

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2008-00683

BETWEEN

ASHA CHARAN

Claimant

AND

OMAR MOHAMMED

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Yaseen Ahmed instructed by Ms. Tara Lutchman for the Claimant.

Ms. Kandace Bharath for the Defendant.

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JUDGMENT

BACKGROUND

1. The claimant purchased a used vehicle from the defendant at a price of \$90,000.00. She claims that in the course of oral negotiations taking place between November and December 2007, the Defendant represented to her that:

- a. Everything was working well with the vehicle; and
- b. That the claimant was buying a very good vehicle. *Paragraph 4 statement of case*

2. The claimant claims she relied on the said representations and therefore did not take a mechanic to inspect the said vehicle. *Paragraph 5 statement of case.*

3. On the same day of the claimant taking possession of the said vehicle, it was discovered that the air conditioning in the said vehicle was malfunctioning. *Paragraph 16 statement of case.*

4. Two days after her taking possession the vehicle broke down and it was discovered that the **power steering line had burst.** *Paragraph 18 statement of case*

5. She claims that the defendant made representations that were untrue, either well knowing that they were false and untrue, or recklessly, not caring whether they were true or false.

Paragraph 19 statement of case

“it was discovered that the **entire braking system** as well as **power steering line** required overhauling; **the tyres required cambering** and the **wheels aligning...**” *paragraph 24 statement of case*

“...it was also discovered that the **entire air condition system** required overhauling.” *paragraph 25 statement of case*

ISSUES OF FACT

6. Whether the vehicle had the alleged or any defects at the time of purchase?

ISSUES OF LAW

7.
 1. What, if any, representations were made by the defendant to the claimant?
 2. Whether any such representations were made negligently or fraudulently?
 3. Whether any such representations constituted terms of the contract of sale?
 4. If so, was the defendant in breach of any such term.
 5. Is the defendant liable to the claimant in damages for

- (i) Negligent misrepresentation

- (ii) Fraudulent misrepresentation
- (iii) Breach of contract

6. If so, to what extent.

FINDINGS

8. I find that the defects which the claimant has established, namely with respect to the tyres and brakes, were to be expected of a foreign used vehicle used as a taxi with an odometer reading of 100,000 km, and in any event would have been, and were, apparent to the claimant on even cursory inspection.

9. I find that the status of the engine light was made known to the claimant by the Motor Critic vehicle report.

10. I find that, on a balance of probabilities, the air conditioning in the vehicle was working at the time of delivery.

11. I find that the statements allegedly made by the defendant, even if made, did not amount to representations, or terms of the contract of sale.

12. I find that the statements allegedly made by the defendant, were not made negligently or fraudulently.

13. In any event I find that the claimant was not induced to purchase the vehicle by these statements in the manner alleged.

14. I find that the defendant was not in breach of any term of the contract for sale of the said vehicle.

DISPOSITION/ORDERS

15. 1. The claimant's claim is dismissed.
2. The claimant is to pay the defendant's costs on the basis prescribed the Civil Proceedings Rules in the sum of \$14,000.00.

THE CLAIM

16. The Claimant, Asha Charan claims against the defendant:

1. Damages for breach of contract pursuant to an oral agreement entered into by the Claimant and Defendant for the sale of PCB 3671 to the Claimant for the price of \$90,000.00.
2. Damages for fraudulent and/or negligent misrepresentation made on the 5th December 2007 by the Defendant to the Claimant thereby inducing the Claimant to purchase the said motor vehicle PCB 3671. She contended under particulars of negligent misrepresentation -

*The defendant was negligent in that **he failed to provide an up to date and recent appraisal/inspection report to the Claimant for motor vehicle PCB 3671 in ascertaining whether the vehicle was of merchantable quality, in proper working condition and free from defects.***

Particulars of fraudulent misrepresentation pleaded were:

- (a) *The said vehicle was **not in proper working condition and free from defects as represented by the Defendant** prior to the Claimant purchasing the said vehicle;*
- (b) *The said vehicle was also not of merchantable quality nor reasonably fit for the purpose for which it was purchased;*
- (c) *The said vehicle was defective in that **its air conditioning, power steering tyres and braking system and wheels needed repairing;***
- (d) *The Claimant has not been able to drive or use the said vehicle to transport school children **since the 14th December 2007.***

29. Subsequent to the start of this matter on the 4th August 2008 the claimant had the vehicle **towed** to Laughlin and De Gannes at No. 37 Dundonald Street Port of Spain for the purposes of conducting some of the necessary repairs to the said vehicle. **Repairs were performed to the entire braking system, the power steering line was overhauled, the tyres were cambered and the wheels aligned. These repairs totaled to \$7,627.00 which was paid by the Claimant.**

30. Since the defects were discovered in December 2007 the said vehicle was not driven. It was only after the repairs were done in August, 2008 that the Claimant started to drive the vehicle. Upon the Claimant driving the vehicle **certain noises were heard and a heat was emanating from the flooring** and said vehicle returned to Laughlin and De Gannes in about September, 2008 where it was further discovered that the **float valve inside the gas tank was broken and the callister requires replacing**. The cost of these two parts was quoted at \$4,023.62 and \$5,031.96 respectively. However due to the serious financial difficulties the Claimant have not had these repaired.

