

**IN THE HIGH COURT OF FIJI AT LAUTOKA**

**CIVIL JURISDICTION**

**Civil Action No. HBC 125 of 2015**

**BETWEEN**

**CARPENTERS FIJI LIMITED** trading as **CARPENTERS FINANCE** a company  
duly incorporated under the Companies Act having its registered address at  
Robertson Road, Suva.

**PLAINTIFF**

**AND**

**GYANESHWAR SANEHI RUP** trading as **GYANESHWAR & COMPANY**

having its place of business at 28 Bouwalu Street, Lautoka.

**DEFENDANT**

**Counsel** : Mr. Narayan with Ms. S. Lal for Plaintiff

Mr. A. Dayal for Defendant

**Dates of Hearing** : 19<sup>th</sup> & 20<sup>th</sup> September 2022

**Date of Judgment** : 28<sup>th</sup> October 2022

## JUDGMENT

[1] The plaintiff filed the writ of summons and the statement of claim seeking the following reliefs:

- (i) Judgment in the sum of \$71,731.95;
- (ii) Interest on the judgment sum at the rate of 18% per annum until full payment but limited to the jurisdiction of the court;
- (iii) Damages;
- (iv) Costs; and
- (v) Any further remedies this court deems appropriate.

[2] The plaintiff's case is that the defendant applied for the loan to finance his vehicle Registration No. FQ007 (Engine No. D4EB9798485 / Chassis No. KMSHS81WR9U524617) and on 30<sup>th</sup> December 2009 the plaintiff offered a loan facility which was accepted by the defendant.

[3] The particulars of the loan facility are as follows:

Value of Vehicle	:	\$79500.00
<i>Less</i> Trade-in Isuzu Trooper Reg. DQ 171(Deposit)	:	<u>\$13,000.00</u>
Loan sum	:	\$66,500.00
<i>Add</i> Account Est. Fee	:	\$ 1,565.86
Attestation Fee	:	\$ 20.00
LTA Charges	:	\$ 18.00
Interest (13% p.a.)	:	<u>\$44,267.51</u>
Net Finance Sum	:	<u>\$112,371.37</u>
Repayments	:	\$1,864.37
Term of the Loan	:	60 months

[4] On the same day the defendant executed a Bill of Sale in favour of the plaintiff and it was lodged for registration with the Registrar of Deeds and Land Transport Authority.

[5] In the statement of claim the plaintiff avers further that on or about August 2011 the defendant started to default his monthly repayments and on or about October 2011 the plaintiff issued the final reminder notice and since the defendant failed to remedy the default on or about 21<sup>st</sup> October 2014 issued a default notice. On 10<sup>th</sup> January 2015 repossessed the vehicle pursuant to the Bill of Sale.

[6] The defendant by way of a counterclaim sought the following reliefs:

1. The bill of sale be set aside.
2. Damages.
3. Interest (Pre and post interest)
4. Costs on indemnity basis.
5. Plaintiff's claim be struck out.

[7] In the statement of defence the defendant states at paragraph 7 that he paid two instalments of \$1873.00 each in September and October 2011. The defendant states further that due to the fact that the vehicle was not fit to be on the road he did not make any payment from 21<sup>st</sup> December 2011. In evidence also he said after the vehicle broke down he stopped paying.

[8] At the pre-trial conference both parties have admitted the following facts:

- 1.0 The plaintiff at all material times a company duly incorporated under the Companies Act [Cap 247] having its registered address at Robertson Road, Suva.
- 2.0 He defendant at all material times –
  - a. residing at Tuvu settlement, Lautoka; and
  - b. was the sole proprietor of the business trading under the name and style of Gyaneshwar & Company.
- 3.0 On or about 16 September 2010, the defendant applied for a loan from the plaintiff to finance his purchase of a Hyundai Santa Fe (“the Vehicle”) from Carpenters Fiji Limited trading a Carpenters Motors (“the Application”).

- 4.0 The defendant had traded-in his vehicle number DQ171 to the plaintiff as a deposit amounting to \$13,000.00 to the vehicle purchased from Carpenters Fiji Limited.
- 5.0 The registration number of the vehicle is FG 007. The engine number of the vehicle is D4EB9798485 and Chassis Number being KMHSH81WR9U524617.
- 6.0 On or about 30 December 2009, the plaintiff offered a loan facility pursuant to the application, which the defendant acknowledged and accepted (referred to as "the Loan Facility inclusive of particulars herein).

Particulars of the loan facility are as follows:

Value of Vehicle	: \$79500.00
<i>Less</i>	
Trade-in Isuzu Trooper Reg. DQ 171 (Deposit)	: <u>\$13,000.00</u>
Loan sum	: \$66,500.00
<i>Add</i>	
Account Est. Fee	: \$ 1,565.86
Attestation Fee	: \$ 20.00
LTA Charges	: \$ 18.00
Interest (13% p.a.)	: <u>\$44,267.51</u>
Net Finance Sum	: <u>\$112,371.37</u>
Repayments	: \$1,864.37
Term of the Loan	: 60 months

- 7.0 On or about 30 December 2009, the plaintiff and the defendant executed a Contract Document and Information Statement as per the Loan Facility pursuant to the Consumer Credit Act 1999 ("the Agreement").

