IN THE GRAND COURT OF THE CAYMAN ISLANDS

Cause No: G240/2016

BETWEEN:

GRAHAM FRASER RITCHIE Q.C.

PLAINTIFF

AUTOHAUS LTD.

DEFENDANT

Appearances:	**Ms. Rosie Whittaker-Myles of RWM Chambers for the Plaintiff**
	Mr. Christian Van der Bol on behalf of the Defendant
Before:	**Justice Marlene Carter (Actg.)**
Heard:	**10th August 2017**

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HEADNOTE

Civil Practice and Procedure – Summary Judgment application *– GCR O. 14, GCR O.14A.*

JUDGMENT

1. The Plaintiff filed a Writ of Summons with Statement of Claim on the 14th December 2016. The Defendant, a resident company incorporated under the laws of the Cayman Islands and carrying out the business of auto deal and repair, appeared in the person of Mr. Christian van der Bol who is a major shareholder and Chief Executive Officer of the Defendant. The Defendant filed an Acknowledgment of Service and a document entitled, "*Defendant's Statement and Rebuttal to the Plaintiff's Statement of Claim*" which the parties agree constitutes the Defence to the claim. The present application for summary judgment was made by way of summons dated 30th May 2017.

2. The facts upon which the claim is based are not complex, in and of themselves, but as they arise from numerous emails passing between the parties they are somewhat involved. I will set out the more salient aspects from the Statement of Claim.

   i. *In or about January 2014 the Plaintiff entered into an agreement with the Defendant whereby the Defendant would act as the Plaintiff's agent for the purpose of marketing and selling the Vehicle on the Plaintiff's behalf (the "Agency Agreement").*

   ii. *In consideration of the Defendant acting as the Plaintiff's agent, the Defendant was to receive a flat fee of CI$1,000.00 payable from the proceeds of sale of the Vehicle.*

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iii. *In order to facilitate a speedy sale of the Vehicle the Plaintiff delivered into the Defendant's custody in or about January 2014 the Certificate of Vehicle Ownership Registration (the "Log Book") for the Vehicle with the Changes to the Register Section thereof duly signed by the Plaintiff on the 21st January 2014. This would enable the Defendant to sell the Vehicle as the Plaintiff's agent notwithstanding that the Plaintiff was off the Island or otherwise unavailable.*

iv. *As far as the Plaintiff was aware, the Defendant had failed to find a buyer for the Vehicle since the inception of the Agency Agreement. Accordingly, in September 2016, the Plaintiff terminated the Agency Agreement and placed the Vehicle in the hands of Tony's Toys to sell on his behalf.*

v. *On the 8th September 2016, the Plaintiff took delivery of the Vehicle from the Defendant and at the same time collected from Mr. van der Bol the Log Book.*

vi. *Later on the 8th September 2016, the Plaintiff discovered upon reading the Log Book that he was no longer the registered owner of the Vehicle. The registered owner of the Vehicle with effect from the 23 December 2014 was someone named "Richard Jeremy Addlestone" ("Addlestone").*

vii. *The Plaintiff immediately brought the information regarding the change of ownership of the Vehicle to the attention of Mr. van der Bol. Mr. van der Bol informed the Plaintiff that he knew no one by the name of Addlestone, nor did he have any idea how a change of owner registration of the Vehicle could have occurred.*

viii. *During the course of the conversation with Mr. van der Bol, the Plainitiff suggested that perhaps the transfer was made in anticipation of a sale that did not go through. Mr. van der Bol, however, assured the Plaintiff that this would not have occurred as this was not the way the Defendant conducted its business.*

ix. *Mr. van der Bol further assured the Plaintiff that the Defendant would never allow a transfer of ownership of any vehicle unless there was a deal binding on both parties, (i.e., the seller and the buyer) and the purchase money was in the bank. Mr. van der Bol suggested to the Plaintiff that the information on the Log Book was probably an error on the part of the Vehicle and Drivers' Licensing Department ("Licensing") and that the Plaintiff should take the matter up with Licensing.*

x. *The Plaintiff attended at the offices of Licensing on the 9th September 2016 and, based on the records of Licensing discovered (for the first time) that the Defendant, as agent of the Plaintiff, had indeed sold the Vehicle to Addlestone for CI$22,000.00 in December 2014 (the "Concluded Sale").*

xi. *As a result of subsequent correspondence between the Plaintiff's attorney-at-law and Mr. van der Bol on behalf of the Defendant, the following facts came to light:*

