

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. T115/85

BETWEEN	VAL CONSTRUCTION LIMITED	PLAINTIFF
AND	VERONICA LOVINDEER	DEFENDANT

SUIT NO. C.L. N013/86

BETWEEN	NATIONAL INVESTMENT BANK LIMITED	PLAINTIFF
AND	VAL CONSTRUCTION COMPANY LIMITED	FIRST DEFENDANT
AND	MARK THOMAS	SECOND DEFENDANT

C.M. Daley and Lawton Heywood for Val Construction and Mark Thomas

Wendell Wilkins and Miss Michalene Lattore for National Investment Bank Limited.

HEARD: DECEMBER 5, 6, 1990.

CORAM: WOLFE J.

REASONS FOR JUDGMENT

On December 6, 1990 Judgment was entered in favour of the Plaintiff in Suit C.L. T115/85 and in favour of the Defendants in Suit C.L. N013/86. At the time of so doing I indicated that my reasons would be reduced to writing at a later date. This effort of mine seeks to fulfil that promise.

Both actions sound in negligence, and arise out of a motor vehicle accident which occurred on the 1st day of February, 1985. The situ of the accident is the intersection at Liguanea Avenue and Paddington Terrace in the parish of Saint Andrew. Both sides are agreed that each corner of the intersection is controlled by a stop sign but that the stop sign at the south eastern corner of Paddington Terrace was broken down at the time. Both sides are also agreed that on the eastern side of Paddington Terrace there is a sign which warns motorists proceeding along Paddington Terrace in a westerly direction that there is a stop sign ahead. There is a similar sign on the southern portion of Liguanea Avenue.

Mark Thomas, the driver of the Mazda 929 motor car bearing registration No. FP5274 and owned by Val Construction Limited, testified that on the 1st February 1985 at about 10.15 p.m. he was proceeding along Liguanea Avenue travelling northwards. On reaching the stop sign at the south west corner of Liguanea Avenue he stopped his vehicle. He looked left. He looked right. There was no vehicular traffic on the road. He proceeded to enter the intersection. It is to be noted that the stop sign is set back about ten feet from the corner of the intersection.

Continuing the narrative, Mr. Thomas said that when he had travelled a distance of about 30 feet from the stop sign he heard a scream from the female passenger seated on the left front seat of his car. He looked to his right and saw a car "bounding down on him at a fast speed". So quickly was the car travelling, he said, that there was nothing he could do to avoid the collision. Both cars collided in the intersection. The Mazda Motor Car came to rest on the western verge of Liguanea Terrace and the northern section of Paddington Terrace. The other car a Toyota was resting in the middle of the intersection. The Toyota Motor Car created a drag mark of approximately 30 feet commencing about a distance of ten feet along Paddington Terrace.

The Mazda Motor Car was damaged from about the middle of the right rear door to the right front door. The Toyota Motor Car was extensively damaged to the entire front.

Mr. Vallin Thomas, a director of Val Construction Limited and the father of Mark Thomas, testified that he went to the scene of the accident and that he spoke with Miss Lovindeer. He enquired of her what had happened. She replied that there was no stop sign and she drove through and hit the car which was crossing. Mr. Thomas said he pointed out to Miss Lovindeer that the intersection was a four way stop. Whereupon she said she was not aware of that.

Mr. Karl Chen, Architect and Town Planner, a friend of Vallin Thomas gave evidence for the Plaintiff in Suit C.L. T115/85. He was not a witness to the collision but having visited the scene shortly after the accident he prepared a diagram of what he saw on his arrival there. This diagram was admitted into evidence by Consent as Exhibit 1.

Miss Veronica Lovindeer, the driver of the other motor vehicle, testified that she was driving Toyota Motor Car Registration No. FT0070 along Paddington Terrace proceeding in a westerly direction towards East Kings' House Road. Her evidence is that she approached the intersection at about 20 - 35 m.p.h. The lights of a car approaching along Liguanea Avenue and travelling northerly induced her to reduce her speed at the intersection. Without stopping, she entered the intersection at about 20 m.p.h. At this point, Miss Lovindeer said, the other car was about some 20 - 3 feet from the intersection and travelling at a speed in excess of that at which she was travelling. The on-coming car did not stop. She swerved to avoid a collision. She applied her brakes. All in vain.

Both cars collided. She denied that she had spoken with Vallin Thomas at the scene of the accident.

It is upon the basis of the summarized evidence that the court is asked to resolve the issue of negligence.

It is crystal clear that Miss Lovindeer cannot escape liability. The most she can hope for is an apportionment of liability. Notwithstanding that the stop sign controlling traffic proceeding along Paddington Terrace in a westerly direction had been broken down she was under a duty to stop at the intersection. To say that it was the first time she was travelling along Paddington Terrace and that she did not know a stop sign was there is of absolutely no avail. Had she been keeping a proper look out she ought to have seen the warning sign along Paddington Terrace indicating "STOP SIGN AHEAD".

Approaching a four way intersection at 20 - 35 m.p.h. and entering it at 20 m.p.h. without stopping is dangerous driving.

The question which must now be resolved is whether or not Mark Thomas the driver of the other vehicle contributed to the accident? Issue is joined as to whether or not he stopped his vehicle at the stop sign. He testified that when he stopped at the stop sign he could see for a distance of 15 yards along Paddington Terrace to his right. He saw no vehicle. Having travelled a distance of 10 yards the car suddenly appears on the scene. From where did it come. Two things are suggested by this evidence,

- i. that either Thomas was not keeping a proper look out at the intersection and therefore failed to observe the other car
- or (ii) The other car was further away than 15 yards. Beyond the point to which Thomas could see. Travelling at a much faster rate of speed it came upon him suddenly.

I am inclined to the latter view. This view is amply supported by the other evidence in the case.

It must be borne in mind that Thomas said that when he moved off from the stop sign and up to the point when the collision took place he was travelling at approximately 5 - 10 m.p.h. I accept this evidence as true. I am inclined to the view that had Mark Thomas been travelling at the speed alleged by Miss Lovindeer the momentum of both vehicles would have resulted in far more devastating damage to the vehicles.

Mrs. Lovindeer's testimony was far from reliable. It is her sworn evidence that when she was about to enter the intersection travelling at a 20 m.p.h. the other vehicle was along Liguanea Avenue and some 20 - 30 feet away from the intersection yet it is the front of her vehicle that collided with the side of the other vehicle.

The physical damage to the vehicles clearly indicate that the Mazda Motor Car had entered the intersection before the Toyota Motor Car. I accept the evidence of Mark Thomas as true when he said that he stopped at the stop sign controlling traffic proceeding from a southerly direction along Liguanea Avenue. I further accept his testimony when he said that he looked left and right and saw no other vehicle.

I also accept as true Vallin Thomas' evidence that he spoke to Miss Lovindeer and that she said "There was no stop sign and she drove through and hit the car which was crossing"

I am not unmindful of the fact that Miss Lovindeer would most likely have been under great stress when she made the statement. However it is significant that no mention was made of the other driver failing to obey the stop sign.

I wish to state that in assessing and accepting Vallin Thomas' evidence I have borne in mind that he is a Director of Val Construction Limited and the father of Mark Thomas. This approach was also applied in dealing with the evidence of Karl Chen, a friend of Vallin Thomas who was summoned to the scene by Mark Thomas.

It is for the reasons stated that in respect of Suit C.L. T115/1985 that Judgment was entered for the Plaintiff against the Defendant in the sum of \$10,268.10 with costs to be taxed if not agreed. And in respect of Suit C.L. N013/1986 Judgment for the Defendants with costs to be taxed if not agreed.