

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

**GRENADA**

**CLAIM NO. GDAHCV2015/0072**

**BETWEEN:**

**DANIEL DUBISSETTE**

Claimant

and

**JONAS BROWNE & HUBBARD (G'DA) LIMITED**

Defendant

**Before:**

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

High Court Judge

**Appearances:**

Mr. Deloni Edwards for the Claimant

Ms. Sheriba Lewis for the Defendant

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2022: July 29;  
September 15; (Further submissions)  
December 13.  
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**DECISION**

[1] **GLASGOW, J.:** This claim concerns complaints made by the claimant (Mr. Dubisette) with respect to a 2013 white Peugeot 3008 Crossover vehicle registration number PAG465 (the vehicle) which he purchased from the Defendant (Hubbard's). Mr. Dubisette's main complaint is that the vehicle that was sold to him was not a new one since the rear windscreen was damaged and replaced prior to it being sold.

### **Claimant's case**

- [2] On 23<sup>rd</sup> February 2015, Mr. Dubisette filed a claim wherein he pleads that on 13<sup>th</sup> December 2013 he purchased the vehicle from Hubbard's for the purchase price of \$108,000.00. The purchase was financed by a loan he obtained from Republic Bank<sup>1</sup>. Further, Mr. Dubisette asserts that the vehicle was described as brand new and therefore there was an implied condition that it ought to correspond with that description and be of merchantable quality. However, he claims that the vehicle did not fit this description and was not of merchantable quality.
- [3] Mr. Dubisette states that:
- (1) Within three months of purchase, he discovered shattered glass in the trunk of the vehicle and in the wheel well. Also, the rear windscreen leaked when it rained.
  - (2) He discovered that the vehicle was not new but had sustained physical damage. The rear windscreen had also been removed and replaced prior to purchase.
  - (3) There were other complaints with the condition of the vehicle which he reported to Hubbard's.
- [4] Mr. Dubisette pleads that, because of these issues with the vehicle, he was entitled to reject the vehicle and as such he rejected the vehicle on 7<sup>th</sup> July 2014. He caused his attorneys to send a letter dated 21<sup>st</sup> July 2014 to Hubbard's seeking a refund of the purchase price of the vehicle. However, despite his request, Hubbard's refused to refund the purchase monies. As a result, Mr. Dubisette claims that he was forced to continue servicing his loan with respect to the vehicle in the sum of \$1,740.00 per month and that he has incurred bank charges.

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<sup>1</sup> See Bill of Sale dated 19<sup>th</sup> December 2013 between Daniel Dubisette and Republic Bank (Grenada) Limited exhibited at page 52 of the Trial Bundle.

- [5] In the circumstances, Mr. Dubisette seeks the following relief:
- (1) Refund of the sum of \$108,000.00 being the purchase price of the vehicle.
  - (2) Interest thereon at a rate of 9 percent per annum from 14<sup>th</sup> December 2014 to payment.
  - (3) Damages for breach of contract.
  - (4) Costs.

**Defendant's case**

- [6] On 26<sup>th</sup> March 2015, Hubbard's filed a defence and counterclaim in opposition to the claim. Hubbard's pleads that it, among other things, engages in the sale of new motor vehicles to members of the public. Hubbard's explains that the vehicle was purchased under warranty as stated in a letter dated 13<sup>th</sup> December 2013 from the company to Mr. Dubisette. Hubbard's accepts that the warranty is in effect a promise on the part of the company that the vehicle was fit for use and that it would repair any defects to the vehicle. Hubbard's denies that Mr. Dubisette had any right under the warranty or at all to have the vehicle replaced.
- [7] Hubbard's denies Mr. Dubisette's pleading that the vehicle was not of merchantable quality and intends to rely on the report of one Robert Miller dated 9<sup>th</sup> September 2014 with respect to the condition and fitness of the vehicle to prove that the company was not in breach of the terms of the warranty as alleged. Further, Hubbard's claims that it has no knowledge of the other complaints and denies the same.
- [8] The company prays that the claim be dismissed and counterclaims for the following relief:
- (1) Damages for defending civil suit GDAHCV2014/0347 between Republic Bank (Grenada) Limited v Jones Browne and Hubbard (G'da) Ltd (the Republic Bank suit) in the sum of \$2,332.50; and

- (2) Damages for compromising the Republic Bank suit in the sum of \$2,300.00;
- (3) General damages for trespass in respect of the unlawful return of the vehicle from 8<sup>th</sup> July 2015 to present;
- (4) Interest; and
- (5) Costs.

