



[2026] JMSC Civ 91

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU 2014HCV03777

BETWEEN	VELMA GORDON	CLAIMANT
AND	JUSCOM MOTORS LIMITED	DEFENDANT

IN OPEN COURT

Ashley Campbell instructed by Georgia Hamilton and Co. Attorney-at-Law for the Claimant

Pauline Brown Rose instructed by Pauline Brown Rose, Attorney-at-Law for the Defendant

Heard: May 6, 2026, June 2, 2026, July 17, 2026.

Contract – Sale of Goods - Breach of Contract of Sale of Motorcar – Misrepresentation – Whether there was wrongful description of the Age of the motorcar – Industry Standard – Whether description should be by model year or year of manufacture – Sale by Description – Implied Condition – The Sale of Goods Act, S. 14.

THOMAS, J:

Introduction

[1] In the instant Claim, filed on the 31st of July 2014, Ms. Velma Gordon, the Claimant, claims against the Defendant, Juscom Motors Limited damages for breach of contract and consequential losses arising from the sale of a Nissan Sunny motorcar.

The Pleadings

The Claim

[2] In the Particulars of Claim filed on the 31st of July 2014, the Claimant pleads the following:

On the 19th of August 2010, the Claimant sought to purchase a Nissan Sunny Motor car, from the Defendant, intending to finance the purchase primarily through a loan from the Bank of Nova Scotia Jamaica Limited (BNS). At the Claimant's request, the Defendant prepared a pro forma invoice dated the 16th of August 2010 describing the vehicle as a 2006 Nissan Sunny. The Defendant retained Orion Loss Adjusters to value the vehicle and report on its condition.

Relying on that valuation, the Claimant agreed on the 19th of August 2010 to purchase the vehicle from the Defendant for \$1,330,000.00; obtained a BNS loan of \$1,303,800.00 on the 10th of September 2010; and insured the vehicle for \$1,440,000.00. An implied term of the sale agreement, pursuant to the ***Sale of Goods Act***, was that the vehicle would correspond with its description as a 2006 Nissan Sunny. The vehicle was delivered to the Claimant in September 2010.

[3] On the 27th of February 2013, the Claimant separately retained Orion Loss Adjusters to value the vehicle. In its valuation report of that date, Orion Loss Adjusters stated that the vehicle had in fact been manufactured in 2005, not 2006, and was therefore worth substantially less than the value assigned in its August 2010 report.

PARTICULARS OF LOSS SUSTAINED BY THE CLAIMANT

[4] The Particulars of Loss as pleaded by the Claimant are as follows:

- a. Difference in the purchase price and the value of the motorcar; and
- b. Difference in insurance premiums from August 2010 to August 2013.

The Defence

[5] The Defendant has denied the Particulars of Loss by Defence filed on the 17th of May 2017 and contends that: The motor vehicle was imported by Wheels & Wheels Auto Imports Limited as a 2006 Nissan Sunny motor vehicle: The documentation submitted to the Jamaica Trade Board Limited described the vehicle as a 2006 Nissan Sunny: The said documentation was approved by the Jamaica Trade Board Limited, which granted an import permit for the vehicle as a 2006 motor vehicle: The Defendant sold the vehicle as a duly authorized sales agent of Wheels & Wheels Auto Imports Limited and did so with the reasonable belief that the vehicle was a 2006 motor vehicle : It is in the business of selling motor vehicles but has no expertise in the determination and verification of the age or date of manufacture of motor vehicles : At the material time, it had no access to specific information or technology capable of determining the year of manufacture of motor vehicles imported into Jamaica: The Defendant relied solely on the documentation received from its exporters or suppliers and on the subsequent authentication and approval of the Jamaica Trade Board Limited.

[6] The Defendants further contends that: Orion Loss Adjusters, who were engaged to provide an assessment and report on the value of the vehicle: The Defendants were of the reasonable belief that the Nissan Sunny was a 2006 motor vehicle: At the time the vehicle was sold to the Claimant there was a common or mutual mistake as to the documented model year of the vehicle: The Defendant gave no warranty to the Claimant as to the correctness of the year of manufacture of the vehicle: It is not uncommon for a vehicle manufactured in the previous year to be sold as the following year's model: The model year of a vehicle is different from the year of manufacture: The Trade Board Uses

the Model year and not the year of production to determine the year of the vehicle: When the Defendant entered into the agreement with the Claimant in September 2010 it did so under the reasonable belief that the motor vehicle was a 2006 motor vehicle.

Evidence of the Claimant

[7] Ms. Velma Gordon states that in August 2010 she visited the Defendant's business place at 76B Hagley Park Road with a view to purchasing a motor vehicle. She says that she was interested in a black Nissan Sunny motor car which was being offered for sale on the Defendant's lot and was assisted by one of the Defendant's sales agents.

[8] She states that she asked the sales agent several times what year the Nissan Sunny was because her previous vehicle was a 2004 Honda Motorcar and she had decided that any replacement vehicle would have to be at least two years newer. She says that there was another burgundy Nissan motor vehicle on the Defendant's lot which was priced approximately \$100,000 less than the black Nissan Sunny. However, she was not interested in purchasing that vehicle because she was informed that it was a 2005 vehicle and considered it too old.

[9] Ms. Gordon states that the Defendant's sales agent assured her that the black Nissan Sunny was a 2006 Nissan Sunny. She says that it was based on that assurance, she expressed an interest in purchasing the vehicle and requested a pro forma invoice which she intended to submit to her bank as part of her loan application. She says that she subsequently received a Pro Forma Invoice dated the 16th of August 2010 describing the motor vehicle as a 2006 Nissan Sunny Super Saloon.

[10] Mr. Gordon states that she submitted the pro forma invoice to her bank and that the loan application was processed on the basis that the vehicle was a 2006 motor vehicle. According to Ms. Gordon, the Defendant handled all the paperwork relating to the transaction, including the valuation of the vehicle. She states that she received a Motor Vehicle Valuation Report from Orion Loss Adjusters and Valuers dated the 18th of August 2010 which indicated that the Nissan Sunny was manufactured in 2006 and valued at \$1,440,000.00.

