Neutral Citation No: [2025] NICty 4 ***Judgment: approved by the court for handing down (subject to editorial corrections)****	***Ref:*** **[2025]NICty 4** ***ICOS No:*** **24/057151** ***Delivered*:** **01/07/2025**

IN THE COUNTY COURT OF NORTHERN IRELAND
SITTING AT BELFAST COUNTY COURT

BETWEEN:

McCAUSLAND HOLDINGS LIMITED

Plaintiff

and

TESCO UNDERWRITING LIMITED

Defendant

Mr Patterson (instructed by JMK Solicitors) for the Plaintiff/Respondent
Ms McGinley (instructed by DAC Beachcroft Solicitors) for the Defendant/Applicant

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DISTRICT JUDGE LOGUE

Introduction

[1] This is an application by the defendant to strike out this action. The defendant/applicant (hereinafter 'the defendant') was represented by Ms McGinley BL and the plaintiff/respondent (hereinafter 'the plaintiff') was represented by Mr Patterson BL. I am grateful to counsel for their assistance. Each lodged written submissions and a joint booklet of authorities. I also heard further oral submissions when the matter was listed for review on 10 June 2025.

[2] The plaintiff is a Company. By an agreement dated 25 July 2022 the plaintiff entered into a 'Rent-to-Own' agreement with Hamid Mahmoud whereby the plaintiff ('the Company') provided a Toyota Prius motor vehicle registration number RGZ4996 ('the subject vehicle') to Hamid Mahmoud ('the driver') subject to the terms of the said agreement.

[3] These terms provided that the agreement was to run for a period of 182 weeks from the date the first payment that being 1 August 2022. Paragraphs 4 and 7 of the agreement are set out below:

> "4. So long as the driver is neither in default in the payment of any sum of money payable nor is in breach of

> any of the obligations on its part to perform under this Agreement it may peaceably hold and enjoy quiet possession of the Vehicle for the term of this Agreement. The Company shall retain ownership of the Vehicle until all of the payments in the payment schedule have been paid by the Driver. If the Driver has paid all of the capital and interest payments to the Company, in accordance with the payment schedule, and has observed and performed all of its obligations under this agreement all ownership, title, obligations and liabilities relating to ownership of the Vehicle shall pass to the Driver.
>
> 7. The Company and the Driver have agreed to enter into this Agreement subject to the terms and conditions set out overleaf. The terms and conditions may be varied from time to time as notified to the Driver in writing by the Company."

[4] Before setting out the agreed chronology in this case. I pause to note that at para 2 of the skeleton argument lodged on behalf of the defendant that the defendant accepts the probability that the subject vehicle is in fact owned by the plaintiff. As set out in para 2 of the skeleton argument lodged on behalf of the plaintiff it is stated that no contrary submissions are made in respect of same.

Chronology

[5] The chronology is as follows:

(a) On the evening of 19 May 2023 a road traffic accident occurred on the Dublin Road, Belfast, involving the subject vehicle driven by Mahmoud Rahma Hamid ('I pause to note that it is common case that this is the driver referred to in the Rent-to-Own agreement as Hamid Mahmoud and hereinafter will be referred to as 'Mr Hamid'), and a vehicle driven by the defendant's insured, Mr Francis Devlin.

(b) A collision occurred when Mr Devlin attempted to park his vehicle in a parking bay on the right-hand side of the Dublin Road. Liability for the collision was in dispute. Mr Hamid's case was that Mr Devlin had collided with his stationary vehicle which was already parked in another parking space. Mr Devlin's case was that Mr Hamid had moved forward into a space in front when Mr Devlin was in the process of parking.

(c) The vehicle was inspected by Mr Smyth, Insurance assessor on 14 June 2023. Mr Smyth provided a 'Repairable Report' dated 16 June 2023 setting out the repairs required and a separate Diminution Report which is also dated 16 June 2023.