### **Claimant's evidence**

#### **Daniel Dubisette**

- [9] Mr. Dubisette avers that on 13<sup>th</sup> December, 2013 he agreed to purchase the vehicle from Hubbard's for the purchase price of \$108,000.00 using a loan that he obtained from Republic Bank. His wife, Valerie Dubisette, mostly drove the vehicle during weekdays. He drove the vehicle on weekends. About two to three months after purchasing the vehicle, his entire family began to experience problems with it either as driver or passenger.
- [10] The first issue he noticed was a leak to the rear windscreen of the vehicle when it rained. He continues that he noticed that whenever the rain was mixed with other liquids, the mixture left a residue on the inside of the rear windscreen. Further, the family observed first-hand that water was seeping through the glass on one weekend when it began to rain. Those issues arose in stages and were reported to Mr. Dowden, a representative of Hubbard's.
- [11] Thereafter, Mr. Dubisette states that he went to investigate the leak to the rear windscreen and discovered a large volume of shattered glass near the spare tyre. He is of the view that the only plausible explanation is that the vehicle had suffered physical damage and the rear windscreen had been replaced prior to the vehicle being sold. Moreover, Mr. Dubisette complains that he heard a rattling sound coming from the dashboard of the vehicle when it was in motion. Mr. Dubisette says that he was informed by his wife and daughter that they felt "shocks" when they touched the doors of the vehicle after the engine was turned off. Further, Mr.

Dubissette claims that he heard a “squeaking noise” whenever the front door glass is being wound up.

- [12] Mr. Dubissette claims that he sent numerous emails to Hubbard’s highlighting his complaints with respect to the vehicle. When he brought the vehicle to Hubbard’s premises for its initial service, the company informed him that they did not find any evidence of his complaints. At the end of June 2014, he, again, sent the vehicle to Hubbard’s to be serviced. It was then that Hubbard’s informed him that they discovered the leak to the rear windscreen of the vehicle. Mr. Dubissette avers that his wife planned to have the vehicle brought in to have the glass resealed. At that point he states that he no longer wanted the vehicle, but Hubbard’s refused to take possession of it. On 7<sup>th</sup> July 2014, he rejected the vehicle by leaving it at Hubbard’s premises.
- [13] After the vehicle was rejected, a representative of Republic Bank informed him that Hubbard’s parked the vehicle in Republic Bank’s car park. As a result of this action, Republic Bank filed civil proceedings<sup>2</sup> against Hubbard’s. During the currency of those proceedings, Republic Bank and Hubbard’s reached a mediation agreement<sup>3</sup> regarding the removal of the vehicle.
- [14] Mr. Dubissette claims that he is now forced to repay the loan at Republic Bank in the monthly sum of \$1,740.00. With respect to his concern about the leak in the rear windscreen, Mr. Dubissette relies on Mr. Robert Miller’s expert report which confirmed that the windscreen was unsealed and that it was replaced.

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<sup>2</sup> GDAHCV2014/0347 – Republic Bank (Grenada) Limited v Jonas Browne & Hubbard (G’da) Limited

<sup>3</sup> (GDAHCV2014/0347 - Dated 6<sup>th</sup> August, 2014 and filed on 5<sup>th</sup> September, 2014)

Valerie Dubissette

[15] Mrs. Valerie Dubissette, Mr. Dubissette's wife, tendered evidence on his behalf. Mrs. Dubissette states that she was the primary driver of the vehicle as she drove it every day to work and her husband only drove the vehicle on weekends.

[16] Mrs. Dubissette made the following observations with respect to the vehicle:

- (1) When driving and more so when reversing out of her driveway of her home, she observed that the vehicle makes a rattling sound.
- (2) After switching off the engine, she experienced a "shock" when she touched the driver's door.
- (3) Her daughter also complained of a similar experience whenever she touched the passenger's side door.
- (4) In or about May or June 2014, she, her husband and their two daughters observed that water began to leak into the vehicle from the rear windscreen within minutes of light rainfall.

[17] Mrs. Dubissette avers that the issues that she experienced with the vehicle persisted even after it was serviced by Hubbard's and returned to her in May 2014. However, in or about June 2014, she again made arrangements with Hubbard's to service the vehicle. Thereafter, the vehicle was returned to her, but she noticed that the rattling noise and the "shocking" were still present. Mrs. Dubissette states that she did not notice whether the rear windscreen was still leaking. In or about July 2014, Mr. Dubissette informed her that he returned the vehicle to Hubbard's premises.

Astra Dubissette

[18] Astra Dubissette (Astra) is Mr. and Mrs. Dubissette's daughter. Astra tendered the following evidence on Mr. Dubissette's behalf :

- (1) Within two to three months of the purchase of the vehicle she began to experience "shocks" whenever she touched the passenger door immediately after the engine was switched off.

- (2) While in the vehicle she heard the rattling sound when her mother reversed out of the driveway of their home.
- (3) She observed the broken glass in the vehicle and took the pictures of it for her father.
- (4) In or about May 2014, while riding as a passenger in the vehicle along with her parents and sister, she observed that the rear windscreen of the vehicle was leaking after light rainfall.
- (5) In or about July 2014, Mr. Dubissette informed her that he returned the vehicle to Hubbard's.