[11] Ms. Gordon further states that in February 2013 her insurers requested an updated valuation of the vehicle for renewal purposes. She says that she paid the sum of \$1,700.00 for a valuation from Orion Loss Adjusters Limited and subsequently received a valuation report dated the 27th of February 2013. She says that although the report described both the model year and production year as 2006, it also indicated that the vehicle had been decoded with a 2005 production date and assigned a market value of \$950,000.00. According to Ms. Gordon, this revealed that the vehicle she purchased was worth significantly less than she had believed and that she had borrowed more money from the bank than she otherwise would have.

[12] Ms. Gordon states that she thereafter requested a renewal quotation from her motor vehicle insurer, ICWI, in order to determine the difference in insurance premiums between a 2005 and a 2006 Nissan Sunny. She says that ICWI provided renewal quotations and a statement of premiums paid between 2010 and 2014. She further states that she retained copies of her premium receipts and tax invoices. According to Ms. Gordon, because the valuation disclosed that the vehicle was a year older than she had been led to believe, her insurance premiums were significantly higher.

[13] She says that she subsequently filed this claim to recover the losses she suffered arising from the difference between the purchase price and the actual value of the vehicle, as well as the difference in insurance premiums paid since the purchase of the vehicle and that, in support of her claim, her attorneys-at-law wrote to the Trade Board Limited seeking expert advice and subsequently received correspondence from the Trade Administrator and Chief Executive Officer of the Trade Board Limited. She says that she also obtained a copy of the Revised Motor Vehicle Import Policy referred to in that correspondence.

[14] She further says that, in preparation for trial, she sought eventually received from the Chief Inspector of the Island Traffic Authority, Mr. Vernal Oliver, Verification of Manufacture Year Report for the Nissan Sunny and other supporting documentation. Ms. Gordon states that the matter has caused her immense stress and inconvenience. She says that, to date, she has not received or been able to obtain what she considers to be

the correct documentation for the vehicle. She further states that she has been advised by the Consumer Affairs Commission that she is unable to resell the vehicle without exposing herself to liability and that this has further compounded her difficulties.

[15] During cross examination, Ms. Gordon agrees that the vehicle purchased is described as a 2006 Nissan Sunny in the invoice dated 16 August 2010. She further agrees that the vehicle described in the pro forma invoice is the same vehicle that was delivered to her. She denies that when she purchased the Nissan Sunny in 2010, she was aware that a vehicle described as a 2006 vehicle could have been manufactured in 2005. She also denies being aware that a vehicle described as a 2006 vehicle was likely to carry a production or manufacturing date of 2005 and states that the issue did not come up at all.

[16] Ms. Gordon states that she purchased the 2006 Nissan Sunny for \$1.4 million. She explains that she paid \$100,000 to the dealer beforehand and thereafter paid the remaining \$1.3 million. She agrees that she received a copy of the certificate of title and further agrees that the vehicle is described on the certificate of title as a 2006 Nissan Sunny. She also agrees that the registration certificate describes the vehicle as a 2006 Nissan Sunny.

[17] Ms. Gordon states that the valuation conducted by Orion Loss Adjusters and Valuers dated the 18th of August 2010 indicated that the Nissan Sunny was manufactured in 2006. When asked whether she saw a manufacturing date on the valuation document, she answered in the affirmative. It was put to her that there was nothing in the valuation report stating that the vehicle was manufactured in 2006. She rejected that suggestion. When counsel pointed out that the report stated, "model year 2006", Ms. Gordon agreed.

[18] She accepts that vehicles may be described and valued using the model year rather than the production year, but maintains that this is not how she views the matter. Her evidence is that if she seeks to purchase a vehicle and is provided with a Pro Forma

Invoice describing it as a 2006 vehicle, she understands that to mean that it is a 2006 vehicle.

[19] Ms. Gordon states that she did not know that there is a distinction between a vehicle's model year and its manufacture year. She says that she specifically asks whether the vehicle is a 2006 vehicle and was told that it is. She asserts that at no time did any discussion arise concerning the distinction between model year and manufacture year and that the issue never came up.

[20] Ms. Gordon accepts that she possesses all the documentation relating to the vehicle and that those documents describe the vehicle as a 2006 vehicle. She confirms that she remains in possession of the vehicle. She also accepts that after obtaining the second valuation, she did not obtain any further valuation. Her evidence is that the second valuation describes the vehicle as having a manufacture year of 2005. Ms. Gordon does not accept that vehicles are valued and described by reference to the model year rather than the year of manufacture.

[21] When counsel showed her the statement of the Director of Licensing, Certification and Enforcement of the Trade Board dated the 7th of July 2025 indicating that, for the purposes of the relevant import policies, the focus is on the model year as reflected in the VIN. Ms. Gordon states that her concern is that she sought to purchase a 2006 vehicle.

The Evidence of the Defendant

Bencle Hibbert

[22] Mr. Bencle Hibbert states that he is the Director of the Defendant Company. He says that the Defendant company is in the business of selling pre-owned motor vehicles and is a member company of Wheels and Wheels Auto Imports Group Limited. He states that the Defendant company is an authorized sales agent for Wheels and Wheels Auto Imports Group Limited. He also states that the motor vehicle was imported by Wheels

and Wheels Auto Imports Group Limited as a 2006 Nissan Sunny motor vehicle bearing chassis number JN1CFAN16Z0506209.

[23] He states that the documentation for the motor vehicle was submitted to the Jamaica Trade Board Limited as a 2006 Nissan Sunny motor vehicle. He says that the documentation was approved by the Jamaica Trade Board Limited and that Wheels and Wheels Auto Imports Limited was granted an import permit to import the said motor vehicle as a 2006 motor vehicle.