(d) In September 2023, a £15,000 civil bill was issued on Mr Hamid's behalf, ICOS 23/074382, (hereinafter 'the earlier proceedings'). The replies in the case indicated that he was seeking £2,226.31 for repairs to the vehicle, £8,900.95 for hire and £260.00 for loss of earnings. The total amount claimed was £11,387.26. The Repairable Report was attached to Mr Hamid's replies to Particulars but not the diminution report although that report bore Mr Hamid's name.

(e) The defendant made a payment into court in the sum of £4,000.00.

(f) The case was listed for hearing on 30 May 2024 at Laganside County Court. Mr Ward BL represented the plaintiff and Ms McGinley BL represented the defendant. The case was settled on the date of the hearing and settlement was announced as 'settled on terms endorsed with liberty to apply.'

(g) Written terms were agreed between counsel and signed on the respective parties' behalf. The substantive terms of the agreement were as follows:

> "1. In full and final settlement of any claims on behalf of the plaintiff arising out of the accident which occurred on the Dublin Road, Belfast on 19 May 2023, the defendant will pay to the plaintiff the sum of £5,000 (five thousand pounds) damages and the defendant will further pay the plaintiff's legal costs for solicitor and counsel at the applicable full County Court scale and will also pay the plaintiff's reasonable outlays. On a practical basis the figure of £5,000 damages will entail the payment of an additional £1,000 in damages in addition to the payment out of the lodgment sum of £4,000.
>
> 2. The payments referred to at 1 above are made on a without prejudice basis and the parties expressly acknowledge that there is no admission in relation to liability.
>
> 3. The parties shall have liberty to apply for the purpose of enforcing these terms."

(h) On 7 July 2024, the civil bill that is the subject of this application was served.

(i) On 1 August 2024, the plaintiff served their replies to the defendant's Notice for Further and Better Particulars. Para 1 of the said replies reads:

> "1. The plaintiff's claim is in respect of the following:

(i) Vehicle Diminution in the sum of £1,000.00 as per the Diminution Report of Mr Glenn Smyth dated 16/6/24.

The remainder is to be comprised of interest."

(j). The Diminution Report begins:

> "Diminution report for Toyota Prius Icon Hybrid, RGZ4996. Mahmoud (sic) Hamid…
>
> The purpose of this report is to comment on accident damage and diminution value."

(k) On 10 October 2024 the defendant's solicitor wrote to the plaintiff's solicitor noting that Mr Hamid and not the present plaintiff was the person mentioned in the Diminution Report. They noted that Mr Hamid's claim had already been dealt with and enclosed a copy of the signed settlement terms. The defendant's solicitor contended that the matter was res judicata and invited the plaintiff to withdraw the proceedings.

(l) The plaintiff did not withdraw their claim and on 24 February 2025 the defendant's solicitor lodged the present application requesting that the civil bill be struck out.

Submissions on behalf of the defendant/applicant

[6] On behalf of the defendant Ms McGinley contended:

- Under the agreement between Mr Hamid and the plaintiff, Mr Hamid would be the bailee of the subject vehicle and the plaintiff the bailor.

- Since *The Winkfield* [1902], it has been established law that a bailee such as Mr Hamid is entitled to sue in tort in respect of damage to a bailed chattel ie, the subject vehicle.

- Mr Hamid was entitled to bring a claim for repairs to the subject vehicle and for the costs of hiring a replacement vehicle even though he was not the owner of the subject vehicle.

- Having brought his claim in respect of damage done to the subject vehicle the bailor ie, the present plaintiff is prevented from bringing their own claim with regard to that damage.

- In *Coles v Hetherton* [2103] EWCA Civ 17 confirmed that a claim for the cost of repairs to a vehicle is in effect a claim for diminution in value.

- The claim for costs of the vehicle repairs was already made by Mr Hamid and settled.

- The claim for vehicle repairs and diminution in market value are for, in counsel's own words, "slightly different types of diminution in value. They are both claims in respect of the same damage to a chattel and are in effect both sides of the same coin."

