

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2017/0537

BETWEEN:

**[1] JUSTIN CAMPBELL
[2] NICKADA CAMPBELL**

Claimants

and

STEELE'S AUTO SUPPLIES COMPANY LTD

Defendant

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Ms. Sheriba Lewis for the Claimants

Mrs. Michelle Emmanuel-Steele with her Ms. Ariel Agostini

2022: November 17;
January 13; (Closing submissions)
2023: March 31

JUDGMENT

GLASGOW, J.: This claim centers on the contentions between the parties about a vehicle which the defendant ("the company") sold the claimants ("the Campbells")

and which vehicle the Campbells rejected on the basis that it was not reasonably fit for the purpose for which it was bought.

The Claimants' case

- [1] On or about 18th December 2015, the company agreed to sell a 2016 Kia Rio motor car registration P6563 ("the vehicle") to the Campbells for the purchase price of \$62,000.00. The vehicle was purchased using the proceeds of a loan obtained from Republic Bank (Grenada) Limited. The Campbells plead that the vehicle was sold subject to an express warranty to cover the period 18th December 2015 to 18th December 2018. Further, it was an implied term of the sale agreement and the warranty that the vehicle was reasonably fit for the purpose for which it is bought. However, they plead that the vehicle was not fit for the purpose in breach of the agreement and warranty.
- [2] The Campbells plead the following particulars of breach:
- 1) Defective or faulty ECU computer (27th July, 2017);
 - 2) The vehicle failed to move from "park" to "drive" gear on three occasions between (27th August, 2017 and 7th September, 2017);
 - 3) The vehicle lost power on an incline and when restarted drove at a slow pace (13th October, 2017);
 - 4) The vehicle accelerated when the brake pedal was engaged (17th October, 2017);
 - 5) The vehicle failed to start after two attempts and thereafter the "check engine" light illuminated (18th October, 2017).
- [3] Further, the Campbells plead that save and except for diagnosing the vehicle's ECU computer as being faulty, the company failed to identify, diagnose and repair the defects referred to in the particulars above. The Campbells contend that they were entitled to reject the vehicle by returning it to the company's premises. By letters dated 2nd November 2017, the Campbells through their attorney-at-law wrote to the

company demanding repayment of the purchase price together with interest at the rate of 7% per annum. Alternatively, the Campbells plead¹ that they have suffered loss and damage in the sum of \$2,700.36 (\$1,288.00 per month) as repayment for the loan from 19th October, 2017 to the date of filing of the claim. Additionally, they claim the sum of \$536.32 as repayment of interest pursuant to the said loan (19th October 2017 to date of filing) and continuing thereafter at the daily rate of \$8.38. The Campbells, in their prayer for relief, claim damages for breach of contract or in the alternative the repayment of the purchase price of \$62,000.00 together with interest and costs.

The Company's case

- [4] The company's answer to the claim is that the agreement for the sale of the vehicle included a three year 60,000 miles warranty and that the vehicle was reasonably fit for the purpose of driving on the nation's roads. The company further disputes that the vehicle was unfit for use because the Campbells kept and drove it for 18 months from the date of purchase with no complaint or issue arising from its use. The company's position is that the vehicle was found to be in good working condition and of merchantable quality when it was serviced on 5 occasions by the company's mechanic.
- [5] In respect of the alleged defects and/or complaints, the company's defence is that:
- 1) On 27th August 2017, the Campbells complained that they were unable to move the gear selector from "park" to "drive". The company provided roadside assistance and the gear selector issue was resolved. Thereafter, the company brought the vehicle to its mechanic to perform tests. The company found no issue during the initial tests and as such it returned the vehicle to the Campbells on 28th August 2017. The Campbells again complained that the gear selector issue reoccurred. The company states

¹ See para. 11 of the Statement of Claim

that it conducted further tests which revealed no issues and it again returned the vehicle to the Campbells.

