

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 104 of 2016

Golden Manufacturers Limited

Plaintiff

v

Palas Auto Services Limited

Defendant

Counsel: : Mr E. Narayan with Ms Komal Singh for the plaintiff

: Mr Ritesh Singh for the defendant

Date of hearing : 19th and 20th November, 2019

Date of Judgment : 4th September, 2020

Judgment

1. The plaintiff purchased a “*Jeep Grand Cherokee*” motor vehicle from the defendant under a warranty for a period of three years. Two years, eight months later, the plaintiff gave the vehicle to the defendant to repair the engine. The defendant advised that a new engine was installed and the vehicle was available for collection. The plaintiff, in its statement of claim states that there were outstanding defects in the Forward Collision Warning, (FCW) light and dashboard. The plaintiff sold the vehicle, as its value had substantially declined, due to the “*delayed re-delivery*”.

2. The plaintiff claims: (i) damages for loss of the use of the vehicle from the time it was given for repair until it was finally delivered; (ii) the cost of repairing the dashboard, in a sum of \$12,038.00; (iii) damages for losses in a sum of \$99,500.00, being the difference between the purchase and sale price;(iv) special damages incurred of \$6625.00, in hiring a vehicle after the expiry of the LTA registration of the vehicle provided by the defendant as a replacement,(replacement) (v) interest; and, (vi) costs.
3. The defendant, in its statement of defence states that after liaising with its supplier in New Zealand and completing tests, a new engine was approved under the warranty. The vehicle was ready for collection. The vehicle was retained for further diagnostics and advice regarding the FCW light. The issue was resolved. The defendant denies liability for the issue with the dashboard and any loss arising from the sale of the vehicle. The vehicle was without defect at the date of purchase and was used for over two years before the defect in the engine arose. The defendant counterclaims for the continued use of the replacement by the plaintiff, after the vehicle was ready for collection.
4. The plaintiff, in its reply states that the vehicle was not ready for collection in September, 2015.

The determination

5. The agreed facts provide as follows:
 - i. On 9th September, 2014, the vehicle was taken to the defendant's garage for servicing and the plaintiff informed the defendant of an "*engine knocking sound*" in the vehicle.
 - ii. On 15th September, 2014, the vehicle was returned to the defendant for repair of the engine, in terms of the warranty.
 - iii. On 6th March,2015, the defendant advised the plaintiff that the vehicle was installed with a new engine and was available for collection.
 - iv. On 23rd March,2015, the plaintiff's solicitors sought proof that the engine was fitted and registered with the LTA.
 - v. The defendant provided a replacement vehicle from October,2014, to June,2015.

6. The plaintiff contends that the vehicle failed to meet the conditions of merchantability and fitness for the purpose. The defendant was negligent, in failing to ensure that the vehicle was free of defects and unreasonably delaying the repairs.
7. PW1, (Mr Naushad Ali, Chief Financial Controller, plaintiff company) the sole witness for the plaintiff in cross examination said that the vehicle was good for the purpose and used from the date of purchase on 9th January, 2012, to September, 2014, with no issues. The plaintiff inspected the vehicle before purchase and did a test drive. The plaintiff was updated of the progress of the repair and informed that a part had to be imported from the US.
8. DW1, (Vinayak Jogia, Sales Manager of the defendant) confirmed that the complaint of the plaintiff on the “engine knocking sound” was first received in September, 2014.
9. “Merchantability .is to be tested by reference to the condition of the car at the time of delivery”, as Rougier J stated in *Bernstein v Pamson Motors*, [1987] 2 All ER 220 at pg 226 as referred to by Mr Singh, counsel for the defendant in his closing submissions.
10. In my judgment, it is evident that the vehicle was merchantable and fit for the purpose intended at the time of purchase. The defect in the engine arose two years, eight months later.
11. The plaintiff claims damages for loss of the use of the vehicle from September, 2014, to 10th December, 2015. The statement of claim states particulars of such loss to be quantified and made available prior to trial. The plaintiff did not adduce any evidence in support of loss. Accordingly, the claim is declined.
12. The defendant provided a replacement when the vehicle was given for repair, It is contended that the replacement was of inferior quality and comfort.
13. In my view, the warranty does not state that the defendant had to provide a replacement of a similar nature as the vehicle purchased, as accepted by PW1 in cross examination.