- The present claim is contrary to principles clearly established by a number of decisions of the EWCA and acknowledged by the Supreme Court in the Armstead decision.

- By his counsel signing the terms of settlement, the clear impression provided by Mr Hamid was that his claim would put an end to all claims by him or on his behalf arising out of the subject accident.

- Given the appearance of Mr Hamid's name on the Diminution report it would have been open to Mr Hamid's solicitors (who are the same solicitors acting for the plaintiff) to have included the claim for diminution in market value as part of Mr Hamid's claim and if necessary to have accounted to the bailor in respect of same.

- By attempting to revisit the issue of liability and by attempting to introduce a claim which could reasonably have been brought by Mr Hamid, the current proceedings are an abuse of process, and in violation of the principles set out in *Henderson v Henderson* [1843] 3 Hare 100 at 114:

> "…where a given matter becomes the subject of litigation in, and in adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matters which might have been brought forward as part of the subject in context but which was not brought forward…the plea of res judicata applies, except in special cases."

- It is an abuse of process to now raise in subsequent proceedings matters which could and should have been litigated in earlier proceedings.

- The earlier proceedings settled without an admission of liability and on a without prejudice basis. Liability remains in dispute. It is unfair to Mr Devlin, the defendant's insured, that he be required to come to court again

should the present case proceed given that liability in respect of the subject accident would be contested.

Submissions on behalf of the plaintiff/respondent

[7] On behalf of the plaintiff Mr Patterson contended:

- At the time of the accident on 19 May 2023, Mr Hamid was not the owner of the subject vehicle and had not, in his own right, suffered any loss by dint of its depreciation in value. That loss had been suffered by the plaintiff in these proceedings.

- Mr Hamid was contractually obliged to have the vehicle repaired and the only way he could recoup his outlay in doing so was to bring proceedings against the defendant for the cost of repair. He was under no equivalent contractual obligation to pay the plaintiff for any additional diminution in value of the vehicle as a result of damage occurring.

- In counsel for the plaintiff's words: "The additional diminution is a separate claim and head of loss from the direct loss that occurs at the moment of impact, and which is measured as the cost of repairs. Awards for each type are invariably given on a regular basis as two distinct types of loss. The latter only arises when or at least can only be quantified on the presumption on when, a vehicle has actually been repaired."

- In *Payton v Brooks* [1974] 1 Lloyds Rep it was held that diminution was recoverable as a head of damage as well as cost of repairs.

- The application of the rule in *Henderson v Henderson* should not be circumscribed by unnecessarily restrictive rules. See *Barrow v Bankside Agency Ltd* [1996] 1 WLR 257 at page 260:

> "The rule in *Henderson v Henderson* [1843] 3 Hare 100 is very well known. It requires the parties, then a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the court so that all aspects of it may be finally decided (subject, of course, to any appeal) once and for all. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences, which they could have put forward for decision on the first occasion but failed to raise. The rule is not based on the doctrine of res judicata in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves,

> that litigation should not drag on for ever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."

- The plaintiff relied on the judgment in *Johnson v Gore Wood & Co* [2000] UKHL 65, wherein it is stated that it was wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive as per Lord Bingham:

> "That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issues which could have been raised before."

- As per Lord Millet in the same judgment:

> "It is one thing to refuse to allow a party to relitigate a question which has already been decided; it is quite another to deny him the opportunity of litigating for the first time a question which has not previously been adjudicated upon. This latter (though not the former) is prima facie a denial of the citizen's right of access to the court conferred by the common law and guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4th November 1950)."

- Had the claim for depreciation been bought by Mr Hamid, the defence may well have argued that it should more properly have been bought by the plaintiff as owner of the subject vehicle. The plaintiff should not be penalized for not having the benefit of hindsight at that time.

