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FINAL

Claim No.: J01BS566

IN THE COUNTY COURT AT BRISTOL

On appeal from Deputy District Judge A. Davies

B E T W E E N :

BLACK HORSE LIMITED

Claimant/ Respondent

-and-

ANDREW CURTIS

Defendant/ Appellant

JUDGMENT

Title page corrected under slip rule 26.2.24

Representation:

Claimant	Mr Evans instructed by:
	TLT LLP
Defendant	Mr Lascelles instructed by:
	Drew & Co

INTRODUCTION

1. A consumer purchases a car from a trader and it is delivered to the consumer. The car is driven by the consumer. The car is not of satisfactory quality. The consumer rejects the car, the trader knows that the consumer has rejected the car and the entitlement to final rejection is not disputed. The consumer tells the trader that the trader can collect the car. No collection time is agreed. The trader does not collect or attempt to collect the car and the consumer continues to use it for a considerable time adding considerable miles. Is the consumer required to give credit for the ongoing use?

2. Generally, section 20 of the Consumer Rights Act 2015 gives the consumer a right to a refund upon exercising his final right to reject. Section 20(2) says the final right to reject is subject to section 24.

3. Section 24(8) of the Consumer Rights Act 2015 reads as follows:

   "If the consumer exercises the final right to reject, any refund to the consumer may be reduced by a deduction for use, to take account of the use the consumer has had of the goods in the period since they were delivered, but this is subject to subsections (9) and (10)."

4. This case concerns only subsection (9) which reads as follows:

   "No deduction may be made to take account of use in any period when the consumer has the goods only because the trader failed to collect them at an agreed time".

5. As a matter of law, is a deduction to be made when the consumer has validly exercised his final right to reject the car, is content for the trader to collect the car, the trader makes no effort to agree a time for collection, there is no agreed time for collection and the consumer continues to use the car until the trader later takes possession of the car?

6. This was one of the issues which arose in the claim brought by Black Horse Limited against Mr Andrew Curtis. The claim was tried by Deputy District Judge Davies and she found in favour of Black Horse Limited on this issue. She held that a deduction was to be made for Mr Curtis' use of the car post final rejection.

7. Mr Curtis has appealed this decision. On 20th November 2023 HHJ Blohm KC gave Mr Curtis permission to appeal and I heard the appeal on 31st January 2024. I record my gratitude to counsel namely:

(a) Mr Lascelles for Mr Curtis and

(b) Mr Evans for Black Horse Limited (to which I shall refer as 'BHL')

for the assistance they gave me.

THE APPEAL

8. There are two grounds of appeal.

9. The first ground reads as follows:

"It was an error of law for the court to conclude that section 24(9) CRA 2015 does not apply in circumstances where the "*fail*ure *to collect… at an agreed time*" was the fault of the trader."

and this judgment mainly addresses that ground.

10. The second ground reads as follows:

"The court's conclusion that the Appellant failed to co-operate in the return of the vehicle, in accordance with s. 24(9) CRA 2015, was perverse."

11. In oral submissions Mr Evans accepted that it was BHL that failed to cooperate rather than Mr Curtis and I think it was common ground at the appeal that the

only criticism that could be made of Mr Curtis was – at most – a lack of collaboration by failing to be proactive in sorting out a date for collection. There is no argument or evidence that Mr Curtis ever impeded BHL in collecting the car. Further, on reading the judgment as a whole, it is apparent that the judge did not base her decision on lack of "cooperation" (which would surely have presupposed an attempt by BHL to arrange collection of the car). As I said during the appeal, the criticism to be made of the Judge relates, I think, to her choice of language rather than reasoning.

12. Accordingly I do not intend to address ground two any further.

13. An appeal is a review of the decision of the lower court; ground one raises an issue of law and this appellate court must decide whether or not the judge was wrong in law.

14. It is common ground that there is no case law which assists the court and I was not taken to the cases in the authorities bundle provided to be. Both Mr Lascelles and Mr Evans focussed upon statutory interpretation and both relied on extracts from Bennion, Bailey and Norbury on Statutory Interpretation (8th edition).

15. On 1st February 2024, after the hearing before me, the Court of Appeal handed down its judgment in Savage v Savage [2024] EWCA Civ 49. Snowden LJ provides an exceedingly helpful summary of the principles of statutory interpretation which I propose to adopt later in this judgment. Counsel have not had an opportunity to address me on the principles in Savage therefore there will be a specific liberty to apply for a further hearing limited to submissions on Savage if either Mr Evans or Mr Lascelles consider a further hearing necessary. Reference should be made to the order which is issued with this judgment.

