ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 96 OF 2000

BETWEEN:

LENFORD POMPEY

Claimant

and

VALLEE AUTO PARTS & SALES LIMITED

Defendant

Appearances:

Stephen Huggins for the Plaintiff
Agnes Cato for the Defendant

2001: September 20
2002: January 14

JUDGMENT

[1] **MITCHELL, J**: This is a sale of goods case. The question was the entitlement of the purchaser of a second hand passenger van to demand his money back on the ground that the vehicle sold him was not fit for the purpose for which it was sold. It turns on its facts.

[2] The action commenced with the issue of a specially endorsed writ out of the Registry of the Supreme Court on 28 February 2000. By the statement of claim endorsed on it, the Claimant pleaded that on 15 January 1999, having made it known to the Defendant that he required a motor vehicle for the purpose of transporting passengers for profit, he purchased from the Defendant a Toyota Hiace motor van; that it was an implied condition of the contract for sale that the van was fit for the purpose of a profit making passenger vehicle; that the van

began overheating on the first day of purchase; that he returned the vehicle for repairs; that he returned the vehicle for repairs on several occasions; that he last returned the van for repairs on 28 June 1999; that up to 6 August when the Claimant communicated with the Defendant through his lawyers the vehicle had not been repaired; that the Defendant failed effectively to repair the vehicle and has refused to refund the purchase price; and that the Claimant has suffered loss and damage. In the alternative, the Claimant claimed that he suffered loss and damage as a result of the Defendant's breach of express warranty. The Claimant claimed rescission of the contract; repayment of the purchase price of $53,921.28 plus 17.5% interest per annum, the damages he is forced to pay to the bank from which he borrowed the purchase price, and which he pleads the Defendant knew or ought to have known was the means by which the Claimant raised the purchase price; or alternatively, damages for breach of contract.

[3] By its defence filed on 7 April 2000, the Defendant denied each and every allegation in the statement of claim save that on 15 January the Defendant sold the Claimant a second hand vehicle which the Claimant stated was for the purpose of transporting passengers; that the Defendant gave the Claimant a 3-month warranty on the engine and the transmission; that about 4 days later the Claimant returned the vehicle stating that it was overheating; that the Defendant had the vehicle checked and repaired the radiator to determine if that was causing the overheating; that a few days later the Claimant again complained that it was overheating but did not bring the vehicle in for checking as instructed; that between the 2nd complaint and 28 June 1999 the Defendant on several occasions requested the Claimant to bring in the vehicle for fixing, but that the Claimant did not bring it in; that the Claimant eventually on 28 June brought in the vehicle; that after the Claimant brought in the vehicle on 28 June, the engine was replaced and the Claimant notified on or about 12 July 1999 that the vehicle had been fixed; that the Claimant did not collect the vehicle; that between 2-3 August the Claimant came and took the vehicle for a test drive, drove it for about a half mile and returned it saying that he would get back to the Defendant; that the Defendant

instead received a solicitor's letter of 6 August; that the failure to repair the vehicle during the 3 month warranty period was due to the negligence of the Claimant; that the Defendant had performed its part of the contract; that the Claimant's loss and damage was entirely due to his own negligence in not returning the vehicle to the Defendant when requested to do so in January 1999; that the Defendant did effectually make good the defect by replacing the engine; that the Claimant had not given the vehicle a proper test to verify the rectification of the defect; and that it was up to the Claimant to make arrangements to collect the vehicle. The Defendant counterclaimed for storage costs of $100.00 per month from 1 August 1999 for storing the vehicle and an order for the Claimant to remove the vehicle from the Defendant's premises.

[4] On 30 August 2000 the Claimant filed a reply and defence to counterclaim. The reply was that the vehicle had been taken in for repair more than once; that the first time the radiator cap had been replaced, while on the second occasion the clutch fan had been replaced; that the Defendant had never requested the Claimant to bring in the vehicle for repair; that on the third occasion when the Claimant took in the vehicle for repair the Defendant company had instructed him to take it to a mechanic shop in Gomea to attend to the radiator at his own expense; that the Defendant had subsequently replaced the radiator; that on 28 July one day after the radiator had been replaced the engine had again overheated; that the Defendant had removed the head of the engine and had discovered that the engine head was cracked in three places; that the Claimant had been informed that the vehicle had been repaired in early August 1999; that he had taken the vehicle for a test drive and that he did complain to the Defendant company that he was dissatisfied with the power of the engine.

