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Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. D085 OF 1988

BETWEEN	THOMAS DEWDNEY	PLAINTIFF
A N D	LENFORD (or Lanny) PINNOCK	1ST DEFENDANT
A N D	WINSTON WALKER	2ND DEFENDANT
A N D	LLOWELLYN A. LAWSON	3RD DEFENDANT
A N D	TROPIGAS S.A.	4TH DEFENDANT

K. C. Burke and Dorothy Gordon for Plaintiff

C. M. Daly instructed by Daly, Walker & Lee Hing for the 1st, 2nd & 3rd Defendants

Dennis Morrison instructed by Dunn Cox & Orrett for the 4th Defendant

Heard: March 22, 25, 1993 April 1, 1993, July 1993 March 14, 1994, November 30, 1994 & February 23, 1995.

Pitter J.

The plaintiff is the owner of premises No. 19 Paradise Street in the parish of Kingston. On these premises were the plaintiff's dwelling house and another building, his bakery. On the 31st December 1984, whilst cooking gas was being delivered to the premises, there was an explosion and fire which destroyed both buildings and their respective contents and equipments for which a claim of $1,303,234.49 is made against the defendants for negligence.

The 1st, 2nd and 3rd defendants deny negligence and averred that any loss or damage to the plaintiff was caused entirely or in the alternative contributed to by the plaintiff's own negligence and further or alternatively was caused entirely or contributed to by the negligence of the 4th defendant. The 4th defendant averred that it engaged the services of the 3rd defendant as an independent contractor for loading and delivery of liquified petroleum gas (L.P.G) to its customers and that it owed no duty of care to the plaintiff and not otherwise liable for the negligence of the 3rd defendant, his servants or agents.

The 1st and 2nd defendants are delivery men and employees of the 3rd defendant. The 3rd defendant is contracted by the 4th defendant to load, transport and deliver cooking gas to its several customers. The 4th defendant Tropigas S.A hereinafter referred to as Tropigas manufactures cooking gas (L.P.G) and supplies its several customers.

Thomas Dewdney the plaintiff, testified that Tropigas has been supplying and delivering gas to him for over 12 years up to the date of the accident. After he had installed the ovens in the bakery, Tropigas selected an area where they installed the storage tank to store the gas supplied by them and did the fittings including the line from the tank to the oven. This tank was inside the building some 10 - 12 feet from the bakery oven. He had nothing to do with the installation. As far as he is aware the 1st, 2nd and 3rd defendants had nothing to do with the installation. The area of the building which housed the bakery and the gas tank is about 35 feet x 55 feet to 60 feet. The plaintiff regarded the system as safe since he had been using it for 10 - 12 years without incident. He did not regard himself being under any obligation to ensure the safe delivery of gas and he took no steps to ensure that gas was delivered safely to his premises. He received no safety instructions from Tropigas. He said the oven carried a pilot light which burned continuously so long as there is gas in the tank. The pilot light is enclosed in the oven and not visible. There was no naked lights in the building and admitted it would be dangerous to have a naked light in the delivery area whilst gas was being delivered. The delivery men knew about the pilot light in the oven. There was no switch to turn off the pilot light - it would have to be blown out at the oven end. However this would cause a build up of gas if it was not allowed to be burnt off by the pilot light. One can turn on or off the oven from the tank. If gas is turned off at the tank there would be no gas flowing to the oven. If one turns off the gas at the tank, the pilot light would go out and no gas would escape.

Mr. Dewdney could not say whether the accident would have occurred if the pilot light had not been on.

He never thought of extinguishing the pilot light when gas was being delivered. It is his view that every safety devise should have been implemented by the delivery men including extinguishing the pilot light whilst the tank was being filled. There was a guage on the tank which had a range 0 - 90 to indicate when it is full. He does not know of a lock-off valve at the end of the hose leading to the tank. There is a nozzle that enters the tank by means of screwing it on. He also knows that there is a valve which controls the flow of gas when gas ceases to go in, if operating correctly it would shut off. As far as he know the valve is operated manually. When sufficient gas is in the cylinder it is closed off by hand, by screwing a gadget i.e. a lock-off valve. He had nothing to do with the connection or disconnection of the hose.

