

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 315 OF 2004

BETWEEN:

STANLEY QUAMMIE

Claimant

v

ANTHONY DACON

Defendant

Appearances: Mr. S.E. Commissiong for the Claimant
Mr. R. Williams for the Defendant

2008: February 19;
May 6;
September 23.

JUDGMENT

- [1] **THOM, J:** This is a claim for damages for breach of a contract for the sale of goods.
- [2] During September 2003 Stanley Quammie agreed to purchase a Jeep Wrangler vehicle from Anthony Dacon for the sum of \$30,000. On 26th day of September 2003 he made a deposit of \$5,000. On October 3, 2003 the vehicle was delivered to him. On 4th October 2003 he paid the remaining \$25,000. Subsequently a dispute arose between Stanley Quammie and Anthony Dacon about certain defects which Stanley Quammie alleged Anthony Dacon had agreed to fix prior to delivery. Stanley Quammie also alleged in his statement of claim that he agreed to purchase a 1993 Jeep Wrangler with a brand new 1995 engine but the vehicle that was delivered to him had a Four Wheel Drive lever and knob, and fuel pump of a Jeep CJ series 1980-1986.

[3] Stanley Quammie instituted these proceedings in June 2003 in which he sought the following reliefs:

- (a) Damages for breach of contract.
- (b) Loss of use for 100 days at the rate of \$125.00 per day.
- (c) Costs.
- (d) Such further or other relief.

[4] Anthony Dacon in his defence alleged that Stanley Quammie agreed to purchase his 1993 Jeep Wrangler which had a 1995 engine. He denied he agreed to sell the vehicle with a new 1993 engine. Stanley Quammie agreed to purchase the vehicle after he had inspected it on three occasions. He denied the defects as alleged and that he agreed to fix the defects as alleged save to provide a side window for the roof, affix the four wheel drive knob to the lever and fix the grill for the speaker boxes and install the original speaker boxes. These were fixed and the window and knob delivered on January 12, 2004.

ISSUES:

[5] The issues to be determined are:

- (a) Whether the sale of the jeep was a sale by description within the meaning of Section 15 of the Sale of Goods Act Chapter 115.
- (b) If it was a sale by description whether the jeep that was delivered was in accordance with the description.
- (c) Whether there was an implied warranty or condition as to fitness for a particular purpose within the meaning of Section 16 (a) of the Sale of Goods Act.
- (d) If the vehicle is not in accordance with the description and or were not fit for the particular purpose what remedies are to be awarded to Stanley Quammie?

EVIDENCE:

[6] Stanley Quammie and Anthony Dacon testified. No witnesses were called by either party.

Stanley Quammie:

- [7] Stanley Quammie in his evidence stated that in September 2003 he agreed to purchase from Anthony Dacon a 1993 Jeep Wrangler with a brand new 1995 engine for the price of \$30,000. He inspected the vehicle on three occasions. He drove the vehicle to a garage and placed the vehicle on a ramp where he inspected the bottom of the vehicle. He drove the vehicle to his home which is on a steep hill. He wanted to see if the vehicle could go up the hill. The vehicle stalled at the top of the hill. He observed there were certain defects, namely:
- (a) Rear view mirror needed to be installed.
 - (b) Four wheel drive knob needed to be replaced with correct shift pattern.
 - (c) Four wheel drive indicator needed to be fixed.
 - (d) Rotten speaker grill needed to be replaced.
 - (e) Oil leak needed to be fixed.
 - (f) New drive belt to be provided along with complete soft top.
- [8] Anthony Dacon agreed to fix the defects. A deposit of \$5,000 was made and it was agreed that the remainder would be paid when the defects were fixed.
- [9] On October 3, 2003 Anthony Dacon delivered the vehicle and assured him that the defects were fixed save for the rear view mirror and a side window which he was unable to locate at his home. He observed that the speakers and amplifier were removed. On 4th October 2003 he paid the remaining \$25,000 to Anthony Dacon.
- [10] He examined the vehicle on the 5th and 6th October 2003 and he observed that save for the speaker grill none of the other defects were corrected.
- [11] On October 7, 2003 he visited Anthony Dacon and told him about the window and that the spare wheel did not have a "mag rim" like the other wheels.

