

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

HECTOR CINTRON,	)	
Plaintiff,	)	
	)	CIVIL NO. 386/82
v.	)	
	)	
ISLAND CARS, INC.,	)	ACTION FOR DAMAGES
	)	
Defendant.	)	

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PETERSEN, Judge

MEMORANDUM OPINION

July 16, 1984

FACTS

On May 19, 1980 plaintiff purchased a new 1980 BMW Blue Model 320, for the price of Fourteen Thousand Four Hundred Ninety-Eight Dollars and Sixty-Five Cents (\$14,498.65) from the defendant for his personal use. After having the vehicle rustproofed at a cost of One Hundred Thirty-Five Dollars (\$135.00), plaintiff took possession of the vehicle on May 21, 1980. Plaintiff did not receive an owner's manual nor

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was he given any written instructions regarding servicing arrangements.

On May 28, 1980 the vehicle became inoperable, having stopped on the highway, and the plaintiff returned it to the defendant for repairs.

On June 2, 1980 the car once again became inoperable and was towed to the defendant's place of business for further repairs. During the weeks and months following the initial repairs, additional malfunctions developed: the clutch did not work properly; the odometer registered inconsistent mileage readings; the air conditioner did not work correctly and overheated; the radio did not function properly; the horn sounded through the radio; the car shimmied when driven; the master cylinder leaked; the floor mat was stained from oil; the dashboard lights malfunctioned; the windshield wipers did not work properly; the car lacked power on take-off, especially on an incline; and the car experienced difficulty in getting into first gear.

The plaintiff made several trips to the defendant's place of business and made numerous telephone calls in an effort to have the various problems corrected.

Finally, dissatisfied with the condition of the car, in January, 1982, the plaintiff filed a complaint with the Consumer Services Administration. After several meetings and

its value to him.

In order to successfully effect a revocation of acceptance, not only must there be a substantial impairment of value to the buyer, but the buyer must notify the seller of the revocation "within a reasonable time after the buyer discovers or should have discovered" the defect. 11A V.I.C. Section 2-608 (2) (1965).

The defendant contends that the plaintiff did not revoke his acceptance within a reasonable time. What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action. 11A V.I.C. Section 1-204(2). Although the plaintiff did not revoke his acceptance until after he had filed his complaint with the Consumer Services Administration, it is significant that he was in constant touch with the defendant concerning the condition of the vehicle and that he relied on the defendant's continued assurance that the vehicle could be repaired satisfactorily. When it became apparent that repeated efforts to obtain good performance were to no avail he promptly proceeded to seek the assistance of the Consumer Services Administration. Under the Uniform Commercial Code, the defendant did have the right to attempt to cure any defects in the vehicle, but this opportunity could not last forever. Conte v. Dwan Lincoln Mercury, Inc., 374 A.2d 144, 149 (Conn.

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a hearing designed to resolve the problems, the plaintiff returned the vehicle to the defendant's place of business in September, 1982.

The plaintiff now seeks rescission of the contract. The defendant contends that the plaintiff's revocation of acceptance of the vehicle did not occur within a reasonable time and before a substantial change had been made.

DISCUSSION

As stated in the leading case of Zabriske Chevrolet Inc., v. Smith 240 A.2d 195 (N.J. 1968)

For a majority of people the purchase of a new car is a major investment rationalized by the peace of mind that flows from its dependability and safety. Once their faith is shaken, the vehicle loses not only its real value in their eyes, but becomes an instrument whose integrity is substantially impaired and whose operation is fraught with apprehension.
Id. at 205.

The plaintiff was unable to use his vehicle when he desired because it was constantly inoperable. When he was able to use it, the vehicle was fraught with problems. It is obvious that the plaintiff's confidence in his purchase was shaken. This Court finds that the numerous defects rendered the car unfit for the purpose for which it was bought, namely, driving, and that the numerous defects substantially impaired

1976).

Under the circumstances of this case, involving a series of repairs, promises and negotiations between the parties and the Consumer Services Administration, the timing of the notice of the revocation of acceptance was not unreasonably long. Moreover, the defendant was on notice that the plaintiff was dissatisfied and expected the defects to be corrected.

The defendant also argues that the number of miles driven in the vehicle constituted a substantial change in the condition of the goods. The odometer reading at the time of the return of the vehicle was over 24,000 miles. This reading on its face is suspect, in light of the numerous vehicle defects previously outlined. Moreover, the uncontroverted evidence established that the odometer readings were inconsistent and unreliable. Specifically, the defendant's record of the odometer reading on May 28, 1981 was 860 miles and its June, 1981 odometer reading was 592. In addition, the evidence established that during the months of June, July and August, 1982, while the vehicle was malfunctioning, the odometer registered over 6,000 miles. The evidence also established that during the period the vehicle was seldom used as the plaintiff utilized his employer's vehicle and the only other driver was off island for long periods of time.

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Under these circumstances, the unreliability of the odometer reading precludes its use to establish a substantial change in the condition of the goods.

Under the U.C.C. Sections 2-711 and 2-715 the buyer is entitled, upon proper revocation of acceptance, to the purchase price paid, as well as incidental and consequential damages. Stridiron v. Island Cars of St. Croix, Inc., Civil No. 1982/27 (D.V.I. January 4, 1984) at 10.

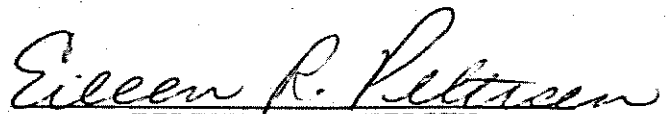
In this case, the plaintiff paid the defendant the purchase price of Fourteen Thousand Four Hundred Ninety-Eight Dollars and Sixty-Five Cents (\$14,498.65); One Hundred Fifty Dollars (\$150.00) for shipment of the vehicle from St. Thomas to St. Croix; and One Hundred Thirty-Five Dollars (\$135.00) for rustproofing. In addition, the plaintiff incurred expenses of Eighteen Dollars and Fifty Cents (\$18.50) for license fees; One Thousand Eighty-Eight Dollars (\$1,088.00) for insurance and One Hundred Fifty Dollars (\$150.00) for highway user's taxes. The plaintiff is entitled to recover as damages the sum of Sixteen Thousand Forty Dollars and Fifteen Cents (\$16,040.15).

The defendant further contends that he is entitled to an offset award of damages for the plaintiff's continued use of the vehicle after his revocation of acceptance. Even though there is no specific provision in the Uniform

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Commercial Code for an offset award for continued use by a buyer, the general rule is that where a buyer is entitled to rescind the sale and elects to do so the buyer shall thereafter be deemed to hold the goods as a bailee for the sale. See Stroh v. American Recreation & Mobile Home Corp., 530 P. 2d 989, 993 (Colo. Ct. App. 1975). Moreover, this reasoning is consistent with the principles of law and equity which the UCC provides shall supplement its provisions. 11A V.I.C. Section 1-103 (1965).

The defendant argues that the odometer registered over 24,000,00 miles at the time of the revocation. The credible evidence indicated, however, that the odometer reading fluctuated considerably and thus it cannot be used as a reliable mileage indicator. Moreover, there was no competent evidence presented as to the use value of the vehicle per mile. The Court finds that the defendant has failed to establish by a preponderance of the evidence the value of the continued use of the vehicle after the revocation of acceptance. Accordingly, defendant's request for an offset must be denied.


EILEEN R. PETERSEN
Judge