i. *There had been a sale of the Vehicle to Addlestone in December 2014.*

ii. *The Defendant had received the purchase price of CI$22,000.00 for the Vehicle from Addlestone by no later than 22nd December 2014.*

iii. *The Defendant had subsequently delivered the Plaintiff's Log Book to Addlestone to facilitate the transfer of ownership of the Vehicle from the Plaintiff to Addlestone.*

iv. *In or about the 14th January 2015, some few weeks after the Concluded Sale, Addlestone approached Mr. van der Bol and persuaded the Defendant to agree to terminate or otherwise cancel the Concluded Sale.*

v. *The purchase price which the Defendant received on behalf of the Plaintiff was then returned to Addlestone.*

xii. *The Defendant did not have the Plaintiff's authorisation to terminate or otherwise cancel the Concluded Sale.*

3. The Plaintiff went on to allege that the Defendant had breached the terms of the Agency Agreement; and/or was in breach of its fiduciary duties to the Plaintiff; and/or was in breach of its duty of care to the Plaintiff. The Plaintiff also particularized damages which he alleged that he had suffered as a result of the Defendant's breach and claimed various sums, damages, interest and costs as well as an order or direction requiring the Defendant to account to the Plaintiff for all funds it received on the Plaintiff's behalf as agent.

4. The Defence provided a detailed statement of the facts surrounding the Addlestone offer to purchase the Plaintiff's vehicle. The Defence set out as follows:

> *"Mr. Addlestone agreed to purchase the car at CI$21,000, with a verbal agreement that the Defendant would check the car over thoroughly before delivering it to him because it was well known the car was standing around for a long time. Mr. Addlestone went ahead and paid the Defendant for the car via Online transfer to Autohaus' Butterfield account on Dec 22 2014 (Evidence GEN 00 Bank record showing deposit of funds to Autohaus Ltd. of CI$21,000). The Defendant suggested to Mr. Addlestone that he could arrange to register the car to him (Mr. Addlestone) without him being present (a convenience for the Buyer) by using a simple Power of Attorney which Mr. Addlestone agreed to (Evidence email AA 02 / 02 I), so the transfer of ownership was done on Dec 23 2014, without Mr. Addlestone being present, by Miss Catrina Whyte of Handy Services Ltd. This was all during the Christmas Rush, a difficult time at best.*

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It is normal procedure for the Defendant that any car about to be delivered to a customer has to be inspected by the Defendants Technician and driven on the road to make sure the car is in good working order, and the results from this procedure was expressed to Mr. Addlestone in the below mentioned email. Namely when the Defendant had his Technician inspect the car on Tuesday Dec 23 2014 it was noticed the car had a surging problem. So at 3:07 pm that same day the Defendant emailed Mr. Addlestone explaining that there was a surging problem and that we needed more time to diagnose and hopefully fix the following day and he agreed to that (Evidence email AA 03).

On Dec 24 2014, after testing the car as much as possible the Defendant was able to determine the surging problem was being caused by an (unknown) Transmission internal problem, and this would be a big job to solve and would take a long time as is usual with that type of repair.

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On Dec 24 2014 9:13 am the Defendant emailed Mr. Addlestone explaining the situation and offered to return the money because the Defendant was unable to deliver the car to Mr. Addlestone in good working order in a reasonable time, so Mr. Addlestone opted to not buy the car again and have his money returned to him (Evidence email AA 04).

The Defendant informed the Plaintiff on Jan 2 2015, a mere 9 days later, 5 of which were Holidays and/or not Business days, and on the first Business day after the Holidays, by email, that the transmission problem caused a failure of the sale and the Defendant informed the Plaintiff that he would be investigating what the problem was and advise the Plaintiff. The Plaintiff replied to the email, "That's most unfortunate. Please keep me posted".(Evidence AR 01)."

5. The application for summary judgment is made pursuant to GCR O.14 r.1 which states:

> ***"Application by plaintiff for summary judgment (0.14, r.1)***
>
> *1. (1)* *Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against the defendant.*
>
> *(2)* *This rule applies to every action begun by writ in the Court other than —*
>
> *(a)* *an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment;*
>
> *(b)* *an admiralty action in rem; or*
>
> *(c)* *an action to which Order 86 applies."*

6. The Applicant asks the court to exercise its jurisdiction pursuant to that Rule to find that the defendant has no defence to the claim, or any part thereof, in circumstances where a statement of claim has been served on the defendant and the defendant has given notice of intention to defend the action.