31. In or about August 2008 also the Claimant **began to have major problems with the gears** and also with **the front shocks** on the vehicle.

THE DEFENCE

17. The defendant says that “as early as September 2007 the price was agreed upon so that there was no further oral or continuing or ongoing negotiations as alleged. The defendant further says that in response to an inquiry from the claimant he told her that as far he was concerned the vehicle **was in good working condition at the time based on a report he had obtained from Motor Critic limited, a vehicle appraiser.**

...the defendant knows that the claimant did not take a mechanic to inspect the vehicle but says that the onus was on the claimant to do so. In fact, the defendant will contend that at the time that he informed the claimant that the vehicle was in good working condition he told her that she should bring her mechanic to check out the vehicle, which she never did. Paragraph 5 of defence.

...the defendant never expressly and/or impliedly informed the Claimant the said vehicle was free from defects as the vehicle was a second hand vehicle and there was always the possibility of defects. (6)

14. *...the defendant avers that the vehicle was hardly used after his mechanic, one Mahindra Tewari, checked out the said vehicle three weeks prior to the purchase in December, 2007.*

18. EVIDENCE

Asha Charan

Paragraph 6, 7, 9, 12, 16, 17, 20, 21, 23, 25, 26, 35, 36, 39. Witness statement - emphasis added

6. *Upon receiving this information, I immediately contacted the Defendant and informed him that I was interested in purchasing the said vehicle. I spoke to the Defendant for about 15 minutes concerning the said vehicle. I enquired from him as to the length of time he owned the vehicle and he indicated that he owned it for about 1 year. I also asked him the reason as to his wanting to sell the said vehicle and he indicated to me that he preferred to buy a vehicle that used diesel since it was cheaper to use. **I also asked him about the condition of the vehicle and the Defendant indicated to me that***

1) *everything was in its original condition. He said it was a real good working vehicle and whenever anything went wrong with the vehicle he took it straight to the company for repairs. He said also that he always maintained the vehicle properly and that I was getting a vehicle that I would not have problems with.*

7. *Based on the high commendation that the Defendant had regarding the condition of the said vehicle, I was led to believe that the said vehicle was in a very good condition and that it was not necessary for me to bring my own mechanic to check the vehicle. Also at no time did the Defendant raise any concerns or inform me of the possibility of defects occurring in the vehicle and this too caused me to believe that it was a very good vehicle that the Defendant had for sale.*

9. *In about mid September, 2007 I collected from the Defendant's mother a letter of sale which the defendant had addressed to the Eastern Credit Union and a Motor Critics Appraisal dated 10th August, 2007. ...*

12. *One of the conditions for the approval of the loan to the Credit Union was the recent satisfactory Valuation Report on the said vehicle which was supplied by the Defendant dated 10th August, 2007 categorised the vehicle as having undergone "**normal wear**" and being graded "**B+**". When the Defendant supplied me with this report **he informed me that since the report was produced he had not driven the said vehicle.** He informed me that the said vehicle was not being used by him since he had purchased another vehicle at that time. **This led me to believe that the said vehicle was in the same condition as at the time of inspection by Motor Critics.***

16. *The Defendant and I liaised with each other on a regular basis whilst the loan was being approved. During these conversations with the Defendant **I tried to negotiate a lower price for***

the said vehicle. He however continued to assure me it was a real good deal and that I was making the right decision in purchasing the said vehicle. The defendant repeatedly told me that “this was a real good vehicle” as he had no major problems with the vehicle. “No quacks does work on this vehicle”. “Anything wrong with the vehicle I take it straight to the company” and “the vehicle does work top of the line”. These were the reasons he gave me to justify the purchase price of \$90,000.00. At no time did the Defendant inform me to bring a mechanic of my own. The Defendant was very convincing. I used to ask him if I would get any problems with the vehicle and he would say I wouldn’t get any problems for a two years.

17. *During one of my telephone conversations with the Defendant sometime in October/November, 2007 I indicated to the Defendant that I wanted to purchase the said vehicle to transport my children to school and that I did not want any vehicle that would break down on me or give problems. The Defendant again assured me that nothing was wrong with the vehicle and I would have no problems whilst using it for a couple of years.*

20. *On the 5th December, 2007 the Defendant and I went to transfer the said vehicle onto my name and to transfer the vehicle from “H” to “P”. Whilst driving to the Licensing Office at about 8.00 a.m. in the morning in another vehicle owned by the Defendant, he spoke to me about the said vehicle. He again indicated that everything was working well with the vehicle and I wouldn’t have any problems with the vehicle. He assured me that I was purchasing a very good vehicle. Up to this point I had not driven the vehicle nor did the Defendant suggest that I drive same. Also my husband was out of the country until late September, early October, 2007.*

21. The **transfer of the vehicle** from Hired status to Private vehicle status and the ownership of the said vehicle from the Defendant to myself was done on about the said **5th December, 2007** at the Licensing Office at Wrightson Road, Port of Spain. I paid a total of \$3,010.00 towards transfer tax for the said vehicle.....