- [12] On October 14, 2003 he discovered the starter motor was not working. He reported it to Anthony Dacon who had it fixed. It is now working but not properly since only one bolt holds it in place instead of two.
- [13] On October 23, 2003 he drove the vehicle to a petrol station at Fountain, to his insurers and back to his home. He was forced to discontinue the insurance because the vehicle was not road-worthy. On January 12, 2004 he received from Anthony Dacon a mirror, window, and a four wheel drive knob. Neither the mirror nor the four wheel drive knob could be installed.
- [14] The vehicle now has the following defects:
- (a) Starter motor is faulty.
 - (b) Emission system not hooked up.
 - (c) Make shift fuel system too close to exhaust manifold.
 - (d) Smell of gas under the hood.
 - (e) Instrument cluster housing is damaged.
 - (f) Spare wheel is different size to other wheels.
 - (g) Four wheel drive indicator is defective.
 - (h) Emergency brake light is on permanently.
- [15] Under cross-examination Stanley Quammie agreed that he did apprenticeship as a mechanic for approximately three years. He worked as auto mechanic in the United Kingdom for several years and also as an auto mechanic at Hertz trucking in the United States of America for several years. He agreed that he inspected the vehicle on three occasions. He examined the engine and other parts including the floor of the vehicle.
- [16] Stanley Quammie also agreed that he requested the original size speakers to be put into the vehicle but stated that he told Anthony Dacon that he would pay for it.
- [17] Approximately one week after delivery of the vehicle he realized that the emission system was defective. He agreed that he knew from the inception that there was no bottom hold

down. He also agreed that on October 7, 2008 he told Anthony Dacon to look for the window but he denied that he told Anthony Dacon that he would not use the vehicle until the new year.

Anthony Dacon

- [18] Anthony Dacon testified that during September 2003, Stanley Quammie approached him and asked him to sell him his Jeep Wrangler which was a 1993 model with a 1995 engine. Stanley Quammie inspected the vehicle on three occasions including taking the vehicle to his garage where he inspected the bottom of the vehicle. He also drove the vehicle and tested the four wheel drive. After all the inspections Stanley Quammie expressed satisfaction and agreed to purchase the vehicle for \$30,000. He made a down payment of \$5,000. He requested that the speaker grill be replaced, the four wheel drive knob be affixed to the lever. He knew it was not the original lever nor the original knob. He requested the speaker boxes and the amplifier be removed. They took up the entire trunk of the vehicle. He requested the original speakers be replaced.
- [19] The speakers and amplifier were removed and the original speakers replaced. The speaker grill was fixed and the knob fastened to the lever. Stanley Quammie inspected the vehicle and drove it accompanied by his son. He expressed satisfaction and requested that the vehicle be delivered the following day.
- [20] It was also agreed that the vehicle would be sold with a full soft top and the bikini top.
- [21] The vehicle was delivered with the full soft top but a window was missing. It was misplaced in his garage. He indicated he would purchase a new one but Stanley Quammie insisted that he would not use the vehicle until the new year so he should look for the window in his garage.
- [22] Some time after the vehicle was delivered Stanley Quammie informed him that the starter motor was not working properly. He had a mechanic repair the starter motor. Stanley

Quammie told him to order some original rims for him and he would sell the "mag rims". Fifty-nine days after the vehicle was delivered, Stanley Quammie complained that the volt meter was not working. Also he wanted an extra "mag rim". He no longer wanted the original rims. Anthony Dacon stated that he agreed to have a mechanic "Joe Clarke" fix the volt meter but he refused to provide the "mag rim". Stanley Quammie became upset and demanded a refund of his money.