Mr. Dewdney's evidence is that he had ordered gas from Tropigas and on the 31st December 1984, at about 9:30 a.m. on returning to his premises he saw a large crowd and his premises on fire. There was a Tropigas tanker parked some distance down the road in front of the premises. The first defendant Lanny Pinnock admitted being the driver of the tanker. Mr. Dewdney said when he asked him how the fire came about, he said he did not close off the tanker in time and the pilot from the oven ignite the gas. Mr. Dewdney said Mr. Pinnock told him he was employed to Tropigas. Cross-examined he said he did not know of any contractors as over the years he had been dealing straight with Tropigas and it was Tropigas that had been delivering gas to him regularly for the past 12 years. He regards the 3rd defendant as a despatcher. He said that when gas is being delivered, the defendant Lanny Pinnock operates the pump from the parked tanker/truck which is connected to the cylinder on his premises by a hose 50 feet to 60 feet long. The second defendant Winston Llewellyn makes the connection of the hose to the tank in the building. He said that sometime after the incident, he spoke to Mr. Walker the 2nd defendant and asked him how the fire started to which Mr. Walker replied that "the flow of gas did not turn off in time and it got to the pilot light in the oven and caused the fire." He said Mr. Walker told him he had disconnected the hose from the tank and the gas was still pumping, into the building.

Since the incident he has been taking gas from Shell Company. Their tank is now located in an open area. He regards the location outside the building as a much safer devise. Shell has given him instructions regarding what should be done when gas is being delivered.

He testified that prior to the fire his personal estimate of the value of the building which he described as being concrete blocks, bricks, zinc roofing and tiled floors at $150,000; baking equipment $142,000; goods in store-room which include items such as rice, flour, cornmeal, sugar, soap, cheese, saltfish and other dry goods he estimates at $154,000.00. When challenged under cross-examination he was unable to give details of the gravity of the goods lost, but said that the figure of $154,000 way below his actual loss.

Michael Powell a handyman employed to the plaintiff testified that on the 31st December 1984 the 1st and 2nd defendants whom he knew before came to the plaintiff's premises delivering gas. He said a Tropigas tanker was parked on the road along Paradise Street and a hose attached to the tanker. This hose was led from the tanker, through a passage, through the bakery and connected to the tank. He said that the 2nd defendant Winston Walker made the connection to the tank whilst the 1st defendant Lenford Pinnock was outside by the supply vehicle. A few minutes later, he said, the defendant Walker began to disconnect the hose from the tank. He saw gas escaping between the hose and the tank head. On finally disconnecting the hose gas started to spray, it was coming out fast and then there was a fire and explosion in the building.

Cross-examined he said he never heard the defendant Walker saying "All lights off". On previous occasions when gas was being delivered by the said team he had never heard them telling anyone to turn all lights off. He cannot say whether the oven was on but nobody was in that area at the time.

Mr. Fitz Marshall a retired Sergeant of Police testified that he has known the plaintiff for over 40 years and is acquainted with his business.

He has a fair knowledge of the business operations including the bakery equipment, the grocery and stock. He had last visited the plaintiff's premises 3 - 4 days before the incident. He said he does not claim to be an assessor but as a man knowing about such, he thinks he could make a reasonable assessment of the plaintiff's business place. Although he has had no training as a valuator, he has been around with respectable valuators and had watched them carrying out valuation on premises.

On his last visit to the plaintiff's premises the grocery and bakery were all stocked. He placed a valuation of $500,000 on the grocery which included items such as flour, sugar, soaps, insecticides, butter and miscellaneous grocery items. The bakery which consisted of 2 large ovens, 2 stoves and lathes he values at $40,000. The office equipment comprised a computer and printer, chairs, cabinet, carpeting, 1 set Encyclopedia, novels, 2 typewriters and filing cabinets he valued at $100,000. The dwelling and business place he values at $400,000 - he regards his figures as being equitable. The figures he quoted refer to the valuation at the time of the fire i.e. December 1984. He was cross-examined in relation to the price of flour and other items as they existed in December 1994 and the current prices he gave the figures. He also gave the prices of the ovens, stoves and filing cabinets as they existed in 1984.

Mr. Lincoln Brown's evidence is that he is a chartered accountant and as such did all the books and prepared the accounts of the plaintiff. All records were destroyed by the fire. He estimated the plaintiff's income at $200,000 from 1984. He arrived at this figure by taking the average of the plaintiff's earnings over the last three years prior to the destruction of the premises in 1984.

Mr. Lloyd Chin testified that the plaintiff is a friend and business associate. He knew the plaintiff's cold-storage rooms as he used to store goods there over short periods. Goods in the cold-storage amounted to about $,00,000; in the Wholesale store-room $100,000 to $150,000; in the bakery store-room $200,000 to $250,000; bakery including dwelling-house $300,000.