23. On the said **12th December, 2007** at about 10.30 p.m. the **Defendant came to my home with the said vehicle** in order to collect the cheque and to **deliver possession** of the said vehicle to me.

25. The Defendant had **driven the said vehicle to my home** and required a lift to St. James where his vehicle was parked. My husband offered to drive the Defendant to St. James with the said vehicle. The **Defendant drove the vehicle to St. James and my husband then drove the said vehicle home**. This was the first time the said vehicle was being driven on my behalf. When my husband returned home with said vehicle, I opened the gate for my husband and **he offered to let me drive the said vehicle into the garage**. I was eager to drive the said vehicle. **Whilst in the vehicle, I observed that the air condition was not working properly and that a check light on the dash board was not coming off. There was also a cranking noise coming from underneath the vehicle. I pointed these things out to my husband who also agreed with my observations.**

26. The vehicle was next driven on Friday **13th December, 2007** by my husband. He used the said vehicle which was limited to two five minutes drive to drop our children to school in the morning and to pick them up in the evening. The school was about 5 minutes away from my home and when my husband returned home in the afternoon **I observed a reddish oil coming out from under the vehicle**. Upon inspection by my husband and I we observed that **the power steering hose had burst and was causing oil to run out under the vehicle**. When I bent under

the car to check I also observed that the two front tyres had been cut down on the inside, right down to the thread so that the steel was showing. My husband upon inspection of the said vehicle indicated to me that the two ball joint rubbers had burst causing the tyres to cut.

34.The braking system was repaired, the power steering line was overhauled, the tyres were cambered and the wheels aligned. The actual cost of these repairs totalled to \$7,627.00 which was paid by the Claimant.

35. Further it was only after the above repairs were performed in August, 2008 that I resumed driving the said vehicle.

36. However, on the first day that I resumed driving the said vehicle I started hearing certain loud, clanking noises from the gas tank area of the vehicle. Also, an intense heat was emanating from the flooring of the said vehicle.

39. I began to experience some problems with the gears. Whenever the vehicle was driven over humps, squeaking noises would be heard from the front of the vehicle, particularly the front shocks of the said vehicle.

Claimant's witness

19. Derrick Chai, a Motor Loss Adjuster at Cariclaims Investigators and Adjusters Limited conducted inspection of the vehicle in **January 2008**.

Paragraphs 9, 10, 11 of his witness statement are set out hereunder.

9. *On first examination of the engine compartment it was noticed that a **steering line was broken** and leaking steering fluid. The engine was momentarily started to ascertain its condition and it was noticed that the engine was missing (**one cylinder not firing**). The **air condition** also did not function adequately. However, the exhaust emission appeared clean. All electrical were in good working order.*

10. *The **tyres at the front** of the vehicle were **badly worn to the inside** and canvas showing on the left front tyre innermost side which suggested a defect or defects in areas of the steering mechanism or alignment.*

11. *The **engine light** on the dash board also stayed on and therefore indicated an engine malfunction. An attempt was made to select the field range of gears in the transmission at stand still and **low range could not be selected**. Neither did the drive light on the dashboard illuminate when it was in drive selection.*

Lawrence Harper Service Unit Manager at Laughlin & De Gannes Limited

Paragraphs 2, 4, 5, 6, 7, 8,9,10, 17, 18 of his witness statement are set out hereunder.

*I recall that on or about the **19th December 2007** the claimant had Motor Vehicle Registration Number PCB 3671...towed to our premises...She complained to the company that the power steering line was giving problems and that the vehicle was not able to be driven. She indicated that she wanted us to do an assessment of the said vehicle so as to determine the nature of the defects in the said vehicle and the cost factor involved in restoring the said vehicle to good working conditions.*

*Upon inspection of the said vehicle we found that the braking system, power steering line, **transmission line** and the tyres required repairs. We concluded that the said vehicle needed a **tune up and filter and oil change, serving to the throttle body, tin bars and motor clean to the injectors**. It also required **a set of disc pads for both front and rear and the rotors needed to be machined, a diagnostic check, a power steering line, a quart of transmission fluid to flush the transmission, 4 tyres, cambering adjustment four wheel alignment. The front and rear calip pin and purge valve required servicing.***

*I recall examining the said vehicle at that time after it was brought in by the wrecker. The power steering line has burst and required replacing. This was necessary **since once the power line burst the steering had gotten stiff and it was hard to turn. The replacement of the power steering line was necessary in order to drive the said vehicle.***

*I also observed that there were problems with the braking systems. Both front and rear disc pads had been very low and worn down and required replacement. It was also necessary to machine the front and rear rotor. This was because the front and rear rotors had lines which were caused by disc pads being run right down to the metal. There was damage to the rotors in the said vehicle and these **were causing the steering to shake and loud screeching noises** were coming from the said vehicle.*

*Upon inspection of the said vehicle I also found that **a check light was not coming off**....*

In examining the said vehicle I conclude that it did not appear to have been serviced regularly prior to it being brought into the company. It was in a poor condition and I concluded that it had not been maintained properly.