[23] On December 14, 2003 he received a letter from Stanley Quammie's solicitor complaining of a number of defects which he was being made aware of for the first time.

[24] Under cross-examination Anthony Dacon testified that Stanley Quammie enquired whether he was selling his jeep. He agreed that he told Stanley Quammie he had a 1993 Jeep Wrangler with a 1995 engine. Stanley Quammie asked to inspect it, he agreed and Stanley Quammie inspected the jeep on three separate occasions.

[25] As a result of a request from Stanley Quammie after the vehicle was delivered, on January 12, 2004, a four wheel drive knob, rear view mirror and window were delivered to Stanley Quammie. Stanley Quammie was aware when he inspected the vehicle that the knob was not the correct knob or lever. Stanley Quammie had a Jeep Wrangler. Anthony Dacon denied the jeep had the other defects to which Stanley Quammie referred when the jeep was sold to him.

[26] Having seen the witnesses and having reviewed their testimony I did not find Stanley Quammie to be a credible witness. Stanley Quammie testified that Anthony Dacon agreed to sell him a 1993 Jeep Wrangler with a brand new 1995 engine. Stanley Quammie examined the engine before he agreed to purchase the vehicle. There is no evidence that at the time of the inspection there was a new 1995 engine in the vehicle or that Anthony Dacon promised to purchase a new 1995 engine for the vehicle. Further, Stanley Quammie claims that the vehicle cannot drive up hills. The access road to his house is a very steep incline. However, in paragraph 9 of his witness statement Stanley Quammie testified as follows:

"I subsequently insured the motor vehicle with Gulf Insurers at Arnos Vale on the 23rd day of October 2003. I drove the jeep for the first time the following day for a total of 8 miles to the petrol station at Fountain, then to my Insurers for inspection and back to my home" (underlining mine).

[27] Also Stanley Quammie stated in paragraph 6 of his witness statement that when the vehicle was delivered to him on October 3, 2003 he observed that the amplifier, stereo and speaker boxes were removed and they should have remained. However in cross-examination he stated that when the vehicle was delivered on October 3, 2003 he did not know if the speaker boxes and amplifier were removed. It was eight o'clock at night and he did not examine the vehicle. Stanley Quammie first made mention of the speaker boxes and amplifier in a letter from his solicitor dated December 22, 2008. I believe the testimony of Anthony Dacon that Stanley Quammie who agreed he was over seventy-eight years old requested that the speaker boxes and amplifier which took up the entire back of the vehicle be removed and the original speakers be replaced. In fact, Stanley Quammie under cross-examination did agree that he requested that the original speakers be installed.

[28] Also Stanley Quammie testified that when he examined the vehicle on October 5 and 6, 2003 he observed that defects which he had pointed out to Anthony Dacon at the time when he agreed to purchase the vehicle and he paid the deposit were not fixed save for the replacement of the speaker grill. However, Stanley Quammie spoke to Anthony Dacon on October 7, in fact, he visited Anthony Dacon at his place of employment and discussed with him the window and he spoke about the spare wheel. He again spoke with Anthony Dacon on October 14, when he requested that the starter motor be fixed. No mention was made of the defects until his letter of December 14, 2003. I do not believe if these defects were agreed to be fixed before delivery and they were not fixed when the vehicle was delivered and Stanley Quammie was aware three days after delivery that they were not fixed he would not have mentioned them.

[29] I did not find Stanley Quammie to be a credible witness. Where his evidence differs from the evidence of Anthony Dacon I accept the evidence of Anthony Dacon. Anthony Dacon was very candid and forthright when testifying. He was not contradicted.

