

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT IN THE HIGH COURT OF JUSTICE (Civil)

CLAIM NO. SLUHCV 2000/0523

BETWEEN

MARCELLINUS VERNON JAMES

Claimant

AND

RELIABLE MOTORS LIMITED

Defendant

Appearances:

Ms. P. Nelson for Claimant
Mr. A. St. Clair for Defendant

2004: February 17
July 15

JUDGEMENT

Introduction

[1] EDWARDS J: Mr. Marcellinus James is a taxi-driver. He obtained a loan from a Bank to purchase a bus in 1998.

- [2] He bought a used reconditioned 1990 Nissan Diesel Engine bus for \$31,700.00 from the Defendant Reliable Motors Limited on the 7th November 1998.
- [3] Reliable Motors Limited (*the Company*) is a Registered Company. It sells imported used vehicles at its business place at Sans Souci in Castries. It promotes its sales by publicizing that it offers reliable and high quality motor vehicles at affordable prices.
- [4] From the 7th November 1998 to the 13th April 1999 the bus malfunctioned . Consequently, Mr. James returned the bus to the Company for repairs.
- [5] The Company failed to repair the bus between the 13th April 1999 and the 27th March 2000.
- [6] By a letter to the Company dated 27th March 2000, Mr. James rejected the bus, demanded a refund of the purchase price and compensation for loss of use.
- [7] The Company failed to respond. Mr. James subsequently brought his action on the 30th May 2000, for breach of the Oral Contract made on the 7th November 1998.
- [8] Mr. James is seeking to recover the purchase price, the loss of value of Insurance for 1 year, the loss of income for the bus, and the interest paid to the bank on the loan used to purchase the bus.
- [9] By its Defence filed on the 10th July 2000, the Company has denied breaching the Contract.
- [10] The Company pleaded that the bus had been repaired, and was ready to be collected by Mr. James upon payment of the costs of repairs. The bus has remained in the possession of the Company.

The Issues

- [11] The issues raised by the pleadings, law, evidence and submissions of Counsel are:
- (i) Whether or not there was an implied condition that the bus should be reasonably fit to be operated as a taxi?
 - (ii) Whether or not there was an implied condition that the bus should be of merchantable quality?
 - (iii) Whether or not the Company transferred the general property in the bus to Mr. James under the contract for sale of the bus on the 7th November 1998?
 - (iv) Whether or not the defects in the bus are latent defects covered by Statutory Warranty, or the Warranty Agreement between the parties, or the merchantable quality “implied condition?”
 - (v) What are the remedies or damages available to Mr. James?

- [12] As a matter of convenience, I will deal with the first three issues in my deliberations on the applicable statutory provisions, the parties' intention, and the terms of the Contract.

Parties' Intention and Terms of the Contract

- [13] I am dealing here with a used bus which was identified and agreed upon at the time it was sold to Mr. James. The Contract was therefore for the sale of a specific or ascertained thing.

- [14] Article 288 of the Commercial Code Chapter 244 states:-

- “(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.*
- (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.”*

- [15] To discover what Mr. James and the Company intended, I am guided by Article 289 of the Commercial Code which provides:-

“Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:-

RULE 1 – Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

RULE 2 – Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done, and the buyer has notice thereof.”

Implied Conditions

- [16] The circumstances of the case are disclosed in the testimony of Mr. James, Mr. Goddard Darcheville who is the Managing Director of the Company, the former Manager of the Company Mr. Bain Nathaniel, and documents exhibited by the parties.
- [17] Mr. James testified that the purpose for which he bought the bus was for his trade in the transportation of passengers for a fee. However, there is no evidence that Mr. Darcheville or Mr. Nathaniel knew Mr. James as a taxi driver prior to the transaction relating to the bus. Neither is there any evidence that Mr. James told them or any other agent of the Company, that he was purchasing the bus for that purpose.
- [18] The Nissan Largo bus is a 7 seater bus with a 4 wheel drive. Despite Mr. Nathaniel's testimony that it was in great demand by many buyers at the time, there is no evidence before me that it was mostly used as a taxi, or only used as a taxi.

[19] In the circumstances therefore, I cannot assume on a balance of probability that the agents of the Company knew that Mr. James was buying the Nissan Largo Bus for taxi purposes.

[20] Article 285 of the Commercial Code states that *"there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except. . .*

(1) *Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.*

(2) *Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.*

(3) *An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.*

(4) *An express warranty or condition does not negative a warranty or condition implied by this Title [Sale of Goods Provisions] unless inconsistent therewith."*

[21] Applying Article 285 (1) to the evidence, I find that there was no implied condition that the bus should be reasonable fit to be used as a taxi.

[22] I also find pursuant to Article 285 (2) that there was an implied condition that the bus should be of merchantable quality.