He said that the last time he visited the premises was in Xmas week prior to the fire. Although he did not take an inventory he saw items such as bacon, chicken, chicken back, minced meat, liver, pork, frankfurters. The store-room was full of stock. He arrived at these figures by estimate and they relate to 1984. At this point the plaintiff closed his case.

Mr. Lenford Pinnock the 1st defendant gave evidence to the effect that he is a salesman who was employed by the 3rd defendant to sell and deliver gas. He now sells for Shell Gas Company. He is paid monthly by Mr. Lawson. He said he worked with Tropigas up to the time of the fire at plaintiff's premises. He was never trained by Tropigas. However with Shell he receives training in safety. He said he had worked with Tropigas for 20 years and had been delivering gas to plaintiff's premises for about 10 years. Up to the time of the fire Mr. Walker the 2nd defendant assisted him. Mr. Walker would connect the hose and remove and roll it up. They would leave Mr. Lawson at Tropigas in the mornings - who would make up the papers and they would deliver the gas. In the absence of Mr. Lawson they would get instructions from a Mr. Powell, a supervisor at Tropigas.

He recounted that on the 31st December 1984, he made a delivery of gas to the plaintiff's premises. He said he drove the truck on to a sidewalk whilst Mr. Walker drew the hose through a passage to the back of the building and connected it to a tank which is very near to the kitchen. From where he was in the truck he could not see Mr. Walker making the connection to the tank. On receiving a signal from Mr. Walker i.e. a 'vibration' to indicate the filling of the tank, he locked off the supply. It was whilst he was at the truck writing up the bill that he heard an explosion inside the plaintiff's premises. He next saw Mr. Walker without clothing suffering burns.

In describing the operation of the system he said this:

> "The hose I use to deliver is a rubber hose lined with wire inside it. There is a nozzle to the tank end which is screwed on to the tank. There is a lock-off by the nozzle. Whenever we square up and I lock off my end and ready to take off, there is a little split valve at the hose end (speaking about the present Shell Company Co-operation).

> The one I used at the time (Tropigas) did not carry a split valve. The split-valve releases the pressure from the hose very slowly. The operator at the tank end would crack the hose end (unscrew it) little by little so that gas does not spread. In disconnecting I would have to cut off the flow from the truck end and he would disconnect. A little gas would come out in pulling off the hose. Gas would escape in the air when the hose is removed - it comes out hard sometimes - plenty would come out. The present system (Shell) does not allow the trapped gas to escape with force - because of the splitter valve, it releases it slowly.

Mr. Pinnock continuing said that the truck was owned by Tropigas, the vehicle was insured in the name of Tropigas, all the equipment on the truck was owned by Tropigas and the tank on the plaintiff's premises belonged to Tropigas. Since Shell took over from Tropigas, the tank on the plaintiff's premises is now located to an area outside of the building - far from the kitchen. Cross-examined by Mr. Morrison, Mr. Pinnock said he previously worked for another contractor who used to pay him and when Mr. Lawson took over, Mr. Lawson continued paying him. He admitted that he never personally gave instructions to anyone to turn off the stove. He denied telling the plaintiff he did not lock off the tank entirely and that was why it exploded. He said he could not see the pilot light - the burner was off. He also admitted supplying gas to the plaintiff for over ten years using the same system and method he earlier described. He said the plaintiff had nothing to do with instructions as regard the filling of his tank.

Mr. Roland Nelson is an engineer at Shell Company who looks after the LPG (cooking gas) operations there. Previously he worked with Tropigas. His evidence dealt mainly with the system of delivery and supplying cooking gas. He is familiar with the equipment used in this exercise. He said that the difference in split-valve hoses and those without is that the split-valve can be opened to release pressure before the hose is disconnected. The split-valve allows the gas to leave the hose at a much slower rate and smaller volume than pulling the hose off.

