

GRENADA

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

CLAIM NO. GDAHCV2004/039

BETWEEN:

KATHLEEN NOEL

Applicant

AND

COURTS (GRENADA) LIMITED

Respondent

Appearances:

Ms. Sabrita Khan for the Claimant
Ms. Jo Francis for the Defendant

2010: June 8

JUDGMENT

- [1] **HENRY, J.:** In August 2001, Claimant purchased an Admiral washing machine from the defendant for the sum \$2,570.50. It was a cash purchase. The machine was subject to a 3 year extended warranty. According to claimant, the machine gave trouble from the start: within 3 months of the purchase, the timer on the machine became defective; within 1 year the motor went bad and had to be replaced and within 2 years the timer and transmission also needed to be replaced. In July 2003, while the defendant was sourcing replacement parts abroad, defendant lent the claimant another washing machine. It was not new, but a second hand machine. In June 2004, defendant informed claimant that they had obtained the needed parts and were coming to fix her machine and retrieve the one loaned to her. At that point the warranty was due to expire in 2 months. Claimant, through her Attorney, requested an extension of the warranty or replacement of the machine. Her Attorney wrote to defendant in these terms:

"Our client is prepared to have you repair the machine on the condition that the warranty is extended at least for another year, failing which she insists that the machine be replaced as there is evidence that it is defective."

[2] On 23rd July 2004, defendant responded in the following terms:

"What you are requesting for your client I do not have a problem with, and I will revisit this request after we have repaired her washing machine. We can only allow this situation to continue until August 14 after which we will collect our loan machine whether we repair her own unit or not.

If your client grants us access to repair then on completion of the repair we will then remove our loan machine which Mrs. Noel has been using for the last eleven months. We may at this point consider the extension of the product warranty."

[3] On August 3, 2004 claimant filed the Claim Form in this action seeking damages for breach of an implied condition for sale of merchantable quality goods, interest and cost.

[4] On 2nd February, 2005 defendant filed its Defence and Counterclaim. However, prior thereto on 22nd December, 2004, defendant wrote to claimant revoking its consent to claimant's possession of the washer lent to her pending the repairs to the washer she purchased. This course, the letter stated, was necessary because the claimant had refused to allow defendant access to the washer she purchased for the purpose of effecting the necessary repairs. Defendant demanded that she make the washer lent to her available for collection within 7 days.

[5] Claimant, through her Attorney responded by letter dated 5th January, 2005 in which she denied that her client had denied defendant access to the machine as alleged; re-affirmed the position as set out in her claim; expressed that the 7 days notice expiring on the 29th December during which time the claimant would have had no chance to take legal advice was manifestly unjust and asked defendant to reconsider the matter. The defence was filed less than a month later with no further correspondence between them.

[6] In its defence defendant admitted that it was an implied condition of the contract of sale that the machine would be of merchantable quality, but denied that there was any other implied condition as alleged. Defendant further denied that it acted in breach of the contract and stated that even if defendant breached the contract the claimant has suffered no loss or damage, and if she did, it was due to her own fault. Defendant also denied liability under certain sections of the UK Sale of Goods Act 1893, which Act it asserts is applicable. Defendant also counterclaimed for an order for the return of the machine or recovery of its value and damages for its detention. Alternatively, damages for conversion.

[7] Issues for determination are:

1. Is the defendant in breach of the implied warranty of merchantable quality?
2. Was there also attached to the contract an implied condition as to fitness for a purpose, and if so, has it been breached?
3. Is the defendant entitled to damages on the counterclaim?

The Warranty of Merchantable Quality

[8] 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** [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. Defendant admits that there was an implied condition of merchantability but denies that there was a breach.

