IN THE HIGH COURT OF THE HIGH COURT

HELD AT RAROTONGA

(CIVIL DIVISION) PLAINT NO. 52/97

BETWEEN TRAVIS MOORE of Rarotonga
Company Director
Plaintiff

AND RAROTONGA RENTAL
LIMITED a company
incorporated at Rarotonga and
carrying on there as car dealers
Defendant

Mr. Manarangi for Plaintiff

Mr. Mitchell for Defendant

Date of Hearing: 1 September 1997

Date of Judgment: 2 September 1997

JUDGMENT OF QUILLIAM CJ

In February 1994 the Plaintiff saw a Lada Station wagon advertised by the Defendant for sale. The car was not then in Rarotonga and the Plaintiff agreed to purchase it on its description. His evidence was that the price was $12,500 but he was persuaded to agree that the car should undergo a sealing process for an additional cost of $2,000. He agreed to this and so the cost was $14,500. The Defendant denies that there was any such additional cost and says that the price in any event was $14,500 and that some undersealing was done in the ordinary course of events in the factory. The Plaintiff took possession of the car on 13 March 1994. He now claims that the car was not of merchantable quality and seeks damages of $7,000 in order to reflect the deterioration in value due to the lack of merchantable quality.

There was a direct conflict as to the way in which the price was made up. On behalf of the Defendant, it was denied that there had been any question of an additional $2,000 for undersealing. A witness called for the Plaintiff, Mr. Kamana, said that he also had been quoted a price for the same kind of car purchased from the Defendant on the same basis and for the same total price as was the Plaintiff. Mr. Arbuthnott for the Defendant not only rejected this but said that Mr. Kamana was put up to giving that evidence by the Plaintiff. That was a grave allegation and I do not consider the evidence requires me to uphold it. However, much more convincing was the evidence of an extract from the Defendant's records which showed in detail how the price was arrived at and this had no component relating to an addition for undersealing.

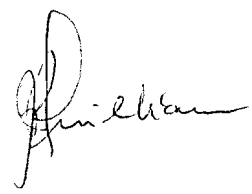
The main question in this case concerns the appearance of rust on the car. The rust was unrelated to the undersealing. It appeared first round the roof and has spread widely throughout the bodywork. I readily accept that the conditions experienced in Rarotonga are likely to have a much greater effect on a vehicle than would those in New Zealand. It follows that an owner must in his or her own interests be particularly careful about regular cleaning and waxing. It nevertheless is a matter of surprise to find that a new car had started to show rust within only 6 months of purchase. It has undoubtedly occurred in the present case. The Plaintiff took the car to the Defendant and pointed out the rust. The reaction of the Defendant was to say that the reason for the rust was the fact that the car was kept outside and that it had not been regularly waxed. It is perhaps unfortunate that remedial work was not at once carried out by the Defendant with a view to preventing any further rust appearing.

The evidence for the Plaintiff was that the car had been regularly cleaned and waxed but still the rust appeared. I was asked to inspect the car and there is no doubt its present condition is appalling so that it is difficult to accept that a buyer could be found for it, at more than a nominal amount.

Because of the very early appearance of the rust I feel there is no escape from the conclusion that there must have been some inherent defect, presumably in the paintwork, and that the car cannot have been of merchantable quality. That does not mean of course that the Defendant is to be held liable on the basis of the present condition of the car. The Plaintiff was aware of what had happened and was accordingly obliged so far as he reasonably could to minimize his loss. He has produced a quote of the costs of restoring the condition of the car totalling $2680.

This however was as at 18 November 1996 and it is clear that the rust must have been allowed to spread long prior to that. I consider the Plaintiff his entitled to some recompense for his new car having developed rust as soon as it did, but regard must be had to the delay in taking steps to prevent the spread. There was evidence that, in New Zealand conditions and upon an average basis the value of this car purchased new in 1994 should now be $5877. I can do no better than to make an estimate of the extent of the Plaintiff's loss attributable only to the inherent defect in the car. I pay regard to the fact that the Defendant could, when shown the initial rust, have taken more positive steps to deal with the problem and that the Plaintiff himself could also have done a good deal more to minimize his loss.

There will be judgment for the Plaintiff for $2000 with costs, disbursements and witnesses expenses as fixed by a Registrar.



CHIEF JUSTICE