- It is open to the defendant to settle the present matter without recourse to a court hearing. It would be inconvenient for Mr Hamid to have to return to court and re-visit litigation arising from the index accident when he will derive no benefit from these proceedings.

- The earlier proceedings settled on a without prejudice basis and did not involve a finding or ruling by a court. It was an agreement the "Defence now apparently seeks to resile from."

- There is no evidence that the plaintiff had input or control into how the earlier proceedings were prosecuted or concluded. Whilst the same solicitors acted for the plaintiff in the earlier proceedings and in these proceedings, solicitors have duties to their clients on an individual basis not on a joint and several basis.

- Mr Hamid was and is not a representative, servant or agent of the plaintiff.

- The plaintiff relies on *HSBC Rail (UK) Ltd v Network Rail Infrastructure Ltd (t/a Railtrack plc)* [2005] EWCA Civ 1437 and contends that the plaintiff has suffered damage to its reversionary interest, the value of the subject vehicle, of which it is still the owner and will remain so until at least the end of this year and they have not been indemnified by Mr Hamid.

- The burden rests on the defendant to establish that this action is oppressive or an abuse of process.

- The paying of legal costs of a number of plaintiffs is something that a defendant insurer frequently has to face, in the course of its insured driver causing loss and damage to numerous persons. For example, a case where a plaintiff is driving their spouse's car. It may be convenient and less expensive for the defendant if there were just one case, encompassing both the personal injury of the driver and the costs of repairs or diminution by their spouse, but these matters cannot always be dealt with at the demands and whims of the defendants in such cases.

- There are relatively modest fixed scale costs involved.

- Should the court find for the defendant the plaintiff will be out of pocket for the diminution in value of the vehicle which was damaged by the defendant's insured driver and will have no redress.

- Claims such as this one are limited in scope. They are mainly restricted to claims involving rent-to-buy agreements. There is no likelihood that a successful claim by this plaintiff will 'open the floodgates' to repeat litigation arising from most road traffic accidents.

- If the defendant's application is unsuccessful they will still have the option of contesting the substantive claim on liability and quantum.

Decision
Bailment

[8] As stated at paras [21] to [22] of *Armstead v Royal & Sun Alliance Co. Ltd* [2024] UKSC 6:

> "…a bailee in possession of property can claim damages from a stranger whose negligence results in the loss of, or physical damage, to the property…
>
> A relationship of bailment arises where a person voluntarily, whether gratuitously or under a contract, takes temporary possession of property from another with that other person's consent."

[9] I am satisfied that there existed a bailor/bailee relationship between Mr Hamid and the plaintiff albeit there may have been a contractual arrangement for legal ownership to eventually transfer. The possession of the subject vehicle was for a specific purpose and with the permission of the legal owner, the plaintiff.

[10] At para [40] of *Armstead* the Supreme Court held as follows:

> "a. The Winkfield did not decide that, where the bailee suffers loss arising from a contractual liability to the bailor, such loss cannot be recovered from the wrongdoer. Indeed, the premise of the decision is that such a liability does give rise to a recoverable loss – the issue in the case being whether the bailee could still recover in the absence of such liability. Nor did *The Winkfield* (or any other case cited to us) decide that the bailor and bailee are treated as having one set of rights when it comes to claiming damages, to the contrary, *The Winkfield* and other authorities recognise that the bailor and bailee may each be entitled to sue for loss of or damage to property. The only restriction is that there cannot be double recovery. Thus, a wrongdoer who has already paid compensation to the bailee for the value (or diminution in value) of the property has an answer to such a claim by the bailor…Likewise, the wrongdoer has a defence to such a claim by the bailee where the bailor has sued first and recovered compensation."