[5] After a case management conference on 23 April 2001 the case was set down for hearing on 27 June 2001. A request for hearing was filed on 10 May 2001, and the exhibits filed and exchanged as ordered. The case in fact came up for hearing on 20 September and all the evidence was given on that day. The Claimant gave

evidence on his own behalf. The Defendant company called Desmond DaBreo, a loans officer at the CIBC bank, the bank that financed the loan to the Claimant to purchase the vehicle, Catherine Gunsam, the company secretary of the Defendant company, and Dennis Gunsam, a mechanic working at the Defendant company.

[6] The facts as I find them are as follows. The Claimant is a taxi driver. He had worked for Sam's Taxi Service many years ago before he emigrated to the USA to better his condition. He had returned to St Vincent shortly before the purchase in question intending to become a self-employed bus driver in his home island. The Defendant company has its business premises in Lacroix in Mesopotamia in St Vincent. It rents and sells motor vehicles. On 15 January 1999 the Claimant purchased a 1991 used Toyota Hiace 10-seater passenger van from the Defendant company. The vehicle information form dated 8 January 1999, prepared by the Defendant company for him to present to CIBC to secure the loan for the purchase of the vehicle, wrongly claimed that it was of 1992 vintage. Nothing turns on this, I find, as the Claimant stated that he knew it was a 1991 vehicle when he agreed to take it. The Claimant testified that he knew at the time of the purchase that he was buying a 'skettel.' 'Skettel' is a dialect term usually reserved for a loose woman, one always on the road. He gave the bank a bill of sale dated 15 January 1999 to secure a loan of $53,921.28 on the vehicle. The bank checked with the Defendant company and was assured that the vehicle was in good working order. Sensibly, the bank also took a mortgage on the Claimant's property for good measure. The purchase price of the vehicle was $34,375.00. The loan was $40,000.00 the balance being accounted for by interest, bank charges, stamp duty, legal fees, and other miscellaneous costs. The Defendant company clearly knew that the purchase was being secured by a loan, as it prepared the document of 8 January addressed to the bank. If the Defendant is liable to the Claimant, any loss he proved deriving from the bank loan would fall to be covered by the Defendant.

[7] There was no written contract between the Claimant and the Defendant produced in evidence. The contract, including the warranty was entirely verbal. The Defendant company did not disagree that it had given the Claimant a 3-month warranty on the engine and transmission. The Claimant in fact worked the van for 5 months. He made income from his chosen occupation using the passenger van during that 5-month period. Until the end of June 1999 he made monthly loan repayments of $1,123.36 to the bank that had loaned him the money and taken a bill of sale on the vehicle. The van was not working satisfactorily. It overheated. He kept taking it back to the Defendant company to have it checked. The Defendant company made several efforts to find out why the vehicle was overheating. It worked on the radiator principally. Nothing it did helped. The Claimant informed the bank that he was having a problem with the vehicle and would have problems paying off his loan. With the knowledge of the bank he returned the vehicle to the Defendant company for repairs to the engine.

[8] In June, the Defendant company discovered that the cylinder head and gasket were cracked in 3 places. There is nothing to say that the engine was cracked at the time that the vehicle was purchased or that it became cracked while the Claimant was driving it. In the opinion of Dennis Gunsam the engine had become cracked from overheating. Whatever the cause or the date of the damage, the Defendant company accepted responsibility for repairing and replacing the engine. The Defendant company took the vehicle back and kept it until the end of July. It replaced the entire engine and automatic transmission with another engine with standard transmission. It did this despite the fact that the warranty period had expired, and despite the fact that, in the opinion of Dennis Gunsam, the cracks in the cylinder head and gasket were at least partly due to the Claimant driving the vehicle while it had been overheating. Dennis Gunsam says that this replacement of the engine and the transmission was done as a favour and not under the warranty. However, I find that suggestion quite unbusinesslike and unbelievable. I find that the Defendant company accepted legal responsibility for repairing the vehicle under the warranty, skettel though it was, and past the warranty period

