IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO 2010 HCV 00477

BETWEEN	**Lowell Morgan**	**Claimant**
And	**Sentry Services Company Ltd.**	**First Defendant**
And	**SGB Maintenance Limited**	**Second Defendant**

Negligence – Breach of Contract – Burglary – whether First Defendant security provider negligent – Whether Second Defendant property manager in breach of duty of care - whether Claimant aware of danger- whether Claimant contributed to or caused his own loss - whether hearsay objection in witness statement best taken at Pre-trial Review – Damages in the absence of Documentary proof.

Catherine Minto, Stephanie Forte instructed by Nunes, Scholfield, Deleon & Co. for Claimant.

Danielle Chai instructed by Samuda & Johnson for the First Defendant.

John Graham, Peta-Gaye Manderson instructed by John Graham & Co. for the Second Defendant

Batts, J.

Heard: 17th November 2014, 18th November 2014, 19th November 2014, 12th December, 2014 and 6th February, 2015

[1] In this action Mr. Lowell Morgan, a prominent attorney-at-Law, claims damages for negligence and/or breach of contract against the 1st Defendant, a Security Company and the 2nd Defendant, property managers. It is alleged that the breach of duty by the First and Second Defendants or either or both of them resulted in a break- in at the Claimant's premises and caused him loss.

[2] The Defendants deny the allegations. The First Defendant said it took all reasonable care and asserts that in any event it had no contract with the Claimant. The First Defendant contends also that it discharged any alleged duty by warning the Claimant and advising of necessary security steps. These were not heeded. The Second Defendant also denied liability and asserted that its duty to the Claimant was discharged when it took reasonable care to employ a

reputable firm of security professionals to secure the premises. It was also urged by both Defendants that the Claimant was well aware of the dangers and took inadequate steps to protect his own property. The Claimant therefore caused or contributed to his own loss.

[3] On the first morning of trial the parties agreed a Bundle of Documents which was admitted into evidence as **Exhibit 1.** The Claimant was the first witness to give evidence. His witness statement dated 18th July 2013 was allowed to stand as his evidence in chief. Permission was applied for and granted to amplify the statement in relation to matters raised in other witness statements.

[4] The Claimant stated that he is the registered owner of townhouse #8 at 3-5 Clieveden Avenue, Fernbrook Estate in St. Andrew. It is located in a gated community called Fernbrook Estate (hereinafter referred to in this Judgment as Fernbrook). The gate is electronic and located next to the security post at the entrance. In order for persons to enter the guard has to open the gate. There is also a pedestrian gateway which the guard also opens to allow ingress. The Claimant gave a detailed description of his townhouse. He received his letter of possession on the 9th January 2009. Importantly he said that within a week of obtaining possession he took a security consultant, a former army officer, to look at the townhouse and advise him on security. He said,

> "Based on my friend's recommendations I decided to grill the downstairs but there was no need to grill upstairs because of where the townhouse was situated. Though my townhouse is at the end of the complex it is right in line of vision of the security post"

[5] The Claimant states that when he obtained possession the townhouse complex was being managed by the Second Defendant. It was they who retained the First Defendant to provide security services.

[6] The Claimant further stated that he retained the services of Mr. Audley Manning to supervise workmen at his townhouse. Mr. Manning was known to him since the year 2000 and he trusted him "explicitly". The Claimant moved into the townhouse in February 2009. He received a letter dated 5th February 2009 from the Second Defendant enclosing an invoice for maintenance fees for January and February 2009. The Claimant paid the amounts but by letter dated 18th February 2009 queried the fee because he considered it excessive. By letter dated 18th February 2009 the Second Defendant responded and provided a budget breakdown for the maintenance. This included the cost of 24 hour security.

[7] The Claimant stated that the Second Defendant retained the First Defendant without prior consultation with the homeowners at Fernbrook. He stated that he had previously observed security guards assigned by the First Defendant asleep while on duty. It was his habit to go on long walks in the mornings. He says he often saw the guard asleep on returning from these walks. He made "numerous complaints" to the Second Defendant about that. The Second Defendant however continued to use the First Defendant.

[8] The Claimant says the matter was of concern as he was aware of two break-in incidents at Fernbrook. These occurred in the period prior to the 13th March 2009. On the 14th March 2009 at 6.40 a.m. a break-in occurred at the Claimant's premises.