Vehicle damage and diminution in value

[11] In *Coles and others v Hetherton and others* [2013] EWCA Civ 1704 Aikens LJ considered the question: "Where a vehicle is damaged as a result of negligence and is reasonably repaired (rather than written off) is the measure of the Claimants loss taken as the reasonable cost of repair?"(para 27) Drawing on Lord Hobhouse's analysis in *Dimond v Lovell* [2002] 1 AC 384 and statements in other cases Aiken's LJ found:

"(1) Where a chattel is damaged by the negligence of another that loss (the "direct" loss) is suffered as soon as the chattel is damaged.

(2) The proper measure of that loss is the diminution in value that the chattel has suffered as a result of the negligence of the defendant. This follows the general principle in awarding damages, ie that of restitution. (*Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25 at 39, 44 JP 392, 28 WR 357 per Lord Blackburn). In Lord Hobhouse's phrase, "this can be expressed as a capital account loss."

(3) If the chattel can be economically repaired, the claimant is entitled to have it repaired at the cost of the wrongdoer, although the claimant is not obliged to repair the chattel to recover the direct loss suffered.

(4) Events occurring after the infliction of the damage are irrelevant to calculating the diminution in value measure of damages. (*Burdis v Livsey* [2002] EWCA Civ 510, [2003] QB 36 at 95, [2002] 3 WLR 762). Thus, subsequent destruction of the chattel, (As in *The Glenfinlas (Note)* [1918] P 33, 87 LJP 40, 118 LT 133; *The London Corporation* [1935] P 70, 51 Ll L Rep 68, 104 LJP 20) or a decision to delay repairs, (*The Kingsway* [1918] P 344, 87 LJP 162, 14 Asp MLC 590) or an ability to have the repairs done at less than cost (*Jones v Stroud DC* [1988] 1 All ER 5, 84 LGR 886, [1986] 1 WLR 1141) or for nothing (*The Endeavour* (1890) 6 Asp MC 511; *Burdis v Livsey* [2002] EWCA Civ 510, [2003] QB 36, [2003] RTR 22, where no sum was payable because the repairs were carried out under an unenforceable credit agreement.) will not prevent the claimant from recovering the diminution in value of the chattel that has been caused by the negligence of the tortfeasor.

(5) Generally, the practical way that the courts have calculated this diminution in value is to ask how much would be the reasonable cost of repair so as to put the chattel back in the state it was in before it was damaged."

[12] The present plaintiff relies on *Payton v Brooks* as lending support to the argument that a claim for diminution in market value is a distinct loss, recoverable as a separate head of damage. In *Payton v Brooks* EWCA 1974 RTR 169 as per Lord Roskill:

> "There are many cases which arise whether in the field of contract law or of tort where the cost of repairs is a prima facie method of ascertaining the diminution in value. It is not, however, the only method of measuring the loss. In a case where the evidence justified a finding that there has been on top of the costs of repairs, some diminution in market value, I can see no reason why the plaintiff should be deprived of recovery under that head of damage also."

[14] In my view, the argument made on behalf of the plaintiff fails to recognise the fundamental principle that when a vehicle is damaged in a road accident it suffers a direct loss, the overall measure of which is diminution in value.

[15] Diminution in value can often, but not always, be properly compensated for by awarding the cost of repairs. However, diminution in value is not strictly limited to the cost of repairs. The cost of repairs may not reflect the full extent of the diminution in value and, therefore, diminution in market value ie depreciation can be awarded depending on the circumstances of the case.

[16] As observed in *Coles v Hetherton* (see paras [28] and [31]. The correct jurisprudential analysis of a claim for diminution in value, even if it is measured by the reasonable cost of repairs, is that it is a claim for general damages, not one for special damages; the cost of repairs is only evidence of the amount of the loss recoverable.

[17] Depreciation is not a separate distinct loss it is part of the measure of the direct loss ie the overall diminution in value arising from the damage caused to the vehicle. The cost of repairs and depreciation are elements of diminution in value and do not represent different losses they are both measures of the same direct loss.