- 2) On 7th September 2017, the Campbells again complained to the company that the gear issue returned. The company initiated a series of diagnostic tests on the advice of the vehicle manufacturer, Kia. The manufacturer advised that the electronic control unit (ECU) should be replaced. The company ordered a replacement ECU and installed it in the vehicle on 9th October 2017. The company returned the vehicle to the Campbells the following day.
- 3) On 14th October 2017, the company received a complaint from the Campbells that the vehicle performed sluggishly while climbing a small hill. The company denies that they received a complaint that the vehicle lost power on an incline. Further, the company states it conducted a test on Marrast Hill and no sluggish performance was detected.
- 4) On 18th October 2017, the second defendant, (Ms. Campbell) complained that the “check engine” light illuminated. The company opined that the “check engine” light illuminated because of the extensive diagnostic testing that it carried out on the vehicle. The company explains that it conducted a further road test and no issues were experienced. Ms. Campbell was called to collect the vehicle but she refused to accept it.
- 5) On 25th October 2017, the company attempted to return the vehicle to Ms. Campbell, however, she, again, refused delivery.
- 6) Having regard to the length of ownership, the Campbells are not entitled to reject the vehicle or claim repudiatory breach of an implied term in the agreement. The company says that the Campbells are not entitled to any relief sought in their claim.

Counterclaim

- [6] As it relates to the counterclaim, the company’s case is that on 23rd October 2017 it communicated with Ms. Campbell via email wherein she was asked to remove the vehicle from its premises at River Road, St. George. By letter dated 27th October

2017, the company formally demanded the removal of the vehicle from its premises by 1st November 2017. Further, the company told the Campbells that they would be charged a daily rental/storage fee of \$100.00 from 2nd November 2017 which they would incur daily if the vehicle is not removed. As at the date of filing of the defence and counterclaim, the company states that the Campbells have refused to remove the vehicle from its premises. As such they are liable to pay the storage fee of \$100.00 per day from 2nd November 2017 until the date of removal.

Does the UK Sale of Goods Act apply to Grenada?

[7] Counsel for the company, Mrs. Michelle Emmanuel-Steele, submits that the law governing the sale of goods in Grenada is the UK Sale of Goods Act 1893 as applied in **Richards v Universal Supplies Limited**². In that case, St. Paul J observed “[t]he *English Sale of Goods Act 1893 which codified the common law in England is the law which applies to Grenada since we do not yet have our own Act.*” Conversely, counsel for the Campbells, Ms. Sheriba Lewis, contends that the laws of the State of Grenada do not address the sale of goods and accordingly, the applicable law is the common law. The common law position prior to 1893 is set out in the UK Sale of Goods Act which was intended to be a codifying statute regarding the sale of goods. Ms. Lewis argues that prior to the UK Act; the law in respect of the sale of goods was entirely governed by the common law.

[8] In my view, it cannot be the case that in the absence of the specific legislation that the English substantive law is applicable. There must be a reception clause or provision in the laws to allow this. This position has been conclusively resolved in respect of the laws of Grenada where our Court of Appeal has put to rest the running debate as to whether the inherent jurisdiction of the high court vested in section 11 of the **West Indies Associated States Supreme Court (Grenada) Act**³ imports

² Grenada High Court Suit No. 445 of 1987 (delivered on 29th September 1992 per St. Paul J)

³ Cap. 336 of the 2010 Continuous Revised Edition of the Laws of Grenada

substantive English law into the laws of Grenada. In **Veda Doyle v Agnes Deane**⁴ Pereira JA had this to say:-

“The English law intended to be imported by section 11(1) of the Supreme Court Act is the procedural law administered in the High Court of Justice in England and not English substantive law, nor English procedural law which is adjectival and purely ancillary to English substantive law.”

[9] If, in view of the foregoing learning from our Court of Appeal, I am in any event constrained to comment on Mrs. Steele’s submissions and her reliance on the High Court’s decision in **Richards**, I would say that neither the submissions nor the case of **Richards** identify the applicable reception provision under statute which empowers this court to apply substantive English law in relation to the sale of goods. It remains therefore, that in the absence of substantive statute in Grenada or that which receives English statute law on the matter, the common law with respect to the sale of goods is applicable to the distillation of the issues in cases in Grenada involving the sale of goods. In **Kathleen Noel v Courts (Grenada) Ltd**⁵. Henry J succinctly addresses the issue:–

“The defendant relies on the UK Sale of Goods Act 1893. That Act was intended to be a codifying statute as to parts of the law regarding the sale of goods. One can look to the Act as setting out the common law as pertained prior to the Act, **Emery Stuart v Jonas Browne and Hubbards (Grenada) Limited** citing **Bristol Tramways v Fiat Motors [198-10] All E.R. 113**. Under the Sale of Goods Act 1893, the condition is excluded, where the buyer has actually examined the goods, only as regards defects discoverable by the examination actually made. Therefore, under both Common Law and the 1893 Act there was attached to this contract of sale an implied warranty/condition of merchantability...”