[9] Audley Manning brought the fact of the break-in to his attention. The Claimant observed footmarks on the wall above the carporte and that the mesh on the window at the front bedroom had been cut. He concluded that that was the point of entry to his townhouse. Several items were missing from his home and these he itemizes.

[10] The Claimant says that within days of the break-in the Second Defendant cut down a tree which was close to his carporte. The security guard on duty was also replaced. The Claimant asserts that the window through which entry had been gained was in the direct line of vision of the security post. He concludes that had the guard been keeping a watchful eye he ought to have seen the intruder.

[11] The Claimant says he was never given proposals for the enhancement of security by either the First or Second Defendant. Nor was he ever warned about the vulnerability of his townhouse.

[12] By way of amplification the Claimant stated that on Tuesdays and Saturdays Audley Manning was retained to clean windows, shoes, wash motor vehicles and mop floors and such the like. He stated that his complaints about the sleeping security guard were made to one Cassandra Johnson who was the representative of the Second Defendant and who was always on spot at Fernbrook. The Claimant also identified the other townhouses which had been broken into. Both break-ins occurred prior to the break-in to his apartment.

[13] When cross-examined by the First Defendant's Counsel, the Claimant stated that the perimeter wall around the premises is more than 6 feet high. He explained that it has a drop on the other side. He thought it might be between 7 to 9 feet. When challenged as to why he had not grilled the upstairs window he responded as follows:

> "A. I did not see the need to because of where security post is and the direct line of vision to where my townhouse is. At Richings we felt because of how high there was not a need to and there was not a problem.
>
> Q. You were relying completely on security at the guard post
>
> A. Yes that is what I am saying."

[14] He admitted that he was aware that at any time only one guard was on duty. It was the duty of the guard to let in and let out visitors. It was also his duty to patrol the complex.

[15] The Claimant admitted that Audley Manning had a key to his apartment and was allowed unrestricted access. In response to the suggestion that he was careless when he allowed Audley such access he retorted,

> "I disagree. When I went to England in 2007 Audley was the person I left with the keys to my house."

[16] Interestingly the Claimant was asked whether the items stolen were insured. He answered in the affirmative and stated that he had been indemnified by the Insurance Company for his losses. The Claimant stated that the claim was a "subrogation" claim. I mention this aspect of the evidence because it is rather unusual and in my view less than desirable, for a trial court to be informed of an Insurance Company's interest in the proceedings. The evidence can serve either to cause the tribunal of fact to sympathise with the person who does not have the deep pocket or to conclude that if the Insurance Company honoured the claim it did have some validity. No objection was taken when the cross examiner pursued this line of questions, nor has any use been made of the answers in

closing submissions. I therefore disregarded this bit of evidence and it will play no part in my determination.

[17] The Claimant was cross examined by Mr. John Graham on behalf of the Second Defendant. Mr. Graham elicited from the witness that he had no documentary proof of the existence or value of the items which went missing. Nor was any such documentation provided to his insurers. The Claimant stated that Audley Manning was not called as a witness because he was not functionally literate and in any event could not help the case. He admitted that he had not seen the guard sleeping that morning nor did Audley Manning report that to him. He admitted that he had not mentioned anything about sleeping guards in his letter to the Second Defendant. The Claimant admitted knowing there was only one guard and that if the incident occurred while the guard was on a "bio-break" he would not consider the guard to be negligent. He admitted that the guard who opened the gate was the only one on the premises. The Claimant admitted he had not received a police report nor had he checked back with them for the results of their investigations. He came to the conclusion as to how the burglary occurred without input from the police.

[18] The Claimant admitted that the First Defendant and the Second Defendant continued at the premises for another 2 years after his break-in. Eventually the Second Defendant's contract was terminated and the First Defendant left with them. The owners replaced the First Defendant with a new security arrangement which did not involve a guard company. There has been one break-in since the new arrangement was put in place. He explained the circumstances of that break-in as being related to "undesirables" being occupants at Fernbrook. The new watchman had not seen that burglar. When re-examined he explained the process of an insurance claim in a house and contents policy.

[19] The Claimant's case was then closed. The First Defendants' Counsel applied for permission to call a witness whose witness statement was served on the 12th

November 2014 (5 days before trial). No witness summary had been served. The intended witness was the guard who had been on duty at the time. He was not yet present at court. This application was resisted by Claimant's Counsel because the court had already granted 3 extensions of time to file witness statements. It was submitted there had been inadequate efforts made to locate the witness. Furthermore there would be great prejudice to the Claimant whose case was now closed. This application if made at the commencement of the trial and if successful would have enabled the Claimant to adjust its case accordingly. Now that possibility was not available. The statement served also referred to a document (a log book) which had not been disclosed in the discovery process. The Second Defendant had no objection to the application and indeed made brief submissions in support.