*On about **14th August 2008**, the Claimant returned to our Company and complained about the **engine light not coming off**, that she had started hearing **loud, clanking noises from the gas tank** area of the said vehicle and **an intense heat was emanating from the flooring** of the said vehicle.*

*Upon inspection of the said vehicle we discovered that the **float valve inside the gas tank was broken** and that **the gauge required replacing**. We however, did not have these specific parts available in order to carry out the repairs or supply a quotation.*

Neil Prescod

Paragraphs **3, 6,7,10, 12, 13** of his witness statement are set out hereunder

*In about **late November 2008** I was approached by the Claimant in respect of Motor Vehicle Registration Number PCB 3671 (hereinafter referred to as 'the said vehicle'). She complained that she had been experiencing some problems with the **gears** to the said vehicle. She also complained that whenever the vehicle was driven over any humps, **squeaking noises would be heard from the front of the said vehicle**, particularly the **front shocks of the said vehicle** and **the check light was not coming off**.*

*Also from my inspections I observed that **the front shocks** to the said vehicle had burst. I also found that the **left side cradle bushings were completely destroyed** and required replacing. The **engine and transmission mounts required** changing also as these were badly rusted and had burst.*

*I indicated to the Claimant that in order to resolve these problems with the said vehicle that the **transmission, two front shocks, wheel bearings, engine mount and (sic) velocity joints by-pass hoses, wire clips on sensors** needed to be removed and replaced. I thereafter supplied the*

Claimant with an estimate dated the 1st December, 2008 which placed the cost of materials and labour at \$10,270.00 to repair the said vehicle. I also estimated that the job will take 5 days to complete.

*The transmission and engine mount were taken down and replaced with a **foreign used transmission and a new engine mount**. Also **the right side shock mount** was removed and replaced with a new one, the **left and right side anti braking system (ABS) sensors** were also removed and replaced with new ones because it was not functioning. Also I was required to remove and replace **the power steering belt** with a new one. In conducting these repairs it became necessary to also install a **new alternator belt** for the left side. I also used 7 quarts of transmission fluid.*

The cost of the actual repairs totaled to \$11,195.33 on the 16th February, 2009, the Claimant visited the garage where she paid the balance of \$5,595.33 and was given a receipt. ...

20. Defendant's evidence

Omar Mohammed

Paragraphs 5, 7,8, 9, 13, 15,18, 19, 21 of his witness statement are set out hereunder

In the circumstances I caused to be carried out an Inspection and Appraisal of the said vehicle by Motor Critic Limited in order to ascertain the market value of the said vehicle and determine the condition the vehicle. The result of the Inspection and Appraisal was a report by Motor Critic Limited dated the 17th August 2007....

*The claimant inspected the vehicle and asked me about the condition of the vehicle. I indicated to her that **as far as I was concerned the vehicle was in good working condition** but she should bring her mechanic to carry out an inspection of the vehicle. At no time did I ever represent to the Claimant that the vehicle was free from defects as it was a second hand vehicle and I knew that there was always the possibility of defects being present. I also furnished her with a copy of the above mentioned report from Motor Critic Limited.*

Negotiations took place and in early September 2007 the price of \$90,000.00 was finalized pursuant to the report by Motor Critic Limited. No further negotiations took place and it was agreed that the sale would be on the terms and conditions orally agreed to.

Thereafter the Claimant would visit my residence from time to time and inspect the vehicle.

On or about the 21st November 2007 I took the vehicle to my mechanic, one Mr. Mahindra Tewari for the vehicle to be checked out before being handed over to the Claimant....exhibit of mechanic card..

*On the 5th December 2007 I picked up the Claimant at her sister's residence **using the vehicle** and we visited the Transport Division, Licensing Office, Wrightson Road, Port of Spain where we proceeded to carry out all steps necessary for the vehicle to be transferred and for reclassification of the plates from "Hired" to "Private".*

At about 7 p.m. on the said 12th December 2007, prior to going to the Claimant's residence to drop off the vehicle, I transported a passenger, one Ms. Crystal Perez-Poon, a regular client of mine, in the vehicle for the period of approximately twenty minutes. Whilst we were on our way to Ms. Perez-Poon's residence, the air conditioning was on and Mr. Perez-Poon indicated to me that she was cold and requested that I lower the settings on the air-condition unit, which I did. I dropped off the said Ms. Perez-Poon approximately fifteen minutes before I delivered the vehicle the Claimant's residence.

At all material times the vehicle was in proper working condition and free from all defects, including the air-conditioning system, power steering system and wheels did not need repairing.