Property Passing

- [23] The documentary evidence discloses that the used Nissan Largo Bus was imported by the Company. It arrived in St. Lucia prior to the 26th October 1998. The valuation and condition report for this vehicle was done on the 26th October 1998 by Mr. Henderson Shores of Shorey's Garage. The motor vehicles mechanical and electrical inspection was carried out on the 30th October 1998.
- [24] It was cleared from Customs by the Company at about 3:00 p.m. on the 7th November 1998. Mr. James purchased the bus about 4:00 p.m. that same evening.
- [25] Both Mr. Darcheville and Mr. Nathaniel testified that Mr. James had been to the Company's business place about this bus once or twice prior to the 7th November 2004.
- [26] The documentary evidence shows that a Barnards' Insurance Cover Note dated 5th November 1998 was issued to Mr. James for the said bus on the 5th November 1998, before he took delivery of it on the 7th November 1998.
- [27] The Bus was insured by United Insurance Company Limited, Barnards Insurance and a Certificate of Insurance Policy No. S 0097003 PCAS was issued. The commencement of the Insurance was 6th November 1998. It was comprehensively insured for a value of \$32,000.00 upon a premium of \$2,660.00 being paid. The Policy was assigned to the National Commercial Bank.
- [28] Mr. James prepared an application for registration of the said Nissan Largo bus, with full details of the description of this bus, on the 6th November 1998. He paid the registration fee on the 9th November 1998.
- [28] In light of this evidence it seems clear to me that Mr. James had made up his mind to buy the said Nissan Largo bus before the bus was cleared from Customs, and before he had the opportunity to examine it.

- [30] The relevant documents mentioned do not indicate whether the bus had a Gas Engine or Diesel Engine.
- [31] Mr. James testified that he thought that he was buying a Gas Engine bus because the price quoted to him was for such and he accepted the purchase price and the bus on that representation. That he discovered it was a Diesel Engine bus only after he had received a Gas Voucher from the Company on the 8th November 1998.
- [32] Mr. James denied under cross examination that he had chosen the bus irrespective of it being a Gasoline or Diesel Bus.
- [33] Mr. Nathaniel's testimony was that the Company had no Gas Engine buses in stock. That Mr. James was aware at the time of purchase that he was purchasing a Nissan Largo Diesel bus.
- [34] I find on a balance of probability from the documents and the evidence on a whole that Mr. James chose the bus without any preference as to whether it had a Gas or Diesel Engine, and that he did so in the absence of any representations made by the agents of the Company.
- [35] I do not agree with learned Counsel Ms. Nelson's submission that Mr. James did not accept the bus, or that property in the bus did not pass from the Company to Mr. James.
- [36] I accept the submission of learned Counsel Mr. St. Clair, that the Insurance and Registration documents demonstrate that the parties intended that the property in the bus should pass at the time the bus was delivered to Mr. James on the 7th November 1998. I now move on to consider the fourth issue relating to the nature of the defects in the bus.

The Defects

- [37] It is not disputed that on the 9th November the bus was returned to the Company because of problems Mr. James experienced in starting it. Neither is it in dispute that the starter

was either repaired or changed, and the battery and glow plugs were also changed by the Company.

[38] Mr. James testified that from the 15th November 1998 the bus was taken to a garage at the Morne, presumably by him, because he was having the same starting problems. The bus he said remained there for 3 weeks before he collected it. He subsequently took it back to the Company 2 days after collecting it, because of the starting problem. The Company kept it until March 1999. Mr. James never pleaded these facts, neither did he disclose this to the Company or his lawyers prior to the commencement of this action, neither did he mention this in his witness statement. Mr. Nathaniel and Mr. Darcheville have in effect denied Mr. James' version of the facts.

[39] The parties are agreed that on the 13th April 1999, Mr. James returned the bus to the Company because of a problem with the transmission.

[40] Mr. Nathaniel has asserted that around the 15th April 1999 after the warranty had expired, the Company sent the bus to a man called Simon at the Morne for a second opinion. That the bus spent at most 2 days at Simon's, and then it came back to the Company's premises. The reason advanced for sending it to Simon was that the Company's mechanics could find no problem with the bus.

[41] It appears to me from the evidence that Mr. James on several occasions was having problems with the bus shortly after the 9th November 1998, and did in fact communicate this to Mr. Nathaniel prior to the 13th April 1999. I do not accept Mr. Nathaniel's evidence that Mr. James' problems with the bus related wholly to his incompetence in starting a Diesel Engine vehicle.

[42] Mr. Nathaniel testified that there were 2 mechanics working at the time with Reliable Motors. Most of the time Mr. James would call him and he would send a mechanic to pick up the bus at Mr. James' home. That the mechanics went to Mr. James' home 2 to 3 time or so and found nothing wrong with the bus.

