

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES' CIVIL APPEAL NO. 14/06

**BEFORE: THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE HARRISON, J.A.**

**BETWEEN CARLAND INVESTMENTS LIMITED APPELLANT
AND A & J RAMTULLA ENTERPRISES
LIMITED RESPONDENT**

Garth McBean, instructed by Garth McBean & Company for the appellant

Kent Gammon, instructed by DunnCox for the Respondent

September 27 & 29, 2006

ORAL JUDGMENT

PANTON, J.A.

1. The respondent claimed that it bought a motor vehicle from the appellant whose managing director never revealed that he was acting on behalf of anyone other than the appellant. The respondent alleged that the said managing director orally warranted to the respondent's managing director that the appellant would be responsible for all costs or expenses incurred in respect of any defect or problem with the motor vehicle for a period of three (3) months or 3000 km. Within 3 months the car malfunctioned and developed an over-heating problem. Against this background, the respondent claimed the sum of One Hundred and

Ninety Two Thousand Nine Hundred and Forty-Nine Dollars, Seventy-Seven Cents (\$192,949.77) for breach of warranty.

2. At the trial of this case before Her. Hon. Mrs. Primo-Griffiths, Resident Magistrate, the appellant denied the existence of a contract for the sale between itself and the respondent. It contended that the contract for sale was between the respondent and the registered owner of the vehicle for whom the appellant acted as agent, and disclosed the agency. The appellant also denied that its managing director gave the oral warranty alleged by the respondent. It should be stated that if a warranty was in fact given, it would be of no moment whether it was given as principal or as agent.

3. In this situation, it was imperative that the learned Resident Magistrate make a finding as to whether an oral warranty had been given by the appellant. However, she did not. As a result, there has been no determination of the main issue in the case. This Court is not in a position to make that determination as it involves a question of the assessment of the credibility and reliability of the witnesses in respect of the content of their conversations.

4. The Court therefore allows the appeal, set aside the judgment entered below, and orders that a new trial take place before another Resident Magistrate as soon as possible. Costs Fifteen Thousand (\$15,000.00) to the appellant.

SMITH, J.A.

I agree.

HARRISON, J.A.

I agree.

ORDER

PANTON, J.A.

Appeal allowed. Judgment entered below set aside. Ordered that a new trial take place before another Resident Magistrate as soon as possible. Costs \$15,000.00 to the appellant.