### **Defendant's evidence**

#### **Allan Bierzynski**

[19] Mr. Allan Bierzynski, Hubbard's Managing Director, tendered evidence in support of the company. Mr. Bierzynski states:

- (1) At the material time, the company was engaged in the sale of new motor vehicles, having been in the motor business since the year 1959.
- (2) On or about 14<sup>th</sup> April 2013, the company received three Peugeot motor vehicles from the manufacturer in the United Kingdom. Upon the vehicles' arrival at the port in St. George's, Grenada, they were examined and the tally sheet noted no damages to the vehicles. Thereafter, the vehicle arrived at the Hubbard's premises and they were inspected, cleaned and placed on display at their Mt. Gay showroom.
- (3) On or about 16<sup>th</sup> November 2013, the vehicle was showcased at a public motor show called "Deals on wheels" which is sponsored by Republic Bank. At that showcase, the vehicle in issue was shown to prospective buyers, including Mr. Dubissette and there were no complaints about the presence of shattered glass in the trunk or the spare wheel well.

- (4) Subsequent to the showcase, Mr. Dubissette and Hubbard's began negotiations towards the sale of the vehicle. Those negotiations concluded with a sale of the vehicle on 13<sup>th</sup> December 2013.
- (5) Once the sale is registered, there is a final pre-delivery inspection which is conducted on the vehicle to ensure that it is in proper condition and all tools and equipment are in place. The vehicle was cleaned prior to its delivery to Mr. Dubissette.
- (6) On or about 8<sup>th</sup> July 2014, the vehicle was left abandoned at Hubbard's motor department at Mt. Gay, St. George without the company's consent where it continues to remain to date.
- (7) Prior to the abandonment of the vehicle on the company's premises, Mr. Bierzynski states that Mr. Dubissette sent emails to the company identifying an issue in relation to a leak he observed. This issue, he says, was repaired in a satisfactory manner under the terms of the warranty and was therefore fit for purpose as required by law.
- (8) On or about 23<sup>rd</sup> July 2014, the company was served with court proceedings in Claim No. GDAHCV2014/0347 and incurred costs in the sum of \$2,332.50 in order to defend the claim and further costs of \$2,300.00 to compromise the claim.
- (9) The company relies on Mr. Robert Miller's evidence. Mr. Miller inspected the vehicle, prepared and filed an expert report dated 8<sup>th</sup> June 2015.

Christopher Dowden

[20] On 31<sup>st</sup> July 2015, Christopher Dowden filed a witness statement in support of Hubbard's defence. Mr. Dowden states that he is Hubbard's Manager, Motor Department, situate at Mt. Gay, Saint George. Mr. Dowden led evidence in relation to the servicing of the vehicle by Hubbard's. The salient points of his evidence are:

- (1) On 22<sup>nd</sup> January 2014, the vehicle was brought to Hubbard's for its first service. The vehicle was serviced and cleaned by the company. Mr.



Dubissette left the premises with the vehicle after it was serviced. Mr. Dowden states that at that time Mr. Dubissette did not mention that he was experiencing issues with the vehicle.

- (2) In or about the month of April 2014, Mr. Dubissette visited the company's premises and showed Mr. Dowden a thin line in the interior of the rear windows where water or liquid may have entered. The company attempted to identify the source of the leak by spraying water on the windscreen, but the leak was not identified. Mr. Dowden states that he informed Mr. Dubissette to fill out a job sheet which is the procedure to make a complaint. However, Mr. Dubissette informed him that he was busy and would return when it was convenient.
- (3) On or about 10<sup>th</sup> May 2014, Mr. Dowden states that he received an email from Mr. Dubissette which showed photographs of plastic debris and small fragments of glass in the spare wheel bay.
- (4) On 12<sup>th</sup> May, 2014, the company serviced the vehicle. During that exercise the company was unable to identify the leak as was claimed by Mr. Dubissette. During the inspection of the vehicle, Mr. Dowden observed debris, glass and plastic in the spare wheel bay. Thereafter, the vehicle was cleaned and returned to Mr. Dubissette.
- (5) Mr. Dowden denies that the rear windscreen was never replaced by the company prior to it being sold. He explains that the glass that is used to make the windscreen is shatter proof and in the event of impact, it would not break into small glass fragments as appeared in the photographs.
- (6) On 27<sup>th</sup> May 2014, Mrs. Dubissette visited the company's showroom to view another vehicle. Mr. Dowden states that he asked Mrs. Dubissette about the condition of the vehicle and was told that there was nothing to report. On 28<sup>th</sup> May 2014, Mr. Dubissette sent an email to Mr. Dowden informing him that water was entering into the vehicle through the rear windscreen. Mr. Dowden avers that he replied to Mr. Dubissette by letter requesting him to bring in the vehicle for a further examination of the source of the leak. However, Mr. Dubissette did not respond to the letter.