[18] I am satisfied that depreciation does not stand apart from the vehicle damage claim it is a component of such a claim. There are obvious and practical reasons for that as one must assess an award for damages by firstly considering whether the cost of repairs is sufficient to put the plaintiff into the position they were prior to the accident or whether an additional sum ought to be awarded for depreciation.

The plaintiff's claim

[19] The plaintiff's claim is limited to a claim for diminution in market value in the sum of £1,000. The plaintiff relies on the report dated 16 June 2023 from Mr Smyth.

[20] As set out above, Mr Smyth inspected the subject vehicle on 14 June 2023 and prepared two reports, one setting out the costs of repairs and the other his opinion as to the appropriate figure for depreciation arising from the damage caused to the subject vehicle.

[21] The earlier proceedings comprised a claim for the costs of vehicle repairs together with a claim in respect of hire charges for a replacement vehicle. The earlier proceedings settled on the day of hearing by way of a compromise agreement, signed on behalf of the parties by their respective counsel.

[22] The relevant case law as referred to at paras [8]-[10] above supports the defendant's argument that the direct loss ie, the damage caused to the subject vehicle could have been litigated by either Mr Hamid or the plaintiff but not by both.

[23] At para [28] of *Coles v Hetherton*, it is stated:

> "The diminution in value claim should, therefore, be pleaded as a claim for general damages. Documents such as an invoice for the cost of repairs undertaken are no more than evidence of the diminution in value suffered by the chattel as a result of the negligence of the wrongdoer which can be used to make good the claim."

[24] Mr Hamid, as bailee, was entitled to bring a claim for diminution in value of the subject vehicle. I note at para 1(i) of his replies to particulars he set out a claim for £2,226.31 in respect of repair costs relying on the 'Repairable Report' of Mr Smyth stating:

> "These repair costs are also claimed as general damages pursuant to the principles set out in *Coles v Hetherton* [2013] EWCA Civ 1704."

[25] I find that in pursuing a claim for the cost of repairs Mr Hamid has already brought a claim for diminution in value of the subject vehicle setting out a claim for general damages in respect of same.

[26] I find it is of significance that the terms of the settlement agreement provided that the amount of compensation agreed was in full and final settlement of any claims on behalf of that plaintiff, Mr Hamid. No claim was advanced by him for depreciation in formal pleadings. However, there existed a depreciation report dated 16 June 2023 addressed to him.

[27] On behalf of the plaintiff it was argued that to deny the plaintiff the opportunity to pursue their claim would leave them 'out of pocket' for the diminution in the market value of the vehicle, and without redress. Whilst the same solicitors acted for Mr Hamid and now act for the plaintiff, there is no evidence that the plaintiff had input or control over the earlier proceedings. To accede to the application would infringe upon their article 6 rights. It was further argued that it would not be oppressive or an abuse of process to allow the present claim to progress given that the defendant would have the opportunity to contest same and the modest costs involved. Counsel for the plaintiff contended that the paying of

legal costs of a number of plaintiffs is something that a defendant insurer frequently has to face, in the course of its insured driver causing loss and damage to numerous persons and that the circumstances in this case where a Rent-to-Own agreement was in place, are limited in scope.

[28] I am not persuaded by those arguments. In determining this application, the court must also consider the rights of the defendant who has already met the claim for direct loss in the earlier proceedings. The rule in *Henderson v Henderson* requires that parties bring their whole case before the court. In the absence of special circumstances, they cannot return to the court to advance arguments and claims which could have been put forward on the first occasion. Mr Hamid, as bailee, could have included in his claimed amount a figure for depreciation but did not do so.

[29] I find that in pursuing a vehicle damage claim, Mr Hamid was in effect claiming for direct loss which is the diminution in value of the vehicle. As was held in *Armstead v RSA*, a wrongdoer who has already paid compensation to the bailee for the value (or diminution in value) of the property has an answer to such a claim by the bailor.