THE FACTS

16. The facts are set out in the judgment of the judge and I shall summarise those key facts as admitted or found which are relevant to this appeal.

17. The hire purchase agreement was made on 17th January 2018.

18. By a letter dated 10th August 2020 BHL admitted that the car was not of satisfactory quality at the point of inception[1].

19. Correspondence ensued between the parties and the key findings in the judge's judgment are as follows:

"27. I consider that it is the letter of 21 August 2020 where the Defendant exercises his right to reject under section 20. Although he makes a veiled threat to add the costs of a hire vehicle to his claim for damages after offering the vehicle for collection nevertheless in my judgment he does sufficient to fulfil his duty under subsection 7(b} to make the goods available for collection by the trader.
28. However, what transpired was that no agreement was made between the parties for the mechanics of collecting the vehicle and despite rejecting it as it was not of satisfactory quality the Defendant has continued to drive it around, placing over 40,000 further miles onto the vehicle which remains uncollected.
29 The reason that the vehicle is not collected was fleshed out in cross examination of Mr Quinton. He explained that the Claimant's process inextricably linked the collection of the car with the resolution of the financial settlement between the parties. As the Defendant had not agreed the financial offer made by the Claimant they had not collected the vehicle. When asked in cross-examination why in his view the Claimant said the Defendant had refused to deliver up the vehicle his answer was *"because he wasn't accepting our offer'.*
30. Mr Quinton went on to concede that the Defendant had never refused to deliver up the vehicle, and that the dealership or the Defendant's home address were reasonably convenient places from which the Claimant could have collected the vehicle. He also acknowledged that the Claimant had not notified the Defendant of another place at which he should make the vehicle available for collection. Finally he accepted that it was clear from the Defendant's correspondence the vehicle was available for collection.

[1] Of the HP agreement.

20. The judge went on to find against BHL on the affirmation of contract issue and concluded that Mr Curtis had rejected the car.

21. The judge addressed the matter of damages in paragraphs 36ff of her judgment. For the purposes of this appeal the key paragraphs are as follows:

> 39. Section 24(9) must be read in its entirety. It does not provide that no deduction may be made to take account of use in any period when the consumer had the goods only because the trader failed to collect them. It is for failure to collect at an agreed time. By its nature agreement requires the co-operation of the parties.
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> 40 Whilst the Claimant complains that the Defendant has continued to use the vehicle after rejection, they could have prevented this by agreeing to its collection and notifying the Defendant of a reasonably convenient place to return it to. Mr Quinton agreed in cross-examination that the Claimant had refused to make any suggestions to the Defendant about the mechanics of collection. However I also observe that the Defendant also made no actual suggestions himself of a date or time for such a collection. Having complied with section 20(7)(b) the Defendant placed the onus upon the Claimant, when in my judgment clause 7 .2 of the Agreement places an onus upon the Defendant and the Claimant alongside the duties in the Act. Taken as a whole there is a joint responsibility to deal with the return of the vehicle which requires a cooperation which was regrettably not forthcoming here.
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> 41 In circumstances where the finance provider provides no notification of a reasonably convenient place this does not in my judgment entitle the Defendant to thereafter drive the vehicle adding c. 40,000 additional miles to it. The basis upon which the Defendant had possession of the vehicle was pursuant to the Agreement that he chose to bring to an end. As Evans J set out in Graanhandel at 533 *"If he does decide to reject the goods, he must do so unequivocally and be prepared to take a stand. From then on he must regard the goods as being for the account of the seller."* In my judgment the Defendant's continued use of the vehicle after rejection where section 24{9) does not apply was at his own peril.

42 In the circumstances, it is my judgment that a deduction for use, to take account of the use the Defendant has had of the goods in the period since they were delivered should in this case apply up to the date of trial as I have found section 24(9) does not apply. **Put simply there was no agreement to collect which the Claimant failed to carry out such as to bring the charge for usage set out in statute to an end."**

(emphasis added by myself).

22. I was not taken to Graanhandel and I think it is common ground that this case addresses only the common law position.

