ROYAL COURT
(Samedi Division)

24th March, 1992

49.

Before: The Bailiff, and
Jurats Myles and Hamon

Between:	Craig Anthony Dempster	Plaintiff
And:	City Garage Limited	First Defendant
And:	David John Sheppard	Second Defendant

Advocate A.P. Roscouet for the Plaintiff.
Advocate D.E. Le Cornu for the First and Second Defendants.

JUDGMENT

THE BAILIFF: City Garage Limited was, at the material time, a company in the business of buying and selling cars which operated from Devonshire Place, St. Helier. It was beneficially owned by Mr. David John Sheppard, who was also a director of that company.

On or about 15th July, the plaintiff, Mr. Craig Anthony Dempster, was passing by and he saw a Porsche 911S 'Targa' on the forecourt (or in the window) of those premises. He was attracted to it and he decided to make enquiries about it. The car itself had done between 76,000 and 80,000 miles and it was 14 years old. It had been bought the day before for £6,000 from Mr. Peter Frampton who had owned it for some time previously and it was for sale for the sum of £7,950.

The plaintiff, after a certain amount of negotiations concerning the car, agreed to buy it. There is some conflict of evidence whether the main negotiations were with Mr. Sheppard or with a Mr. Rawlinson who was his manager/salesman. We have come to the conclusion that it was in fact Mr. Rawlinson who negotiated the sale of the car, although on one occasion, perhaps the first occasion, the plaintiff had some conversation with Mr. Sheppard. In any case there was no express guarantee given in respect of that car, quite the reverse, there was a total disclaimer of any liability on the invoice.

One matter is clear and it is this: that in February when Mr. Frampton was still the owner of the car, it was examined by a Mr. Santos who runs a business which specialises in servicing high quality cars, and in particular Porsches, and he discovered no corrosion at that time. The representations upon which the plaintiff relies were said to have been made by Mr. Sheppard and/or Mr. Rawlinson and it was on those representations, it is alleged, that he decided to buy the car.

We are satisfied that they were not the sole reason for his buying the car. He was told quite clearly by Mr. Sheppard and by Mr. Rawlinson that the car had a defect inasmuch as there was a tendency for it to jump out of gear when in third gear. Some further information was given. Mr. Dempster says that he was told it was in good order by Mr. Sheppard, that there had been no problems and accordingly it was perfectly "all together". Mr. Rawlinson said that he told Mr. Dempster about the slipping third gear and that he could not give a guarantee. Mr. Dempster was attracted to the car, as well he might be; we saw photographs, it was an attractively painted car. It was an élite kind of car, much sought after by people who like driving classic cars of that type.

He went once or twice, or perhaps more than once, to the garage; the defence suggests that he was in and out of the garage; certainly he was very keen to buy it and eventually he was taken for a test drive. There was some dispute as to whether he drove or whether Mr. Rawlinson drove him, but that was explained by Mr. Rawlinson who admitted that he had told Mr. Dempster that there was no insurance, as Mr. Dempster claimed. This was because the defendants were not all that keen to sell the car to Mr. Dempster who was offering a car he owned in part exchange. The Porsche was the kind of car which could immediately attract a cash purchaser.

Eventually Mr. Dempster did drive the car - we are satisfied about that; and we accept the evidence of Mr. Rawlinson that his garage had an insurance policy which would cover the driving of a car for sale by a prospective purchaser, provided one of the garage employees was in the car at the same time.

Mr. Dempster looked at the car, he did not put it on the ramp; he looked underneath it from the side, and could see nothing wrong with it. However, he did not rely entirely on his own examination nor on the representations of the sellers; he either took it or telephoned - there is some dispute as to whether he went or whether he telephoned, we think on balance he probably took it - however he went to Mr. Santos to ask him about the car because Mr. Santos, as I have said, had been servicing it over a period of years for Mr. Frampton. Mr. Santos told him that it was "O.K." structurally and that it was

roadworthy, and in fact he described it as a "good, solid, old car". I pause for a moment to stress that this was a 14 year-old car and however well it had been looked after, there was bound to be some wear and tear on a car which had done 76,000 or 80,000 miles. It cannot have been in pristine condition, although looking at the photographs, it was obviously a very attractive yellow car to look at.

Between buying the car, which he did on the 21st July, 1988, when he signed an invoice, which I have said already contained a no guarantee clause - I need not recite the actual words - Mr. Dempster had two minor services done by Mr. Santos, and eventually, in October, because he was going to England, he took it to Mr. Santos for a fuller service. Mr. Santos checked the brakes, which was important of course on a fast car of that nature; however, although the car was on a ramp and we accept it was on a ramp, there is some doubt as to whether Mr. Santos or one of his men actually went underneath and had a look at any corrosion that might be there. But so far as Mr. Santos is concerned - and he assured us that he generally made it his duty to check the cars himself or, if his men had serviced the car, to inspect it afterwards, - he did not see any corrosion on the underside in October.