⁴ GDAHCVAP2011/020 at para. 3 of the headnote

⁵ GDAHCV2004/0039 at para. 8

Fitness for purpose

- [10] A seller of goods is obliged, among other things, to ensure that the goods sold are fit for the purpose for which they are sold and are of merchantable quality. The requirements of these obligations are often said to be disparate. In **Grant**, their Lordships referenced s. 14 of the South Australia Sale of Goods Act, 1895, which is identical to section 14 of the English Sale of Goods Act, 1893. But as I have discussed above, the Sale of Goods Act, 1893 codified the then common law on the matter which is the applicable law in Grenada. With respect to the first of the two obligations, Lord Wright had this to say in **Grant v Australian Knitting Mills**⁶:-

“The first exception, if its terms are satisfied, entitles the buyer to the benefit of an implied condition that the goods are reasonably fit for the purpose for which the goods are supplied, but only if that purpose is made known to the seller so as to show that the buyer relies on the seller's skill or judgment.” It is clear that the reliance must be brought home to the mind of the seller, expressly or by implication. The reliance will seldom be express: it will usually arise by implication from the circumstances: thus to take a case like that in question, of a purchase from a retailer, the reliance will be in general inferred from the fact that a buyer goes to the shop in the confidence that the tradesman has selected his stock with skill and judgment: the retailer need know nothing about the process of manufacture: it is immaterial whether he be manufacturer or not: the main inducement to deal with a good retail shop is the expectation that the tradesman will have bought the right goods of a good make: the goods sold must be, as they were in the present case, goods of a description which it is in the course of the seller's business to supply: there is no need to specify in terms the particular purpose for which the buyer requires the goods, which is none the less the particular purpose within the meaning of the section, because it is the only purpose for which any one would ordinarily want the goods”

- [11] With respect to the second obligation cited above, their Lordships observed that in some cases, the obligation to sell goods of merchantable quality “overlaps” the obligation to sell goods that are fit for purpose. Their Lordships noted that:-

“The second exception in a case like this in truth overlaps in its application the first exception; whatever else merchantable may mean, it does mean

⁶ [1936] A.C. 85 at pages 99-100

that the article sold, if only meant for one particular use in ordinary course, is fit for that use; merchantable does not mean that the thing is saleable in the market simply because it looks all right; it is not merchantable in that event if it has defects unfitting it for its only proper use but not apparent on ordinary examination: that is clear from the proviso, which shows that the implied condition only applies to defects not reasonably discoverable to the buyer on such examination as he made or could make.”

- [12] The Campbells case is that the vehicle which they bought from the company was not fit for the purpose for which it was bought. At paragraph 6 of the statement of claim, the Campbells highlighted the purpose for which the vehicle was bought as “...namely for driving on the roads of Grenada, known to be particularly narrow, steep and winding in parts.” The Campbells therefore claim that there was an implied term that the vehicle was reasonably fit for ordinary use on the nation’s roads.

Claimants’ submissions

- [13] Counsel for the Campbells, Ms. Lewis, submits that the vehicle was sold with defects and was not fit for the purpose purchased or of merchantable quality. Ms. Lewis relies Lord Denning MR’s opinion in the case of **Farnworth Finance Facilities v Attryde**⁷, where his Lordship stated that a machine should correspond with the description and should be reasonably for the purpose of which it was hired, in that it should be roadworthy. It is submitted that a vehicle is reasonably fit for purpose only when it is in a safe and road worthy condition. A driver of a “new” car does not expect to enter into a running battle with a series of minor faults.
- [14] Counsel argues that a purchaser is entitled to expect value for their money as stated in the case of **Rogers and another v Parish (Scarborough) Ltd and another**⁸. Counsel points to the evidence that the Campbells made numerous complaints to the company between 27th September, 2016 and 18th September, 2017 when the ECU was diagnosed as being faulty and replaced by the company. In this regard,

⁷ [1970] 2 All ER 774

⁸ (1987) 1 QB 933

Counsel references Leon Felix's evidence that the Campbells made various complaints about problems with the vehicle which he says were examined and repaired by the company. This evidence, counsel says, is in sharp contrast to the assertion that there was no problem found on assessment of the complaints.

- [15] Ms. Lewis concludes that the vehicle which was sold to the Campbells was not fit for the use that it should be ordinarily used and that there remain defects which make it unfit for usage.