[24] He states that on or about the 20th of August 2010, the Defendant sold the said 2006 Nissan Sunny motor vehicle, chassis number JN1CFAN16Z0506209, to the Claimant. He says that the Defendant obtained a permit from the Jamaica Trade Board Limited to import the motor vehicle as a 2006 motor vehicle. He further states that the Jamaica Trade Board Limited is a regulatory agency of the Government established under the auspices of the Ministry of Industry, Commerce, Agriculture and Fisheries and has responsibility for the issuing and approval of import permits for motor vehicles.

[25] He says that at the material time the Defendant company had no access to specific information or technology to determine the year of manufacture of Nissan Sunny motor vehicles imported into Jamaica. He states that the Defendant company at all material times reasonably believed that the Nissan Sunny motor vehicle was a 2006 model vehicle and relied on the documentation supplied by the exporter or supplier and the subsequent authentication by the Jamaica Trade Board Limited.

[26] He further says that at the time of the sale the Defendant company employed Orion Loss Adjusters, certified loss adjusters, to provide an assessment and report on the value of the said Nissan Sunny motor vehicle. He says that Orion Loss Adjusters were themselves of the reasonable belief that the Nissan Sunny motor vehicle was a 2006 model motor vehicle. He states that the year of manufacture of the motor vehicle did not come up for consideration and that the vehicle was priced and sold based on the model year, which was 2006.

[27] Mr. Hibbert states that the Defendant company gave no warranty to the Claimant as to the correctness of the documented model year or year of manufacture of the motor vehicle. He says that the Defendant company gave no documented warranty regarding the model year or year of manufacture of the said motor vehicle.

[28] He states that at first the Defendant company thought that there was a common or mutual mistake as to the documented year of manufacture of the motor vehicle sold to the Claimant. However, he says that it is not uncommon for vehicles manufactured in the previous year to be sold as the following year's model. He states that the model year of a vehicle is different from the year of manufacture and that the Trade Board uses the model year and not the year of manufacture to determine the year of the vehicle.

[29] He states that he has been involved in the business of importing and selling motor vehicles for over thirty-seven years and is also a trained motor vehicle mechanic. He says that based on his experience motor vehicles are valued and sold based on the model year, which is the year the specific model was released, rather than the actual year of manufacture. He further states that in terms of a vehicle manufactured in 2005 and sold as a 2006 model, there is no significant difference in age, potential value or wear.

[30] He maintains that the Defendant company is not in breach of the implied condition in the agreement for sale of the motor vehicle between the Claimant and the Defendant company. He says that the Defendant company at the material time reasonably believed that the motor vehicle sold to the Claimant was, as described, a 2006 Nissan Sunny. He states that the vehicle was described based on the model year, namely 2006, and not the year of manufacture, namely 2005.

[31] On cross examination, Mr. Hibbert accepts that, prior to importing motor vehicles, he obtains specifications from the supplier and that further information concerning a vehicle may be obtained from the same source if required. He also accepts that those specifications include the year of manufacture of the vehicle and that the information provided by the supplier is used in applying for import licenses from the Trade Board.

[32] Mr. Hibbert's evidence is that the Trade Board does not have physical access to vehicles being imported and relies on the documentation submitted by the importer. He accepts that only documentation supplied by the exporter is forwarded to the Trade Board. He further accepts that customers rely on the information provided by motor vehicle dealers and that a Pro Forma Invoice is ordinarily provided when a vehicle is offered for sale. He also accepts that such invoices are used by customers to obtain financing and that it is important that the information contained in them is accurate. Similarly, he accepts that any valuation report provided in connection with a proposed purchase should be accurate.

[33] Mr. Hibbert accepts that the Nissan Sunny is described as a 2006 vehicle on the Pro Forma Invoice and that he knows the document would be used by the Claimant in support of her loan application. His evidence, however, is that the designation refers to the vehicle's model year and that this is standard within the motor vehicle industry. He accepts that the Pro Forma Invoice does not expressly state "model year" and that where the document refers to "model", it identifies the vehicle simply as a "Sunny". He also accepts that he did not explain to the Claimant that a distinction exists between a vehicle's model year and its manufacture year, maintaining that such a distinction is standard within industry.

[34] Mr. Hibbert states that he does not have access to the manufacturing details of the vehicle. While he accepts that he is familiar with VIN numbers and that, in some instances, a VIN may indicate a vehicle's year of manufacture, he maintains that he did not know that the Nissan Sunny was manufactured in 2005. His evidence is that vehicles are sold by reference to their model year and not their manufacture year. Consistent with that position, he states that he does not consider it necessary to provide the Claimant with information concerning the vehicle's manufacture year and did not verify the manufacture year before issuing the Pro Forma Invoice.

[35] Mr. Hibbert also accepts that not all customers are experts in motor vehicles. However, he is unable to say that customers generally lack knowledge of the practice of identifying vehicles by reference to their model year. He further states that he did not

know whether the Claimant understood the distinction between model year and manufacture year before purchasing the vehicle. He accepts that the year attributed to a vehicle may affect the terms of a loan and that, in some cases, a 2006 Nissan Sunny may have a different value from a 2005 vehicle. He maintains that vehicles are sold by model year and not by manufacture year. He states that he assumes people purchasing motor vehicles are aware of that practice and maintains that the manufacture year was not a significant consideration in the sale of the vehicle.

Issues

[36] This is a claim for breach of contract, alleging misrepresentation. As such the issues which lie to be determined are;

- i. Whether there was a representation about the age of the vehicle by the Defendant to the Claimant.
- ii. Did this representation induce the Claimant to enter the contract?
- iii. What was the true meaning of this representation?
- iv. Whether the Nissan Sunny motor vehicle sold by the Defendant to the Claimant differs from that which was described or represented to her.
- v. Whether the representation that the vehicle was a "2006 Nissan Sunny" was false, inaccurate or misleading.
- vi. Whether the vehicle corresponded with its description as a 2006 Nissan Sunny for the purposes of section **14 of the Sale of Goods Act**.
- vii. Whether the Claimant has established that she suffered loss and, if so, the measure of any recoverable damages.