- [43] I therefore accept Mr. James' testimony on the disputed facts. I find as a fact that the bus continued to malfunction after the 9th November 1998. I find that Mr. James took it to another mechanic at the Morne who kept it for 3 weeks. I find that in or about December 1998, Mr. James took the bus back to Reliable Motors and they kept it up until March 1999. I accept Mr. James' evidence that a few days after the Company returned the bus to him, it had transmission problems and he returned it to the Company.
- [44] By letter dated 29th June 1999, Mr. James informed National Commercial Bank of the problems he was having with the bus. He wrote: *"From November of last year the Company has changed battery, glow plugs, starter, engine and the gear box is bad. At the time of these problems I spoke to my loans officer, Mr. Raveneau who asked me to bring in a report from a qualified garage stating the problem. I have since given the report to him. . I would appreciate your assistance in looking into the matter as it does not make sense to be paying a loan for a vehicle which is parked in a garage from the time I paid for it and it is not making any money."*
- [45] Despite the existence of a report from a qualified garage concerning the defects in the bus, no technical evidence exists in this case explaining what was wrong with the bus.
- [46] Consequently, I have focused on the letter dated 1st December 1999 written by Mr. Bain Nathaniel, Manager of Reliable Motors Limited which states – *"Our company records indicate that vehicle number HC904, a Nissan Largo belonging to Mr. Marcellinus James was brought in for repairs to the transmission on the 13th April 1999. Due to the highly technical nature of the repairs the vehicle is still at our garage, where it can be inspected. Repairs are expected to be completed before a deadline of January 31st 2000" (My emphasis).*
- [47] A bizarre development occurred at the trial, concerning Mr. Nathaniel's letter. Mr. Nathaniel testified that the letter was a lie. He said that he lied in the letter that the bus had a major problem because Mr. James who was drunk and hyperventilating, threatened

his life. That he agreed to write the letter to help out Mr. James for the Bank to give him leeway.

[48] Mr. James was never cross examined concerning this letter and why it was written. I therefore find that this letter reflects the true position concerning the problem with the Nissan bus.

[49] Mr. James' evidence was that he drove the bus on one occasion to the Hilton in Soufriere, then on another occasion he drove it from the Vigie Airport to the North, then to his home at Babonneau, and then back to Reliable Motors. He approximated this distance as 81 miles. He also said he used the bus to carry passengers probably 4 times in all.

[50] Articles 1432 to 1438 of the Civil Code of St. Lucia Cap. 242 deals with Warranty Against Latent Defects.

[51] Article 1432 states that "*The seller is bound to warrant the buyer against such latent defects in the thing sold, and its accessories, as render it unfit for the use for which it was intended, or so diminish its usefulness that the buyer would not have bought it or would not have given so large a price, if he had known them.*"

[52] Article 1433 exonerates the seller from apparent defects "with which the buyer might have made himself acquainted." Article 1434 states that the seller is liable for latent defects not known to him unless the agreement otherwise stipulated.

[53] Mr. Darcheville's evidence was that Mr. James had taken a Rasta man mechanic with him on the 7th November 1998 to inspect the motor vehicles the Company had. That he Mr. Darcheville and the Company's mechanic assisted Mr. James in choosing the bus and starting it. That Mr. James told him that the Rasta man was his friend who knows about mechanics and engines. That this Rasta man was present when the Nissan Largo bus was started. There is therefore no evidence that Mr. James or the Rasta man

mechanically examined or test drove the bus. Mr. James has denied that he had a Rasta man with him on the 7th November 1998, or that the bus was checked and started.

[54] I accept Mr. James' version of the facts. Based on this evidence, I have concluded that the proviso to Article 285 (2) of the Commercial Code is inoperative. (*See paragraph 20 of this Judgment*).

[55] There is also the Warranty Agreement signed by the parties on the 7th November 1998. This warranty guaranteed the engine only for 3 months or 3000 kilometers, covering "*the normal wear and tear on the bus's engine and transmission.*" Learned Counsel Mr. St. Clair argued that the existence of this express warranty suggests that the Court should not apply any implied warranty under the Statute. He argued further that the Company would not be liable for the transmission problem which the bus developed after the 3 months warranty period had expired. Ms. Nelson countered that this warranty agreement was not a contract creating binding obligations between the parties which can oust the Statutory obligations to Mr. James."

[56] It appears to me having considered the submissions of both Counsel, that this warranty is not in conflict with the implied condition that I found to exist, that the bus should be of merchantable quality, pursuant to Article 285 (4) of the Commercial Code. (*See paragraph 20 of this Judgment*). I do not agree with Counsel Mr. St. Clair's submissions. The warranty is an addition to Mr. James' Statutory rights and not a subtraction from them: (Roger and other –vs- Parish (Scarborough) Limited and Others [1987] 2 ALLER 233.

