Mr. Orellana denies that the Belize Customs Department took possession of the vehicle and says if it did, it is not his fault. He says that he bought the vehicle from Mr. Rodriguez who was the registered owner and who delivered to him the Certificate of Registration dated 1<sup>st</sup> October, 2009. Further, that Customs Duties payable on the motor vehicle were paid on 14<sup>th</sup> October, 2003 by Bravo Investments Ltd.
38. The second Defendant, Belize Marine and Mooring says that it had no agreement with Mr. Rosado and if the Belize Customs took possession of the motor vehicle, it could not have been any fault of Belize Marine and Mooring.

Mr. Rosado's evidence is that Belize Customs Department confiscated the vehicle and he was provided with a Custody receipt which is exhibited as "YR 4". Mr. Rosado's evidence is supported by that of Mr. Gibson, Customs Officer.

39. Mr. Adrian Gibson is a Customs and Excise Clerk 1 at the Customs and Excise Department for approximately 15 years. He works with the Comptroller of Customs who was added as Interested Party so as to assist the court since it was stated by Mr. Rosado that the motor vehicle was seized by them.
40. Mr. Gibson in his witness statement, stated that on Friday 28<sup>th</sup> May, 2010, while on a routine patrol on the Western Highway, he noticed a Silver Isuzu D-Max Pickup with licence plate number BC-C-36423 which he had previously received information may be an uncustomed vehicle. As such, with the permission of Mr. Rosado, he conducted a physical

inspection of the Vehicle which included inspecting the confidential vehicle identification number (VIN) on the Vehicle itself.

41. He stated that upon inspection, it appeared to him that the VIN which read as MPATFS77H4H501797 was tampered with and so he immediately informed Mr. Rosado of his concerns and that he would be taking the vehicle into custody to conduct further checks at Bravo Motors on the Western Highway who was the authorized dealer for Isuzu vehicles. Mr. Gibson stated the he issued a Custody Receipt to him and took the Vehicle to Bravo Motors where he met Mr. Delroy Hamilton, the Service Manager at Bravo Motors.
42. Mr. Gibson further stated that he provided the Vehicle's documentation to Mr. Hamilton who informed him that the Vehicle was actually a later model and not a 2004 model as stated on the documentation. Further, he was informed by Mr. Hamilton that while he did not have access to the computer that week to verify his suspicions, he recalled that he had sold the original 2004 vehicle to Jenell's Trucking Co. Ltd. of 5 ½ miles Western Highway.
43. Mr. Gibson stated that he returned to Bravo Motors one week later, May 31, 2010, so that Mr. Hamilton could use the computerized database to retrieve the correct VIN number for the Vehicle, which he claimed was not the 2004 vehicle. He stated that upon reviewing the computerized database, Mr. Hamilton informed him that contrary to its documentation the correct VIN number for the Vehicle was MPATFS85H7H532947, and it was actually a 2007 model Isuzu D-Max Pickup.
44. He stated that his further investigations regarding the Vehicle have confirmed that the Vehicle is uncustomed, and a report from J.I.C.C of the Belize Police Department has revealed that the Vehicle was reported

stolen in San Salvador on 10<sup>th</sup> December, 2009. He exhibited a copy of the report as “**AG-1**”. Further, on January 25, 2011, Mr. Hamilton provided him with an official report from Bravo Motors for the vehicle which he seized from Mr. Rosado. That report is exhibited as “**AG-2**”.

45. Mr. Gibson stated that his further investigations revealed that the original 2004 vehicle was involved in an accident and the wreckage was retrieved by Home Protector Insurance Co. Ltd. who in a letter dated August 15, 2011 informed him that the wreckage was sold to Mr. Gabriel Rodriguez of No. 9 Gentle Avenue, Belize City. A copy of the letter is exhibited as “**AG-3**”. He said that he has spoken to Mr. Rodriguez who informed him that he bought the wreckage from Home Protector Insurances repaired it and sold it to Mr. George Orellana. He was informed by Mr. Orellana that he sold the Vehicle to Mr. Rosado.
46. Mr. Gibson’s evidence is that the vehicle is still in the custody of the Customs and Excise Department as an uncustomed vehicle.

Submissions by Mr. Zuniga

47. Mr. Zuniga submitted that Mr. Gibson’s witness statement was based on hearsay evidence since Mr. Hamilton was not brought to testify. As such, the court has no evidence that the vehicle sold by Gabriel Rodriguez has been tampered with as suggested by Mr. Gibson. In the circumstances, Learned Senior Counsel, contended that Mr. Orellana has not been shown to be in any fault or breach.