THE LAW

[37] In the case of **Dick Bentley** Lord Denning had this to say on the issue of law of misrepresentation: "The first point is whether this representation, was an innocent misrepresentation (which does not give rise to damages), or whether it was a warranty"

[38] He also stated that:

“Looking at the cases once more, as we have done so often, it seems to me that if a representation is made in the course of dealings for a contract for the very purpose of inducing the other party to act on it, and it actually induces him to act on it by entering into the contract, that is prima facie ground for inferring that the representation was intended as a warranty. It is not necessary to speak of it as being collateral. Suffice it that the representation was intended to be acted on and was in fact acted on. But the maker of the representation can rebut this inference if he can show that it really was an innocent misrepresentation, in that he was in fact innocent of fault in making it, and that it would not be reasonable in the circumstances for him to be bound by it”

[39] **Section 14 of the Sale of Goods Act** reads;

“Where there is a contract for the sale of goods by description, there is an implied condition that the goods description shall correspond with the description; and if the sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.”

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[40] Counsel for the Claimant submits that the Defendant is liable for misrepresenting the Nissan Sunny as a 2006 vehicle. Although the Claimant accepted that the vehicle described in the Pro Forma Invoice was the same vehicle delivered to her, Counsel argues that this does not absolve the Defendant from liability for the representation made as to the year of the vehicle.

[41] Counsel submits that the distinction between 2005 and 2006 vehicles was material to the Claimant, her financier and her insurer. Reliance was placed on the Claimant's evidence that she specifically wanted a vehicle that was at least two years newer than her 2004 Honda and that she regarded the difference in value as significant, particularly considering the interest payable on her loan. Counsel further submits that the Claimant was unaware that a vehicle described as a 2006 vehicle could have been manufactured in 2005 and did not know that there was a distinction between model year and year of manufacture.

[42] Counsel argues that such knowledge cannot be assumed on the part of an ordinary purchaser of a used motor vehicle; the Claimant, as a layperson, relied on the expertise and representations of the Defendant, a seller of pre-owned motor vehicles. Counsel contends that it was therefore reasonable for the Claimant to understand the representation that the vehicle was a 2006 Nissan Sunny as meaning that it was manufactured in 2006.

[43] Counsel submits that the Defendant was in a position to ascertain the correct year of manufacture of the vehicle. Counsel relies on the case of **Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd** [1965] 1 WLR 623. In that regard, counsel highlights Mr. Hibbert's admissions that specifications were obtained from suppliers before importation, that further information could be obtained from those suppliers and that such specifications included the year of manufacture of the vehicle. Counsel further argues that the Defendant cannot avoid liability by relying on the approval process of the Trade Board and Mr. Hibbert's evidence that the Trade Board only received documentation supplied to it and did not have physical access to the vehicle. Counsel submits that the Defendant failed to identify any steps taken to verify the information upon which it relied.

[44] Counsel also relies on Mr. Hibbert's admissions that the Pro Forma Invoice did not state "model year", that the distinction between model year and year of manufacture was not explained to the Claimant and that he did not know whether the Claimant understood that distinction. Counsel further submits that Mr. Hibbert accepted that not all customers are experts in motor vehicles and that he merely assumed that customers would know that vehicles are described by reference to model year.

[45] As to damages, Counsel submits that the Claimant suffered loss as a result of purchasing a vehicle represented as a 2006 Nissan Sunny when it was subsequently determined to have been manufactured in 2005. Counsel posits that the Claimant is entitled to recover the difference between the purchase price of the vehicle and its subsequent valuation, together with interest.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

[46] Counsel for the Defendant submits that the Claimant's case is undermined by a number of concessions made during cross examination. Counsel notes that the Claimant accepted that the vehicle delivered to her was the same vehicle described in the Pro Forma Invoice and that she also accepted that she did not know the difference between a model year and a year of manufacture and was unaware that a vehicle described as a 2006 model could have been manufactured in 2005. Counsel further relies on the Claimant's evidence that she was not in the motor vehicle business and was therefore unable to dispute the industry practice that vehicles may be manufactured in one year and released as the following year's model.

[47] Counsel submits that these concessions demonstrate that the description "2006 Nissan Sunny" was neither false nor misleading and support the Defendant's contention that the description referred to the model year of the vehicle rather than its year of manufacture. Counsel further submits that the Defendant's evidence, given by Mr. Bencle Hibbert, establishes that the vehicle was sold as a 2006 model based on documentation received from the overseas supplier and information approved by the Jamaica Trade Board. Reliance was also placed on the valuation report prepared at the time of the sale.

[48] Counsel argues that the Defendant reasonably believed that the vehicle was a 2006 Nissan Sunny and that there was no intention to mislead the Claimant. Counsel submits that the Defendant, as a motor vehicle dealer, does not possess the technology to independently determine the manufacturing date of imported vehicles and was entitled to rely on the documentation supplied by the exporter together with the approval process undertaken by the Jamaica Trade Board.

[49] Counsel relies on Mr. Hibbert's evidence that motor vehicles are bought, sold and valued by reference to their model year rather than their year of manufacture. It , counsel submits that it is not uncommon for a vehicle manufactured in one year to be sold as the following year's model and that there is no material difference in age, value or wear between a vehicle manufactured late in 2005 and sold as a 2006 model.

[50] Counsel further relies on several admissions made by Mr. Hibbert during cross-examination. Counsel notes that Mr. Hibbert confirmed that the Defendant relied on supplier documentation and Trade Board approval, accepted that customers rely on information contained in pro forma invoices and maintained that the description "2006 Nissan Sunny" referred to the model year of the vehicle in accordance with industry practice. Counsel also points to Mr. Hibbert's evidence that motor vehicles are not sold by reference to their year of manufacture and that the manufacturing year is not determinative of the value of a vehicle.

