

Please note:

Mr Filby was in court, sitting directly behind me, with note pad in hand as this Judgment was read.

IN THE TUNBRIDGE WELLS COUNTY COURT

BR001240

Merevale House
42-46 London Road
Tunbridge Wells
Kent
TN1 1DP

28th December 2000

Before

DISTRICT JUDGE LETHEM

Between

Alan Howell, Claimant

-v-

Pilgrim Cars Ltd, Defendant

J U D G M E N T

(Draft)

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A District Judge Lethem: On the 24th of August 1999 the Claimant in these proceedings, Mr Alan Howell, purchased from the Defendant, Mr Tanner, who trades as Pilgrim Cars, a Pilgrim Sumo Cobra motor vehicle.

The purchase price was £12,000 and there was an additional £800 for some additional work that the Claimant wished carried out to the vehicle.

B This claim arises out of various matters that subsequently went wrong with the vehicle, and which the Claimant lays at the Defendant's door. The claim sets the matters out quite neatly, and I will return to the history of the case shortly but, in essence, the
C Claimant is claiming for a fuel pump that broke down, a clutch master cylinder (and labour) that needed replacing, front suspension which failed, second hand sump and reconditioned gearbox, which were also the product of the failure of the suspension.

D It is the Claimant's case, in a nutshell, that the vehicle was not of satisfactory quality. It was not fit for the purpose for which it was purchased. That, within a very short time and doing a very small mileage, these numerous defects arose and that Mr Tanner, as the
E vendor of the vehicle, was fixed with an implied term under The Sale of Goods Act that he was in breach of that term, and he is therefore liable for the damages that flow.

F Mr Tanner joins issue with Mr Howell on these points. He says that the vehicle was, in truth, a 1983 vehicle, and that I have to judge whether it was of satisfactory quality not against the standards of a new vehicle, but against the standard of a vehicle from 1983.

G That the vehicle was in perfect running order when it was sold, that he was not given an opportunity to see any of the defects that had gone wrong, that he does not accept that some of the defects can be laid at his door. And so he says to me he is not liable for the damage that arises out of the alleged breach of contract.

H I have explained to the parties, and they have accepted, the propositions of law which are that I really have to think about two matters in connection with this case. Firstly,

A whether the vehicle was of satisfactory quality under section 14 of The Sale of Goods Act 1979, this being a vehicle that was sold in the course of the Defendant's business, and that I have to take into account the description of the goods, the price and the various matters that are set out in the additional sub-sections 2 (a) and (b) to The Sale of Goods Act section 14.

B Against that, I have to lay off Mr Howell's duty to mitigate his loss, that is, to keep the loss to the minimum that is reasonable in all the circumstances. That is not a counsel of perfection. It does not mean to say that I have to look at the situation and decide that it could possibly feasibly have been dealt with more cheaply. That would be to place
C much too onerous a task and burden upon Mr Howell. I simply have to say to myself: "What would a reasonable person, faced with this situation, do in order to rectify the situation at minimum cost?" And whatever the answer to that question sets whether or not the Claimant has mitigated his loss in connection with the case.

D Now, the framework of the factual background is not in dispute. It can be shortly stated that, as I have already said, Mr Howell purchased the vehicle on the 24th of August 1999. Not long after that, and certainly on the first long drive that the vehicle made, I
E am told after doing 702 miles, and I accept, having looked at the receipts in the bundle that was right, Mr Howell was coming back from Lincoln. The vehicle failed because of a fuel pump. He had to be towed back home. He had a conversation with the Defendant. It is alleged, in a matter I will refer to, that the Defendant refused to assist.
F And indeed, and I deal with all the telephone conversations, I can summarise the Claimant's position by saying that on each and every occasion it is claimed the Defendant refused to assist.

G But as far as the non-controversial items are concerned, the fuel pump to the vehicle was replaced. The cost of that was £149. At about 900 miles, the clutch master cylinder failed. It was not possible to get the vehicle into gear without pumping the pedal and, more seriously, it would not come out of gear. Now this was just after the vehicle had

A been laid up for some period of time and, indeed, Mr Howell was very fortunate not to suffer a serious accident because he was in fact travelling down a road when he found that he could not get the car out of gear. It was only with his quickness of thought in turning the ignition off and applying the handbrake that something more serious was averted.

B Again, there was a conversation between Pilgrim Cars and Mr Howell. Again, the vehicle was not repaired by Pilgrim Cars but rather by the Claimant's own garage, TMC Gas Power Limited.