14. Next, the plaintiff claims the cost of repair of the dashboard.
15. PW1 said that when the plaintiff collected the vehicle on 10 December, 2015, it was found that the dashboard was damaged, as the vehicle was parked in the sun. The plaintiff obtained a quotation from Asco Motors for over \$12,000.00 to replace the dashboard.
16. PW1 was unaware if the defendant was informed of the damage.
17. DW1 stated that it was not brought to the attention of the defendant that the dashboard was damaged. The defendant would have repaired it under the warranty.
18. I would note that PW1 said that the defendant honoured the terms of the warranty and attended to every issue raised by the plaintiff.
19. In my judgment, the plaintiff has not established that the damage to the dashboard was brought to the attention of the defendant nor that the vehicle could have been sold for a higher price, if the dashboard was repaired, as contended by PW1. The claim is declined.
20. The plaintiff claims a sum of \$99,500.00, being the difference between the purchase price of \$ 176,500.00 and the stated sale price of \$ 77,000.00. It is contended that the value of the vehicle had "*substantially declined on account of the delayed re-delivery of the vehicle*" by the defendant.
21. PW1 said that the vehicle was sold in 2016, shortly after it was collected from the defendant. He was unsure if a valuation of the vehicle was obtained and if the buyer "*Pau Consultant*" was a consultant of plaintiff, as was put to him in cross examination. PW1 said that a vehicle would depreciate in four years.
22. The evidence reveals that the plaintiff did not collect the vehicle for four months, after the new engine was installed and for three months, once the FCW light was repaired on 15th September, 2015.

23. In my judgment, the plaintiff has not established that the value of the vehicle had declined for the alleged reason. The claim is declined.
24. The final claim is for special damages incurred of \$6625.00, in hiring a vehicle for the period "16th June, 2015, to 21st August, 2015".
25. On 25th June, 2015, the plaintiff's technician inspected the vehicle after a new engine was installed. He noticed a red FCW light on the dashboard. On 6th July, 2015, the defendant informed the plaintiff that following the inspection, the vehicle was not ready to be picked up and requested a rental vehicle, as the insurance and LTA fitness of the existing rental had expired on 3rd July, 2015.
26. In my view, the plaintiff was required to provide a replacement during the period the FCW light was repaired.
27. PW1 produced a purchase order issued by Avis Rent A Car to the plaintiff for rental charges for the period 16th July, 2015, to 21st August, 2015 in a sum of \$ 6625.00. He said that the plaintiff has an invoice of payment. The invoice was not produced. I am satisfied from his objective evidence on the whole that this sum was incurred.
28. In *Narendra Kumar v Sairusi Drawe, Minister for Home Affairs and Auxillary Army Services and The AG*, [1990]36 FLR 90 at page 95, Palmer J stated:
- Notwithstanding that not a single receipt has been produced in evidence I am satisfied from the Plaintiff's evidence that he paid those amounts*
29. In my judgment, the plaintiff is entitled to recover the sum of \$ 6625.00 from the defendant.
30. The defendant shall pay the plaintiff a sum of \$ 6625.00 together with interest, (as pleaded) at 3 % per annum from 21st August, 2015, to 19th November, 2019 (date of hearing) in a sum of \$845.00 totalling \$7470.00

Counterclaim

31. The defendant counterclaims for the use of the replacement by the plaintiff for the period 6th March,2015, to 3rd July,2015, in a sum of \$29,500.00, at a rate of \$250.00 per day for 118 days.
32. The defendant provided the plaintiff a replacement from October,2014, to 3rd July, 2015.
33. On 10th March,2015, the defendant requested the plaintiff to return the replacement. On 20th March,2015, the defendant informed the plaintiff that it would charge \$ 250 a day as rental for use of the replacement.
34. It transpired in the cross examination of PW1 that for four months, the plaintiff neither inspected, collected nor attended to the signing of forms to register the new engine with the LTA, as owner of the vehicle, as requested by the defendant by several emails. .
35. In my judgment, the defendant is entitled to recover from the plaintiff, the rental charges of \$29500.00 for the period 6th March,2015, to 3rd July,2015.
36. I set off the sum of \$ 7470.00 recoverable by the plaintiff from the defendant against the aforesaid sum of \$29500.00. In the result, the plaintiff shall pay the defendant the sum of \$22030.00.

37. Orders

- (i) The plaintiff shall pay the defendant a sum of \$ 22030.00.
- (ii) I decline the plaintiff's claims for damages for loss of the use of the vehicle; the cost of repairing the dashboard; and, the claim for the sum of \$ 99,500.00.
- (iii) Each party shall bear their own costs.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE
4th September,2020