SUBMISSIONS:

- [30] Learned Counsel for Stanley Quammie submitted that the vehicle delivered was not a 1993 Jeep Wrangler but a composition of a 1993 Jeep Wrangler and a four-speed Jeep CJ. The knob and the lever were from a 1980-1986 Jeep CJ series. Anthony Dacon had cut it off from a 1980-1986 Jeep CJ and placed it on a 1993 Wrangler. Anthony Dacon had also changed the transfer case and transmission system.
- [31] The defects in the vehicle were hidden and could not have been discovered upon reasonable inspection. The vehicle delivered to Stanley Quammie was not the vehicle agreed to be purchased within the meaning of Section 15 of the Sale of Goods Act Chapter 115 of the Laws of Saint Vincent and the Grenadines. Learned Counsel referred the Court to Section 13 of the UK Sale of Goods Act 1893 which is in the same terms as Section 15 of the St. Vincent Act, and to the case of Beale v Taylor [1967] 3 A.E.R. p. 253.
- [32] Further, Section 16 of the Sale of Goods Act Chapter 115 is applicable since the vehicle could only be driven on flat roads and not on hilly roads bearing in mind Saint Vincent and the Grenadines is a mountainous country. Learned Counsel referred the Court to several cases including Grant v Australian Knitting Mills Ltd [1935] A.E.R. p. 209; and Baldry v Marshall Ltd. [1924] A.E.R. p. 155.
- [33] Learned Counsel further submitted that Stanley Quammie is entitled to relief under Sections 53 and 54 of the Sale of Goods Act. Learned Counsel referred the Court to the case of Mason v Birmingham [1949] 2 A.E.R. p. 134.
- [34] Learned Counsel for Anthony Dacon submitted that based on the evidence Stanley Quammie was not entitled to the reliefs sought. He further submitted that Stanley Quammie was under a duty to mitigate his loss. Learned Counsel referred the Court to Sections 13, 35 and 36 of the Sale of Goods Act Chapter 115.

LAW AND ANALYSIS:

[35] I now turn to the issues - whether the sale of the jeep was a sale by description within the meaning of Section 15 of the Sale of Goods Act, if it was a sale by description was the jeep delivered in accordance with the description and whether the vehicle was fit for the particular purpose within the meaning of Section 16 of the Sale of Goods Act.

Section 15

[36] Section 15 of the Sale of Goods Act Chapter 115 provides inter alia that where goods are sold by description it is an implied condition that the goods shall correspond with the description.

[37] Learned Counsel for Stanley Quammie submitted that the vehicle that was delivered to Stanley Quammie did not correspond with the description given by Anthony Dacon being a 1993 Jeep Wrangler with a 1995 engine, since the vehicle had a four-gear shift pattern of a Jeep CJ of the 1980 – 1986 model. The transmission system and the transfer case were from the Jeep CJ series.

[38] In his statement of claim Stanley Quammie pleaded in paragraphs 6 as follows:

“6. ... The manual that was given to the Claimant by the Defendant revealed that the 4WD lever and knob do not belong to a 1993 Jeep (Wrangler Islander) but to a Jeep CJ series which was discontinued in 1986; so too the fuel pump.”

[39] There was no mention in Stanley Quammie’s pleadings that the transmission system and the transfer case were from the Jeep CJ series. Further, no mention of this was made in his witness statement.

[40] Having reviewed the evidence I found the following facts in relation to this issue to be that Stanley Quammie informed Anthony Dacon that he was interested in purchasing Anthony Dacon’s Jeep Wrangler. Anthony Dacon told him it was a 1993 Jeep Wrangler with a 1995 engine. He inspected the vehicle on three occasions including putting it on a ramp to

examine the bottom. He drove it to his home to test whether it could go up the very steep incline that led to his house. He then agreed to purchase the vehicle after Anthony Dacon agreed to fix certain defects. As stated earlier I believe the testimony of Anthony Dacon. The lever and the knob were not from the 1993 Jeep Wrangler series but from a Jeep CJ series. Anthony Dacon's testimony that Stanley Quammie was fully aware of the adjustments made to the vehicle before he agreed to purchase it was not contradicted on cross-examination. I note it is not disputed that the wheels on the vehicle were not the normal wheels used by a Jeep Wrangler but they were "mag wheels". The speakers were not the original speakers. I believe Anthony Dacon's testimony that Stanley Quammie was aware that the lever and knob were not from a 1993 Jeep Wrangler when he agreed to purchase the vehicle.