C That was not an end to the problems, because not long afterwards, when the vehicle had done about 1,100 miles, a much more serious failure occurred. On this occasion, a nut detached itself from the front lower wishbone, or from that assembly. The suspension collapsed, the wheel came off, the car grounded and, again, the Claimant had to be taken
D back home, having first managed to find the nut and finding that it was a nylon locking type nut which had wrongly been used twice to hold the assembly on. It being the case, and I accept that this is the case, that one only uses those nuts on one occasion.

E Again, there was a conversation between the Claimant and the Defendant. Again, the work was not carried out by the Defendant, but rather by TMC.

F Now, as I indicated earlier on, the items relating to the front suspension is not the sole item that arises from that last failure because, of course, the vehicle in grounding landed on its sump. There was damage to the sump and a new sump had to be fitted, and the Claimant claims for that. Also, it is suggested, that as a result of that accident there was a failure in the gearbox and there had to be a reconditioned gearbox inserted in the
G vehicle.

H The sum total of those various items, including labour, are not those shown on the claim form, which the Claimant, through no fault of his own, was unable to quantify at that

time, but are, in fact, £1,196.07p.

A That disposes of the items which are non-controversial.

B I now turn to the items that are relevant and which are in contest. One of the significant areas is that the Defendants claim that they were not given an opportunity to deal with the vehicle to rectify whatever errors had arisen in the vehicle. They were only told *ex post facto* of what had happened or, on other occasions, told what would be done by way of repairs and if they did not agree to those repairs then they assert that Mr Howell refused to deal with them. This, they say, was an unreasonable stance to take. They say
C they should have been given an opportunity to comment and to put matters right.

D Having heard the evidence of the Claimant and the Defendant, it being the Claimant's case that there was no such exchange, that every time he got in touch there was a predictable response. The way it is put in the claim is as follows: "The answer from them was predictable. On asking if I would have the car towed to them and they would fix it, the same reply no." And that is what the Claimant says happened on each and every occasion. The Defendant says: "No, that is not right. We said that we would put
E the stuff right, but not necessarily in the way that the Claimant wanted. That the Claimant was unreasonable." The Claimant [inaudible].

F Now, firstly, I wish to make it clear I accept the Defendant's evidence on this point, and I have arrived at that conclusion for the following reasons. Firstly, the Claimant's evidence has been inconsistent on the point. I have already quoted from the Particulars of Claim, and the way in which the case was opened was that every time the Defendants said that they would do nothing about the various repairs that needed to be done. But
G later it became clear that on occasions the Defendants had said that they would do things. They had on occasions offered, for example, to weld the sump on the Claimant's own case. The Defendant, in fact, said the offer went further than that. The Defendants had offered to repair the gearbox bearing. Again, not consistent with the suggestion that

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the Defendants would have nothing to do with the vehicle at all.

A In listening to the Claimant giving evidence, his evidence lacked thought. He, on
occasions, would make assertions which simply did not marry up with the facts that were
B agreed. For example, the assertion that the Defendant made most of the parts for the
vehicle. And yet, when I look at the picture of the parts that are actually made, it is
transparently obvious that they are in the main the chassis and front suspension, the body
and the cosmetic parts. He made various assertions of mechanical fact, and then
admitted that he was not a mechanic. So as a general overview of the Claimant's
evidence, I found him to be somewhat unsatisfactory.

C I also have to say the way in which he gave the evidence very much supported what the
Defendant said. The Defendant said that he was excitable, that he interrupted, that he
was not very reasonable, and I myself have had to ask the Claimant on three occasions
D not to interrupt me. So I have to say that his demeanour in giving evidence to me very
much backed what the Defendant was saying.

E In contrast, I found the Defendant's evidence to be more thoughtful. He explained
through the reasons why he got to the position that he got to, and I was prepared to
accept his version of the telephone conversations as being a better and truer recollection
than that of the Claimant. Also, in this respect, I find it very significant that the
F Claimant did not have the vehicle towed to the Defendant's premises on any single
occasion. I asked him why, and he said, well, because he was worried that the vehicle
would not be returned to him. There was no basis for that in any of the evidence that I
have heard at all. In my judgment, that was an unreasonable stance to take, particularly
G in the initial parts of the case and so, as another general observation, I find that the
Defendant is correct to assert that he was unreasonably denied an opportunity to look at
the vehicle.

H I now then turn to the specifics of the case, and the matter which I have to decide as part

A of my judgment in the case. And, of course, the first and most important matter which I have to consider is whether this vehicle was of satisfactory quality, because I have explained that term is implied into the contract and, if the vehicle was not of satisfactory quality, then there is a breach of contract and the Defendant must pay for the damages which reasonably flow from that breach of the contract. The competing arguments here are the Defendant's urging me to look at the history of the vehicles in question, that one was a 1983 vehicle, the engine came, I think, from a 1990 vehicle. He says to me this: "Do not judge this vehicle as a brand new vehicle, because it is not. It is an amalgam, perhaps, of older vehicles, and you judge it by the standards of a second hand vehicle."