- (7) On or about 2<sup>nd</sup> July 2014, Mrs. Dubisette requested that Hubbard's service the vehicle. Mr. Dowden states that after a thorough check they were able to identify a small trickle coming down the side of the rear windscreen. Mrs. Dubisette was informed of the company's findings and was told that in order to repair the vehicle, it would require the removal and resealing of the rear windscreen. Therefore, they requested a further service of vehicle in order to repair it. The vehicle was serviced on 3<sup>rd</sup> July 2014 and returned to Mrs. Dubisette on even date. Mr. Dowden states that the company also gave Mrs. Dubisette a letter addressing the previous complaints raised by Mr. Dubisette in his prior emails to the company.
- (8) Mr. Dowden states that on or about 8<sup>th</sup> July 2014 Mr. Dubisette informed him that he came to drop off his vehicle at the company's motor department. Mr. Dubisette informed him that there was a leak in the glass. The vehicle was left on the company's premises where it remains to the time of filing of his witness statement (31<sup>st</sup> July, 2015).

### **Robert Miller's Expert Report**

- [21] Robert Miller was called as an expert witness in Claim No. GDAHCV2014/0347 to tender expert opinion on the issues experienced by Mr. Dubisette and his family with respect to the vehicle. Both parties to these proceeding rely on the evidence in his expert report dated 9<sup>th</sup> September 2014. Mr. Miller testifies that he inspected and drove the vehicle and made the following observations:

#### Unusual sound from windows

- (1) Mr. Miller states that he noticed the sound coming from the windows which he opines was caused by friction between the tint on the glass and the seal on the door. He states that an application of "carwax" or silicone could fix this complaint. He later applied carwax to that area.

#### Ratting sound

- (2) Mr. Miller states that he did not experience a rattling sound while driving. However, he noted that he heard a minor rattling sound coming from inside the cabin of the vehicle on the steering column/lower dashboard area.

#### Electrical shock

- (3) With respect to this head of complaint of shock, Mr. Miller states that he did not experience this complaint, but made checks to the vehicle's battery, engine and electrical system which in his opinion were in order.

#### Physical Damage

- (4) Mr. Miller avers that after an in-depth inspection of the vehicle, he can confirm no damage to the undercarriage or main body of the vehicle. However, he noticed that the rear windscreen was removed or replaced and there was no evidence of repair or replacement of the tail gate door which houses the rear windscreen.

#### Condition of the vehicle

- (5) Mr. Miller states that he found the vehicle to be "roadworthy" and "in near new condition".

### **Issue**

- [22] The main issue for determination is whether Mr. Dubissette had the right to reject the vehicle on the basis that it was not fit for purpose or of merchantable quality.

### **Claimants' submissions**

- [23] On 29<sup>th</sup> December 2020, counsel for the claimant, Ms. Celene Edwards, filed written submissions. Mr. Dubissette contends that the issues with the vehicle as set out above in the facts of this case constitute a breach of implied warranty of merchantability or a mis-description of the vehicle. Therefore, Mr. Dubissette is of

the view that he was entitled to reject the vehicle and is obliged to receive a refund of his purchase price.

- [24] Ms. Edwards argues that the law with respect of the sale of goods is governed by the common law as stated by Henry J in **Kathleen Noel v Courts Grenada Limited**<sup>4</sup>, where the court stated at paragraph 8 of the judgment that:

“The law governing the sale of goods in Grenada is the Common Law, **Emery Stuart v Jonas Browne and Hubbards (Grenada) Limited** Claim No. GDAHCV1998/0129. At Common Law, the rule was that a warranty of merchantable quality was implied where goods of a specified description, i.e. kind inaccessible to the buyer's examination, were contracted for. In such a case, the presumption was that the buyer relied upon the judgment, knowledge, and information of the seller, and the maxim caveat emptor accordingly did not apply (see Halsbury's Laws of England Volume 41, Para. 695 note 10). 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 [1908-10] All E.R. 113 [sic]**. 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. Defendant admits that there was an implied condition of merchantability but denies that there was a breach.”

- [25] With respect to the test as to what amounts to “merchantable quality”, counsel relies on Lord Denning’s dictum in **Bartlett v Sidney Marcus Ltd**<sup>5</sup>

“...is the article of such a quality and in such a condition that a reasonable man acting reasonably would, after a full examination, accept it under the circumstances of the case in performance of his offer to buy that article.”

- [26] Counsel queries whether Mr. Dubisette would have bought that car as a “new” car for the same price of \$108,000.00 had he known that the windscreen was broken and had been replaced? Ms. Edwards says that if the answer to this question is no, then that would be the end of the matter and Mr. Dubisette would be entitled to

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<sup>4</sup> GDAHCV2004/039

<sup>5</sup> [1965] 2 All ER 753

reject the contract and ask for a refund of his monies. Ms. Edwards observes that Hubbard's did not disclose that the glass had been replaced and that small fragments of the glass were discovered in the vehicle.