Company's submissions

- [16] Counsel for the company, Mrs. Steele, relies on section 14(1) and the case of **International Motors Ltd v Ronnie Thomas**⁹ to suggest that the Campbells were required to make known or specify the particular purpose for which the purchase was intended. Mrs. Steele submits that the Campbells were required to establish that they made known or specified to the company the particular purpose for which the vehicle was purchased or required and that they relied on the company's judgment. In the absence of these pleading, the Campbells have failed to establish a contractual condition, whether express or implied within the terms of section 14(1) of the Sale of Goods Act that the goods were for specific purpose. Therefore, the company cannot be held in breach of any such condition.

Analysis

- [17] In this case, there is no evidence of the written contract between the parties for the sale of the vehicle. What is before this court is evidence that on or about 18th December 2015 the Campbells purchased the vehicle from the company for the sum of \$62,000.00. Additionally, the agreement for the sale of the vehicle was subject to a warranty from the company for three years or 60,000 miles. This, in my view, constituted an oral agreement for sale between the company as vendor and the Campbells as purchaser.

⁹ BVI Civil Appeal No. 7 of 2002

[18] It is accepted that the company is in the business of importing and selling new vehicles to customers in Grenada from the manufacturer. As, in **Grant**, it is quite reasonable to conclude that the Campbells relied on the skill or judgment of the company to obtain from the manufacturers and sell vehicles that are fit for the purpose for which they are sold, that is to say, that they are fit for use on the particular conditions of Grenada's roads. There was no need, in the circumstances of this case for the Campbells to specify the same to the company. As the Privy Council stated in **Grant v Australian Knitting Mills**¹⁰:-

“...The reliance will seldom be express: it will usually arise by implication from the circumstances: thus to take a case like that in question, of a purchase from a retailer, the reliance will be in general inferred from the fact that a buyer goes to the shop in the confidence that the tradesman has selected his stock with skill and judgment: the retailer need know nothing about the process of manufacture: it is immaterial whether he be manufacturer or not: the main inducement to deal with a good retail shop is the expectation that the tradesman will have bought the right goods of a good make: the goods sold must be, as they were in the present case, goods of a description which it is in the course of the seller's business to supply: there is no need to specify in terms the particular purpose for which the buyer requires the goods, which is none the less the particular purpose within the meaning of the section, because it is the only purpose for which any one would ordinarily want the goods.”

[19] In **Grant**, the goods in question were undergarments. The court determined that there was an implied term that the undergarments would be worn and would make contact with the skin. In these proceedings, the vehicle was purchased brand new and as such it was expected that this vehicle would be in a roadworthy condition and be safe for ordinary use on the road.

[20] With respect to the company's reliance on the case of **Ronnie Thomas**, I find that this authority can be distinguished on the facts. In that case, the respondent specified the particular purpose for which he required the vehicle to the dealer. However, in this case, it seems to me that the Campbells are not arguing that they

¹⁰ [1936] A.C. 85

expressly indicated to the company a particular purpose for which the vehicle was required. What they plead is that the vehicle was only required for ordinary use. This was not a case like **Ronnie Thomas** when the purchaser required a vehicle with “power” to climb “steep hills” or a case where the vehicle was purchased for off-road use or some other specific purpose. As the case law reveals and I so find, the Campbells were not required to state a particular purpose when the vehicle was only purchased for ordinary use. I find that the Campbells were entitled to rely on the implied term that the vehicle was fit for the purpose for ordinary use on the nation’s roads. In all the circumstances of this case, the company cannot dispute such a term existed. They have been in the business of obtaining new vehicles from manufacturers and offering them for sale for use on the nation’s roads for quite several years. They were duty bound to obtain and sell vehicles fit for the purpose for which they were being advertised for sale. Did the company breach this implied term in this case?

Expert’s evidence on the alleged defects/complaints

[21] Mr. Robert Miller tendered expert evidence to the court in a report dated 10th September 2018 and filed on 14th November 2022. The following are key findings in the report:

- (1) He conducted a road test on 3rd September, 2018 where he drove the vehicle for one hour. The odometer indicated that the mileage at the start of the road test was 12, 707 miles and 12, 721 miles at the end. As such, he drove the vehicle for 14 miles.
- (2) He drove the vehicle from the company’s premises in River Road, St. George to the Grand Etang rainforest. Mr. Miller drove back to Tempe, Mottley Hill and up to Fort Frederick. Thereafter, he returned the vehicle to the company’s compound.
- (3) During the road test, Mr. Miller observed that the vehicle drove satisfactorily subject to two comments. He states “*I stopped on the steepest corner I could find and then moved off again, the front tyres skidded causing me to*

break at which point the engine stalled. I rolled back a few feet to obtain better traction. Restarted promptly and moved off without hesitation.”