Mahindra Tewari

Paragraphs 2, 5, 7, 8, 9, 10, 11, 12, 13 of his witness statement are set out hereunder

I have been a mechanic for approximately 12 years

In or around the 6th September 2007, the Defendant brought the vehicle to my garage and indicated that the vehicle was being sold and to "check it out". On this occasion the main drive belts, as well as the oil and filter were changed.

In or around the 15th September 2007 the Defendant brought the vehicle to my garage as and I changed two ball joints and 2 small bushings, one large bushing on the right side

Upon my inspection of the vehicle there was nothing else wrong with the vehicle

*On or about **the 21st November 2007, the Defendant brought his vehicle to my garage and indicated that the vehicle would be sold in December** and that he was hearing a squeaking noise and as such he wanted me to check it out before it was handed over to the purchaser.*

*Upon inspection I determined that the noise was emanating from the fuel level sending unit, located in the fuel tank of the vehicle. I advised him that **in order to remedy the problem the***

entire unit would have to be changed but if this was not carried out it was not crucial to the proper functioning of the vehicle and it only resulted in the squeaking noise which was being heard.

I carried out a final check on the entire vehicle and determined that the vehicle was in proper working order.

To my knowledge and upon the inspection of the vehicle on the last occasion there were no defects with the vehicle save as mentioned above and it was in proper working condition.

Crystal Perez-Poon

...I do recall that the air-conditioning was on and functioning well as I was feeling cold and asked the Defendant to lower the coldness of the air-conditioning. (Paragraph 7)

ANALYSIS AND FINDINGS OF FACT

21. The Alleged Representations

- 1) *Everything was in its original condition.*
- 2) *It was a real good working vehicle*
- 3) *Whenever anything went wrong with the vehicle he took it straight to “the company” for repairs.*
- 4) *That he always maintained the vehicle properly*
- 5) *That I was getting a vehicle that I would not have problems with.*

“This was a real good vehicle”

“No quacks does work on this vehicle”.

“Anything wrong with the vehicle I take it straight to the company”

“The vehicle does work top of the line

I wouldn’t get any problems for a two years.

That nothing was wrong with the vehicle and I would have no problems whilst using it for a couple of years.

That everything was working well with the vehicle

I wouldn’t have any problems with the vehicle.

That I was purchasing a very good vehicle.

22. As to the alleged representations it defies credibility that the claimant was induced by these statements and as a result did not carry out her own independent adviser. She chose not to carry her own mechanic. Any mechanic would have been able to readily ascertain that the tyres were worn or that the brake pads needed changing.

23. Apart from that however, the lighted engine check light would have been obvious to the claimant herself, as well as whether the air conditioning was working. In fact the condition of the tyres was discovered by her the very next day, and the air conditioning and engine light status the moment she entered the vehicle to drive it on the night of delivery to her. The odometer

reading was also instantly visible on the dashboard, and there is no basis for her alleged belief that the vehicle would maintain the same mileage as at the date of the Motor critic report. If this were important a cursory inspection of the odometer would have produced that information.

24. None of those statements allegedly made could have induced a reasonable person to decide not to have the vehicle independently checked. It was not even necessary for a mechanic to inspect it to identify most of the defects alleged by the claimant.

25. Further none of those statements could possibly have led a reasonable person not to herself inspect the vehicle. No matter how superficial the examination the alleged status of the air conditioning and the engine check light would have been immediately obvious, even if she had not read the Motor Critic Report.

26. A slightly more detailed examination would have revealed the condition of the tyres and the brakes – obvious targets for inspection. These were identified by the claimant herself on the first day of driving the vehicle.

27. I do not accept that the statements made could have been relied upon by the claimant so as to induce her, as alleged, to buy the vehicle without having examined it either herself for by a mechanic, or even a competent friend. The statements made are not of such a character.

28. LAW

Chitty on Contracts, Volume 1, 30th Edition

Paragraph 6-006

(a) A false statement of fact

*A misrepresentation must be a false statement of fact, past or present, as distinct from a statement of opinion, or of intention or mere commendatory statements. Mere “puffs” do not amount to representations: *Dimmock v Hallet (1866) L.R. 7 Ch. App. 21 at 27. A mere statement of opinion which proves to have been unfounded, will not be treated as a misrepresentation, Hummingbird Motors Limited v Hobbs [1986] R.T.R. 276.....as a general rule these cannot be regarded as representations of fact, except insofar as they show that the opinion or intention is held by the person expressing it. Moreover statements must be construed as they would reasonably be understood by the recipient in the context in which the statement was made. Thus a statement as to the nature of a policy made to an experienced loss adjuster, who had a copy of the policy schedule that described it correctly, and was thought to have a copy of the policy itself, was regarded as “a contention, not as a representation” – in other words, it was merely an expression of opinion.*

*Dimmock v Hallet (1866) L.R. 7 Ch. App. 21 at 27.