- [27] Ms. Edwards recites the common law rule which states that where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description. Counsel refers the court to the text **The Sale of Goods**<sup>6</sup> where the author quoted from the decision of the Privy Council in **Grant v Australian Knitting Mills Limited and others**<sup>7</sup> as follows:

“...that there is a sale by description even though the buyer is buying something displayed before him on the counter: a thing is sold by description, though it is specific, so long as it is sold not merely as the specific thing but as a thing corresponding to a description, e.g., woollen under-garments, a hot-water bottle, a second-hand reaping machine, to select a few obvious illustrations.”

- [28] Further, counsel quotes from the learning in **The Sale of Goods** to the effect that:
- “...one party is aware, or ought reasonably to be aware, that the other party's intentions are not the same as his own, the mistaken party's intentions cannot be judged objectively and the party who is not mistaken cannot hold the other to a contract on the terms intended by him.”

- [29] Therefore, counsel argues that where the seller knew that the vehicle's glass had been replaced and sold the car as a new car, without disclosing that to the buyer, he has misrepresented the description of the vehicle. And the buyer has now discovered the misdescription or misrepresentation, he or she is entitled to reject the contract. Counsel is of the view that no buyer in the circumstances of this case would purchase that vehicle as a new car if they knew that the glass had been broken and replaced. As such counsel concludes that Mr. Dubissette was entitled in law to reject the car, rescind the contract and obtain a refund of his monies with interest thereon.

### **Defendant's submissions**

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<sup>6</sup> P.S. Atiyah, 5<sup>th</sup> Edn. (Pitman)

<sup>7</sup> [1936] AC 85 at page 100

[30] Counsel for Hubbard's, Ms. Sheriba Lewis, agrees that the law with respect to the sale of goods in Grenada is the common law since there is no Sale of Goods Act in Grenada. At common law, counsel explains, a warranty of merchantable quality is implied where there is a sale of goods of specific description. In that case, there is a presumption that the buyer relied upon the judgment, knowledge and information of the seller and the maxim "*caveat emptor*" did not apply<sup>8</sup>. Counsel points out that the United Kingdom's Sale of Goods Act of 1893 sets out the common law position prior to the Act coming into force. That 1893 Act was a codification of the law with respect to the sale of goods.

[31] Counsel Ms. Lewis submits that the court must be guided by the law of contract. The court must determine whether the implied term of being fit for the particular purpose has been breached and whether the implied condition of merchantability at the time of the sale has also been breached.

[32] With respect to the law concerning merchantable quality and fit for purpose, counsel's argument is that the vehicle was sold to Mr. Dubissette as a brand-new vehicle of merchantable quality that was purchased from the manufacturer and fit for the required purpose. In **Grant v Australian Knitting Mills**<sup>9</sup>, Lord Wright stated at pages 99-100 of the judgment that:

"...whatever else merchantable may mean, it does mean 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..."

"In effect, the implied condition of being fit for the particular purpose for which they are required, and the implied condition of being merchantable, produce in cases of this type the same result."

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<sup>8</sup> GDAHCV2004/0039 - Kathleen Noel v Courts (Grenada) Limited

<sup>9</sup> [1936] A.C. 85 at pages 99-100

[33] Counsel also relies on the decision of **Farnworth Finance Facilities Ltd v Attyrde and another**<sup>10</sup>, where Lord Denning stated at page 777 of the judgment that:

“These cases show that it is an implied condition that the machine should correspond with the description and that it should be reasonably fit for the purpose for which it was hired; which means, of course, that it should be roadworthy. In addition, the machine in this case was expressly described as 'new', which adds emphasis to the implied terms. A new motor cycle should at any rate be a workman-like motor cycle which is safe to be used on the roads.”

[34] Counsel posits that once a motor vehicle is in a usable condition, even though it may not be in perfect condition, it is still merchantable<sup>11</sup>. In this case, counsel argues, the vehicle in issue was fit for the purpose for which it is ordinarily used and that there were no defects which made it improper for usage. Notwithstanding Mr. Dubissette's allegations that the vehicle was not brand new or that the rear windscreen glass had been broken and replaced prior to the sale, counsel says, he has failed to provide evidence in support of these allegations. Hubbard's relies on the expert, Robert Miller's evidence wherein he stated “*I found the vehicle to be road worthy and in near new condition*”. Hubbard's case is that having fully examined the vehicle prior to its purchase and subsequent purchase of the same, Mr. Dubissette, accepted that the vehicle was indeed of merchantable quality.