[20] I ruled that the witness could not be called. My reasons were: a) The rules of the court must be obeyed, except where the interest of justice requires a departure. In this case there have already been extensions of time to file and exchange witness statements. The First Defendant had the option of filing a witness summary and this was not done. There could have been early notification of the dilemma. b) It is also unfair for the Claimant to have to treat with such an application after its case has been closed. c) The Court has to bear in mind the public interest in the efficient use of judicial time. There is a real danger that if allowed, the Claimant will require time to take instructions on the new material. This in my view, in a matter of this nature, will not be in the public interest or serve the ends of justice.

[21] The First Defendant's Counsel then sought an extension of time in respect of the supplemental witness statement of Ezekiel Knight filed on the 11th November 2014. There was no objection and I extended time accordingly.

[22] The First Defendant's Counsel then applied for permission to call a witness to prove a document which had been disclosed in a Notice of Intention filed on the

31st October 2014 to which a counter notice was filed. Both Claimant's Counsel as well as Counsel for the Second Defendant objected; the former on the basis that a witness statement ought to have been done; the latter because the document was addressed to his client but his client contends they had never received it.

[23] I asked both counsel whether they were prejudiced, and if so how, by the late notice of the document's existence and they both withdrew the objection stated. I therefore noted that it was in order for the First Defendant to lead evidence to prove the document in question. It was not necessary to file a witness statement although it might have been desirable. Once a Notice and an Objection were served the parties ought reasonably to expect that a witness to prove the challenged document would be called. No injustice therefore results from granting permission to call a witness for that single purpose.

[24] Ezekiel Knight was then called to give evidence on behalf of the First Defendant. He is a security officer and at the material time was area manager. His witness statements dated 23rd April 2013 and 6th November 2014 stood as his evidence in chief. The Claimant's counsel then rose to take objections based upon hearsay to the contents of the witness' statement. I enquired of her if the statement was given in 2013, why were these objections not made at pre-trial review. Counsel responded that there was judicial authority to the effect that such applications are to be made at the trial.

[25] I refused to allow the application at this late stage. Different situations may call for another exercise of a discretion. It seems to this court that the general rule, if the efficiency of the court is to be maintained, must be that objections to the contents of witness statements take place in pre-trial hearings. A party who has duly filed and exchanged witness statements to which no objection is taken is entitled to plan his case on the basis that this will be the evidence in chief of his witness. If at trial due to a successful objection, a great hole is punched in

matters he needs to prove, an application to adjourn can be expected. The whole tenor of the Civil Procedure Rules supports a view that litigation by ambush is to be avoided. I will not allow the First Defendant to be ambushed at this stage by objections to the content of a witness statement served over a year ago. Cross-examination as well as submissions on the probative value of the content of witness statements are adequate safeguards available to the Claimant. My position may of course have been otherwise had the witness statement been served out of time or subsequent to the pre-trial review.

[26] Mr. Ezekiel Knight's witness statements are to the effect that as Area Manager it was his duty to audit the locations at which the First Defendant provided security. After completing Fernbrook's security audit he made several verbal recommendations to Ms. Cassandra Johnson, the client's property manager. One of the recommendations was that 2 security guards be employed, one at the gate and the other to patrol at nights. He says she advised him that economic constraints meant only one guard could be afforded. He said that on the morning in question he received information at approximately 6.20 a.m. about a break-in at Fernbrook. He attended the location and the Claimant in his presence and the presence of the police itemized all the missing items. The police in his presence examined the premises but found no evidence of a forced entry. An open window above the garage and an old tree stump adjoining the garage suggested the possible access point. He saw spots of dry dirt on the floor by the inside of the window. From his observation the apartment was not ransacked and this suggested to him that the perpetrator knew the apartment well and was familiar with the apartment and its contents. He said he was informed that the Claimant allowed a male individual unrestricted access to the premises. This person was the first to alert the guard on duty that there was a break-in. In his supplemental witness statement Mr. Ezekiel Knight stated that the contract between the First and Second Defendants which subsisted on the 13th March 2009 was that the Second Defendant used its own watchman from 7.00 a.m. to 7.00 p.m. The First

Defendant only provided services from 7.00 p.m. to 7.00 a.m., and this by way of a single security guard.