[51] Counsel submits that although Mr. Hibbert accepted that not all customers are experts in motor vehicles, that fact does not impose a duty on the Defendant to guarantee the year of manufacture of the vehicle. In this regard, counsel argues that the Claimant herself admitted that she did not know the distinction between a model year and a year of manufacture.

[52] Counsel relies on section 14 of the **Sale of Goods Act** and submits that the authorities establish that goods sold by description need only correspond with the description in all material respects. Counsel submits that a breach arises only where the goods delivered are not of the class or identity described and that minor or technical differences do not constitute a breach of the section. She places reliance on the cases of **Beale v Taylor** [1961]1WLR 1193, **Varley v Whipp** (1900) QB 513 and **Arcos v Ronaasen** [1933] AC 470. Applying those principles, Counsel submits that the vehicle corresponded with the description contained in the Pro Forma Invoice and that the Claimant received precisely the vehicle she contracted to purchase. Reliance was placed on the supplier's documentation, the Trade Board approval and the valuation report, all of which identified the vehicle as a 2006 Nissan Sunny. Counsel further notes that the Claimant accepted that the vehicle delivered to her was the same vehicle described in the Pro Forma Invoice.

[53] Counsel submits that the evidence establishes that the reference to 2006 related to the model year and not the year of manufacture. Counsel places reliance on the Defendant's evidence concerning industry practice, the valuation report and the Revised

Motor Vehicle Import Policy which defines model year by reference to the designation assigned to the vehicle rather than its actual production date.

[54] Counsel further submits that there was no breach of **Section 14** of the **Sale of Goods Act** because the description "2006 Nissan Sunny" accurately described the vehicle in the commercial and industry sense. Counsel argues that the fact that the vehicle may have been manufactured in 2005 did not alter its identity as a 2006 model and that there is no evidence that the vehicle belonged to a different class, type or model from that described. As to damages, counsel submits that the Claimant has failed to prove any recoverable loss. Reliance was placed on **Murphy and Mills and Mirriam Martin v Desmond Walker & Silbert Andrade** for the principle that special damages must be strictly proved.

[55] Counsel argues that the Claimant failed to establish any misdescription of the vehicle, that the 2013 valuation report is not in evidence, that there is no expert evidence demonstrating any material depreciation arising from a 2005 manufacturing date and that the insurance premium claim is speculative and unsupported. Accordingly, counsel submits that the Claimant has failed to establish that the vehicle was misdescribed, that the Defendant breached **Section 14 of the Sale of Goods Act**, that she suffered any loss or that any difference in manufacturing year was material. Counsel therefore invites the Court to dismiss the claim with indemnity costs.

Discussions

[56] In all civil proceedings the Claimant bears the burden of proof which must be discharged on a balance of probabilities. In this case there is no denial that there was a contractual relationship between the parties. In order to succeed in her claim for damages on account of misrepresentation by the Defendant under the contract the Claimant must

prove (i) the fact of the representation by the Defendant ; (ii) that it was this representation that induced her to enter into the contract with the Defendant; (iii) that the representation was false/inaccurate and that (iv) she suffer damages as a result of the representation. Where the Claimant succeeds in establishing the requirements of (i), (ii) and (iii) a prima facie case of misrepresentation would be established. However, the Defendant can rebut this inference by adducing evidence tending to show that the representation was an innocent misrepresentation, that he was not at fault in making it and as such it would not be reasonable for the Court to bind him to it.

Whether the Defendant Represented the Vehicle as a 2006 Nissan Sunny; Whether the Vehicle Was in Fact Manufactured in 2005

[57] The evidence on this issue is largely uncontroverted. The Claimant's evidence is that the motor vehicle was represented and sold to her as a 2006 Nissan Sunny. This evidence finds support in the Pro Forma Invoice dated the 16th of August 2010, which described the vehicle as a Nissan Sunny and identified the year as 2006. Additionally, Mr. Hibbert, who gave evidence on behalf of the Defendant company, accepted during cross examination that the vehicle was represented to the Claimant as a 2006 vehicle and that it was described as such on the Defendant's invoice. In these circumstances, I find that the Defendant represented the vehicle as a 2006 Nissan Sunny.

[58] The evidence further discloses that the Pro Forma Invoice identified the vehicle by chassis number JN1CFAN16Z0506209. The Island Traffic Authority's (ITA) letter dated the 9th of June 2022 refers to the same chassis number. It states that the vehicle was manufactured in January 2005. The VIN verification likewise refers to chassis number JN1CFAN16Z0506209 and identifies the vehicle as having been manufactured in 2005. Accordingly, I find that the vehicle bearing chassis number JN1CFAN16Z0506209 was manufactured in 2005 with a model year of 2006.

Whether the representation of the Motor Vehicle as 2006 induced the Claimant to enter the Contract

[59] There is no challenge to the Claimant's evidence that she was assisted by one of the Defendant's sales agents who assured her after her enquires that the motor vehicle was a 2006 motor vehicle. There is equally no denial to her evidence that having been informed that another burgundy Nissan motor vehicle on the Defendant's lot which was priced approximately \$100,000 less than the black Nissan Sunny, was a 2005 vehicle, she opted against purchasing that vehicle because she considered it to be too old.

[60] I also note the Claimant's evidence that she made these enquires of the sale agent because her previous vehicle was a 2004 Honda motorcar as she had decided that any replacement vehicle would have to be at least two years newer. As such I find that the Claimant has proven on a balance of probabilities that the description of the motorcar as a 2006 Nissan Sunny induced her to enter into the contract for sale of the said vehicle with the Defendant Company.

Whether the representation that the vehicle as a "2006 Nissan Sunny" was false, inaccurate or misleading.