[35] With respect to the warranty for the vehicle, counsel accepts that when the vehicle was sold to Mr. Dubissette it was subject to warranty. The effect of the warranty is that if there is a breach, the remedy that arises would be a claim for damages, but not a right to treat the contract as repudiated<sup>12</sup>. Counsel contends that Mr. Dubissette was limited to the right to have the vehicle repaired under the warranty and having availed himself of the repairs for the minor defects, he cannot now repudiate and reject the motor vehicle<sup>13</sup>. In view of the repairs being conducted satisfactorily, Hubbard's case is that Mr. Dubissette is limited to recovering damages in respect of the same and not a replacement or refund.

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<sup>10</sup> [1970] 2 All ER 774

<sup>11</sup> Bartlett v Sidney Marcus Ltd [1965] 2 All ER 753

<sup>12</sup> Chitty on Contracts, 29<sup>th</sup> Edn. Vol 1. at pages 716 and 722.

<sup>13</sup> International Motors Limited v Ronnie Thomas – BVIHCVAP2002/007

- [36] Further, in respect of its counterclaim for unlawful entry or trespass, Hubbard's claims that the return of the motor vehicle to its premises at Mt. Gay, St. George was unlawful and constituted trespass. Counsel submits that a person trespass upon land "*if he wrongfully sets foot on or rides or drives over it or takes possession of it...or places anything on it or in it*<sup>14</sup>..." Therefore, counsel concludes that Hubbard's is entitled to the special damages which were incurred by it.

## Discussion

### Misdescription of the vehicle

- [37] The facts pleaded by Mr. Dubissette suggest that he is complaining that the vehicle did not fit the description of a new vehicle. In essence, he alleges that the condition of the vehicle was wrongly described as new. In **Grant v Australian Knitting Mills**<sup>15</sup>, Lord Wright stated at page 100 of the judgment that:

"It may also be pointed out that there is a sale by description even though the buyer is buying something displayed before him on the counter: **a thing is sold by description, though it is specific, so long as it is sold not merely as the specific thing but as a thing corresponding to a description**, e.g., woollen under-garments, a hot-water bottle, a second-hand reaping machine, to select a few obvious illustrations." (My emphasis)

- [38] In **Randall v Newson**<sup>16</sup>, the English Court of Appeal had this to say:

The governing principle, therefore, **is that the thing offered and delivered under a contract of purchase and sale must answer the description of it which is contained in words in the contract**, or which would be so contained if the contract were accurately drawn out. And if that be the governing principle, there is no place in it for the suggested limitation. If the article or commodity offered or delivered does not in fact answer the description of it in the contract, it does not do so more or less because the defect in it is patent, or latent, or discoverable. (My emphasis)

- [39] Mr. Dubissette alleges that when he went to investigate the leak from the rear windscreen, he discovered a large volume of shattered glass in or near the spare

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<sup>14</sup> See Halsbury's Laws of England, Vol. 45(2) at paragraphs 505 and 511

<sup>15</sup> [1936] A.C. 85

<sup>16</sup> (1876) 2 Q.B.D. 102 at page 109



wheel bay/trunk of the vehicle. He states that *“the only plausible explanation is the said vehicle was not a new vehicle but a vehicle which had sustained physical damage and the rear windscreen had been removed and replaced prior to the vehicle being sold to me<sup>17</sup>.”* Mr. Dubisette relies on Robert Millers’ evidence to confirm that the windscreen was tampered with, in that it was unsealed and replaced.

[40] Notwithstanding his strenuous contentions to the contrary, Mr. Dubisette has presented no credible evidence to support his allegations that the vehicle was not in new condition when he purchased it in December 2013. The complaint that the vehicle was not new is propelled by the assertion that the windscreen was replaced or repaired prior to it being sold. This complaint is further buttressed by the discovery of broken glass in the trunk and wheel well. I am of the view that the mere fact that he allegedly found shattered glass in the wheel bay of the vehicle does not lead to inevitable conclusion that the vehicle was not new. Two matters are significant in this regard –

(1) There is no evidence of when the glass entered those areas of the vehicle. Neither party disputes the evidence that the vehicle was inspected by both parties prior to and at the time of purchase. Neither party saw any broken glass in the trunk or elsewhere. The glass was discovered after inspection by both parties and after it was in Mr. Dubisette’s custody for some time. To be clear, there is no suggestion that he put the glass there himself or that someone else put it there after it was sold to Mr. Dubisette. Rather, the point is that, there is no evidence to support his contention that the broken glass that he discovered came from a broken windscreen; and

(2) Even if there was broken glass in those areas of the car at the time that it was purchased, there is absolutely no evidence that it came from a broken windscreen from that car or that the windscreen was replaced before

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<sup>17</sup> Paragraphs 10-11 of the Witness Statement of Daniel Dubisette

purchase. In fact, there is no evidence that the shattered glass was of the same make, type or brand of a rear windscreen of his 2013 Peugeot 3008 cross over vehicle.

