

IN THE SUPREME COURT OF BELIZE, A.D. 2006

CLAIM NO. 415

STACEY COLLINS

CLAIMANT

BETWEEN AND

**KIRK HALL
BOWEN & BOWEN LTD.**

**1st DEFENDANT
2nd DEFENDANT**

Hearings

2009

28th July

4th September

18th September

Mr. Lionel L.R. Welch for the Claimant
Mrs. Liesje Barrow Chung for the defendants

LEGALL J.

JUDGMENT

1. On the night of the 17th January, 2003 it was raining on Faber's Road, Belize City. After a while the rain subsided to a constant drizzle. Residing at the said Faber's Road, at lot 27, were Joseph Collins and his family, including his daughter Stacey Collins, the claimant in this matter. Joseph Collins carried on a mechanic workshop at his residence. On the said night there was a brown Lincoln Continental

car, about 12 to 14 feet in length, license number C-8156, parked for repairs in the driveway in front of the gate to the residence. It was blocking the exit from the residence of another car, used by the claimant that was parked further in the yard of the residence.

2. The claimant was employed at the time at the Fire Department, Belize City and was scheduled to report for work at 11:30 p.m. that night. In the midst of the drizzle, at about 11:15 p.m., for the purpose of going to work, she stepped out of her residence located on the southern side of Faber's Road which runs east to west. She noticed that the brown Lincoln Continental car was blocking the car she intended to use to go to work. So she reversed the brown car in a northern direction, from in front of the gate of the residence onto Faber's Road. Having reversed the car, she then came out of it, further opened the gate, so that she could drive the said brown car further into the yard, which would provide enough space to drive the other car out of the yard, which she intended to use to go to work.
3. Having further opened the gate, she then re-entered the brown Lincoln car to drive it further into the yard; but before she could do so, another vehicle, a Ford pick-up truck, license No. C-0745 travelling along Faber's Road, collided to the left or driver's side of the brown Lincoln car, between the driver's door and the back door. The truck was, as a result of the collision, wedged into the left side of the brown Lincoln car. The claimant testified that the lights of the brown car were on, and that the car was not in the middle of the road; and therefore other vehicles could have passed behind it.

4. The claimant, who was in the brown car at the time of the collision, suffered physical injuries. According to her evidence her back was fractured, and she suffered numbness in her hands and feet and also suffered chest pains. The claimant was taken to the Karl Heusner Memorial Hospital where she was examined by Dr. John Waight. The claimant did not call Dr. John Waight or any other doctor to describe her injuries. But the defendant, in accordance with an order of court dated 3rd May, 2007 to disclose documents, disclosed a letter dated 31st January, 2003 from Dr. John Waight concerning the defendant's injuries. The letter stated as follows:

“Ms. Collins has as the result of the accident sustained:

- 1. A strain of the ligaments of the cervical spine, the pain resulting from which is diminishing in severity and which can be expected to resolve entirely with the passage of time.**
- 2. Closed injuries without fractures to the upper right and lower left chest wall. The resulting pain can be expected to resolve entirely with the passage of time.**

It is my view that Ms. Collin's injuries are severe enough to prevent her from engaging in her physically-demanding

**occupation as a fire-fighter for a period
of four weeks from the date of the
accident.”**

5. More than three years after the accident, the claimant brought a claim on the 14th of August, 2006 against the defendants for negligence, claiming general and special damages.
6. The first defendant, who was employed by the 2nd defendant, admitted that on 17th January, 2003 he was driving a Ford pick-up truck, owned by the 2nd defendant, along Faber’s Road, at about 11:00 p.m. when it collided to the brown Lincoln Continental car. He stated that the rain was falling, the place was dark, and he was travelling at about 25 miles an hour, on the right side of Faber’s Road, going in the direction of the Western Highway.
7. He said that while driving, he noticed something in the middle of the road, but could not, at that time, say whether the something was moving or stationary. He said he was about 25 feet away and he applied brakes. He said that as he got closer, he realized that the something was a dark brown vehicle parked in the middle of the road, without any lights on. The 1st defendant said he could not avoid hitting the brown car, because of the central position of the car on the road; and that there was not enough space on the road for him to go around the brown car, and though he applied brakes 25 feet away from the brown car, because of the wet surface of the road, he still collided to the car. It was also a part of his evidence that when he was

about twelve feet away he realized the something was a vehicle. In his witness statement he said that as soon as he saw the car he applied brakes.