There is a certain amount of safety factor in the split-valve in that with it gas would dissipate in the air without coming out of the hose at one time. Hoses, he said, should not be used without safety valves. A system without split-valve would cause gas coming out suddenly when the hose is being taken off. As a safety precaution, tanks should not be inside the building - this is unsafe. If there is a rupture of the tank there would be too much gas in it to dissipate safely. If the tank is in the open and gas escapes, it would dissipate and would not burn. If the tank is enclosed and gas escapes, it would be confined, and at the correct temperature, it would explode. He further said that communication between truck driver and the person connecting the hose at the tank-end should be in a line of sight and be able to call to each other. They must be in contact. If the tank is enclosed in a building and the driver in the truck, if the driver cannot see the man at the tank end, then delivery should not be made there. It is the company that makes delivery of the gas and in such a case delivery should not be made. He said that when gas is locked off from the truck end gas trapped in the hose. If the pump is still running the pressure could get very high and the driver should hear the strain on the pump. The strain on the pump would be a signal for the driver to lock off the pump. This is not a reliable system in that there is a lot of pressure on the hose and on the pump and the hose should not be subjected to such strain. Preventive maintenance, he said, is the responsibility of the Company as the contractor is not equipped to conduct any preventive maintenance nor equipped to remedy it. If pilot light is on and gas is in an enclosed area, there would be a danger of gas being lit - gas escaping from any part into enclosure coming in contact with a lighted pilot light would cause an explosion. A basic precaution, even in a case where a split valve is used, is not to have any naked light within a minimum of 10 feet..

Winston Walker's evidence is that on 31.12.84 himself and Lenford Pinnock were delivering gas at the plaintiff's premises when an explosion occurred.

He was at the tank end of the operation connecting and disconnecting the hose. He spoke of the system used by himself and the driver Mr. Pinnock in the delivery of gas. That day, he said, he told someone in the kitchen to lock down all flames and this was done. It was whilst disconnecting the hose, gas was trapped between the lock-off and the close end. There was a valve to the end of the hose but no bleeder. He said that no meter is attached to the plaintiff's tank. He dismissed the suggestion that he disconnected the hose whilst gas was still being pumped into the tank. This he said would be impossible as the gas was being pumped under heavy pressure. He denied telling the plaintiff that the container was full, that the driver did not turn off the gas, and that he disconnected the hose from the tank whilst the gas was still being pumped.

Llewllyn Lawson's evidence is that he is a contractor for Shell Company delivery LPG gas - previously he was a haulage contractor for Tropigas delivery bulk gas. Shell Company subsequently took over the operations of Tropigas. He was first employed to Tropigas as a driver in 1970. He subsequently took over from a previous contractor and was paid weekly wages by Tropigas. In 1973 that arrangement changed and his status was that of a contractor with the responsibility of hiring and paying an assistant from the commission on sales he would then be earning. He no longer received wages from Tropigas. Although his status was changed, he did not sign the prepared contracts drawn up by Tropigas as he regarded them as unsatisfactory. The vehicle he operated was owned by Tropigas. The tank in which the gas was stored on the plaintiff's premises belonged to Tropigas. Mr. Pinnock is employed by him as a driver. He is responsible for employing his own drivers and assistants. He pays them and makes the statutory deductions from their wages. He pays his own taxes. If any of the assistants performs badly the Company would reprimand them. He could dismiss any of them if they are not performing. He considers himself working under a contractual basis. Customers are those of Tropigas. Mr. Daly closed the case for 1st, 2nd and 3rd defendants. No evidence was given by the 4th defendant, Tropigas.

Mr. Morrison for the 4th defendant sought and was allowed an amendment to the defence which essentially brings his defence in line with that of the 1st, 2nd and 3rd defendants - it reads:

> (7a) In the alternative, this defendant says that any loss or damage suffered by the plaintiff which is not admitted was caused entirely or contributed to by the negligence of the plaintiff.
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> Particulars (a) failing to ensure that there was no naked light in his premises while gas was being delivered thereto at his request. (b) Failing to observe the necessary and usual safety measures whilst gas was being delivered to his premises. (c) Maintaining an improper system of the delivery of gas onto his premises.

Mr. Daly observed that Tropigas has given no affirmative evidence. He argued that the 1st, 2nd and 3rd defendants were only agents for Tropigas carrying out the instructions of Tropigas in the only manner that they could, having regard to the system set up by Tropigas. That Tropigas installed the tank in an area which was extremely dangerous. That the loss and damage to the plaintiff was caused by the negligence of Tropigas by not installing a safe system for the delivery of gas and that neither of these defendants were liable in negligence or contributory negligence. He submitted that the defendant Llewellyn Lawson is not an independent contractor in the legal sense. That although the 1st and 2nd defendants were employed by Lawson, Lawson is to be regarded only as an agent for Tropigas. Draft letters of contract were never signed by Mr. Lawson as he was given no insurance protection and he too contends he is a mere agent of Tropigas. These letters were tendered and admitted in evidence as exhibits.