[27] When cross examined by Claimant's Counsel the witness admitted that he had been sitting in court on the previous day when he arrived after 3.00 p.m. He had not done so on this the second day of the trial. He was unable to say the date his audit of Fernbrook was done. He said Fernbrook ceased being a client in 2012 and that the audit report would have been placed on the client's file. The audit was done after the contract for provision of security services was entered into. The witness was taken through a series of considerations which go into the preparation of the security audit. He admitted that all the things itemized were relevant not only to securing of premises but also to the security of the guard provided. The witness said his audit was done in writing but he did not think it was provided to Fernbrook.

[28] He passed on his report to Mr. Kevin Clarke the compliance manager at the First Defendant. He admitted that in addition to the recommendations referred to in his witness statement he also made other recommendations. Those were for an intercom system, lighting and an additional security officer at night. The witness was shown answers to request for information (pg. 40 Judge's Bundle) and admitted that the warnings and recommendations were made orally. Nor was there mention in his witness statement of any written warning. He admitted that none of his 5 recommendations were implemented. The witness admitted that the failure to implement his recommendations created a security risk at the premises. Indeed it made monitoring the premises at Fernbrook "virtually impossible". The witness stated that after each break-in a security audit was done and the same recommendations made. He made none to the Claimant. All were made to Cassandra Johnson. He had never spoken to the residents at Fernbrook.

[29] The witness admitted that all the information in his witness statement about an individual with access to the Claimant's townhouse was given to him by the security guard on duty. The witness admitted that in the other 2 break-ins which had occurred access was from the rear of the respective premises. He said it was possible if the guard stood outside the guardhouse he could see an intruder standing on the roof of the Claimant's carporte. The witness admitted having no training in crime scene analysis or footprint analysis. He had worked for 15 years in the security industry as guard escort and securing life and property.

[30] When cross examined by Mr. Graham for the Second Defendant, the witness admitted he had not recommended CCTV to Fernbrook. This was because of cost considerations. He admitted that the guard could not stand at the gate and see the section of the perimeter wall behind each townhouse.

[31] The First Defendant's next witness was Mr. Kevin Clarke. He was allowed to affirm as an oath was against his personal beliefs. He stated that he wrote a letter to the Second Defendant dated 19th February 2009. A copy of that letter was admitted as **Exhibit 2**. The original, said the witness, was sent to the Second Defendant.

[32] When cross examined by Claimant's Counsel he said that the letter was not copied by him to the residents of Fernbrook. He said it was addressed to Sharon Morris of the Second Defendant at 5 ½ Retreat Road, Kingston 5.

[33] When cross examined by Second Defendant's Counsel he stated, having been shown the Security Services contract (pg 9 Ex. 1) that the contract between the First and Second Defendants was made on the 5th January 2009. He could not explain why the letter (Exhibit 2) was sent to the address stated on it because,

> "I would be the person who draft letter and send to the Administration. They would do necessaries to have it sent."

He admitted that the address for the Second Defendant on the contract was different from the address on the letter. He had no information that the address of the Second Defendant had changed. There was no re-examination and the First Defendant closed its case.

[34] The Second Defendant called Ms. Sharon Morris to give evidence. The witness statement dated 18th July 2013 was allowed to stand as her evidence in chief. She was allowed to amplify in relation to Exhibit 2. Having seen it she stated that the Second Defendant had no location at the address stated in that letter. She had never received that letter. In her witness statement she stated that she is the property manager of the Second Defendant. The contract between the Second Defendant and Omicron Development Ltd., the developer of Fernbrook, has no term requiring the Second Defendant to provide security services. However on 5th January 2009 the Second Defendant entered into a contract with the First Defendant for security services to be provided. One term of the contract was for unarmed security guards 24 hours per day, 7 days per week. On 13th March 2009 the Claimant reported a break-in but that she is unaware if it occurred or if anything was stolen.

[35] When cross examined by the First Defendant's Counsel Ms. Morris identified the contract at pages 9-13 of Exhibit 1. She admitted that the contract was amended but insisted that on the day of the incident the First Defendant provided 24 hour security. She was not aware that a security audit was done. She admitted that Cassandra Johnson was her employee. She was responsible for Fernbrook at the time. However she said that Ms. Cassandra Johnson on her own supervised the security arrangements. She says the only time she recalls getting security recommendations from the First Defendant was after the Claimant's break-in. She admitted there were break-ins prior to the one involving Mr. Morgan's premises. She had gone to the premises when the Claimant's report of a break-in was made and the apartment seemed "immaculate" to her. She did recall that at a meeting with the residents security complaints were raised. She could not say if this was before or after the break-in at the Claimant's townhouse.