[61] The Defendant in the instant case is not denying that the sale of the Nissan Sunny to the Claimant was a sale by description that the goods was a 2006 Nissan Sunny. However, the Defendant's position is that the reference to "Year: 2006" in the Pro Forma Invoice referred to the model year of the vehicle and not its year of manufacture. As such the Defendant contends that there is no misrepresentation in the description of the vehicle.

[62] The Claimant's position is that the representation conveyed that the vehicle was manufactured in 2006. The issue therefore is whether the representation, viewed in its proper context, would reasonably have conveyed that the vehicle was manufactured in 2006 or merely that it was a 2006 model. The Claimant's evidence is that she specifically

requested a 2006 motor vehicle and was told that the vehicle being sold to her was a 2006 Nissan Sunny. She says that she purchased the vehicle on that understanding. According to her, no one explained that the year stated on the Pro Forma Invoice referred to a model year rather than the year in which the vehicle was manufactured.

[63] Counsel for the Claimant submits that although the Claimant accepted that the vehicle described in the Pro Forma Invoice was the same vehicle delivered to her, the distinction between a 2005 and a 2006 vehicle was material to the Claimant, her financier and her insurer: That the Claimant was not aware that a vehicle described as a 2006 vehicle could have been manufactured in 2005 and did not know that there was a distinction between model year and year of manufacture. She contends that it was reasonable for the Claimant to understand the representation that the vehicle was a 2006 Nissan Sunny meant that it was manufactured in 2006.

[64] An examination of the documentary evidence generated at or around the time of the transaction reveals the following: On the Pro Forma Invoice the reference is "Year: 2006 Nissan Sunny", The Customs Declaration similarly described the vehicle as a "Year: 2006 Nissan Sunny" and the Certificate of Title recorded the year as "2006". None of those documents expressly stated that the year referred to the "year of manufacture or only to the vehicle's model year".

[65] The Claimant is relying upon these documents as supporting her position that an ordinary purchaser would understand the reference to 2006 as denoting the year in which the vehicle was manufactured. The Court recognizes that a purchaser unfamiliar with the motor vehicle trade may not necessarily appreciate that a distinction can exist between a vehicle's manufacture year and its model year. The Claimant's evidence is that she was unaware of any such distinction and that none was explained to her. The Court also accepts that the age of the vehicle was an important consideration in her decision to purchase it.

[66] The court considers her evidence that she declined to purchase another vehicle on the lot because she understood it to be a 2005 motor vehicle and that she wished to

purchase a vehicle that was newer than her 2004 Honda. However, this evidence reflects that it was not her first time purchasing a vehicle. This evidence essentially demonstrates that she is not new to the process of motor vehicle purchase.

[67] Additionally, I find it very instructive that Ms. Gordon has made no mention in her evidence whether the 2004 vehicle that she purchased was manufactured in 2004 or whether the 2004 referred to the model year. In fact, her evidence suggests that at the time of purchase of that vehicle she was not aware of that distinction, that she was only alerted to the difference by the Orion report of 2013 and even up until the trial she did not know, understand and appreciate that there was such a distinction.

[68] The issue, however, cannot be determined solely by the Claimant's understanding of the representation. The fact that the vehicle was manufactured in 2005 does not, without more, establish that the description as a 2006 vehicle was a false, inaccurate or misleading representation. The question must be viewed within the proper context. The Court must consider whether the representation was misleading when viewed objectively and in the context of all the evidence.

[69] In considering this issue, Ms. Campbell counsel for the Claimant relies on Mr. Hibbert's admission that the Pro Forma Invoice did not expressly state that the year 2006 referred to the vehicle's model year and that he did not explain the distinction between a vehicle's model year and its manufacture year to the Claimant. However, the absence of such an explanation does not, without more establish that the representation itself was false or misleading. Mr. Hibbert's evidence in essence is that the reference to the vehicle as a 2006 was in reference to the model year and not the year of manufacture. However, the Court equally does not consider this evidence in isolation. I must conduct an objective assessment of the circumstances surrounding the transaction.

[70] It is evident that counsel Ms Brown Rose and the Defendant through its witness, Mr Hibbert, in asserting that it is common business practice in the sale of motor vehicle, that reference to year means model year is urging this court to apply the common law principle that allows common (standard) trade practice to be implied, into the contract.

[71] The learned authors of [Chitty on Contracts, Volume 1, 34th ed, para 16-035.] has this to say on the subject;

“If there is an invariable, certain and general usage or custom of any particular trade or place, the law will imply on the part of one who contracts or employs another to contract for him upon a matter to which such usage or custom has reference a promise for the benefit of the other party in conformity with such usage or custom, provided there is no inconsistency between the usage and terms of the contract. To be binding, however, the usage must be notorious, certain and reasonable and not contrary to law; and it must also be something more than a mere trade practice.”

[72] In **Con Stan Industries of Australia v Norwich Insurance** [1986] 160 CLR 226 the High Court of Australia elaborated on this general principle in the following terms:

“(1) The existence of a custom or usage that will justify the implication of a term into a contract is a question of fact

(2) There must be evidence that the custom relied on is so well known and acquiescent in that everyone making a contract in that situation can reasonably be presumed to have imported that term into the contract ...

However, it is not necessary that the custom be universally accepted, for such a requirement would always be defeated by the denial by one litigant of the very matter that the other party seeks to prove in the proceedings

(3) A term will not be implied into a contract on the basis of custom where it is contrary to the express terms of the agreement

(4) A person may be bound by a custom notwithstanding the fact that he had no knowledge of it nothing turns on the presence or absence of actual knowledge of the custom; that matter will stand or fall with the resolution of the issue of the degree of notoriety which the custom has achieved (See Page 485).”

[73] In my determination of the issue, I consider the report of **The Trade Board Limited (TBL)** and “**The Revised Motor Vehicle Import Policy of 2004**” issued by the Ministry of Commerce Science and Technology. In their report dated the 7th of June 2025 TBL explained that a vehicle's manufacture year and model year are distinct concepts and that the two years may differ. According to TBL, the manufacture year refers to the year in which the vehicle is physically assembled whereas the model year is the designation assigned by the manufacturer. The report however states that “all guidelines concerning

the importation of motor vehicle are contained in the “***Revised Motor Vehicle Import Policy***” The indication is that in their operations they place reliance on this policy.