though it was. The replacement engine, according to Dennis Gunsam, was manufactured sometime between 1990 and 1994. He purchased it in Trinidad and installed it himself in the Claimant's van. He thought it was quite satisfactory when he installed it. The Claimant took the vehicle for a test drive in early August when he learned that the engine had been replaced. He discovered that the transmission had been altered from an automatic to a manual transmission, and that the power with the manual transmission was very low and unacceptable. He was not satisfied and took the vehicle back to the Defendant company, and he left it with them. He applied to the Defendant company for a replacement vehicle so that he could run his business and pay back the bank. The Defendant company instead offered to rent him another vehicle for $150.00 per day. The Claimant rejected this offer and never went back for his van. He had his solicitor write to the Defendant company demanding his money back. The Defendant company did not reply. This law suit resulted.

[9] In the meantime, the bank was not happy that its monthly instalments on the loan were not being paid. It contacted the Defendant company and requested that it keep the van secure. It arranged a sale of the vehicle, as it was entitled to do under its bill of sale. It received the proceeds of the sale on 24 July 2000, several months after this suit had begun, which is why no mention of the sale of the vehicle appears in the pleadings. The vehicle was sold by the bank to one Jeffrey Richards for an undisclosed sum. Shortly after that, the same Denis Gunsam of the Defendant company purchased the van from Jeffrey Richards. It is now apparently operating as a passenger van quite satisfactorily.

[10] There is really little law in this case. I must however express my appreciation to both counsel for the extensive briefs of law and argument that they presented for the assistance of the court. They greatly assisted the court in appreciating what the legal issues were that surrounded the facts in the case and that would, with a different finding on the facts, have applied. However, as an example, I do not have to find whether or not the vehicle in question was, either at the time of the

purchase or after its repair by Dennis Gunsam, merchantable in terms of the **Sale of Goods Act**. That question would have arisen if the Defendant company had repudiated liability at the time and refused to repair the vehicle after the expiration of the warranty. The Defendant company instead had voluntarily accepted responsibility under the warranty for the repair of the vehicle at the time the Claimant brought it in to their shop. The court is, thus, saved the problem of deciding the question of whether the warranty still applied at the date when the Claimant returned the vehicle to the shop. The only issue remaining is, did the Defendant company satisfactorily perform its responsibility under the warranty to repair the vehicle? The telling evidence on this issue came from an admission by Dennis Gunsam in cross-examination that immediately after he had purchased the Claimant's vehicle from Jeffrey Richards he changed the transmission on the vehicle back from manual to automatic. It was only then, I find, that the vehicle's engine and transmission worked satisfactorily. Dennis Gunsam insisted that the van had been working properly prior to his changing the transmission back to automatic, ie, after he had replaced the engine and changed the transmission to manual and returned the van to the Claimant. But, I find that impossible to believe. In sum, I find that the company accepted liability for the repairing of the engine, and, if it thought that would help, the transmission as well, under the warranty they had given to the Claimant. Their obligation was to ensure that whatever repairs they did to the engine or to the transmission brought the van to a reasonably workable state as a used vehicle. They failed to meet this obligation.

[11] The question of the proper remedy now arises. When this case began by the issue of the writ, the vehicle was safely parked in the Defendant's premises. The Defendant company well knew that the van had been purchased with a loan from the CIBC bank. It was aware that interest and bank charges would fall to the Claimant's account. It was aware that the Claimant would suffer loss and damage as a result of his inability to carry out his taxing business with the bus that they had sold him for that purpose. If the van had remained there in the premises of the Defendant company, one issue for the court would have been whether, the

property in the van having passed to the Claimant, he should be made to retain the vehicle and to receive compensation for its unsatisfactory state, or whether the contract should be declared rescinded and he should receive full damages. The bank having intervened, as it was entitled to under its bill of sale, and having sold the vehicle to Jeffery Richards, the only recourse available to the Claimant is that the court should declare him entitled to be indemnified fully in damages. I am satisfied that the Claimant was entitled to repudiate the contract and to demand his money back. There will be judgment for the Claimant for damages to be assessed on application. He is also entitled to his costs. The counterclaim is dismissed.

I D MITCHELL, QC
High Court Judge