*Hummingbird Motors Limited v Hobbs [1986] R.T.R. 276

6-007

Statement of opinion may amount to statement of fact

However, in certain circumstances a statement of opinion or of intention may be regarded as a statement of fact, and therefore as a ground for avoiding a contract if the statement is false. Thus, if it can be proved that the person who expressed the opinion did not hold it, or could not, as a reasonable man having his knowledge of the facts, honestly have held it, the statement may be regarded as a statement of fact. Connolly Limited v Bellway Homes Limited [2007] EWCH 895.

6-008

Opinion not honestly held

If a person states as his opinion something which he does not in fact believe, or which given the facts known to him, he could not honestly hold, he makes a false statement of fact. So where at a sale of property, the vendor described the occupier as “a most desirable tenant”, while in fact he knew that the rent was considerably in arrear, this was held to entitle the purchaser to rescind the contract.

Smith v Land and House Property Corp (1884) 28 Ch D 7.

6-012 Reasonable reliance on statements of opinion or statements as to the future

*...It is suggested that the fundamental principle which underlies all the cases of misrepresentation,... is not so much that statements as to the future, or statements of opinion, cannot be misrepresentations; but rather that **statements are not to be treated as representations where, having regard to all the circumstances, it is unreasonable of the representee to rely on the representor’s statements rather than on his own judgment.** In general this seems to be the reason why statements as to the future and statements of opinion have been held not to ground relief; in dealing with statements of this nature it has usually been felt that the representee ought not to have relied on the representor. It has been recognized that sometimes a statement which on its face a statement of fact was really only one of opinion because it was apparent that the maker had no real knowledge or was simply passing on information for what it was worth.*

*Bisset v Wilkinson [1927] A.C. 177

*Highland Insurance Co. v Continental Insurance Co [1987] 1 Lloyd’s Rep. 109.

On the other hand there are circumstances in which it is perfectly reasonable for the representee to rely on the representor’s statements even where those statements are matters of opinion, or statements as to the future, and where this is the case, it is thought that the statement should be treated as a representation in the relevant sense.

*R v Sunair Holidays Ltd [1973] 1 W.L.R. 1105

29. For example if the statement were made that everything was in its original condition then knowing that the vehicle was a foreign used vehicle, had an odometer reading of 100,000 km. as clearly stated in Motor Critic report, and had been in use as a taxi, such a statement if made at

all, must have been recognized by a reasonable person as being mere puff or exaggeration, and treated with healthy sceptism. It would be unreasonable to ascribe such weight to a statement of that nature and it would not be reasonable for the claimant to rely on such a statement, as she claims she did, to enter into the contract of sale without performing basic inspection of the vehicle either herself or with an adviser.

30. In any event this statement would have been inconsistent with the alleged statement “*anything wrong with the vehicle, I take it to the company for repairs*”. Surely a statement like that would trigger the query “anything wrong? – like what ? – what repairs were done on this vehicle? On her own evidence the claimant assumed that by “the company” it was the dealer that he was referring to, though he is never alleged to have said that it was.

31. The alleged statement that “*no quack does work on this vehicle*” or *that the claimant would have no problem for two years*” for example are not really representations, but expressions of opinion. In the case of the statement “*I wouldn’t get any problems for a two years*” “the defendant couldn’t possibly have had such knowledge of what the future held for a vehicle with a 100,000 km odometer reading.

32. It must have been obvious to a reasonable, intelligent person that this must be the case and it was obvious from the manner in which the claimant testified that she was sufficiently

intelligent to have realized this, and not consider it a statement of fact, far less to have permitted herself to be induced by such statements.

33. The other alleged statements are of the same nature. I have no reason to doubt the claimant's evidence that some of these statements were made to her but I do not accept that all the statements attributed to the defendant, especially the more exaggerated ones, were in fact made by him.

34. I do have reason to doubt whether they constituted representations, and whether they could constitute terms of the contract for sale. I find that even if they were made they would not amount in law to representations such that the claimant;

- (a) could credibly state that she was induced by them to purchase the vehicle
- (b) ought to have relied on these rather than on her own judgment.

35. I find that any such statements made were mere puff and / or statements of opinion (such as *the vehicle does work top of the line*) and could not, by their nature, constitute representations. In any event even if they could I find that they were not made negligently or fraudulently, because the defendant had no knowledge of any unremedied defects in the said vehicle, (save for the gas tank float valve), which fundamentally affected the operation, performance or safety of the said vehicle. There is no evidence that he deliberately concealed from the claimant knowledge which he had of any such defect.

36. In fact the evidence is that
- a) The claimant received a copy of the Motor Critic Report.
 - b) That report clearly indicated
 - i) that the vehicle was a foreign used vehicle,
 - ii) that its odometer reading was 100,000 km,
 - iii) that the vehicle was in use as a hired vehicle, and
 - (iv) that the engine light on the dashboard was lit.