SUMMARY OF THE SUBMISSIONS

23. Mr Curtis' argument is attractively simple. The purpose of the Consumer Rights Act 2015 is to protect the interests of consumers as set out a little more fully in the introduction to the Act and set out in much greater detail in the explanatory notes.. Mr Curtis was entitled to reject the car and he made the car available for collection. BHL, for tactical reasons it seems, was not prepared to reach agreement with Mr Curtis to collect the car in the absence of a complete compromise including a compromise on the sums refundable to Mr Curtis. Therefore, it was BHL which failed to collect the car at an agreed time and on any interpretation of section 24(9) of the Consumer Rights Act 2015 no deduction should be imposed on the refund due to Mr Curtis. In particular, Mr Curtis argues that BHL are wrong in any argument that there must first be an agreed time for collection followed by a failure to collect at that time for Mr Curtis to be entitled to a refund free of deduction for his post rejection use of the car otherwise BHL can ensure that section 24(9) will never apply by simply never agreeing a time for collection.

24. BHL's argument is attractively simple as well. Section 24(9) means what it says: in the one statutorily specified circumstance of there being an agreed time for collection with failure to collect, the consumer (as bailee) is relieved of liability to give credit for use but not in any other circumstance. BHL points out that if Parliament intended that a trader should be deprived of the economic value of

the use of its goods by the consumer on the strength of the trader failing to agree a time for collection, it would have said so in the Act.

25. As I Have already observed, both Mr Lascelles and Mr Evans rely on Bennion in support of their arguments upon how the statute should be interpretated.

INTERPRETATION OF THE STATUTE

26. In Savage v Savage [2024] EWCA Civ 49 the issue which arose was interpretation of section 15(3) of the Trusts of Land and Appointment of Trustees Act 1996. It is not necessary to dive any deeper into the issues which arose in that case. Snowden LJ summarised the principles applicable to statutory interpretation at paragraphs 15 to 21 of his judgment as follows:

“Statutory interpretation

15. The role of the courts in interpreting a statute was described by Lord Nicholls in R v Secretary of State for the Environment etc, *ex parte* Spath Holme Limited [2001] 2 AC 349 ("Spath Holme") at 396,

"Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration."

16. The Judge was correct that in carrying out this exercise, there is a presumption – or, more accurately, a starting point - that Parliament intended the words used to have their grammatical meaning. As Lord Nicholls put it in Spath Holme at 397,

"an appropriate starting point is that the language is to be taken to bear its ordinary meaning in the general context of the statute".

17. However, as Lord Nicholls' dictum itself indicates, even when considering the grammatical meaning of words, the words should not be considered in isolation. As a matter of pure linguistics, it is possible that words can have more than one

"ordinary" meaning depending on the way that they are used (so-called "semantic" or "syntactical" ambiguity). But it is also possible that the words can have more than one "ordinary" meaning depending on the context in which they are used ("contextual" ambiguity). Accordingly, when deciding the ordinary meaning of the words used and, in particular, when determining which of any linguistically available meanings is the meaning that Parliament intended, the court must have regard not only to the way in which the words are used in the statutory provision in issue, but also to the relevant context in which they are used.

18. In this exercise, the relevant context naturally includes the structure and contents of the part of the statute in which the relevant provision appears, as well as the statute as a whole. However, it is not limited to such matters. The relevant context can also include the historical background against which the statute came to be passed, and its legislative purpose. Those matters may be apparent from the wording of the remainder of the statute itself, which must be the primary focus. In addition, but subject to some limitations, reference can also be made to secondary materials such as Law Commission reports and Explanatory Notes.

19. These principles, and the relationship between giving effect to the words of a statute and reference to secondary materials, were explained by Lord Hodge giving the judgment of the majority in R v Secretary of State for the Home Department *ex parte* O [2022] UKSC 3. At [29]-[30], after quoting Lord Nicholls' dictum from Spath Holme at 396, Lord Hodge continued,

> 29. Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. There is an important constitutional reason for having regard primarily to the statutory context as Lord Nicholls explained in Spath Holme, 397:

"Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament."

30. External aids to interpretation therefore must play a secondary role. Explanatory notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty: *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), para 11.2. But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity."

20. As regards the use of so-called "canons of interpretation", such as the "*expressio unius*" maxim, it is important to bear in mind that such canons are merely interpretative tools that reflect the use of language generally, and hence should not be applied rigidly: see e.g. *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed) ("*Bennion*") at [20.1] citing Cusack v Harrow LBC [2013] UKSC 40 at [58]-[60] *per* Lord Neuberger.