[36] The witness was then cross examined by the Claimant's Counsel. The witness admitted, having been shown a list of documents, that she had seen a Police Report on the incident. She admitted that the owners at Fernbrook played no part in the selection of a security company; nor did they have power to terminate the contract. She admitted that Cassandra Johnson had been in court during the trial on Monday and Tuesday. She was asked whether there was any specific reason why Cassandra Johnson had not given a witness statement and responded "No".

[37] The case for the 2nd Defendant was closed and the parties given permission to file written submissions. The matter was deferred to the 12th December 2014 for oral submissions limited to a response to the written submission of others. On that date and after hearing the submissions I adjourned to consider my decision. The parties will, I hope, forgive me for not in detail outlining the very interesting and well-researched submissions made. They may rest assured that I have carefully considered the points made.

[38] I find as a fact that there was a break-in at the Claimant's premises as alleged. It is clear on the evidence, and I therefore also find, that the security arrangements were inadequate to adequately secure the premises. The First Defendant's witness stated as much. I find on a balance of probabilities that the break in through the front upstairs window would not have occurred had there been more than one guard on duty at the material time. A single guard could not both let persons (on foot and/or in motor cars) in and out of the premises while at the same time keep watch over the several apartments /townhouses in the complex. There is no evidence that either the First or the Second Defendant brought this inadequacy to the Claimant's attention. It is no answer to say that neither did the Claimant's own security consultant. This is because the consultant may not have been aware that only one guard was assigned. In any event the fact that the Claimant's consultant may have given bad advice to the Claimant does not

detract from the failure of the First Defendant to take reasonable care to secure the premises.

[39] The question therefore arises whether the First Defendant had a duty of care to the Claimant and if so whether it was satisfied by verbal warnings of the inadequacies to the Second Defendant. There is no doubt in my mind that there was a sufficiently proximate relationship between the Claimant and the First Defendant ***Bluett v. Suffolk County Council [2004] EWCA* 378 QB *and British Road Services v Arthur C Crutchley Ltd. (Factory Guards Ltd. third parties) [1968] 1 All ER 811*.** To be fair this was not seriously challenged. It was reasonably forseeable that in the absence of care in carrying out its duties the First Defendant might cause loss to the Claimant and other owners at Fernbrook. I find that the First Defendant was negligent in the manner in which it set out to secure the premises.

[40] I am not satisfied that the First Defendant took any or any adequate steps to bring to the attention of the Second Defendant the inadequacies of the security arrangements at Fernbrook. Cross-examination exposed the fact that the letter (exhibit 2) which was intended to warn of the dangers was directed to the wrong address. The Second Defendant says it was not received. I accept and find as a fact, that the Second Defendant received no written communication from the First Defendant. The First Defendant says there was oral communication to the Second Defendant's representative at Fernbrook, Ms Johnson. I accept and find as a fact that Mr. Ezekiel Knight did tell Ms Johnson that one security guard at nights was inadequate. Such oral communication maybe sufficient to protect the First defendant in the event of a claim to contribution or indemnity by the Second Defendant. Is it sufficient to inure the First Defendant to a claim by the owner who suffers loss as a result of the failure to "devise and effect any recommendation for the security" of Fernbrook (Paras. 6 Viii, x and xiii of the Particulars of Claim).

[41] I hold that the oral communication to an employee of the Second Defendant is not a discharge of the First Defendant's duty in that regard. The risk must be considered as well as the expense or difficulty of alerting the owners either directly or by way of the second Defendant. When regard is had to the fact, as indeed was admitted, that there was a real danger due to the prevalence of crime, the First Defendant had a duty to bring the results of its security audit in no uncertain terms to the attention of the Second Defendant. They recognized this obligation, and demonstrated this by writing a letter. They failed however to correctly address the letter. In doing so they failed to ensure that the upper echelons of management of the Second Defendant were made aware of the situation. This resulted in the Second Defendant not bringing it to the attention of owners and or not taking the steps recommended in the audit. In other words the danger to which the inadequacies exposed the Claimant and other householders was such that only a formal earnest and clear communication to the Second Defendant would be a defence to the claim in negligence. A conversation or conversations with Ms Johnson was not adequate to discharge the duty of care to the Claimant. I find the First Defendant liable to the Claimant.