[57] In the absence of a Statutory definition of the meaning of "*Merchantable quality*" in the Commercial Code or Civil Code, I look to the current law of England as Article 917A of the Civil Code requires me to do.

[58] Both Counsel relied on the case. Business Applications Specialist Limited –vs- Nationwide Credit Corporation Limited which considered the definition of "*Merchantable quality*" in Section 14 (6) of the Sales of Goods Act 1979 U.K. (Court of

Appeal (Civil Division) [1988] RTR 332 [1988] BTLC 461, [1988] CCLR 135 18th April 1988).

- [59] Section 14 (6) of the UK Act provides that “*Goods of any kind are of merchantable quality within the meaning of subsection (2) above* [which is comparable to Article 285 (2) of the Commercial Code St. Lucia] *if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances.*”
- [60] In the absence of any Statutory definition of the meaning of “Latent defects” in Article 1432 and 1434 of the Civil Code, learned Counsel Ms. Nelson relied on the definition in *Blacks’ Law Dictionary 5th Edition*. There, “Latent Defect” is defined as a hidden or concealed defect. One which could not be discovered by reasonable and customary inspection. One not apparent on face of goods, product, document etc.
- [61] Applying the U.K. definition of “*Merchantable quality*” to the description of and problems with the Nissan Largo bus, its performance, the inability to drive it easily and comfortably from one place to another, or use it for any purpose, I do not agree with learned Counsel Mr. St. Clair’s submissions that in effect since it was road- worthy and fit to be driven in safety, it passed the test of “*Merchantable quality*”.
- [62] I endorse the submissions of Counsel Ms. Nelson and find that the bus was not of merchantable quality when it was sold to Mr. James by the Company.
- [63] Ms. Nelson also focused on the evidence for the Company’s case, particularly the certification documents showing that the bus was in good condition. She emphasized also the evidence of Mr. Darcheville that reconditioned vehicles were of a higher standard than used vehicles. Mr. Darcheville testified that reconditioning only involves removing scratches on the motor vehicle by spray, changing the battery, oil, oil filter, fuel filter air

filter and general cleaning of the motor vehicle. The Warranty Agreement stated that reconditioning was at an additional cost to the customer.

[64] Relying on this evidence, Ms. Nelson argued that Article 1433 of the Civil Code would not apply to this case since the defects were not apparent and Mr. James could not have acquainted himself with them at the time of purchase.

[65] I accept these submissions. I find it probable that the starting problems, engine, gear box, and “transmission problems of a highly technical nature,” were latent defects which diminished the usefulness of the bus, I am of the view that Mr. James would not have bought that bus, or paid \$31,700.00 if he had known of these latent defects. In these circumstances applying Article 1432 of the Civil Code the Company is liable for such latent defects.

[66] I now move on to finally consider the 5th issue relating to remedies and damages.

Remedy and Damages

[67] Article 1435 of the Civil Code states –

“When several principal things are sold together as a whole so that the buyer would not have bought one of them without the other, the latent defect in one entitles him to repudiate the purchase of the whole.”

[68] Article 1436 gives Mr. James the option to return the bus and recover the price according to an estimation of its value.

[69] Article 1437 entitles Mr. James to recover from the Company all damages he suffered as a consequence of the latent defects along with the purchase price where there is evidence that the Company knew of the defect.

[70] Under Article 1438, in the absence of evidence that the agents of the Company knew of the latent defects, or where the Company is not legally presumed to have known them, Mr.

James is entitled to recover the purchase price and be reimbursed the expenses caused by the sale.

[71] The evidence shows that Mr. James had rejected the bus as I now find he was entitled to do, on the 27th March 2000, through a letter to the Company written by his lawyer.

[72] The evidence does not reveal that on the 7th November 1998 the agents of the Company knew that the Nissan Largo bus had these latent defects. In the circumstances therefore I hold that Article 1438 of the Civil Code will be the basis for redress.

[73] The evidence of Mr. James proceeded on the basis that he had lost income. Mr. James proved that \$2,660.00 was paid to insure the bus. Though he pleaded that interest of \$5,910.04 was paid on the loan to the bank, there was no evidence adduced to prove this. He pleaded that the loss of income was \$5,000.00 although his testimony disclosed a higher figure. The purchase price was \$31,700.00.

[74] In the circumstances I enter Judgment for the Claimant in the sum of \$39,360.00 and costs and interest.

[75] The prescribed costs pursuant to PART 65.5 Appendix B is \$11,340.00.

[76] The Interest payable on the Judgment Debt of \$50,700.00 is 6% per annum from the date of Judgment until the Judgment Debt is fully satisfied.

.....
OLA MAE EDWARDS
High Court Judge

Dated this 14th day of July, 2004