21. As regards the *expressio unius* maxim itself, it is clear that this is not an absolute rule and should not be applied where there is some reason, other than the intention to exclude certain things, for mentioning some but not others. So if it appears that particular items were singled out for mention merely as examples, there is no room for the maxim to apply: see *Bennion* at [23.13]."

DISCUSSION

27. It is settled common law that a purchaser cannot both reject goods and continue to use them. Consumer law allows for rejection and continued use thereafter but obvious discomfort arises with the concept of permitting the consumer "free" use of goods now 'belonging' to the vendor. In the case before me, at first blush, there was "free" and extensive (approx. 40,000 miles) use by Mr Curtis.

28. In my judgment it is necessary to consider the overall structure of Part 2 of the Consumer Rights Act 2015 once it is established that the goods are not of satisfactory quality. Section 20 addresses the right to reject; the relevant parts of the section state as follows:

(2) The final right to reject is subject to section 24.
(4) Each of these rights entitles the consumer to reject the goods and treat the contract as at an end …..
(5) The right is exercised if the consumer indicates to the trader that the consumer is rejecting the goods and treating the contract as at an end.

29. Section 20(7) lays out the consequences of a lawful rejection as follows:

From the time when the right is exercised—

(a) the trader has a duty to give the consumer a refund, … and

(b) the consumer has a duty to make the goods available for collection by the trader or (if there is an agreement for the consumer to return rejected goods) to return them as agreed.

30. For the avoidance of doubt there is no suggestion that Mr Curtis was under any obligation to return the car (as opposed to making it available for collection).

31. Plainly the Act envisages that on the date of lawful rejection of the car by Mr Curtis:

(a) BHL were under a duty to give Mr Curtis a refund (payable without undue delay and within 14 days of the date on which the trader agrees that the consumer is entitled to a refund per section 20(15);

(b) Mr Curtis was under a duty to make the car available for collection.

32. Section 20(14) provides that Mr Curtis was entitled to a refund of the amount of the price that he had paid and section 24(8) allows for a deduction to be made for the use Mr Curtis made of the car between delivery and rejection.

33. Thus, in my judgment, the Act makes clear provision for unwinding the hire purchase agreement and plainly envisages termination of the agreement with appropriate refund paid to Mr Curtis and collection of the car by BHL.

34. In my judgment the meaning of section 24(9) must be considered with and in the light of section 20(7).

35. There would be no argument in this case if section 24(9) simply read:

> "No deduction may be made to take account of use in any period when the consumer had the goods only because the trader failed to collect them"

36. Thus it seems to me that the critical question is whether section 24(9) intends to refuse the consumer relief on the basis that the trader's obligation to collect is conditional upon there being an agreed time for collection.

37. In my judgment such an interpretation would make a nonsense of the consumer rights Parliament intended to give consumers. It would leave a consumer who has lawfully rejected a car but who has not been given the refund to which he is entitled (potentially rendering him unable to buy a different car) and from whom the car has not been collected deliberately by the trader open to paying for his ongoing use of the car. In my judgment the purpose of section 24(9), in the light of section 20(7) is to put the burden of collecting the car on the trader.

38. Once section 24(9) is read in context there is no precondition of an agreed time for collection and I consider that an informed citizen would read section 29(4) in the same way that I do. BHL's argument engages the expression unius principle which I do not consider applicable here.

39. It follows that I consider the Deputy District Judge's decision to be wrong in law but I hasten to add that the absence of precedent makes this a difficult case of statutory interpretation and she has my sympathy.

CONCLUSIONS

40. There is no need for a rehearing. All that is required is for counsel to agree the deduction to be made for the period from delivery to 21st August 2020. I will then set aside paragraph 2 of the order and replace it with the appropriate figures. It would be disproportionate in time and expense for there to be a further hearing on quantum.

41. I hereby adjourn the appeal to enable representations to be made on:

    (a) Savage v Savage
    (b) costs
    (c) any other consequential matters.

42. Counsel must either agree within 14 days of receipt of this judgment and send to the court:
    (a) A final minute of order or
    (b) The matters which the court needs to visit at a further hearing together with a time estimate.

43. This is a final judgment deemed handed down on the date it is sent to the parties and comments on the judgment are not expected.

HHJ RALTON

21st February 2024