C "No," says Mr Howell to me, "this cannot be right. I am entitled, spending £12,000 plus on a vehicle, to one that is going to perform much better than this vehicle did, and will be fit for the purpose for which it is used, i.e. to drive safely from A to B without the vehicle breaking down."

D Mr Howell is right. He was entitled to expect a vehicle that did not break down in the way that this vehicle did. In arriving at that conclusion, I think that Mr Tanner is right² to remind me that this is a second hand vehicle. But this is a second hand vehicle which costs £12,000. It is not a Ford Sierra bought for £500 from a car breaker's or through auction. This is a vehicle which has had a considerable amount of work done upon it, and somebody who spends £12,000 on a vehicle is entitled to better than Mr Howell got. I take into account the fact that the breakdowns occurred within a short period of time in terms of the mileage that the vehicle had travelled. In a short period of time in terms of the first breakdown, which was on the first long journey that this had done. Mr Howell was entitled to expect greater durability from a vehicle than he in fact received.

G Persons who sell second hand and used motor vehicles must accept that there is the implied term of satisfactory quality and that the court is entitled to say, "Where does the burden of that clause fall? Is it that the Claimant is always going to have to pay for matters than go wrong, or is he entitled to accept a reasonable level of quality, a suitable

A amount of quality, from the Defendant?" Well, of course, the latter is the law, and if the burden has to fall anywhere, then it falls upon the Defendant, who is selling in the course of business.

B It follows, therefore, that there has been a breach of contract in this case, and the Claimant will recover for that breach of contract.

C I now have to ask myself what the damages that flow from the breach of the contract are and the extent to which the Defendant has properly mitigated his loss in relation to the specific items.

D I turn first to the fuel pump. This, of course, was the first item to go wrong. It was the breakdown after the vehicle had done only 700 miles, when the Claimant was on his way back from Lincoln. I accept that the fuel pump did break, I accept that it needs replacing. I have already found that it would have been reasonable for Mr Howell to have returned the vehicle to Pilgrim Cars, particularly on this occasion, this being the first time that the vehicle had broken down.

E I have heard the unchallenged evidence of Mr Tanner that, had the vehicle been taken back to him, then the cost would not have been anything like the £149 claimed, but would have been £39 plus another £11 labour, making a total of £50. I accept that evidence. As I say, it was unchallenged and, therefore, the recovery on that heading will be the £50 of that unchallenged evidence.

G Now, I then look at the clutch master cylinder and labour. The claim here is £150. The evidence is that Mr Howell felt that the proposal of the Defendant that the cylinder be cleaned, have new O-rings placed in it and refitted, was not satisfactory in all the circumstances. Indeed, I believe that that was the advice that he received from his mechanic. Now, I have not heard from his mechanic, so I am unable to judge one way or another what was actually said. Neither has Mr Tanner had the opportunity to test

A that evidence. The evidence before me again was unchallenged, and was that it would have cost £22 to recondition that cylinder and inserted new O-rings in it. I, therefore, because that evidence is unchallenged, and I made it very clear to both parties that if they did not challenge the evidence I would take it was accepted, will be a recovery of £22, so that makes a total of £72 to date.

B Now, of course, by far the biggest claim is that arising from the failure of the nut, from the sump hitting the ground from the front lower wishbone suspension collapsing. Now the evidence about this is highly controversial. The Defendant says to me: "I do not accept that the nut was in the same position or in the same state as when I sold the vehicle. And the reason why I do not accept that is because I received a phone call from C the Claimant's mechanics, asking about spongy brakes. I gave them various suggestions, some of which would have involved removing that nut, and therefore there is on balance a reasonable prospect that that nut was removed after I had sold the vehicle, and I am not D therefore responsible for the damage that flows from that."

E There is some support for that suggestion in the correspondence. There is talk about spongy brakes, and although Mr Howell says that it is a wrong reference by the mechanics, TMC, there is at least a reference to a brake cylinder in one of their documents. Now it may well be right that that is a reference made in error. If that is the case it is an unfortunate error, because it definitely does say brake cylinder.

F So there are those various items of evidence which suggest to me that some work was carried out on the brakes. Again, Mr Tanner was not challenged about the advice that he gave and, indeed, that may well have been a quite right and proper attitude for Mr Howell to take, because with the best will in the world he really does not know what G went on in a conversation between Mr Tanner and TMC. Neither, I suspect, does he know what work TMC did in that respect.