[42] The Second Defendant was aware vicariously if not actually of the security concerns. The Claimant had advised Ms Johnson about the tendency of the guard to doze. I accept the Claimant's evidence in that regard. Furthermore and as stated above, Ms Johnson had been orally advised by the First Defendant of the inadequacy of a single guard. Whether she communicated that to her superiors or not, the fact is she was their representative at Fernbrook. The Second Defendant cannot credibly deny her ostensible authority and hence responsibility to receive and act on that information. At a minimum this meant advising the owners including the Claimant of the concerns raised by the First Defendant security providers. This was not done, neither in meetings orally nor in writing. They had every opportunity to do so, indeed letters were written to the Claimant about other matters prior to the incident. The ostensible authority of Ms Johnson to receive such information renders it irrelevant, to the question of the

Second Defendant's liability to the Claimant, whether Ms Johnson ever did tell her employers. If necessary however I find on a balance of probabilities that she did not advise her employers. There is no evidence that Ms Johnson told anyone. The Second Defendant's sole witness says they were not told. It is quite possible that Ms Johnson regarded her conversations with the First Defendant's representative as just that chit chats about the location. She could after all reasonably expect that a formal communication between the companies would ensue. There is not much evidence of the context or circumstances in which the oral communications were made. No dates were provided nor do we know whether they occurred in a meeting, or out in the yard on the occasion of a break-in. I therefore find that Ms Johnson in all likelihood did nothing more with the information she received and which she in all likelihood regarded as informal due to the mode of its communication to her.

[43] Miss Johnson's inaction however renders the Second Defendant vicariously liable. Ms Johnson had information which had a direct bearing on the safety of the owners including the Claimant. If as I find, she neither told the owners nor took steps to ensure her employers implemented the recommendations, then she was negligent. That breach of duty is something for which her employer the Second Defendant is vicariously liable. Furthermore and as adverted to above her knowledge is imputed to the Second Defendant. The Second Defendant is therefore negligent for failing to act on information however received which had such dire implications, if not acted upon, for the safety of the owners. The fact the upper management may not have been actually aware is in this regard of no moment. I therefore find the Second Defendant liable to the Claimant in negligence.

[44] It was contended that the Claimant was contributorily negligent. The allegation being that because he had seen the guard dozing on prior occasions and because he knew there was only one guard on duty and because he knew there had been previous break-ins, he ought reasonably to have grilled his windows. I

do not agree. It was not unreasonable for the Claimant, as he stated, to be comforted by the fact that he was in a gated community which offered a security service. Furthermore his townhouse was in the line of vision of the guardhouse and his upstairs window clearly visible from that vantage point. The inherent flaws in the security arrangement which the first Defendant's security audit revealed would not be obvious to a layman and I find was not apparent to the Claimant. His decision not to grill his upstairs window was therefore not negligent and he breached no duty to himself in that regard. As regards, the sleeping guard and the prior break-ins he took steps to and did report the former and was therefore reasonably entitled to expect that reasonable corrective measures would be taken in consequence. The Claimant cannot be said to have contributed to his loss.

[45] On the matter of damages the Claimant has provided no documentary support. He clearly described the items stolen. I find as a fact that they were. There was no expert evidence as to the value of the items. There was no documentary proof of purchase price. The court was therefore urged to make no award. I do not believe that the authorities cited compel such a result. There is after all a loss. The items do or rather did have some value. I accept the Claimant is a truthful witness. Truthful witnesses can be mistaken; they may have failures of recollection. Furthermore even if the Claimant has accurately recalled the amount paid for each item, there is no expert evidence as to the depreciation or appreciation in value since purchase. In these circumstances of uncertainty the court must do the best it can with the evidence it has. In order to be fair and hence to guard against an unmeritorious award on the one hand and an overgenerous award on the other, I have decided in the Solomonic tradition to award 50% of the values deponed to by the Claimant.

[46] There will therefore be Judgment for the Claimant against the First and Second Defendants in the amount of US $4,300.00 and £175.00. Interest will run on this

award from the 14th March 2009 to the date of this Judgment at 1.5%. Costs will go to the Claimant to be taxed if not agreed.

David Batts
Puisne Judge