- (4) At the top of Grand Etang road (near the 1, 910 feet sign), he stopped the vehicle and left it idling. He opened the bonnet to observe the engine bay and observed that the vehicle was idling roughly with the exhaust emitting uneven and black smoke. He revved the engine a few times, but the condition persisted.
- (5) Thereafter, Mr. Miller states that he drove to Tempe without incident and noted that the engine felt “smoother and more responsive.” He states that he repeated his stop at Grand Etang on Mottley Hill twice and the vehicle responded well and moved off on both occasion without hesitation. He conducted this stop test again at Fort Frederick which again produced “good results”.
- (6) When he returned the vehicle to the company’s premises and attempted to park it, the engine of the vehicle stalled. He did a “walk around” of the vehicle and noted *“the rough idle from the engine and uneven black exhaust as was done at Grand Etang. The running quality issue appeared to be intermittent, but current. When this condition is present, the engine is rough at idle and sluggish to respond to the throttle. This condition would also cause the engine to stall.”*

Mr. Miller’s evidence suggests that the vehicle exhibited performance issues in that it intermittently stalled and shut off and during those occasions the vehicle idled roughly and emitted uneven and black exhaust. Mr. Miller drove the vehicle for one hour during the road test and the engine stalled twice. This evidence highlights performance issues with the vehicle and supports the Campbells complaint that on 13th October 2017 the vehicle *“lost power on an incline and when restarted drove at a slow pace”*. I note that Mr. Miller states that when the rough idle condition is present, the vehicle will also be “sluggish to respond to the throttle¹¹”. When questioned during cross examination about his report, Mr. Miller explained that apart

¹¹ Supplement Trial Bundle filed on 14th November 2022 at page 4 (Road Test Findings)

from the “intermittent” performance issues the vehicle is capable of being driven “safely” and “is suitable for providing transportation and thus the purpose for which it was purchased.”¹² In my view, this statement stands in contrast to Mr. Miller’s other stated findings. In particular, Mr. Miller in his report stated that when the vehicle engine stalled around a steep corner at Grand Etang, he “*rolled back a few feet to obtain better traction.*” Mr. Miller is no ordinary driver. He is a motor vehicle expert and such this driving experience may not have been difficult for him to manoeuvre. However, this may not be such a safe driving manoeuvre for an ordinary driver, having regard to the fact that the engine completely shut off and had to be restarted on a steep corner. In any event, the testimony itself states quite expressly the vehicle works well apart from “intermittent” performance issues. A vehicle that stalls and/or shuts off intermittently while driving, in my view, is not in a roadworthy condition nor is it reasonably fit for ordinary and safe use on the nation’s road. I cannot see how any reasonable person who purchases a brand-new vehicle would be expected to accept it as fit and proper for use knowing that it may stall or shut off without warning while driving. In **Ronnie Thomas**, Saunders JA made a similar point when he stated that:–

“Putting aside for the moment Mr. Thomas’s complaints about the lack of power, no purchaser of a brand-new motor vehicle would be content with one that exhibits a completely defective reverse gear within a month of purchase and very serious damage to the crown wheel and pinion within five months...”

In **Farnworth Finance Facility Ltd v Attryde and another**¹³, Lord Denning MR stated:–

“Any defect is serious if it is likely to cause an accident or to render the vehicle unsafe on the road. It may be easily remediable, yet, until it is remedied, it is a serious defect.”

¹² See “Answer” provided at the bottom of page 14 of the Supplemental Trial Bundle filed on 14th November 2022.

¹³ [1970] 2 All ER 774

[22] I am of the view that no reasonable person would conclude that this vehicle was fit for purpose in light of its performance issues. I find that the vehicle was not fit for the purpose for which it was purchased.

