Contract – written binding contract – repairs to motor car – care by respondent – written receipt – court granted damages. Appeal against judgment for respondent allowed. Judgment set aside. Judgment entered for appellant with costs.

No Cases referred to

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JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL NO. 25/91

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A. (Ag.)

BETWEEN	MEGAN TAYLOR	PLAINTIFF/APPELLANT
AND	QUINTON RILEY	DEFENDANT/RESPONDENT

Miss Sandra Johnson for the appellant

Respondent not present

October 17, 1991

BINGHAM, J.A. (Ag.):

This is an appeal from a judgment of the learned Resident Magistrate for Saint Ann on the 13th of July, 1989, in which the plaintiff claimed to recover the sum of ten thousand dollars ($10,000) being monies spent and labour provided to repair a Rover motor car, the property of the appellant. The learned Resident Magistrate found in favour of the respondent and entered judgment for two thousand nine hundred dollars ($2,900) with costs.

The facts relating to the matter were that the appellant and the respondent enjoyed a common-law relationship which covered a period of some six years up to 1987, at which time the parties lived in Runaway Bay in the parish of Saint Ann. It appears that the appellant was the bread winner. The respondent, on the other hand, who was an upholsterer by trade did not enjoy work. However, on their removal to Saint Ann, he acquired a job for a short while, working in the hotel industry. After he lost this job, the relationship between the parties appeared to have weakened somewhat

and a break-down seemed imminent. The respondent suggested to the appellant that the Rover car which she had, be repaired and that he be given permission to use it for the benefit of both of them.

The appellant, however, who was at that time not willing to place much trust in the respondent, wanted some formal arrangement to be entered into, in which she would allow him to purchase the car for ten thousand dollars ($10,000). She suggested that they go to a lawyer who was practising in Brown's Town, to enter into a formal agreement in which a deposit of one hundred dollars ($100) would have been paid and he would thereafter make instalments of four hundred dollars ($400) per month until the contract for the sale of the car was completed.

The respondent, however, did not go through with this arrangement. Against the wishes of the appellant, he took the car, carried out certain repairs totalling some two thousand nine hundred dollars ($2,900) which, as the Magistrate found in her Reasons for Judgment, were done by him "in anticipation of some agreement subsequent to be signed as drawn up by the attorney-at-law in Brown's Town." The Magistrate further found that this was "in pursuance of a conversation that had taken place between the parties and the attorney-at-law."

However, it is clear from the evidence that there was no formal contract entered into. Whatever work was done on the car, the only basis upon which the respondent could hope to found a claim, would have been, as the Magistrate in fact found, on a quantum meruit principle. Having found that there was no binding agreement, she came to the conclusion that the respondent should be awarded the amount of two thousand nine hundred dollars ($2,900) for the money and labour expended by him on the car. However, the respondent also admitted, under cross-examination, that when he was half-way through repairing the vehicle, he was stopped by the appellant and this admission I would regard as being crucial

because it would have been consistent with the appellant's own evidence that in the absence of a formal contract she was not a willing and consenting party to the respondent carrying out any repairs in relation to the car. In this regard, also, no quasi-contract based on a quantum meruit relationship could flow from this conduct on the respondent's part. The situation, therefore, would be that there was no basis for the finding by the learned Resident Magistrate.

Such repairs as the respondent did in effect carry out on the vehicle, would place him in the position of being a gratuitous donor, having regard to the whole tenor of the relationship between the parties. Further, having regard to the fact that after the car was repaired he did use it for some time before possession was re-taken by the appellant, the justice of the case demanded that the claim ought to have been dismissed.

This Court, therefore, in assessing the evidence, is in as good a position as the learned Resident Magistrate, who saw and heard the witnesses, in coming to a different conclusion. For the reasons that I have just stated, I would allow the appeal, set aside the judgment of the learned Resident Magistrate, and enter judgment for the appellant.

CAREY, P. (Ag.):

I agree with my brother Bingham, J.A. (Ag.). I must observe, however, that even on her own findings, she ought at most to have awarded a figure precisely half of the amount which she in fact awarded. There was evidence before her that the appellant had told him to cease all activities with respect to the car after the repairs had reached the half-way mark. But the evidence shows that he was nothing more than a gratuitous donor. He benefitted himself rather than the appellant.

The appeal is accordingly allowed. The judgment of the

Court below is set aside and judgment entered for the appellant with costs fixed at three hundred and fifty dollars ($350).

DOWNER, J.A.:

I agree.