- 8.0 On or about 30 December 2009, the plaintiff the defendant executed a Bill of Sale in favour of the plaintiff with the vehicle primarily demised as security for the Loan Facility. The said Bill of Sale was subsequently lodged for registration with the Registrar of Deeds and Land Transport Authority.
- 9.0 The documentation and registration for the Bill of Sale was done by the plaintiff.
- 10.0 On or about October 2011, the plaintiff issued Final Remainder Notice to the defendant.
- 11.0 On or about 21 October 2014, the plaintiff issued to the defendant a Default Notice totalling sum of \$64,154.08 plus cost of \$112.50 on account of accrued re-payments , interest and costs.
- 12.0 On or about 10 January 2015, the vehicle was repossessed pursuant to the Bill of Sale and the plaintiff issued a notice after repossession on the plaintiff, giving notice to the defendant to, inter alia, exercise his equity of redemption which the defendant failed to exercise.
- 13.0 The plaintiff has against the defendant sought by way of formal demand the Amount Due on 29 May 2015.

[9] From the facts admitted by the parties it is clear that the plaintiff offered a lean facility which was accepted by the defendant and the parties entered into an agreement and also the defendant executed a Bill of Sale. None of these documents were challenged by the defendant. However, the 1<sup>st</sup> witness for the plaintiff tendered all these documents in evidence at the hearing.

[10] In the quotation given to the defendant (P5) it is stated;

STANDARD GENERAL WARRANTY

50,000KM OR 2 YEARS WHICHEVER COMES FIRST

EXTENDED DRIVE TRAIN WARRANTY


YOU ARE ALSO ENTITLED TO A EXTENDED DRIVE TRAIN WARRANTY FOR 36 MONTHS OR 100,000KM WHICHEVER OCCURS FIRST

- [11] However, in the warranty document signed by both parties is a drivetrain warranty and only mechanical components of the engine and mechanical components of transmission including the differential.
- [12] The defendant testified that the warranty was not explained to him. However, he admits that he read it before signing. If the defendant could not understand the terms and conditions contained in the warranty document he could have requested the plaintiff to explain it to him.
- [13] The defendant's position is that the vehicle was not of merchantable quality.
- [14] The defendant, as averred in the statement defence, stopped payments because the vehicle had mechanical defects. The defendant's evidence is that the vehicle was serviced at 1000km and 5000km. He testified further that once he took the vehicle to Suva and he could not start it and when he informed the plaintiff it took the vehicle to the garage and it took few days to get the vehicle back. He also said in evidence that apart from the key problem there were other problems with the power steering and the seat. According to the defendant there had been so many other technical issues such as bursting of the radiator hose pipe (P24). It is also the evidence of the defendant that towards the end of 2011 he had to hire a tow truck and towed the vehicle to plaintiff's garage and with his permission the engine of the vehicle was opened and found that the engine had seized.
- [15] In this regard the defendant had sent an e-mail (D1) to the plaintiff and had explained how it happened. In the e-mail he had said that he bought the vehicle on 30<sup>th</sup> December 2009 and after driving the vehicle for about running the vehicle for about 2500km it started giving problems.
- [16] The issue of the key had been solved by the plaintiff. The defendant says that it occurred over and over again but apart from his statement there is no other evidence of a qualified person that it was an inherent defect in the vehicle.
- [17] The defendant also testified that somewhere in October and November 2011 on his way to the office the vehicle stopped and said further that Hyundai have a control in there to stop the vehicle when water dries up. However, he was not able to tell court from where he got this information and he did not even say that he is qualified give such evidence. Be that as it may, when the vehicle faced this technical issue it had already run ninety five to ninety seven thousand kilometres within a period less than two years which is about 140km a day.

- [18] When the engine suddenly stopped, the vehicle was taken to the plaintiff's garage and the engine was opened with defendant's permission. It was found that the engine had due overheating of the engine. It was later found that the reason for overheating the engine was bursting of radiator hose. The defendant without taking to the plaintiff's garage hired a mechanic who cut the hose and fixed it without replacing it.
- [19] The defendant admitted that he did not service the vehicle at 85,000km, 90,000km and 95,000km.
- [20] From the above it is clear that the defendant had not maintained the vehicle properly and also had not taken good care of it. He cannot say that the vehicle was not of merchantable quality.
- [21] There is an agreement between the parties that once the vehicle is repossessed the plaintiff would sell the vehicle and that the amount recovered would be set off against the claim. However, the vehicle was not sold and the reason offered by the plaintiff was that it had no value.
- [22] The defendant claimed damages from the plaintiff but the damages sought are not expressly pleaded and also no evidence was adduced to prove damages.

### ORDERS

1. The defendant is ordered to pay the plaintiff \$71,731.95 with interest pursuant to Law Reforms (Miscellaneous Provisions)(Death and Interest) Act.
2. The defendant's counter claim is struck out.
3. The defendant is also order to pay the plaintiff \$7500.00 as costs.

  
Lyone Seneviratne

**JUDGE**



28<sup>th</sup> October 2022