The classic exposition of the test that this court must apply on the application as stated is derived from the case of ***Swain v Hillman***[1]:

[1] [2001] 1 All E,R, 91

"... under part 24.2 (the English equivalent of GCR Order 14) the Court now has a very salutary power, both to be exercised in the claimant's favour, or where appropriate, in the defendant's favour. It enables the Court to dispose summarily of both claims or defences which have no real prospect of being successful. "The words no real prospect of being successful or succeeding" do not need amplifications, they speak for themselves. The word "real" distinguishes fanciful prospects of success, or as Mr. Bidder submits, to direct the Court to the need to see whether there is a "realistic" as opposed to "fanciful" prospect of success... It is important that a Judge in appropriate cases should make use of the powers contained in 24.2. In doing so, he or she gives effect to the overriding objectives contained in Part 1. It saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no useful purpose, and I would add, generally, that is in the best interest of justice. If a claimant has a case which is bound to fail, then it is in the claimant's interest to know as soon as possible that this is the position. Likewise, if the claim is bound to succeed, a claimant should know that as soon as possible."

7. I note that in ***Montpellier Pension Trustees Limited & Anor v Crown Acquisitions***[2] Mangatal J. reaffirmed that:

> *"although the equivalent English Rule Civil Procedure Rule 24.2 speaks to summary judgment being granted where the defendant has no real prospect of successfully defending the claim, and that there is no other compelling reason why the case or issue should be disposed of at a trial and therefore on the face of it, the test under Order 14 of the GCR appears higher, that same test as applied in* ***Swain v Hillman****...applies in the Cayman Islands."*

8. This test has been applied and distilled in this jurisdiction in a number of cases. In ***Zuiderent v Christiansen***[3] Sanderson J set out the matter thus:

> *"When considering an application under the Grand Court Rules, O.14 for summary judgment, the appropriate test to be applied in two stages is: (1) is what the defendant says credible? And (2) has he shown that there is a fair and reasonable probability that he has a real bona fide defence:"*

[2] Cause G 0072/2015 Dated the 8th November 2016
[3] (2004-2005) CILR Note 23

9. In ***Hampshire Cosmetic Labs Ltd v Mutschmann, Cayman National Bank Ltd., Duffel and Belcher***[4] the court held, on an application for summary judgment, that the plaintiff was entitled to judgment because the only suggested defence was a point of law which was clearly misconceived.

10. In ***Bolton Pharmaceutical Co 100 Ltd. v Doncaster Pharmaceuticals Group Ltd and Others***[5] Mummery LJ stated:

> *"17. It is well settled by the authorities that the court should exercise caution in granting summary judgment in certain kinds of case. The classic instance is where there are conflicts of fact on relevant issues, which have to be resolved before a judgment can be given (see Civil Procedure Vol 1 24.2.5). A mini-trial on the facts conducted under CPR Part 24 without having gone through normal pre-trial procedures must be avoided, as it runs a real risk of producing summary injustice. 18. In my judgment, the court should also hesitate about making a final decision without a trial where, even though there is no obvious conflict of fact at the time of the application, reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case."*

11. With these principles of law firmly in mind I will explore the three main planks to the Defence which are the matters that the Defendant submitted in answer to the present application.

12. The Defendant claims that there was no agency agreement because there was no actual written agreement.[6] The Defendant asserts that:

[4] (1999) CILR Note 3
[5] [2006] EWCA Civ. 661
[6] See page 4 of the Defence.

> *"There was no "Agency Agreement" of any sort between the Plaintiff and the Defendant, just the words and the emails that were sent back and forth between the Plaintiff and the Defendant in excellent and clear communication about the selling of the car (For example see Evidence email AR 00 already presented). No actual written Agreement or Contract with any special conditions was ever entered into between both parties, with no specific details on how the money was to be handled. Just the trust developed between the Plaintiff and the defendant where the Plaintiff trusts the Defendant to sell his car in a Professional and Ethical manner."*

13. However, the law of agency does not require that there be a written agreement for the relationship of principal and agent to be acknowledged.