[23] The company maintained its position at trial that, even if the defects were present, the fact that the vehicle sat unused for over 6 months before Mr. Miller's testing may have contributed to those performance issues. Mr. Miller's evidence elucidated this issue where he stated that "[c]onsideration of this was taken during my road test, the route and length in order to give running gear time to get back in normal operating mode¹⁴". My own understanding of this evidence is that Mr. Miller acknowledged that the vehicle was sitting idle for some time and drove it ~~for~~ a sufficient length of time to enable it to perform in a satisfactory manner during the road test. Indeed, Mr. Miller maintained this position at trial under cross-examination by Ms. Lewis. All in all, it seems to me that the performance issues identified by Mr. Miller on his road test are similar to those stated by the Campbells. Mr. Miller, in addressing the loss of power issue experienced by the Campbells on 13th October 2017, confirmed that "[t]his is a similar experience that I experience during my test drive but not as severe". The confluence of the law and these facts have compelled me to conclude that the vehicle in this case was not fit for the purpose for which it was bought by the Campbells.

Merchantable quality

[24] Mrs. Steele submits that the Campbells cannot avail themselves of section 14(2) of the Sale of Goods Act which concerns the implied term of merchantable quality. Counsel submits that the Campbells are bound by their pleadings and cannot rely on matters which have not been pleaded in their case. A cursory reading of the statement of claim does not disclose any pleading by the Campbells that the vehicle was not of merchantable quality. Rule 8.7 of the Civil Procedure Rules requires parties to set out the parameters of their case. Further, rule 8.7A prohibits reliance

¹⁴ See page 85 of Trial Bundle which begins with the heading "Note".

on allegations which have not been pleaded without permission of the court. In **The National Lotteries Authority v Jerome De Roche**¹⁵, Ward JA, had this to say:—

“The claimant must plead the essential facts that constitute its case, and those facts must be sufficient to establish a cause of action and to enable the other side to know the case it has to meet in sufficient detail. CPR 8.7A prohibits reliance on allegations or facts not pleaded unless the judge gives permission, or the parties agree.”

- [25] I agree with the counsel for the company that the Campbells cannot rely on that implied term since it was not pleaded. Accordingly, there is no need to consider whether the company breached the implied term of merchantable quality.

Did the Campbells have a right to reject?

- [26] It is said that “[A] buyer, in principle, has the right to reject goods which do not conform with their description or their sample, are not of satisfactory or not reasonably fit for their purpose.”¹⁶ But as Saunders JA elucidated in **Ronnie Thomas**, “[T]he law is that any rejection of the goods must take place promptly, within a reasonable time”¹⁷ and “[B]y section 36 of the Sale of Goods Act, a buyer is deemed to have accepted goods when, after the lapse of a reasonable time, the buyer retains the goods without intimating to the seller that he has rejected them. Each case must turn on its own peculiar facts.”¹⁸

- [27] Counsel for the company, Mrs. Steele, submits that in the instant case the Campbells rejected the vehicle some eighteen months after having accepted delivery. During that period there were no complaints about the vehicle. Therefore, she submits that in view of the period in which the Campbells enjoyed the use of the vehicle without complaint, there is no doubt that they accepted the vehicle within the meaning of section 35 of the Sale of Goods Act. Counsel also relies on the learning

¹⁵ GDAHCVAP2021/0025 at para. 1 of the headnote

¹⁶ McKendrick, Sale of Goods, page 505, para. 10—032.

¹⁷ BVIHCVAP 20002/0007 at para. 13

¹⁸ BVIHCVAP 2002/0007 at para. 15

from **Bernstein v Pamson Motors (Golders Green) Ltd**¹⁹ and **Richards v Universal Supplies Limited**²⁰, where the courts held that the claimants were not entitled to rescission, but rather damages for breach of warranty.

[28] Under the common law a buyer is deemed to have accepted goods delivered to him when after the lapse of reasonable time, he retains the goods without intimating to the seller that he has rejected them. In **Ronnie Thomas**, Saunders JA stated that at paragraph 15 of the judgment that “*each case must turn on its own peculiar facts.*” A similar approach was taken in **Clegg**²¹, where the court stated that the decision in **Bernstein** does not represent the present law on reasonable time.

[29] The court in **Clegg** held that what amounts to a reasonable time “*is a question of fact*”²². In **Ronnie Thomas**, the Court of Appeal upheld the trial judge’s finding that the vehicle was not fit for the purchase for which it was bought. In that case, the purchaser kept the vehicle for 5 months. In **Farnworth**²³, the purchaser of a motorcycle rejected it after riding it for 4,000 miles. In **Clegg**, the owner of a yacht Mr. Clegg, rejected an offer to repair on 6th March 2001, having been in possession of the yacht since 25th July, 2000. The court ruled that he was entitled to reject the yacht and awarded him damages to be assessed. The learning therefore suggests that the length of time from the date of delivery is only relevant as a factor and not determinative of the question of whether the owner rejected the goods within a reasonable time.

