

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CIVIL APPEAL 17/2017

**BEFORE: THE HONOURABLE MR JUSTICE BROOKS JA
THE HONOURABLE MR JUSTICE F WILLIAMS JA
THE HONOURABLE MISS JUSTICE STRAW JA**

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| BETWEEN | DELROY HAUGHTON | APPELLANT |
| AND | SAMSON HERBAL PRODUCT | RESPONDENT |

14 January 2020

Appellant not present or represented

Roger Davis instructed by Roger A Davis & Company for the respondent

BROOKS JA

[1] This is an appeal from the decision of Her Honour Mrs Cresencia Brown, as she then was, in the Resident Magistrate's Court for the parish of Saint Thomas, as it was then called. The learned judge found for the plaintiff before her, Sampson's Herbal Products (SHP). SHP, which is the respondent in this appeal, had sued Mr Delroy Haughton, on two separate complaints, for goods sold and delivered but not paid for. The total outstanding on the two invoices for the supply of the goods, according to SHP is \$500,000.00.

[2] Mr Haughton's defence was that he did not owe any money to SHP. He accepted that the goods were delivered to him, but he said, that he and the managing director of SHP, Mr Albert Smith, had an oral agreement whereby payment would be offset by the advertising of SHP's products that Mr Haughton would pay for. He produced receipts for various advertisements.

[3] The learned Resident Magistrate, based on the evidence, held that the advertisements were aimed at increasing Mr Haughton's sales of the products, rather than directly benefitting SHP. She also found that the fact that the advertisements were not contracted until months after the time of the delivery of the goods, was inconsistent with the evidence that the oral agreement was made at the time of the delivery.

[4] She therefore rejected the defence. She also found that Mr Haughton's defence made no economic sense for SHP, for, on her reasoning, if there was to be no payment for the goods, advertisement did not assist SHP.

[5] Having rejected the defence, she gave judgment for SHP on both complaints and rejected the counter-claim that the complaints had been instituted out of malice.

[6] These were findings of fact by the learned Resident Magistrate who had the benefit of seeing the two witnesses, one for each party and assessing their respective demeanours and credibility.

[7] Her assessment cannot be faulted and the documentation does not provide any basis for undermining her findings. We have heard no arguments to the contrary in this

court. Mr Haughton's counsel was made aware of the fixture of the appeal and there has been no explanation for her absence or his.

[8] The appeal is, therefore, dismissed with costs to the respondent in the sum of \$50,000.00.