14. In Atkins Encyclopaedia of Court Forms in Civil Proceedings[7] the agent's duties to principal at common law are stated:

> *"The common law position is that no formality is needed for the conclusion of a contract of agency. The duties owed by an agent to his principal, or the precise terms thereof will usually depend on specific terms of the agreement made between the parties. In the absence of any express terms the following duties will normally be imposed on an agent by operation of law:*
>
> *a. a duty to carry out the principal's lawful instructions;*
> *b. a duty not to delegate the performance of his functions;*
> *c. a duty to act with due care, skill and diligence;*
> *d. a duty to act in accord with the fiduciary obligations owed to his principal;*
> *e. a duty to account to his principal; and*
> f. *a duty to indemnify his principal in respect of his, the agent's negligence or other breach of duty."*

[7] 2nd Edition, Volume 4, (1995 Issue) pgs. 10,11

15. It is clear that there was an unwritten contractual agreement between the parties for the Defendant to act as the Plaintiff's agent for the sale of his vehicle. The Defendant agreed with the Plaintiff's assertions at paragraphs 6, 7 and 8 of the Statement of Claim that the Defendant was to act as the Plaintiff's agent and receive a flat fee upon the sale of the Plaintiff's vehicle, that the Defendant took possession of the vehicle from the Plaintiff and that the Plaintiff delivered into the Defendant's custody the Certificate of Vehicle Ownership Registration (the "logbook") for the vehicle as well as the Changes to the Register Section of the logbook duly singed by the Plaintiff to enable the Defendant to sell the vehicle as the Plaintiff's agent notwithstanding that the Plaintiff was off the Island or otherwise unavailable.

16. The Defendant also agreed with the more important terms of the agreement as set out in the said Statement of Claim "in principle". At paragraph 8 of the Statement of Claim the Plaintiff asserted:

"The Agency Agreement contained the following terms (whether expressed or implied):

i. *The Defendant would carry out the Plaintiff's lawful instructions in the marketing and sale of the Vehicle;*

ii. *The Defendant would use reasonable care, diligence and skill in the exercise of its duties under the Agency Agreement;*

iii. *The Defendant would act for the exclusive benefit of the Plaintiff and would not put itself in a position where its own personal interests or the interests of others would conflict with its duties to the Plaintiff under the Agency Agreement;*

iv. The Defendant would bring to the Plaintiff's attention all matters concerning the subject matter of the Agency Agreement, including, inter alia, the existence of any potential or actual sale of the Vehicle;

v. .....

vi. ....."

17. The Defendant's reply to those specific assertions made in paragraph 8 of the statement of claim was:

"Pargraph (sic) 8

Disagree. You cannot have an agreement if there is no written agreement.

I Agreed in principle, despite the fact that no actual Agreement exists

II Agreed in principle, despite the fact that no actual Agreement exists

III Agreed in principle, despite the fact that no actual Agreement exists.

IV Agreed in principle, despite the fact that no actual Agreement exists. The Defendant did advise the Plaintiff from time to time when there was a prospective buyer. If there had been a concluded sale the Defendant would have notified the Seller but in this case the sale was not concluded."

18. Therefore salient aspects of the agreement are clear and are not disputed by the Defendant. The Defendant disagreed only with the Plaintiff's statement of those terms of the Agency Agreement which put an obligation on the Defendant to account to the Plaintiff for the proceeds of any sale of the vehicle which it received, and which further obligated the Defendant not to enter into any agreement to either terminate or cancel any existing sale of the vehicle without the express permission or consent of the Plaintiff. The duties as agent which the Defendant does not accept however are duties which may be implied into an agency agreement, and they are highly relevant in this matter as will be seen below.

19. In any event, the duties owed to the Plaintiff as accepted by the Defendant are consistent with an agency relationship. As the Plaintiff's submissions to this court emphasize:

> *"Agency is the relationship that exists between two persons when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal's legal position in respect of strangers to the relationship by the making of contracts or the disposition of property."*

20. It was well within the bounds of the unwritten contractual relationship between the parties that the Defendant could represent the Plaintiff in such a way as to affect his legal position in respect of strangers to their relationship, here prospective buyers of the vehicle, by transferring ownership of the vehicle from the Plaintiff to such buyer. Despite the absence of a written agreement a relationship of agency existed between the parties.

21. The second issue surrounds whether there was in fact a concluded sale as the Plaintiff asserts. Again, the facts themselves are not in issue it is the interpretation of the effect of these that is the sticking point between the parties.

22. The Plaintiff asserts in his statement of claim that there was a concluded sale between the Defendant and the purchaser. He states that the Defendant had received confirmation from him when the offer was made that the Defendant could proceed to accept the offer and that the Defendant did so. He further states that the Defendant received the purchase price of CI$22,000.00[8] from the Seller and that the Defendant subsequently delivered the Plaintiff's log book to the Seller to facilitate the transfer of ownership of the vehicle from the Plaintiff to the Seller which transfer was successfully effected on the 23rd of December 2014 when Richard Jeremy Addlestone became the registered owner of the vehicle.