## **Determination**

### *Admissibility of Mr. Gibson's evidence*

48. Firstly, the court will make a determination as to whether Mr. Gibson's evidence is admissible since Learned Senior Counsel, Mr. Zuniga submitted that his witness statement was based on hearsay evidence. The evidence of Mr. Gibson that the vehicle was uncustomed was based on a thorough investigation and not solely the information received from Mr. Hamilton. Mr. Gibson was cross-examined and I found him to be a very credible and reliable witness who supported his evidence with official documents obtained during his investigation. Mr. Gibson's investigation revealed that there was tampering with the identification number of the vehicle which he seized from Mr. Rosado. That investigation led him to Bravo Motors on the Western Highway who was the authorised dealer for Isuzu vehicles so as to retrieve the correct VIN for the vehicle. Mr. Gibson gave the vehicle documentation to the Service Manager, Mr. Hamilton who checked his computerised database which showed the correct identification number for the vehicle as MPATFS85H7H532947, and that it was actually a 2007 model Isuzu D-Max Pickup truck. Mr. Gibson was so informed and verily believed that the correct information was given to him. Mr. Gibson also received an official report from Mr. Hamilton which forms part of his investigation and is exhibited as "**AG 2**". It states:

*25 January, 2011*

*To: Customs Department, Investigation section*

*Attention: Mr. Adrian Gibson*

*Belize City, Belize*

*Subject: Isuzu D-Max C-36423*

*Dear Sir,*

*We did an inspection on the said Isuzu D-Max bearing color Silver with VIN No. MPATFS77H4H501797 and this is what we found out below:*

- 1. The vehicle VIN does not match the vehicle. It is calling for an older module D-max that belongs to someone else.*
- 2. The VIN that we found on the vehicle using the ISUZU Tech 2 scan tool is MPATFS85H7H532947 and it is a 2007 vehicle. It matches the module of the vehicle and this vehicle was not sold by us, so it must be from another country.*
- 3. Please note that the module that the VIN is showing does not match the module that the vehicle is showing; the head lamps and the rear lamps are different from the vehicle what we can see with the VIN.*
- 4. The VIN we have register in our system to a Company Jennels trucking service bought in 2004, the other VIN is not register in our database.*

*My conclusion is that the VIN number does not belong to this truck in question. ....*

*Kind regards*

*Delroy Hamilton  
Sales Manager  
Bravo Investments Ltd.  
41/2 Western Highway*

*.....*

49. Mr. Gibson also did further investigation which revealed that the vehicle is uncustomed as it was reported stolen in San Salvador. A Report from the Police Department, J.I.C.C. exhibited as "**A.G. 1**" shows that checks were made through INTERPOL database and the results showed that the Isuzu D-Max Pickup, Silver color, N/P, VIN No. MPATFS85H7H532947 was reported stolen in San Salvador on 10<sup>th</sup> December, 2009. This is the same VIN number which Mr. Hamilton confirmed was on the vehicle seized from Mr. Rosado.
50. Mr. Gibson did not stop there as he went on to investigate what became of the vehicle that was sold by Bravo Motors. He found out as shown by **Exhibit "AG 3"** that Home Protector Insurance Company Limited sold the salvage of the 2004 ISUZU D-Max- C-20428 with VIN number MPATFS77H4H501797 to Mr. Gabriel Rodriguez, the third Defendant.
51. In light of all the investigations done by Mr. Gibson, it is my view that it was not necessary to call Mr. Hamilton even if he was available. There is no evidence before the court contrary to that of Mr. Gibson that the vehicle was stolen and its VIN number tampered. As such, the court finds that the evidence of Mr. Gibson is admissible.

Were customs duties paid on the vehicle?

52. Mr. Orellana denied that the Belize Customs Department took possession of the vehicle and says if it did, it is not his fault. That he bought the vehicle from Mr. Rodriguez who was the registered owner and who delivered to him the Certificate of Registration dated 1<sup>st</sup> October, 2009. Further, that Customs Duties payable on the motor vehicle were paid on 14<sup>th</sup> October, 2003 by Bravo Investments Ltd.

53. It has been proven by Mr. Rosado and Mr. Gibson that the Customs Department did take possession of the vehicle which was bought by Mr. Rosado. Further, it has been proven by Mr. Gibson that duty was not paid on the vehicle sold to Mr. Rosado as it was a stolen vehicle from San Salvador. The duty that was paid by Bravo Motors was on the salvage vehicle which was sold to Mr. Rodriguez. The evidence before this court is that the VIN number on the vehicle sold by Bravo Motors was used on the stolen vehicle. I accept Mr. Gibson's evidence which I find to be credible that the vehicle was stolen, the Vin numbered was tampered and that it is an uncustomed vehicle. Accordingly, the court finds that customs duties were not paid on the vehicle which was seized from Mr. Rosado.