[30] The law on bailment is well settled. The plaintiff and Mr Hamid had freely entered into the Rent-to-Own agreement whereby they became bailor and bailee, respectively. The defendant has settled the bailee's, Mr Hamid's, claim and, therefore, has an answer to the plaintiff's claim. There is no interference with the plaintiff's article 6 rights as the claim for diminution in value has already been advanced and settled.

[31] I pause to observe that whilst the present proceedings involve a Rent-to-Own agreement, there are other types of agreement whereby vehicles are held in the possession of one party, but full ownership does not pass until final payment is made such as hire purchase or personal contract purchase agreements. To allow artificial severance of the direct loss into vehicle damage and depreciation may open the door to numerous instances whereby defendants would face two separate actions for the same loss.

[32] Counsel for the plaintiff invited me to consider the decision in *HSBC Rail (UK) Ltd v Network Rail Infrastructure Ltd (t/a Railtrack plc)* [2005] EWCA Civ 1437. In that case, the plaintiff was the bailor of train rolling stock damaged in a train derailment caused by the negligence of the defendant. The rolling stock had been leased to GNER who had assumed all risk of loss, damage or destruction of the rolling stock from any cause whatsoever and it's obligation to pay rent was to continue despite any such loss or damage. At final appeal it was held that HSBC had suffered no damage to it's reversionary interest, the value of the rolling stock, because it was fully indemnified by GNER. Counsel for the plaintiff contrasted this with the arrangement as between the plaintiff and Mr Hamid contending that the plaintiff has suffered damage to its reversionary interest, namely the value of the subject vehicle.

It is still the owner of that vehicle and will remain so until at least the end of this year and they have not been indemnified by Mr Hamid.

[33] The present case is not on all fours with the HSBC case as there is a Rent-to-Own agreement in place and not a lease. The Rent-to-Own agreement is continuing. At the concluding date (early 2026) ownership will transfer to Mr Hamid unless it is terminated in advance of then. If it is terminated and the vehicle returned to the plaintiff they have the benefit of the indemnity clause which is set out in Term 4 of the terms and conditions applying to the Rent-to-Own agreement:

> "Indemnity: The driver shall indemnify the company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profits, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) incurred by the plaintiff arising out of or in connection with the agreement."

[34] The loss claimed by the plaintiff in the present action has already been litigated. If the Rent-to-Own agreement is terminated before ownership of the vehicle passes to Mr Hamid, the plaintiff is not disadvantaged as they have the benefit of an indemnity should any losses arise. Even in the absence of any such indemnity, Mr Hamid as bailee would always have to account to the plaintiff as bailor for any outstanding damage arising at the termination of the bailment. If, through his failure to include within the vehicle damage claim an amount for depreciation there is a shortfall, then that is an issue as between him and the plaintiff, the bailor.

[35] In any event, applying the doctrine of Res inter alios acta, the existence of any contract as between the plaintiff and Mr Hamid cannot adversely affect the defendant, a non-party to the contract. The defendant should not face two claims for the same direct loss which arose in the index accident.

Summary

[36] The plaintiff's claim is limited to diminution in market value/depreciation only.

[37] For the reasons stated above, I find that when a vehicle is damaged it suffers an immediate direct loss ie, diminution in the value of the vehicle.

[38] As a general rule, diminution in value is represented by the reasonable costs of repairs but is not limited to that.

[39] Diminution in value can comprise the reasonable cost of repairs and an additional amount in respect of depreciation. However, the reasonable cost of repairs and depreciation are measurements of the same direct loss. They cannot be severed to form separate claims.

[40] The earlier action included a claim for cost of repairs. Those costs were claimed as general damages pursuant to the principles set out in *Coles v Hetherton*.

[41] I find that a claim for diminution in value of the subject vehicle has already been advanced, and the plaintiff is precluded from re-opening the claim.

[42] I find that the plaintiff's action is ill founded and that it is appropriate to strike out the civil bill.

[43] The defendant having succeeded in their application is awarded costs to include the costs of the application.