23. The Plaintiff asserts that there was a concluded sale and referred to the following in support thereof:

> *"The following documents obtained from the records of Licensing conclusively establish the existence of the Concluded Sale:-*

[8] The parties accept that the Defendant communicated that the offer was $21,000.00 but that he would seek to get $22,000.00 to ensure that the Plaintiff received the full price that he was willing to sell the vehicle for and to take account of the Defendant's commission of $1,000.00

i. *A notarized letter from Addlestone dated 22nd December 2014 confirming his purchase of the Vehicle for CI$22,000.00.*

ii. *A temporary cover note for the Vehicle dated 22nd December 2014 which Addlestone had obtained as the owner of the Vehicle, through the Insurance Company of the West Indies (Cayman) Limited.*

iii. *The Plaintiff's Log Book for the Vehicle (which he had signed on the 21 January 2014 as explained in paragraph 7 above) duly completed by or on behalf of Addlestone evincing the transfer of ownership of the Vehicle from the Plaintiff to Addlestone.*"

24. The Defendant took issue with whether there was in fact a concluded sale. In relation to this issue the Defence at Page 3 set out:

"*A fair sale cannot be considered concluded, until at the very least the following 3 basic conditions occur [:]*

1. *1 the buyer has in his possession the car received from the Defendant in good working order.*

2. *The buyer has in his possession the Original copy of the ownership document for the car which shows clearly that he is the legal owner of the car.*

3. *The seller has in his possession the money derived from the sale.*

Unfortunately none of the above 3 conditions were able to be satisfied, so therefore there was no conclusion of the sale, and it is the Defendants opinion that this entire Claim by the Plaintiff has no merit."

25. The Defendant further states in the Defence:

"The facts remain that the Plaintiff agreed to accept $21,000 for the car...Mr. Addlestone gave the defendant $21,000 on December 22 2014, and that same amount was given back to Mr. Addlestone on December 24 2014 when the sale failed. Autohaus had the money for only 2 days before it was returned to Mr. Addlestone..."[9]

26. There is no doubt that there was a legally concluded sale of the vehicle. The fact that the buyer had not yet received the vehicle into his possession does not derogate from this conclusion or affect the legally binding nature of the sale. As the Plaintiff submitted in his affidavit in support of the application for summary judgment:

"Once the Certificate of Vehicle Ownership was issued on the 23rd of December 2014, there was simply nothing else that needed to be done in order to effect the transfer of legal ownership to the Vehicle..."

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[9] Defence at page 7 paragraph 20

27. There is the third issue that must be considered on this application for summary judgement. The crux of the Plaintiff's claim is that the Defendant breached the terms of the Agency Agreement in failing to inform the Plaintiff that a concluded sale had taken place in December 2014. I have already referred to the nature of an agent's obligations above.[10]

28. The Defendant does not dispute that it owed the plaintiff a duty within the context of the agency agreement to act with due care, skill and diligence. At page 5 of the Defence in answer to paragraph 10 of the Statement of Claim wherein the Plaintiff asserts that the Defendant owed the Plaintiff a duty of care to use all reasonable diligence and skill in performing its duties as the Plaintiff's agent, the Defendant stated:

> "*Agree, but only from the point of view that the Defendant believes he DID use all reasonable diligence and skill in performing his duties as the Plaintiffs Agent, the Plaintiff just does not see it that way, simply because he never got the money.*

29. As I have stated above the duties as agent which the Defendant does not accept are duties that may be implied into an agency agreement, specifically the duty to account to the Plaintiff for the proceeds of any sale of the vehicle which it received and not to enter into any agreement with a buyer to terminate or cancel any existing sale of the vehicle without the express permission or consent of the Plaintiff. I accept that they should be implied into the instant agency agreement. The Defendant accepts that it did not provide all the information relating to the sale of the Vehicle to the Plaintiff. At page 8 of the Defence the Defendant stated:

[10] See Paragraph 14

"The Plaintiff was made aware by the Defendant that there was a pending sale on Dec 20 2014, the Plaintiff replied to the email discussing this. The Defendant never advised the Plaintiff that the buyer's money had been given to the Defendant, because the Defendant was not finished concluding the sale."[11]

30. The Defendant does not accept that this failure to inform the Plaintiff was a breach of the Defendant duties to the Plaintiff as agent. The Defendant sought to explain the failure to inform the Plaintiff thus:

"...the Defendant is not obligated to send the money for the sale of a car to the seller if the car is not in good working order before the Buyer takes deliver of the car. That would be a clear breach of trust to the Buyer."[12]

31. Although the Defendant accepted that part of its obligations to the Plaintiff entailed a duty to bring to the Plaintiff's attention all matters concerning the subject matter of the Agency Agreement, including, *inter alia*, the existence of any potential or actual sale of the Vehicle, the Defendant did not inform the Plaintiff of the actual sale of the Vehicle in this instance. The Defendant instead asserted that it did not have to account to the Plaintiff for the proceeds of any sale of the vehicle which it received.

"The Defendant never agreed to that anywhere, and the Defendant fails to see where this is really important, because as a Sales Agent the Defendant is in a highly trusted position acting always for both the Seller AND the buyer equally because the Defendant's reputation is on the line. The Defendant has to do what is right for both the Seller AND the Buyer.

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[11] see paragraph 21
[12] Defence, page 8 at paragraph 23

32. The Defendant further defended this position by reiterating that there was no sale and therefore no termination or cancellation to transmit to the Plaintiff:

> *"The Defendant never entered into any specific agreement with Mr Addlestone to terminate or cancel any sale. This is very simple, the car had a problem before Mr. Addlestone bought it, and he gave the Defendant the money with a GENTLEMAN'S agreement that the car would be without defects when it was delivered to him".*

33. The Defendant further agreed that part of its obligation to the Plaintiff under the Agency Agreement was that it would act for the exclusive benefit of the Plaintiff and would not put itself in a position where its own personal interests or interests of others would conflict with its duties to the Plaintiff. Yet this is exactly what the Defendant has admitted to doing in this case. The duty to account to the Plaintiff for the proceeds of the sale or to inform him of a termination or cancellation of such had nothing to do with the Buyer. This was a matter entirely between the Plaintiff as principal and the Defendant as his agent.

The Defendant seemed to be preoccupied with a duty to the Buyer of the vehicle and not to its obligations to the Plaintiff under the agency agreement. There were clear breaches of the duty owed to the Plaintiff by the Defendant.

The Plaintiff has been denied the sale of the vehicle. Had the Plaintiff been kept informed by the Defendant he would have been at liberty to take account of the defects noted by the Defendant and may have offered the vehicle to the Purchaser at a reduced price. As counsel for the Plaintiff suggested, the Plaintiff may well have considered reducing the price in light of the possible defect and selling the vehicle "as is".

CONCLUSIONS

34. In ***Rankin v Scott, Martin and Ebanks,***[13] Levers J stated:

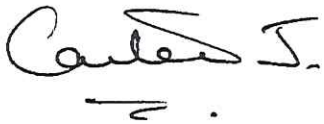
> *"The purpose of summary judgment is to dispose of simple cases, involving clear legal issues, without the need for a trial, where the applicant can show that (a) the respondent has no real prospect of success; and (b) there is no other compelling reason for a trial..... such applications are not to be regarded as trials of the evidence; when a complex point of law is raised, which can only be examined in the context of the facts, the action must be tried. Similarly, a real prospect of success (which is not to be judged on the balance of probabilities, but calls for the court to decide whether there is a realistic (though not necessarily substantial), rather than fanciful, prospect of the respondent's defending the applicant's action) may be held to exist if the respondent has a substantive defence, relies on a specific point of law, denies the facts on which the applicant relies, or presents further facts in defence of the applicant's action (Swain v Hillman, [2001]1 All ER 91, applied)."*

35. This is not a case in where there are conflicts of fact on relevant issues where fuller investigation of the facts would add or alter the evidence at trial and so the outcome of the case. The Defendant does not dispute the chronology of facts offered by the Plaintiff. The Defendant however offers a Defence that is plainly misconceived. The matters upon which the Defendant seeks to rely as set out in the Defence indicate that the Defendant failed to appreciate that an agency agreement need not be in writing, what constitutes a concluded sale or the full scope of the obligations that were owed to the Plaintiff under the agency agreement. On the issues advanced by the Plaintiff in his statement of claim, the Defendant has no real prospect of successfully defending that claim.

[13] 2008 CILR N-9

36. For the reasons set out above, Summary judgment on the claim is entered against the Defendant with costs to the Plaintiff.

Dated this the 20th October 2017



Carter J (Actg.)
Acting Judge of the Grand Court