[41] Further, the fact that Mr. Miller's expert report found that "rear windscreen was removed or replaced" does not assist Mr. Dubisette. Mr. Dubisette complained to Hubbard's in or about June 2014 that there was a leak in the rear windscreen of the vehicle. Therefore, Hubbard's made arrangements in July 2014 to have the leak repaired. Mr. Dubisette in his own evidence states that *"[a]rrangements were subsequently made with my wife, to have the car brought in to have the glass resealed<sup>18</sup>."* Mr. Christopher Dowden at paragraphs 22-23 of his witness statement states that: *"I informed the Claimant's wife of our findings and asked her if we could conduct the repairs on the vehicle to resolve the leak issue complained of."* At paragraph 23 of the witness statement, Mr. Dowden continues that: *"[t]he vehicle was collected from the Claimant's wife as agreed and the repairs were conducted on the motor vehicle"*.

[42] In my view, the above evidence suggests and I accept that the issue of the leak in the rear windscreen was addressed and resolved by Hubbard's sometime in July 2014. In any event, there is no evidence or allegation before the court that the leak from the windscreen persisted after it was addressed by Hubbard's. For the foregoing reasons, I am not satisfied that the evidence of the leak in the rear windscreen or that shattered glass was discovered in the wheel bay is sufficient to prove that the vehicle was not in a new condition when it was sold. I find that on a balance of probabilities the vehicle that was sold by Hubbard's to Mr. Dubisette did fit the description of a new 2013 Peugeot 3008 Crossover.

#### **Merchantable quality/ Fit for purpose**

[43] At the time that the vehicle in issue was sold, there was no legislation in respect of the sale of goods in Grenada. Therefore, the common law principles with respect to

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<sup>18</sup> Paragraph 17 of Witness statement of Daniel Dubisette

the sale of goods are applicable in the circumstances. In **Grant v Australian Knitting Mills Ltd and others**<sup>19</sup> Lord Wright had this to say:

“...whatever else merchantable may mean, it does mean 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.**” (My emphasis)

[44] In this case, both parties agree that there was an implied condition or warranty that the vehicle was of merchantable quality and/ or fit for purpose. Mr. Dubisette pleads that the vehicle did not fit the description and was not of merchantable quality. Hubbard’s in response denies this and argues that the vehicle was of merchantable quality and fit for the required purpose.

[45] I have stated above in this judgment, the various complaints made by Mr. Dubisette about the quality of the vehicle. Having regard to my finding above that there is no evidence that vehicle was not in a new condition or that the rear windscreen was damaged and replaced, there is no need for me to consider whether Hubbard’s breached the implied condition of merchantable quality. In any event, the mere fact that a leak in the rear windscreen of the vehicle was discovered a few months after its sale does not, in my view, render the vehicle unmerchantable. This since it is Hubbard’s unchallenged evidence which I accept that this defect was adequately addressed. Having been adequately addressed, this alleged defect could no longer form the basis for saying that the vehicle was unfit for the purpose for which it was sold, that is to say, use on the roads. Mr. Robert Miller in his report noted that the main issues he observed while driving the vehicle was that there was a “minor” rattling noise originating from the area of the dashboard and a sound when the windows are being wound up, which he successfully addressed. There is no

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<sup>19</sup> [1936] A.C. 85 at at pages 99-100

evidence to disprove the accuracy of this statement. In view of the above, I find that the vehicle that was sold to Mr. Dubisette was of merchantable quality.

- [46] With respect the common law on implied warranty of fitness for purpose, the learning in the decision in **Jones v Bright and others**<sup>20</sup> is apt. In **Jones**, Best CJ stated at page 1172 that:

“But I wish to put the case on a broad principle:—If a man sells an article, he thereby warrants that it is merchantable,—that it is fit for some purpose. This was established in *Lainy v. Fidgeon*. If he sells it for a particular purpose, he thereby warrants it fit for that purpose...”

- [47] Apart from Mr. Dubisette’s assertions that the vehicle was not fit for the purpose for which he bought it, there is no evidence that the vehicle was bought for a specific or particular purpose other than to be used as a motor vehicle on the road. Counsel for Mr. Dubisette, in her further submissions relies on the decision of the Court of Appeal in **International Motors Limited v Ronnie Thomas**<sup>21</sup> to support the contention that Mr. Dubisette had a right to repudiate the contract. However, this case can be distinguished from **Ronnie Thomas**.