Mr. Morrison on the other hand submitted that the business of the delivery of gas was contracted out to Mr. Lawson who was an independent contractor with the 1st and 2nd defendants as his employees. On this basis, he said, Tropigas cannot be made vicariously liable for negligence on part of the 1st 2nd and 3rd defendants. He relied on this submission on the ground that Mr. Lawson is paid a commission on sales and not wages.

That the 1st and 2nd defendants are paid by Mr. Lawson who has the power to hire or fire them. He contended that the 4th defendant is not liable in negligence.

Before negligence can be attributed to any or all of the defendants, it must be settled whether in law Mr. Lawson is an independent contractor. An independent contractor is a person, who carries on an independent employment and contracts to do certain work, which he can decide for himself how it should be done. Whilst he may be subject to the directions of his employer, in no sense is he either under any contract of service to or under the control of the employer and he is free to perform the work in his own way. See Hardacker v. Idle D.C. (1896) 19QB 335.

In the instant case the evidence is that the defendant Lawson had no personal arrangements with the plaintiff regarding the delivery and supply of gas. He was given instructions by Tropigas to collect pay from customers on delivery of gas. He could not decide for himself how the work was to be done neither was he free to perform the work in his own way. The method of the supply of gas to the plaintiff was the creation of Tropigas and not of Mr. Lawson. Mr. Lawson therefore cannot be regarded as an independent contractor as he was not his own master for all practical purposes, he would therefore fall under the category of a servant, being a person who has to work under the directions of his master Tropigas.

The evidence regarding the events leading up to the explosion and fire on the plaintiff's premises is largely uncontraverted. In fact it is supported by the 1st, 2nd and 3rd defendants. My findings of fact are as follows:

1. That on the 31st December, 1984, there was an explosion and fire on the plaintiff's premises which burnt down his bakery and dwelling house and the contents therein and that he suffered damage as a result.

2. That the 4th defendant Tropigas selected and installed the storage tank on the plaintiff's premises after the ovens were already in place and that the plaintiff had nothing to do with its installation.

3. That the tank on the plaintiff's premises belonged to Tropigas.

4. That the delivery truck and the apparatus for supplying gas belonged to Tropigas.

5. That the gas (LPG) that was being supplied belonged to Tropigas and it is dangerous.

6. That Tropigas provided the equipment and set up its own system and method for the supply of gas to the plaintiff's premises.

7. That gas escaped from the hose at the delivery end whilst it was being supplied.

8. That the pilot light in the ovens were on at the time of the supply.

9. That the absence of a release valve at the nozzle of the hose did not allow for gas backed up in the hose to be dissipated in small volume which would in its escape being harmless.

10. That the method of the filling of the tank was faulty and as such became a source of danger.

Because gas is a dangerous thing, those persons who make, supply or use it are subject the liability of the Rule in Ryland v. Fletcher (1868) LR 3HL. In the case of North Western Utilities Ltd. v. Guarantee and Accident Co (1936) AC 108, Lord Wright explained as follows:

> That gas is a dangerous thing within the rules applicable to things dangerous in themselves is beyond question. Thus the appellants who are carrying in their mains the inflamable and explosives gas are prima facie within the principle of Rylands vs. Fletcher; that is to say, that though they are doing nothing wrongful in carrying the dangerous thing, so long as they keep it in their pipes, they come prima facie within the rule of strict liability if the gas escapes; the gas constituted an extraordinary danger created by the appellants for their own purposes, and the rule established in Rylands and Fletcher requires that they act their peril and must pay for damages caused by the gas if it escapes, even without negligence on their part (emphasis mine).

A person who builds a reservoir, is liable for damage caused by the escape of water, even though he employed a contractor to construct it (See Ryland v. Fletcher supra). This is because the employer is under the absolute duty, which attaches to the ownership of dangerous things. The employer who employs a contractor to do an act involving the creation of or the interference with a dangerous thing, is liable for the negligence of the contractor in not preventing the dangerous thing from causing damage.

It is settled law that an employer who employs an independent contractor to execute a work from which, in the natural course of things, injurious consequences to others must be expected to arise unless measures are adopted by which such consequences may be prevented is bound to see that everything is done which is reasonably necessary to avoid those consequences - See Bower v. Peate (1876) 1QD 321. He cannot, therefore, relieve himself of his responsibility in such a case by proving that he had delegated the performance of his duty to the contractor employed to do the work, or some independent person, however competent the contractor or delegate may be. In accordance with the same principle, where the work which the independent contractor is employed to do is of character likely to be dangerous to the public unless done with proper precautions, the employer is responsible to any member of the public who sustains injury in consequence of the manner in which the work is done.