**Issue 4 : Whether Mr. Rosado is entitled to the return of the purchase price of \$40,000.00 paid to Mr. Orellana and the second Defendant.**

54. Learned Counsel, Mr. Musa submitted that pursuant to section 14 of the Sales of Goods Act, there is an implied condition on the part of the Vendor, in this case, the first and second Defendants, that they have the right to sell the goods. He further contended that the evidence revealed that they had no such right since the vehicle was not declared to the Belize Customs Department upon entry into Belize. As such, they breached the implied condition and Mr. Rosado has the right to treat the contract as repudiated and seek the recovery of the purchase price of \$40,000.00. **Section 14 of the Sales of Goods Act, Chapter 261** states:

*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;*

55. I agree with Mr. Musa that pursuant to **section 14** of the Act there was an implied condition on the part of Mr. Orellana and also the second defendant that they had the right to sell the motor vehicle. The court further agrees with Learned Counsel that it has been proven that they had no such right since the vehicle was stolen and uncustomed. As such, as submitted by Mr. Musa, the first and second defendants have rendered the contract between the parties impossible, thereby breaching the contract. Since Mr. Rosado did not receive a legitimate title he is entitled to the loss suffered. He has proven that he paid \$40,000.00 for the motor vehicle. Accordingly, the court finds that Mr. Rosado is entitled to the return of the purchase price of \$40,000.00 paid to Mr. Orellana and the second Defendant, Belize Marine & Mooring Services Ltd.

Gabriel Rodriguez – third Defendant

56. The Claimant did not make a claim against the third defendant when it was initially issued. Mr. Rodriguez was added by the court at case management conference after perusing the defence of Mr. Orellana who stated that he bought the vehicle from him. Mr. Rodriguez did not file a defence to the claim in relation to the allegations made that the vehicle was stolen although he appeared at case management with his

attorney. Mr. Orellana filed an ancillary claim against Mr. Rodriguez in the event he is liable to Mr. Rosado.

### **Counterclaim**

#### **Issue 5: Whether Mr. Orellana is entitled to \$20,000.00 on the counterclaim.**

57. Mr. Orellana counterclaims \$20,000.00 as he says that Mr. Rosado failed or refused to pay the balance of the purchase price. It has been proven that Mr. Rosado paid the full purchase price for the vehicle. As such, the counter-claim is dismissed.

#### **58. Order**

Judgment is entered for the Claimant in the sum of \$40,000.00 as damages plus interest against the first and second Defendants.

The first and second Defendants are to pay the cost of the Claimant in the sum of \$10,000.00.

The Counter Claim is dismissed.

## **Ancillary Claim**

### **Issue 6: Whether Mr. Orellana is entitled to damages on the ancillary claim.**

59. An Ancillary claim was filed by Mr. Orellana against Mr. Rodriguez in the event he is liable to Mr. Rosado for the return of the purchase price of \$40,000.00, damages, interest and cost. In particular, he claims against Mr. Rodriguez, the sum of \$28,000.00 which he paid to him as the purchase price of the motor vehicle and loss of profit of \$12,000.00., damages for breach of contract warranty, Declaration that the first Defendant is to be indemnified if he is liable to Mr. Rosado, judgment for any amount for which he may be found due from him to the Claimant and cost which he may be adjudged to pay the Claimant.
60. Mr. Rodriguez did not file a defence to the ancillary claim. The court takes into consideration the evidence before the court in giving judgment. Judgment is entered for Mr. Orellana in the sum of \$28,000.00. being the purchase price that he paid to Mr. Rodriguez for the vehicle. The claim for loss of profit and other damages is refused as it was a stolen vehicle for which no duty was paid. Mr. Orellana has shown by his evidence that he is not in the business of selling cars. He bought this vehicle because it was cheap and he thought he was getting a good deal. He should not be allowed to make a profit on a stolen vehicle.
61. The 3rd defendant is ordered to indemnify the cost of \$10,000.00 to Mr. Orellana which he has to pay to the Claimant. The third Defendant is also ordered to pay \$7,000.00 cost to the first Defendant on the ancillary claim.

62. **Order on the Ancillary Claim**

Judgment is entered for Mr. Orellana in the sum of \$28,000.00. as damages plus interest, against the third Defendant, Mr. Rodriguez.

The 3rd defendant is ordered to indemnify the cost of \$10,000.00 to Mr. Orellana which he has to pay to the Claimant. The third Defendant is also ordered to pay \$7,000.00 cost to the first Defendant on the ancillary claim.

Dated this      day of January, 2013.

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Minnet Hafiz-Bertram  
Supreme Court Judge