[74] ***The Revised Motor Vehicle Import Policy of 2004***, indicates that among the factors that the policy took into consideration was consumer protection. Nevertheless, in the very policy “*Year of vehicle*” is defined as “*the model year for which the vehicle was manufactured as determined by the manufacturer, not the specifically the calendar year*” This evidence lends support to the Defendant's assertions that a vehicle is properly identified by reference to its model year notwithstanding that it was manufactured in an earlier year. This is also of some relevance in determining whether in describing the vehicle as a 2006 Nissan Sunny, the Defendant was providing incorrect information.

[75] It is also of some significance that this designation appeared in documents connected with the importation, registration, licensing and valuation of the vehicle. These are, the Customs Declaration, Certificate of Registration, Certificate of Fitness. The Orion valuation also reflected that designation. During cross-examination, the Claimant accepted that the Pro Forma Invoice, Certificate of Title and Registration Certificate all described the vehicle as a 2006 Nissan Sunny. She admits that she is still in possession of the same vehicle and that that all the current documentation in her possession identifies the vehicle as a 2006 vehicle.

[76] This evidence is important because it demonstrates that the designation complained of was not confined to the Defendant's Pro Forma Invoice but appeared consistently throughout the documentation relating to the vehicle. Importantly, however is the fact that this designation is one that is recognized and employed by the very public entity that has the responsibility of implementing a comprehensive motor vehicle policy.

[77] Another important factor is that, despite the fact that the motor vehicle was in fact manufactured in 2005 the designation of the vehicle on the current documents, in possession of the claimant, issued by the Revenue Department continues to carry the same description as at the time of purchase.

[78] In the Privy Council decision of ***The Attorney-General of Belize v Belize Telecom Ltd (“Belize Telecom”)*** [2009] UKPC 10 Lord Hoffman in delivering the Judgment of the Court at paragraph 16 had this to say:

“The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument it addressed”

[79] Further at paragraph 21 he stated:

“It follows that in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such a provision would spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean” ...

[80] While the afore-mentioned documents do not by themselves conclusively determine the meaning of the representation, they nonetheless provide support for the Defendant's explanation that the designation "2006" was being used as a recognized classification of the vehicle and not necessarily as a representation of its manufacture year. The evidence also supports the Defendant's contention that, within the motor vehicle industry, a vehicle is generally identified by reference to its model year notwithstanding that it was manufactured in an earlier year. Consequently, the Court is satisfied that the Defendant's the evidence in this regard cannot be dismissed as implausible.

[81] Having considered the totality of the evidence, this Court is unable to conclude that the representation was only capable of the meaning attributed to it by the Claimant. The evidence demonstrates that it was more probable of bearing the meaning advanced by the Defendant, namely that the year 2006 referred to the vehicle's model year. The next issue to be resolved is whether the Defendant honestly believed that the Claimant was interested in purchasing a vehicle based on the model year and not on the calendar year.

[82] While the Court accepts the view of Ms. Campbell, that not every purchaser would necessarily understand the distinction between manufacture year and model year, the relevant consideration, however, is not whether every purchaser would appreciate that distinction, but whether the Claimant conveyed to the Defendant that she was interested in purchasing a vehicle manufactured in 2006, as distinct from a vehicle with the model year of 2006, and the Defendant nevertheless misled her into believing that the vehicle that was sold to her was manufactured in 2006.

[83] Counsel Ms. Campbell submits that the Defendant could have ascertained the correct year of manufacture of the vehicle. However, in my view, the Defendant cannot be faulted for not being aware of knowledge that was lacking on the part of the Claimant, regarding common industry practice where this ignorance was not expressed, whether by word or conduct. Neither is there any convincing evidence that the expertise of the agent of the Defendant was sought on the issue.

[84] There is no evidence that any agent of the Defendant was ever asked to explain the difference or the impact if any on the value of, the motor car between the manufacturing year and the model year. The fact that the Claimant up to time of trial admits that she did not know that, that distinction exists, is an indication that, the question was never raised or even discussed. There is no evidence that the Defendant departed from standard trade practice. I take into consideration the evidence that the Claimant indicated to the salesperson of the Defendant company that she was already the owner of a motor vehicle. As such, without any indication to the contrary, this salesperson could not conclude that she was inexperienced, in the purchase of motor vehicles. She asserts that when she was shown a 2005 motor vehicle she decided against purchasing that vehicle since she previously owned a 2004 vehicle and wanted to purchase a vehicle that was 2 years newer.

[85] However, even if the Court accepts that the Ms Gordon genuinely understood the representation to mean that the vehicle had been manufactured in 2006, there is no indication that the agent of the Defendant would have been aware of this

misunderstanding, but nevertheless proceeded to represent to her that 2006 referred to manufacture as also model year.

[86] In the case ***Oscar Chess Ltd v Williams*** [1957] 1 WLR 370 a man had bought a second-hand car and received with it a logbook, which stated the year of the car, 1948. He afterwards resold the car. When he resold it he simply repeated what was in the logbook and passed it on to the buyer. He honestly believed on reasonable grounds that it was true. The court found that he was completely innocent of any fault. There was no warranty by him but only an innocent misrepresentation.

[87] I notice that the Orion Report referred to “*production date, on seat belt*” as 2006. However, in my view this is insufficient to conclude that, that the reference was to the manufacture date of the vehicle itself and not in reference to the seat belt which could have been replaced after the vehicle was put on the market by the manufacturers. The Defendant’s evidence indicates that reliance is placed on the documents provided by the overseas suppliers in its description of the vehicle. No evidence has been adduced by the Claimant to establish that the vehicle was not in fact a 2006 Model.