[41] This case can be distinguished from the case of *Beale v Taylor* [1967] 3 A.E.R. p. 253. In *Beale's* case the car was advertised by the seller as a "Herald Convertible White 1961 twin carb." Neither seller nor buyer realized that only the rear half was a 1961 model but the front half was an earlier model. The U.K. Court of Appeal found that the car did not fit the description as advertised. The variation could not have been seen from looking at the car in the ordinary examination. It was the personnel at the garage who examined the car and found it was made up of two cars.

[42] Sellers LJ in explaining section 13 of the UK Sale of Goods Act 1893 which is in the same terms as Section 15 of the Sale of Goods Act Chapter 115 stated at page 255 paragraph f as follows:

"Sale of goods by description may however apply where the buyer has seen the goods if the deviation of the goods from the description is not apparent; but even then (as I am quoting now from a well-known text book Chalmers Sale of Goods (15th Edition) When the parties are really agreed on the thing sold a mis-description of it in the contract may be immaterial." (Underlining mine).

[43] I have no doubt that after the three inspections and the test drive up the steep hill to his home Stanley Quammie being an auto mechanic and the owner of a Jeep Wrangler he knew that the lever and knob were not from a 1993 Jeep Wrangler. He requested the

knob be affixed to the lever before the vehicle was delivered to him. I note no mention of the lever and the knob was made in his letter of December 14, 2003 where he outlined defects of the vehicle.

[44] I also have no doubt that based on the evidence Stanley Quammie and Anthony Dacon were in the words of Sellers LJ "agreed on the thing sold." This was a sale of a specific thing. As Lord Wright stated in Grant's case at page 215:

"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 (underlining mine) but as a thing corresponding to a description e.g. woolen under garments, a hot water bottle, a secondhand reaping machine to select a few obvious illustrations."

Section 16:

[45] Section 16 provides in effect that when goods are sold there is no implied warranty or condition as to quality or fitness for any particular purpose of the goods save in certain circumstances as set out in paragraphs (a) to (d).

[46] Learned Counsel for Stanley Quammie submitted that this case falls within paragraph (a) which reads as follows:

"16. Subject to the provisions of this Act and of any written law in that behalf, 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 as follows:-

(a) 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 skills 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 that goods shall be reasonably fit for such purpose:

Provided ..."

The proviso is not relevant to this case.

- [47] Learned Counsel for Stanley Quammie submitted that the purpose was obvious, a person purchases a vehicle to drive it on any public road in a country; Saint Vincent and the Grenadines is a mountainous country.
- [48] To fall within paragraph (a) Stanley Quammie was required to prove that:
- (a) he expressly or by implication made known to Anthony Dacon the particular purpose(s) for which he needed the vehicle so as to show he was relying on Anthony Dacon's skill or judgment.
 - (b) the goods are of a description which it is in the course of Anthony Dacon's business to supply.
- [49] Having reviewed the evidence there is no evidence on which the Court could find that Stanley Quammie expressly made known to Anthony Dacon that the vehicle was needed for any particular purpose. Also there is no evidence from which it could be implied that Stanley Quammie made known to Anthony Dacon any particular purpose for which the vehicle was needed. Stanley Quammie testified that the access road to his home was a steep hill. He further testified that he wanted to see if the vehicle could go up the hill so during his inspection he drove the vehicle to his home and the vehicle stalled at the top of the hill. In spite of this a few days later he agreed to purchase the vehicle and made a down payment. Stanley Quammie clearly was not relying on the skill or judgment of Anthony Dacon.
- [50] I agree that Saint Vincent and the Grenadines is a mountainous country. It cannot be disputed that not all the vehicles sold in Saint Vincent and the Grenadines can drive on all the hills in Saint Vincent and the Grenadines, more so this was an eleven-year-old vehicle.
- [51] This case can be distinguished from the case of *International Motors Ltd v Ronnie Thomas* Civil Appeal No. 7 of 2002 (BVI). In *International Motors* the Court of Appeal found inter alia that Ronnie Thomas was entitled to a refund of the purchase price of a Vitara V6 Jeep which he had purchased from International Motors after Ronnie Thomas