H Now I have to therefore ask myself the following question: "On a balance of

A probabilities, am I satisfied that it is probably that this nut was in the same state and had not been tampered with after the vehicle was sold?" On the one hand, I have the evidence which I have just summarised. On the other hand, there is nothing to contradict it. Therefore, asking myself that question, I come to the conclusion that I am unable to say on a balance of probabilities that this nut had not been tampered with. Indeed, on a balance of probabilities it probably had been tampered with. I therefore cannot lay on a balance of probabilities the failure of the front suspension at the door of the Defendant. It follows that all the damage that results from that has not been proved to the requisite standard, and there will be no recovery under those headings.

C The net effect of my judgment, therefore, is that there will be a recovery by the Claimant, but it will be in the sum of £72 and there will be a judgment accordingly.

DJ Lethem Now ... judgment for Claimant in the sum of £72. When can that be paid, Mr Tanner?

D Mr Tanner It's not ... I mean I can pay in cash now, Your Honour.

DJ Lethem I shall say payable in seven days. You can pay outside the door. You pay directly to, Mr Howell. Mr Howell, you've been successful overall in the case. You paid a fee to the court. Do you have a claim for costs arising out of the case?

E Mr Howell Two days work at £180. That's what it's cost me ...

DJ Lethem £180?

Mr Howell That's what it's cost me to get here, sir.

DJ Lethem Well, let's, let's deal with this in short stages.

Mr Howell I paid £100 to Bromley in the first place ...

DJ Lethem Yes.

Mr Howell And then when they transferred it here they said it was another £80.

F DJ Lethem Could you just pause there? Yes, it would be. An allocation fee.

Mr Howell That's right.

DJ Lethem So you paid £180 in fees.

Mr Howell And two days work I've lost.

DJ Lethem I thought you told me you were retired?

Mr Howell Well, I am, but I do private work, and I haven't been at work.

G DJ Lethem What would you have been doing today?

Mr Howell Gardening mostly, but of course, being the snow, it wouldn't have been.

DJ Lethem So what would you have been doing today if you hadn't been here?

Mr Howell I would have been doing ... well, I would have been here, that's it. If I hadn't have been here I wouldn't have been doing anything, not in this snow.

A DJ Lethem What about travel? How far have you come?
Mr Howell From Biggin Hill, sir.
DJ Lethem How many miles is that?
Mr Howell It's about 30, I suppose, 30 miles.
DJ Lethem 60 in total.
Mr Howell Something round that, yes, sir.
DJ Lethem £24. [pause] Now, Mr Tanner. I needn't trouble you about loss of earnings for Mr Howell, he would be here anyway, because of the weather.

B Mr Tanner Yes.
DJ Lethem He has paid £180 court fees to the court, and he's also come from Biggin Hill and wants £24 for that. What do you say about an order as to whether or not you should pay those fees?

C Mr Tanner I think in the event when the judgment has been for such low a fee, and given that in correspondence I did actually ask Mr Howell to put to me a reasonable offer, and had I received a reasonable offer of the order of £72 or even £172, I would have sent it him rather than being here today. I believed that he had a point, but I didn't want to concede a penny to find that in doing so I had conceded 1,000, if you follow me.
DJ Lethem I understand what you're saying, and I, I understand the difficulties of being [inaudible].

D Mr Tanner Now had Mr Howell put a reasonable claim to me, there would have been no need for him to have expended his £180 in fees in the first place.
DJ Lethem So that, that offer, "put a reasonable offer to me" ...
Mr Tanner Yes.
DJ Lethem ... was made before he issued these proceedings, is that right? 'Cause he expended this when he issued the proceedings, or within a short time afterwards.

E Mr Tanner Certainly, certainly in relation to the fuel pump and the clutch as they happened, yes. I said to him ...
DJ Lethem When did you say to him, "Put me a, make me a reasonable offer"?
Mr Tanner In one of those three letters that he's put forward, I said I would be prepared to pay.

F DJ Lethem Well, I have some sympathy for you. Unfortunately, you've got the law the wrong way round. It's not for him to make, to put a reasonable offer to you, it's for you to put a reasonable offer to him. Part 36, although Part 36 doesn't apply in its full glory to this case. He has had to expend that money, he has been successful. In the circumstances he will receive those two sums, that's £204 in total. Can that be paid in seven days as well?

G Mr Tanner Yes, under 300, yes. No problem.
DJ Lethem Right, then I shall say the Defendant be paid the costs of the case in the sum of £204 in seven days. Gentlemen, thank you very much for coming in. I wish you a safe journey home.

H

I approve this note of my judgment as amended by me.

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[Signature]
P. L. Judge.