- [9] Defendant called only one witness – Leon Richards, Service Manager of defendant. At trial he accepted that the motor on the machine on examination by his repairmen was found to be defective and had to be replaced. His evidence on this point differed from the claimant only in terms of when the complaint was made. His evidence is that the records of defendant reveal that the complaint was made in October of 2001. Claimant purchased in August 2001. So he is saying that defendant's records reveal that within 2 months of the sale, the motor on the machine was found by defendant to be so defective as to require replacement. He also conceded that the timer and transmission also needed to be replaced.
- [10] Mr. Richard's evidence in regard to the motor is that if the motor is not working, the machine is not going to work. His further evidence is that the transmission is what causes the clothing to be washed. It is responsible for the movement within the machine. He agreed that if the washer has no transmission it would not function. The timer he states is responsible for the duration of the wash and spin cycles. He also agreed that if the timer is not working the machine will be unable to work. Mr. Richards refused to say whether these problems experienced by the claimant were major or minor. But preferred to state that if the problem resulted in the machine not working it should be looked at and repaired, which is what he says defendant did. In the final analysis, his evidence in regard to the washer purchased by the claimant, a machine with which he stated he was familiar, is that all things being equal, if properly used, it would be a year or more before he would have expected it to have problems.
- [11] The assertion by defendant is that claimant has failed to prove that the machine was not of merchantable quality and that in fact claimant presented no expert evidence of the condition of the machine.
- [12] Claimant is required to prove her case on a balance of probability. The evidence presented of the nature of the defects found by the defendant's own repairmen and the evidence of the importance of the defective parts to the proper functioning of the machine strongly support the claimant's case. No doubt the case depends on inferences to be drawn from the evidence. The reasonable inference from the evidence, including the short time after purchase that the defects appeared, and in the

absence of any other explanation is that the machine was not of merchantable quality and expert evidence was not necessary.

- [13] In the Australian case of **Grant v Australian Knitting Mills Ltd. and Others** [1936] A.C. 85 the Privy Council examined the meaning of "merchantable". The action was brought under a provision of the South Australia Sale of Goods Act which is identical to section 14 of the UK Sale of Goods Act 1893, upon which the defendant rest their defence. In any event there is no difference between the meaning of the word "merchantable" as use at common law and in the UK1893 Act. Lord Wright writing for the court stated:

"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."

The case involved the purchase by the plaintiff of under garments which when worn next to the skin produced dermatitis in the plaintiff. Lord Wright further stated:

"It may be that after sufficient washing that defect would have disappeared; but the statute requires the goods to be merchantable in the state in which they were sold and delivered; in this connection a defect which could easily be cured is as serious as a defect that would not yield to treatment."

- [14] In this case before the court, it may be that after these many repairs to various important parts no further defects may appear, but the reasonable inference to be drawn from the evidence, especially the timing of the reported defects, is that the machine was not merchantable when it was sold and the defendant is therefore in breach of the implied warranty of merchantable quality in respect of the sale. The defences raised under various sections of the UK Sale of Goods Act 1893 are not applicable.
- [15] Defendant asserts that even if defendant is in breach, the claimant has suffered no loss or damage since defendant repaired the washer free of cost and later when subsequent faults were diagnosed defendant lent the claimant a washer of a similar value while awaiting parts for installation. Furthermore, if the claimant did sustain

damages it is due to her own fault, since she has refused the defendant's workmen access to have the said washer repaired.

[16] Claimant at the time of the sale was entitled to a machine that was of merchantable quality - not one with defects. From the defendant's own evidence, the washer with the defective motor was of no use to the claimant. It could not work. The cost of the washer was \$2,570.50. The defendant shall pay to the claimant the said sum of \$2,570.50 and claimant shall deliver up the said machine to the defendant. The evidence is that defendant, as part of its business, sells second hand washers. Defendant will then be in a position to repair and re-sell same.

[17] There is no need to consider the question whether there was also a breach of the warranty of fitness for a particular purpose.

The Counterclaim

[18] Defendant counterclaims for the return of the washer lent to the claimant pending repairs or its value. Claimant was notified that defendant was demanding its return. This was after the commencement of this action. The claimant in her evidence admitted that she did not make the machine available to defendant after the letter to her of 22nd December, 2004. She stated that the reason she didn't is because she had instructed her lawyer who was in consultation with defendant. Undoubtedly, the defendant is entitled to the return of the said machine and the Court so orders. Under the circumstances of the case, no award of damages will be made in regard to the detention.

[19] Accordingly, judgment is granted as follows:

1. Defendant to pay to the claimant the sum of \$2,570.50.
2. Claimant to immediately make the both machines in her possession available for collection by the defendant.
3. Each party to bear their own cost.


Clare Henry
HIGH COURT JUDGE