experience grave difficulty in getting the Vitara V6 to drive up Joe's hill where he lived. Joe's Hill is one of the steep hills in the BVI. At the time of the purchase he had indicated to International Motor's agent that he wanted a vehicle with a lot of power to go up the hill. The agent recommended the Vitara V6.

[52] In relation to the second limb of paragraph (a) Stanley Quammie in his statement of claim pleaded in paragraph 1 as follows:

"1. The Claimant is an adult of sound mind and discretion. He lives at Prospect, Saint Vincent and the Grenadines. The Defendant is a motor vehicle dealer."

[53] Anthony Dacon in his defence pleaded at paragraph 1 as follows:

"1. Paragraph 1 of his statement of claim is admitted. It is further alleged that the Claimant is a mechanic and owns a property on the Vigie Main Road which houses or has housed a mechanic shop owned and operated by the Claimant."

[54] In his sworn testimony he denied that he was a motor vehicle dealer. He testified that he was the Manager of C.K. Greaves Wholesale Department. He testified that he owned the vehicle for about four years before he sold it to Stanley Quammie. He used it daily to go to work until he was given a company car then he drove it on weekends. His testimony was not contradicted. There is no evidence that Anthony Dacon was in the business of supplying vehicles or specifically Jeep Wranglers. This case can be distinguished from *Grant v Australian Knitting Mills Ltd.* [1935] A.E.R. p. 209. In *Grant's* case the Court found that the pants were purchased from a shop which dealt with that type of goods.

[55] The onus was on Stanley Quammie to show that this case fell within paragraph (a) of Section 16. He was required to prove both limbs of paragraph (a). He failed to do so.

- [56] I find on the facts that Anthony Dacon did agree to supply a complete soft top for the jeep and that when the jeep was delivered a window was missing. This window was not delivered until January 12, 2004.
- [57] It is settled law that a person bringing a claim for damages should act reasonably to mitigate his loss. The law will not permit a Claimant to recover loss that could have been avoided.
- [58] There is no evidence that Stanley Quammie could have purchased the window in Saint Vincent and the Grenadines. Indeed the evidence is that Anthony Dacon purchased the window in the U.S.A. I am of the opinion that a period of two weeks would have been a reasonable time within which the window could have been purchased and received by Stanley Quammie. I will therefore award Stanley Quammie loss of use for a period of two weeks at a rate of \$125.00 per day that is a sum of \$1,750.00.
- [59] In relation to the other losses and damages as claimed by Stanley Quammie, based on the evidence and as stated earlier I accepted the evidence of Anthony Dacon, I did not find Stanley Quammie to be a credible witness, and the findings that I made earlier, I find that Stanley Quammie is not entitled to the damages as claimed by him.

COSTS:

- [60] At the Case Management Conference held on the 30th November 2004 Master Cottle (as he then was) ordered that costs to the successful party would be in the sum of \$7,000. Stanley Quammie was only successful on a small part of his claim. The sum awarded being significantly lower than what was claimed, I would reduce the amount of costs to be awarded from \$7,000 to \$1,500.00.
- [61] It is ordered that:-
- (1) Anthony Dacon shall pay Stanley Quammie the sum of \$1,750.00 being loss of use for two weeks at a rate of \$125.00 per day.

(2) Anthony Dacon shall pay Stanley Quammie costs in the sum of \$1,500.00.

.....
Gertel Thom
HIGH COURT JUDGE