[30] In this case, the Campbells complained of issues with the vehicle between 27th September 2016 and 18th October 2017. The final straw for the Campbells appears to be the week of October 17th, 2017, where they complained of a series of performance issues, including loss of power, failure to start and the check engine light being ignited. The Campbells rejected the vehicle on 18th October 2017 when

¹⁹ [1987] 2 All ER 220

²⁰ Grenada High Court Suit No. 445 of 1987 or GD 1992 HC 9 per St. Paul J

²¹ Ibid at para. 63

²² Ibid

²³ [1970] 2 All ER 774

they refused to collect it from the company. They formally rejected the vehicle by way of letter dated 2nd November 2017 from their lawyer to the company. I have concluded that given the series of consistent complaints the Campbells made in respect of the performance of the vehicle, they were entitled to reject the same on 18th October 2017. The company denies that they received any complaint on the loss of power; however, this is immaterial to the issue of rejection. Rejection is a remedy in law available to persons who are dissatisfied with goods they purchased on the basis that they are not fit for purpose or of merchantable quality for whatever reason. The evidence in this case supports the contention that there were several issues with the vehicle which, in law, permitted the Campbells to reject it. There is no requirement in law for the owner of the goods to first complain of the defects or seek repair before rejecting the goods. In **Clegg**, Lady Hale had this to say at paragraph 74 of the judgment:—

“In English law, however, the customer has a right to reject goods which are not of satisfactory quality. He does not have to act reasonably in choosing rejection rather than damages or cure. He can reject for whatever reason he chooses. The only question is whether he has lost that right by accepting the goods...”

Relief

- [31] An award of damages for breach of contract is granted to put the aggrieved party in the position he would have been in had the contract been performed²⁴. *“The measure of damages is the loss directly and naturally resulting, in the ordinary course of events, from the breach of the term, a formula that encompasses consequential losses.”*²⁵
- [32] Mrs. Steele in her closing submissions argues that, even if it is found that the Campbells had the right to reject, repayment of the purchase monies would unjustly

²⁴ The Attorney General of the Federation of St. Christopher and Nevis v SKN Choice Times Limited at para 18. Per Michel JA

²⁵ The Law of Tort (Common Law Series), para. 19.5

enrich them since they enjoyed the use of the vehicle for over 18 months prior to the date of rejection²⁶. The purchase price of the vehicle was \$62,000.00. It is not disputed that the Campbells rejected the vehicle on 18th October 2017. Therefore, the vehicle was in the Campbells possession for some 22 months from the date of purchase. Further, Mr. Miller, in his report, confirmed that the vehicle had been driven for over 12,000 miles as at the date of the road test. Having regard to the contention between the parties, the question arises whether the Campbells should be awarded the value of the original purchase price of the vehicle or its value as the date of rejection.

- [33] In the case of **St. Lucia Electricity Services Limited v Vanya Edwin-Magras**²⁷ Ellis JA at para. 60 of the judgment adopted the dicta of Colman J in **Voaden v Champion and the Owners of the Ship 'Timbuktu'**²⁸ in assessing the value of an item or chattel:—

“24. In order to establish the capital value of a vessel the best evidence will normally be that of the amount which a willing buyer would be prepared to pay to a willing seller of the same vessel immediately prior to the loss. If such evidence is not available, it is necessary to investigate the price at which comparable vessels were being sold at the relevant time and place.”

At para. 61

“The judgment does not acknowledge that the appropriate value is that which a willing buyer would be prepared to pay to a willing seller for a similar appliance immediately prior to the loss. As in **Voaden v Champion, this would require either evidence of the attempt to sell the item prior to the loss, or evidence as to the market value of comparable or any expert evidence opining on valuation.”**

- [34] There is no evidence before this court of the value of the vehicle as at the date of rejection or of the comparable value of vehicles as at that date. Moreover, there is no evidence of the current value of the vehicle in its present condition. It is generally

²⁶ See para. G. 2. under “Special Damages”

²⁷ SLUHCVP2018/0017

²⁸ [2000] All ER (D) 408.

accepted that a motor vehicle is a depreciating asset. As at the date of rejection, the vehicle was 23 months or 701 days old, excluding the date of rejection. In light of the state of the evidence and there being no comparable values for similar vehicles as at the date of rejection, I will order that damages are to be assessed to determine the value of the vehicle as at the date of rejection.