[88] In fact, there is no evidence attributable to the Defendant that can conclusively or objectively establish that the Defendant represented the vehicle as being manufactured in 2006. Even if we are to take the Orion report of representation of such a fact. On the issue of honest misrepresentation, I must take into consideration the undisputed evidence that Orion was an independent technocrat hired by the Defendant to conduct the valuation. That valuation did not form part of the proforma invoice, from the Defendant’s company describing the vehicle to the Claimant. This was a separate document supplied by this independent third party on which both parties relied. This becomes even more evident from the Claimant’s evidence that it was this very independent third party that she engaged some years later to provide her with a new valuation, the content of which gave rise to this present claim before the court.

[89] While remaining insistent that at all times that reference to year 2006 on the Proforma Invoice and the motor vehicle documents was intended to be the model year in

accordance with standard industry practice, the defendant has also averred that there was mutual mistake by both parties. In this regard the mutual mistake becomes evident in their reliance on the Orion report.

[90] I find that the case of ***Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd*** upon which the Claimant relies is distinguishable from the instant case. In that case a motor car dealer expressed to the purchaser that a vehicle had travelled only 20,000 miles since the replacement of its engine and gearbox. The purchaser relied upon that representation, and it was subsequently shown to be inaccurate. The representation concerned a matter which the dealer was in a position to know or verify and as such he was held liable for breach of warranty. This Court finds the instant case distinguishable as, the court finds that the Defendant did not convey any inaccurate information to the Claimant regarding the year of manufacture, as this question was never raised by the Claimant

Whether the Vehicle Corresponded with its Description as a 2006 Nissan Sunny for the Purposes of Section 14 of the Sale of Goods Act.

[91] The Claimant also contends that there was a breach of an implied term of the contract of sale that the vehicle would correspond with its description. Counsel relies on **Section 14** of the **Sale of Goods Act** and submits that the vehicle did not correspond with the description "2006 Nissan Sunny" because it was subsequently determined to have been manufactured in January 2005.

[92] Counsel for the Defendant, on the other hand, submits that the vehicle delivered to the Claimant was the very vehicle described in the Pro Forma Invoice. Reliance was placed on the Claimant's admission during cross-examination that the vehicle delivered to her was the same vehicle identified in the Pro Forma Invoice and on the Defendant's contention that the designation "2006" referred to the model year of the vehicle.

[93] **Section 14** of the **Sale of Goods Act** requires that where goods are sold by description, the goods delivered must correspond with that description. Whether there has been compliance with that obligation depends upon the proper construction of the description used and the nature of the goods supplied.

[94] The case of **Beale** was considered under the **UK Sales of Goods Act, 1979**. Section 13(1) provides that:

“where the buyer is sold goods by description, the goods must correspond with this description.

[95] In that case the defendant advertised a car for sale as being a 1961 Triumph Herald 1200. The claimant inspected and checked the car and saw a metal disc at the rear of the car with “1200” on it and purchased the car. He later discovered that the car was made up of a rear 1961 Herald Triumph 1200 welded to the front of an earlier model Triumph Herald 948. The court found that the Defendant had breached Section 13 of the Act, even though claimant had inspected the car as he relied on the description in the advertisement and the metal disc at the rear of the car.

[96] It is however noted that in the **Beale case** there was no dispute that the Defendant had made representation regarding the date of manufacture. However, in the instant case, the court has found that there was no representation regarding the date of manufacture. The description in the present case was “2006 Nissan Sunny”. For the reasons previously outlined, the Court is not satisfied that the designation “2006” was only capable of referring to the vehicle's manufacture year. The court accepts the evidence of the Defendant that the designation was the vehicle's model year and that this designation was consistent with standard business practices

[97] This Court has found that the vehicle was consistently identified as a 2006 vehicle in the documents relating to its importation, registration and licensing. The Customs Declaration, Certificate of Registration, Certificate of Fitness and Certificate of Title all described the vehicle in those terms. The Defendant's evidence was also that the vehicle was imported and sold as a 2006 model. This Court accepts that the vehicle was

manufactured in January 2005. However, this Court finds that the description "2006 Nissan Sunny" was not inaccurate in the sense alleged by the Claimant for the reasons already discussed, the Court is unable to reach that conclusion. Having regard to the totality of the evidence, the Court is not satisfied that the Claimant has established that the vehicle failed to correspond with its description within the meaning of **Section 14** of the **Sale of Goods Act**. This Court therefore finds that the claim for breach of contract has failed.

Conclusion

[98] I find that the Claimant has failed to prove that in describing the Nissan Sunny sold to her as a 2006, Nissan Sunny, the 2006 referred to the manufactured year of the vehicle. I find that the Claimant has failed to prove that the Defendant has provided her with inaccurate and misleading information which induced her to enter into contract for the purchase of the motor vehicle. I find that the Claimant has failed to prove on a balance of probabilities, that the representation of the Motor Vehicle as a 2006 Nissan Sunny was false, inaccurate or misleading.

[99] I find that the Claimant has failed to prove that there was misrepresentation on the part of the Defendant as to the year of manufacture of said vehicle. I find that the designation of the vehicle though manufactured in 2005 as 2006 Nissan Sunny is consistent with The Motor Vehicle Policy and Common Trade Practice. As such I find that Claimant has failed to prove on a balance of probabilities that the vehicle sold to her by the Defendant failed to correspond with its description within the meaning of **Section 14** of the **Sale of Goods Act**. This Court therefore finds that the claim for breach of contract has failed.

COST

[100] Counsel for the defendant has requested that cost be awarded on an indemnity basis. However, she has not provided this Court with the basis for granting such an award.

Moreover, in my view there is nothing in the circumstances of this case that would take it out of the norm to attract such an award. Consequently, I make the following orders

ORDERS

1. Judgment for the Defendant
2. Cost to the Defendant to be taxed if not agreed.

.....
Andrea Thomas
Puisne Judge