8. The main question in this case is whether the accident was caused by the negligence of the first defendant? The claimant reversed a 12 to 14 feet long Lincoln brown car, onto the highway on a dark rainy night, about 11:00 p.m. The back of the Lincoln car was stationary, to a certain distance, across the highway, while the front of the car was facing the claimant's residence. The defendant contended that the Lincoln was almost across the whole highway thereby preventing him from swerving from it and passing at the back of it.

The claimant, at a visit to the locus in quo by the court, pointed to a spot near to the middle of Faber's Road, where the back of her car was. Moreover, this is how the claimant in her witness statement described the position of the car on Faber's Road –

“After the car was reversed the whole of it was on the right side of Faber's Road, Belize City in the direction of Central American Boulevard but it was at an angle with the front of the car pointing to the driveway.

9. The claimant, in her oral evidence, said that “the brown car took up the left hand side of the road. The left hand side of the road was about

8 feet to 10 feet wide.” She also testified that “the front of the vehicle was facing my house and the rear of the vehicle was on Faber’s Road.” The claimant called a witness, Kathlene Collins, who testified that the claimant reversed “the brown car on the street. She did not park it away from traffic or out of the road.” This witness also testified that her daughter, the claimant, reversed the car “a little on the street” and that the Lincoln car had on lights and did not take up much of the road so that another car could have passed at the back of the brown car. And the witness Joseph Collins testified that the brown car was not across the whole of Faber’s Road.

10. I believe the claimant reversed the car, without any lights on, to some distance across Faber’s Road, on a dark rainy night. The Lincoln car suffered damage to the driver’s side between the driver’s door and the passenger seats. The damage was around the middle of the car on the driver’s side. The car must have been some distance across Faber’s Road to have suffered the damage to the middle of the car on the driver’s side.
11. In my view, it was grossly negligent to reverse a car by the back at night to a distance across the highway, and then park the car in that position on the highway. The claimant could have easily requested other occupants of the home, who according to the evidence, were home at the time, to check to see if the road was clear before reversing the car; and having reversed the car, she could have then parked the car on the side of the road, rather than parking the car some distance across the road. When asked in cross-examination by learned counsel

for the defendant why she did not park the vehicle at the side of the road, this is what the claimant said:

“I did not park the brown vehicle at the side of Faber’s Road, because I found it was easier to park it where I parked it I did not think of other persons using the road at that time and I did what I think was appropriate for me at that time.”

12. It might have been easier to park the car where it was parked; but was it safe to do so? It was clearly not, as the events have clearly shown. The claimant should have reasonably foreseen that if she parked the car in the position she did, it may cause harm to herself, as well as to other persons using the road. The claimant had a duty of care to other users of the road; and in my view, the facts of the case clearly show that she breached that duty of care. To reverse, unsupervised, a large car on a dark rainy night, with no car lights on, and park it some distance across the public road, and then to leave it there, even though momentarily, amount, in my view, to gross negligence, perhaps bordering on recklessness.
13. I do not believe that there was enough space for another vehicle to pass at the back of the brown car. But assuming that there was enough space, it was still, in my view, grossly negligent to reverse the car, unsupervised, some distance across the road on a dark rainy night

with no lights on. If the claimant had done the reasonable thing by having members of her family properly supervise the reversing and assisting with the gate, I have no doubt the accident would not have occurred. In my view, the claimant was the sole cause of the accident.

Counterclaim

14. The second defendant filed a counterclaim against the claimant for negligence and claimed the amount of \$3,005.00 as the cost for repairing the said Ford pick-up truck license C-0745 that was involved in the accident. The defendant tendered as exhibits receipts showing that the amount of \$3,005.00 was the cost of repairing the Ford vehicle.

15. I have given above the reasons for my decision that the claimant was the sole cause of the accident. I find that the damage to the Ford pick-up truck was as a result of the accident. I therefore give judgment for the defendant against the claimant on the counterclaim. I make the following orders:
 1. The claim filed by the claimant against the defendants is dismissed.

 2. Judgment for the 2nd defendant against the claimant in the sum of \$3,005.00.

3. Claimant to pay to the 2nd defendant interest on the said sum of \$3,005.00 at the rate 6% per annum from 17th January, 2003 until the sum is fully paid.
4. Claimant to pay costs to the 2nd defendant in the sum of \$1,000.00.

Oswell Legall
JUDGE OF THE SUPREME COURT
18th September, 2009