ALLEGED BREACH OF CONTRACT

37. As to the alleged defects I find as follows:

CHRONOLOGY

- | | | |
|--------------------------------|---|---|
| Mid September 2007 | - | Motor critic report given to claimant |
| December 5 th 2007 | - | Vehicle transferred to claimant – query whether at licensing office |
| December 12 th 2007 | - | vehicle dropped off at claimant's home -claimant notices <ul style="list-style-type: none">(a) that air condition not working(b) check light on dashboard not coming off |
| December 13 th 2007 | - | Power steering hose burst
Discovery that tyres cut/worn |
| December 19 th 2007 | - | Braking system – disc pads, rotors
Burst power steering line – replacement
Transmission line
Tyres |

August 14 th 2008	-	Float valve in gas tank broken
November 2008	-	Transmission replaced, shocks, bearings, engine mounts, sensors, Power steering belts

The engine check light

38. It is clear that the claimant would have known of the engine check light issue. It was referred to in the Motor Critic Report.

39. It is clear that the defendant knew of the gas tank float valve issue. He did not inform the claimant of this. I accept however the evidence of his mechanic that, given the cost of repairing this he elected not to as this was not an issue that would impact on the functioning of the vehicle.

40. The claimant says she did go to the Licensing Department with the defendant on December 5th 2007 to effect the transfer of the vehicle but not in that vehicle. The defendant says she did travel with him in that vehicle. On her version of events she would allegedly have had no opportunity to:

- (a) ascertain whether the air conditioning was working.
- (b) hear any noises the vehicle might have been making.

41. Section 19 of the Motor Vehicles and Road Traffic Act requires the vehicle to be present at the time of transfer together with the registered owner and the proposed transferee.

42. I do not accept that the claimant is truthful in stating that she never travelled in that vehicle to the licensing office.

Air conditioning

43. I entertain considerable doubt as to whether the air conditioning was defective at the time of sale or delivery.

44. At the time of sale the claimant on a balance of probabilities travelled in the said vehicle to the Licensing Office.

45. At the time of delivery the claimant's husband, himself an air conditioning technician and the owner of a business specializing in air conditioning, travelled in the vehicle. Yet it took the claimant to point out its alleged non-functioning when she sat in it at her home, after he had driven to and from St. James in the very vehicle without detecting that anything was wrong with it.

46. It is for this reason that I accept the evidence of the defendant's customer, unusual though it is for her to have remembered the fact that the air conditioning in the vehicle was working on the day of delivery.

The power steering

47. I accept the claimant's evidence that the power steering hose was discovered burst the day after delivery. I find that this probably had not burst before delivery of the vehicle to her as it would have caused the steering to become less maneuverable (see evidence of Mr. Harper), detectable by her husband when he drove the vehicle back from St. James, or when he used it the following day to drop the children.

48. I accept the evidence of the defendant's mechanic that he did repair such a hose, as the vehicle could not have been readily driven without power steering fluid.

49. I find that the defendant could not have known that the hose would burst again, and that while the timing of this was unfortunate, right after delivery to the claimant, the defendant was not liable thereby for breach of contract, or misrepresentation.

Tyres

50. There really is no sensible or credible explanation as to why the claimant, over the months that she was waiting to purchase the said vehicle, did not examine the tyres of this vehicle. This was something that she could have done herself. Even if she did not, she could have had someone else do so on her own behalf. Such a person did not have to be a mechanic. She did not inspect the tyres. The vehicle was a working taxi. Any reasonable person would expect that it would be operated over a higher mileage, and could experience greater tyre wear, than a vehicle

operated by an owner for purely private purposes. The fact that tyres needed replacing was a risk that she thereby accepted when she took delivery of the vehicle without making those basic checks.

Brakes

51. There really is no sensible or credible explanation as to why the claimant over the months that she was waiting to purchase the said vehicle did not have the brakes on the vehicle examined. The fact that disc pads needed replacing was a risk that she thereby accepted when she took delivery of the vehicle without making those basic checks.

52. I do not accept that the claimant was induced by the very general statements that she says were made to her. I consider it to be an exaggeration that those alleged statements, even if made, were sufficient to induce her to forego all independent thought and discretion.

53. In fact I find that the engine check light status was disclosed on the motor critic report which the claimant was given in September 2007, and it would have been obvious just by sitting in the vehicle and looking at the dash board. That would also have revealed the current odometer reading.

54. I do not accept the evidence of the claimant that she only discovered this on the night of delivery of the vehicle, and view with suspicion the assertions that the vehicle presented with a multiplicity of problems to the extent that she testified. I find that on a balance of probabilities, the air conditioning, for example, was working at the time of delivery.

55. The characterization of the noise made by the gas tank float is another illustration of the propensity to exaggerate the defects, and costs of remedying same. I accept the evidence of the defendant's mechanic that if this were not replaced it would not impede the normal functioning of the vehicle, and that given the cost of replacing the entire unit versus the effects of not so replacing it, it would be a reasonable decision not to replace it.

56. The claimant was not purchasing a new vehicle. Her suggestion under cross examination that because of the series of the vehicle she thought that it was relatively new (paraphrase) is not supported by the Motor Critic report. This clearly states that the vehicle was "foreign used"- that is, it would have been purchased second hand, and it would be older than a vehicle purchased new from the dealer with a similar registration number.