In the case of Cassidy v. Minister of Health (1951) 2KB 343, 363. Denning L J summarised the principle where the contractor may be regarded as agent of the employer to perform the primary duty of the employer himself thus making the employer liable because he has broken his own duty of care. He said:

> "I take it to be clear law, as well as good sense that, where a person is himself under a duty to use care, he cannot get rid of his responsibility by delegating the performance of it to someone else, no matter whether the delegation be to a servant under contract of service or to an independent contractor under a contract for service."

In the instant case all four defendants pleaded in the alternative contributory negligence on the part of the plaintiff in that he failed to ensure that there was no naked light on his premises whilst gas was being delivered. I find that this is the responsibility of the 4th defendant, Tropigas. Contributory negligence has not been proven against the plaintiff.

It is my finding in law that Tropigas should have foreseen that if gas escaped in the bakery during its supply it was likely to cause damage and injury if a naked light, eg a pilot light was in the immediate vicinity.

In totality, I find that Tropigas the 4th defendant owed a duty of care to the plaintiff which it has not discharged. The cause of the fire and explosion was due to the use of faulty equipment which allowed gas to leak during delivery to the tank on the plaintiff's premises. I further find that the system employed by Tropigas was dangerous and hold that Tropigas is solely liable for the damage caused by the explosion. The 1st, 2nd and 3rd defendants are not liable in negligence as they are to be regarded as servants or agents of Tropigas and were only carrying out the business of Tropigas.

In the circumstances there will be judgment for the plaintiff against the 4th defendant Tropigas and judgment for the 1st, 2nd and 3rd defendants against plaintiff, such cost however to be bourne by the 4th defendant.

Although Mr. Daly did not challenge the quantum of damages, Mr. Morrison submitted that the plaintiff's evidence remains wholly unsatisfactory hence there was no basis for awarding $1.3M as pleaded.

The plaintiff called Mr. Fiz Marshall, Lincoln Brown and Lloyd Chin in support of his claim.

Mr. Morrison described the evidence of Fitz Marshall as being unreliable as he has had no training in valuation. That of Mr. Lincoln Brown as a "guesstimate", and that of Mr. Lloyd Chin as just throwing figures at the Court and that of the plaintiff as not being specific.

It is undisputed that the plaintiff's premises including building records, and equipment were burnt to the ground during the fire.

It would therefore be impossible for anyone to give an accurate account of all the items lost. Mr. Morrison's submission is that the plaintiff has not satisfactorily proven any loss. Given the extent of the damage which is not challenged, it would be an injustice for the Court to say to the plaintiff "although you have given some figures, no more than a nominal award can be made as figures provided were not done by a trained valuator or assessor."

The Court is well aware of the strictures placed on it in awarding special damages. I find that the plaintiff, given the circumstances, presented such figures as were available to him in order that the Court could make a reasonable determination regarding the quantum of his losses. In the unreported case of Noel Gravesandy v. Jamaica Auto & Cycle Co. Ltd. S.C.C.A 99/90 Patterson J. A. (Ag.) in delivering his judgment said:

> "We shared the view that special damages must be pleaded and proved before one can recover any such sum in an action. Evidence of damages done to a motor vehicle in a collision is usually supplied by an expert. However, expert evidence may be given by anyone who has some experience and who has gained skill or knowledge from experience in a particular field. The Court has always exercised a wide discretion in deciding whether or not the evidence of a witness should be admitted as expert evidence, but once that discretion has been exercised, then the only issue that arise is the weight to be attached to such evidence."

In the instant case, I find that although Mr. Marshall is not a trained valuator, his experience in such matters allows him to testify as such. The plaintiff will be awarded the following sums which I find proved having regard to the pleadings as against the evidence:

1.	Value of building	-	$150,000.00
2.	baking equipment	-	$142,000.00
3.	goods in store-room	-	$154,000.00
4.	goods & articles in computor room and office equipment	-	$100,000.00
5.	Loss of earnings (as pleaded)	-	$45,000.00
		Total:	$591,000.00

Although the plaintiff was given every opportunity to prove special damages, the evidence fell very short of what was claimed in the particulars of claim.

In fine, judgment for the plaintiff against the 4th defendant in the sum of $591,000 with interest @ 4% p.a. from 31.12.84 to with costs to be agreed or taxed.

Judgment for the 1st, 2nd and 3rd defendants against the plaintiff, such cost to be borne by the 4th defendant to be agreed or taxed.