The car was then taken to the United Kingdom and did at least 1,200 miles and was driven at a maximum speed according to the plaintiff of 90 m.p.h. and he had no trouble with it.

On 4th November, 1988, he was travelling along St. Brelade's coast road to the east of the church and had to drive to the right up La Marquanderie. In doing so the car swung round to the left and was involved in an accident, hitting a wall and a bank and a tyre burst. There is some doubt as to whether the tyre burst before or after the impact. We have come to the conclusion from the reports and the evidence we have heard that the tyre burst after the accident or during it but it did not burst before. The plaintiff suggested that he felt some 'juddering' as he went round the bend and he tried to correct it and the car went out of control.

Mr. King, who also drives a Porsche, gave evidence that he was driving his Porsche along the St. Brelade's coast road - he was not entirely sure the plaintiff could have been in the car park as he (the plaintiff) said - but he (Mr. King) continued towards St. Brelades Church and went round the corner up La Marquanderie. By the time he had started to take the bend he noticed the plaintiff's car behind him. As he went up the road he noticed that the plaintiff's car seemed to go out of control and the rear part of it slewed round.

We therefore had to decide whether that accident was due to some defect in the car, or whether it was due to something else.

We have come to the conclusion that, because there was no other technical abnormality found in the car later, apart from the corrosion to which I shall come, nor did the suspension move, that it must have been because the car was driven too fast round that corner. Mr. Maletroit, an expert witness engineer for the plaintiff, said that it would possibly be affected if one took a bend at 40 m.p.h. However, we are unable to attribute the cause of that accident to the condition of the car.

After the accident the car had to be taken to be examined. It was examined by Mr. Turpin, an engineer well-versed in these matters, on 8th December, and he found that the front cross-member was heavily corroded and that the condition of the car made it not only unroadworthy but positively dangerous because the state of corrosion on the front cross-member would affect the suspension and if that broke then the car would become out of control. He was satisfied because of the length of time he said it would take for that amount of corrosion to take place, that the car was in that condition in July when it had been bought by the plaintiff. Mr. Maletroit, also an expert, as I have said, said there was no evidence of concealment of the corrosion he found and he, too, said it took a long time to reach the condition it was in.

We have reached the conclusion, however, after looking at the evidence of the defendants, particularly the fact that they are garage dealers and paid £6,000 for this car, that it is highly unlikely that they would have bought a car and sold it the next day in the condition it has been suggested by the plaintiff it was in. We are unable to accept, therefore, that the amount of corrosion present when the car was examined in December, was there, as the plaintiff claimed, when it was bought in July.

That is not the end of the matter because if the corrosion was not apparent - as we do not think it was - in July, was it then a hidden fault, - a *vice caché*? It is not necessary for me to go into a great deal of the law, although I am indebted to both counsel for their very careful collection of documents and the authorities. It is enough, I think, to refer to our own Court of Appeal and, although I am not saying one ignores the English authorities, where we have our own authorities and our own Norman French authorities, those are to be preferred in cases of this nature, in contract. I refer to the Appeal Court case in this Court of Kwanza Hotels Limited -v- Sogeo Company Limited (1983) JJ 105 C of A. On p.119 the Court says this:

> ***"A fault is not hidden if the purchaser could have discovered it either by examining the thing himself or as Pothier expressly said getting it examined by somebody better qualified. The critical question is whether the fault would have been revealed by an examination more than***

superficial but less than minute such as a reasonably careful purchaser could have made either himself or through someone appointed for the purpose. This does not mean an examination involving taking the thing sold to pieces or on the sale of a building such steps as taking up floors or removing wall coverings".

We are of the opinion that that is a very good description, if we may respectfully say so, of a *vice caché* or a hidden fault. We are satisfied that the fault of corrosion would have been revealed by an examination, even if that corrosion was taking place under the underseal, with which we are told these cars are habitually covered. It would not have been a difficult matter for that corrosion - if it was there underneath the seal - to have been discovered. In the absence of fraud or deceit which is not pleaded, that really is the end of the matter, unless we are prepared to extend the claim to one in tort. But we are not prepared to do so - the main claim is in contract and that is where it fairly lies. This is a claim in contract and the question of tort does not really arise in our opinion.

Accordingly we find for the defendants with costs.

Authorities

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