57. I do not accept that the claimant did not know this. She testified as an independent, practical, thinking person of intelligence, not as a person who would rely unthinkingly on statements such as those alleged. I do not accept that the claimant would not have known that the

vehicle was a foreign used vehicle or that by virtue of that fact the registration series of the vehicle would not reflect its actual age.

58. The evidence demonstrates

1. That the contract was for the sale of a vehicle

(a) Which was a foreign used vehicle, and

(b) Was operated as a taxi.

(c) Which had an odometer reading of 100,000 km as at August 2007.

2. That it was maintained by the defendant's mechanic.

3. That the claimant discovered issues with the vehicle after taking delivery.

59. I find that some of those issues as set out above were exaggerated. The risk of others, like the state of the tyres and the brakes, was accepted by the claimant when she chose not to have these basic items examined, even foregoing personal inspection.

60. The brake pads and/or tyres could not reasonably be expected to be in original condition. If the claimant wished to attempt to offset the replacement cost of these or other items this was open to her in negotiating the price, which she attempted unsuccessfully. It was open to her to

walk away from the purchase. It was also open to her to accept the risk of taking the vehicle without inspection, and with those items in whatever state they happened to be in.

61. I find that the power steering hose did burst after delivery, but on the evidence this cannot be ascribed to the defendant. He provided the Motor Critic report, and did not conceal the fact that the vehicle was in use as a taxi, with an odometer reading of 100,000 km and an engine warning light showing on the dashboard for all to see.

62. The evidence from Laughlin and De Gannes is that they performed the following work in August 2008

- a) Tune up and filter and oil**
- b) Servicing (servicing ?) to the throttle body, tin bars**
- c) Motor clean to the injectors**
- d) A diagnostic check**
- e) A quart of transmission fluid,**
- f) Cambering**
- g) Adjustment four wheel alignment**
- h) The front and rear calip pin and purge valve required servicing**

63. On their face these costs are for service/ maintenance type activities, and have not been demonstrated to be occasioned by defects as such.

64.

a) A set of disc pads for both front and rear

b) 4 tyres,

In relation to these costs the fact that tyres and disc pads on a vehicle have to be replaced does not indicate that the vehicle is defective. These are normal incidents of operating a vehicle. The claimant owned a vehicle before and I do not accept that she would not have known this, especially as her application for the loan to purchase the said vehicle included a figure of \$1600 per month as her estimate for vehicle repairs.

65. *A power steering line* needed to be replaced.

If this line had burst before the claimant received the vehicle it would have been obvious on the night of delivery. I have found that this line, on a balance of probabilities, burst after the vehicle was delivered to the claimant, and that it is very unlikely that the defendant would have known that it would burst.

66. Such a line/hose had been repaired before, and the defendant had it repaired. He would not reasonably expect it to burst again. The evidence is that he did take the vehicle to his mechanic on a reasonably regular basis.

67.

a) The rotors needed to be machined

b) Transmission line

In relation to the two items above I find that there is no reason to believe the defendant knew about these , that the vehicle could not be expected to be in the exact condition as a new vehicle given its age and history, and in any event the costs of repairing these were within a reasonable range for a second hand vehicle ,and not so excessive as to justify the claimant's assertion that there was a total failure of consideration.

68. I do not consider on the evidence that the defendant was in breach of the contract for sale of the said vehicle.

69. Further, I view with scepticism the further alleged defects that the claimant went on to discover after the Laughlin and de Gannes repairs (save for the gas tank float valve – which was a condition existing prior to the sale). It has not been demonstrated on the evidence that the need for replacement of the entire transmission, and the alleged heat coming from the floor of the vehicle for example, were known to the defendant or attributable to his use of the vehicle.

70. I consider that the attempts to portray the vehicle as substantially defective at the date of delivery are based on exaggerations, not supported by the evidence. I consider the attempt to portray the entry into the contract for sale of the vehicle, without even a basic cursory inspection of it, as based on various representations by the defendant, is equally based on exaggerations.

CONCLUSION

71. I find that the defects which the claimant has established, namely with respect to the tyres and brakes, were to be expected of a foreign used vehicle, used as a taxi, with an odometer reading of 100,000 km, and in any event would have been, and were, apparent to the claimant on even cursory inspection.

72. I find that the status of the engine light was made known to the claimant by the Motor Critic vehicle report.

73. I find that the air conditioning in the vehicle was, on a balance of probabilities, working at the time of delivery.

74. I find that the statements allegedly made by the defendant, even if made, did not amount to representations or terms of the contract of sale.

75. In any event I find that the claimant was not induced to purchase the vehicle by these statements in the manner alleged.

DISPOSITION/ORDERS

76. The claimant's claim is dismissed. The claimant is to pay the defendant's costs on the basis prescribed the Civil Proceedings Rules in the sum of \$14,000.00.

Dated this 19th day of April, 2011

Peter A. Rajkumar

Judge