- [48] In **Ronnie Thomas**, Saunders JA agreed with the lower court’s finding.. His Lordship stated at a paragraph 12 of the judgment that “*the Judge clearly found that Thomas had communicated to IM the particular purpose for which he required the vehicle. Thomas needed a vehicle with power, one that could cope properly with hills. He complained that this vehicle was deficient in the former and it was accepted that the agreed and serious problems exhibited by the vehicle were associated with the climbing of hills.*” In **Ronnie Thomas**, it is pellucid that Mr. Thomas clearly communicated to the dealer the particular purpose for which he required the vehicle. He wanted a vehicle with power that could adequately manage hills. In this case, there is no evidence that the vehicle was bought for a particular purpose other than for ordinary use on the nation’s roads. The complaints made by Mr. Dubisette when

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<sup>20</sup> (1829) 130 ER 1167 or (1829) 5 Bing 533

<sup>21</sup> BVI Civil Appeal No. 7 of 2002

considered against all the evidence emerging in this case, particularly that of the expert, Robert Miller, fail to demonstrate that the vehicle was unfit for ordinary use as a motor vehicle. Therefore, I am of the view that Mr. Dubissette did not have a right to repudiate the contract and his action in leaving the vehicle at Hubbard's premises without the company's consent amounts to trespass. I will now consider the counterclaim for trespass.

### **Counterclaim for trespass and special damages**

[49] Regarding the law on damages for trespass, Thomas J (Ag.) in **Walter Heitz v Rosemary Bunche et al**<sup>22</sup>, had this to say:

At paragraph 24:

"In Elements of Land Law the fundamental nature of trespass is stated thus:

'The roots of trespass to realty lie in the medieval action of trespass *quare clausum fregit*. The inviolability of land from the physical incursion of strangers is a principle deeply grounded in the common law, as fundamental to the concept of property as it is to basic notions of individual freedoms and personal privacy. Laws relating to trespass have been described as an important feature of any government dedicated to the rule of law. The common law, therefore, it is virtually axiomatic that any entry upon land unsupported by consent or other authorization or justification is a trespass. The right to exclude unwanted strangers has been described as one of the essential sticks in the bundle of property rights and it is the fundamental right of the owner of land ... to object to trespass. It is in this area that property and privacy concerns most obviously coalesce and the common law tradition has long endorsed the right of the citizen to the control of and enjoyment of his own property, including the right to determine who shall and who shall not be permitted to invade it.'

And at paragraph 25:

"As noted before, trespass to land involves entry upon land unsupported by consent or other authorization. In this context a claimant is entitled to nominal damages for trespass even if no loss or damage is caused. "

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<sup>22</sup> DOMHCV2013/0297 at paras. 24-25

[50] As I have indicated above, Mr, Dubissette was not entitled in law to enter Hubbard's premises and to leave the vehicle there without its permission. Hubbard's is entitled to claim for trespass on its premises. However, the company has not presented any pleadings or evidence that it suffered any actual, direct or consequential loss or damages flowing from the unlawful trespass besides the sums claimed in respect of the Republic Bank claim which I will address below. Notwithstanding, Ms. Lewis argues that Hubbard's may be awarded nominal damages, where it has not shown any actual loss. I agree with Ms. Lewis' submission on this point. As stated above in **Walter Heitz**, a claimant is entitled to nominal damages where trespass is shown, even if no loss or damages is suffered. At trial, both counsel indicated to the court that the vehicle in issue was destroyed by fire at Hubbard's premises. Therefore, there is no continuation of the trespass. A nominal award for damages for trespass will be granted. Accordingly, Hubbard's is awarded the sum of \$2,000.00 in nominal damages for trespass.

#### **Sums claimed for compromising the Republic Bank claim**

[51] Hubbard's claims the sum of \$4,632.50 for defending and compromising a civil suit between **Republic Bank (Grenada) Limited v Jonas Browne and Hubbard (G'da) Ltd**<sup>23</sup>. However, the court notes that these sums claimed were incurred in relation to the settlement of a previous claim involving Republic Bank and Hubbard's. The evidence reveals that Republic Bank brought a claim against Hubbard's for unlawfully trespassing on its property by leaving the vehicle at the car park of the bank. This loss cannot be recovered as it involved a separate claim for trespass, where the action for trespass flowed from Hubbard's unlawful occupation of Republic Bank's premises. As was rightly argued by Republic Bank, in that claim and as the outcome of that case has in some way indicated, there was simply no basis or right in law for Hubbard's to enter the bank's premises without its consent and leave the vehicle there. More relevant to this case is the fact that Hubbard's has presented this court with no legal authority for saying that (and indeed, I say that

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<sup>23</sup> GDAHCV2014/0347

there is none) Mr. Dubissette's actions obligated or authorised Hubbard's to commit illegal entry upon Republic Bank's property. Accordingly, I refuse the claim for special damages in the total sum of \$4,632.50.

### **Conclusion**

[52] For all these reasons, I hereby order as follows:

- (1) The claimant's claim filed on 23<sup>rd</sup> February, 2015 is dismissed.
- (2) The defendant's counterclaim is granted in part as follows:
  - (a) The claimant shall pay to the defendant nominal damages for trespass in the sum of \$2,000.00 together with interest at a rate of 6% per annum from the date of judgment until date of payment.
  - (b) The claimant shall pay costs to the defendant in the sum of \$1,000.00

**Raulston L.A. Glasgow**  
High Court Judge

**By the Court**

**Registrar**