Pre-judgment interest on damages

- [35] The award of interest on damages is discretionary²⁹. Section 27 of the **West Indies Associated States Supreme Court (Grenada) Act**³⁰ provides that:—

In any proceedings for the recovery of any debt or damages, in the High Court or the Court of Appeal, **the Court may, if it thinks fit, order that there shall be included in the sum for which judgement is given interest at such rate as it thinks fit** on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgement, but nothing in this section—

- (a) shall authorise the giving of interest upon interest; or
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) shall affect the damages recoverable for the dishonour of a bill of exchange. (My emphasis)

- [36] The court is empowered by this section to award interest on damages if it thinks fit. It is not disputed that the Campbells obtained a loan to purchase the vehicle. The Campbells, by way of relief, plead for interest to be awarded on the damages granted by this court. I am satisfied that they are entitled to recover interest on their assessed loss. It is trite that a claimant must show that they have mitigated their loss³¹. The burden is generally on the defendant to show that the claimant has failed

²⁹ See House of Lords dicta in *President of India v La Pintada Cia Navegacion SA* [1984] 2 All ER 773

³⁰ Cap 336 of the 2010 Continuous Revised Editions of the Laws of Grenada

³¹ See BVI Civil Appeal No. 7 of 2002 *International Motors Limited v Ronnie Thomas* at para. 16 per Saunders JA

to take steps to mitigate their loss. In **Michael Bridgeman v Kenwyn Maitland**³², Barrow JA explained that:–

“...the burden of proof is on the defendant to show that the claimant should have taken certain steps to mitigate his loss. The author cites *Roper v Johnson* as establishing that **the normal measure of damages will not be cut down unless the defendant succeeds in showing that the claimant ought reasonably to have taken the suggested mitigating steps.**” (My emphasis)

- [37] In this case, the company has not shown or proven that the Campbells acted unreasonably or failed to take any mitigating steps. Having regard to the above learning, the Campbells are awarded interest at the rate of 3% per annum on the assessed value of the vehicle at the date of rejection. The interest is to run from 18th October 2017 to the date of the judgment. This award shall be assessed as damages.

The Counterclaim

- [38] The vehicle in this case was not fit for purpose. The Campbells were entitled to reject the vehicle and repudiate the contract. Therefore, the company’s counterclaim for daily rental/storage fees from 2nd November 2017 and other relief, including costs is not granted.

Conclusion

- [39] For all these reasons, it is hereby ordered that:
- (1) The claim filed on 22nd December 2017 is granted.
 - (2) The claimants are awarded damages for breach of contract on the value of the Kia Rio registration no. P6563 (“the vehicle”) as at the date of rejection together with interest at the rate of 3% per annum from 18th October 2017 to the date of judgment. Those damages are to be assessed.

³² GDAHCVAP2004/0024 at para. 7.

- (3) The defendant shall pay post-judgment interest of 6% per annum on the total assessed damages awarded from the date of assessment to the date of full payment.
- (4) The parties shall jointly retain the services of a motor vehicle expert or valuer who shall provide two valuation reports. The first valuation report shall determine the value of the vehicle in its present state and condition. The second valuation report shall determine the depreciated value of the vehicle at the date of rejection or a comparable vehicle as at 18th October 2017 with the depreciation of two years. The valuation reports must state the method used in assessing the value of the vehicle. The parties shall jointly bear the costs of the valuations. The valuations must be conducted within 30 days of today's date.
- (5) After the valuations have been completed, the claimants shall formally transfer ownership of the vehicle to the defendant together with all keys in their possession within 14 days receipt of the report. Thereafter, the defendant may sell the vehicle and the sum obtained may be used to set-off the damages awarded to the claimants.
- (6) The counterclaim filed on 22nd January 2018 is not granted.
- (7) If there is no agreement between the parties as to costs, the defendant shall pay prescribed costs to the claimants on the assessed damages.
- (8) The parties may file further submissions for the purpose of the assessment of damages.
- (9) The assessment of damages will take place on further application by either party at any time after 14 days after the valuation is received.

Raulston L. A. Glasgow
High Court Judge

By the Court

Registrar