SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT FORFAR

[2025] SC FOR 33

FFR-A81-24

JUDGMENT OF SHERIFF JILLIAN MARTIN-BROWN

in the cause

MONEYBARN NO. 1 LIMITED

Pursuer

against

PAUL LEIGHTON

First Defender

and

MEDDICKS BLACKSMITHS & WELDERS

Second Defender

Pursuer: McClymont; DWF
First Defender: Mr Leighton; self-represented
Second Defender: Ms Taylor; self-represented

Forfar, 4 April 2025

Introduction

[1] This dispute concerned the relevancy and specification of defences to an action for payment and recovery of possession of a car purchased under a conditional sale agreement.

Background Facts and Circumstances

[2] The pursuer averred that a Landrover Range Rover Evoque ("the car") was advertised for sale by Serene Motor Dealers Limited, a motor dealer based in England ("the motor dealer"). The first defender selected the car and on 31 May 2023 the pursuer and the first defender entered into a conditional sale agreement ("the agreement") regulated by the

Consumer Credit Act 1974, with a maturity date of 31 May 2028. In terms of the agreement, the first defender agreed to buy the car from the pursuer for a total price of £25,367.62, payable in instalments. The total price payable under the agreement comprised a cash price of £11,049 and credit / interest charges of £14,318.62. It was a term of the agreement that title to the car would only pass to the first defender once all sums due to the pursuer in terms of the agreement had been paid. The first defender took possession of the car.

[3] The pursuer averred that on 7 June 2023, the first defender complained that the car was faulty. The complaint was referred to the motor dealer, who offered two options to the first defender. The first option was for the first defender to return the car and receive a full refund. The second option was for the motor dealer to collect the car, provide a courtesy car to the first defender, assess the condition of the car, make any necessary repairs and return the car to the first defender once any necessary repairs had been completed. The first defender refused both options and requested that any repairs be carried out at a garage of his choosing, close to his home address. The pursuer and the motor dealer agreed to the first defender’s request and the car was recovered to Motech Garage in Forfar.

[4] Motech Garage stripped and tested the car and diagnosed exhaust gas recirculation cooler malfunction and air mass malfunction. The motor dealer agreed to the repairs and the necessary parts were ordered. The repair parts arrived around 15 June 2023 and the repairs were completed around 16 June 2023. The first defender collected the car from Motech Garage on 26 June 2023.

[5] The pursuer averred that the first defender fell into arrears of instalment payments due in terms of the agreement. On 18 January 2024, the second defender contacted the pursuer and informed the pursuer that it was in possession of the car. The pursuer instructed its vehicle recovery agents to contact the second defender and recover possession

of the car. The second defender refused to release the car until storage charges of £16,464 were paid by the pursuer. On 16 February 2024, the pursuer terminated the agreement. On 19 April 2024, the pursuer served a default notice in accordance with section 88 of the Consumer Credit Act 1974 on the first defender.

[6] The pursuer averred that on 13 September 2023, the first defender complained to the Financial Ombudsman Service. The Ombudsman's final decision was dated 21 June 2024 and was incorporated into the pursuer's pleadings. The Ombudsman determined that the first defender agreed to the car being repaired at a local garage at the motor dealer's expense but then changed his mind on 15 June 2023. The Ombudsman determined that having agreed to a repair, the first defender could not exercise the right to reject the car until he had allowed the motor dealer a reasonable time to repair it, unless that would cause him significant inconvenience. The car was available to collect within a reasonable time and there was no suggestion that the car was not of satisfactory quality once it was repaired. The first defender had not suffered significant inconvenience and did not have the right to reject the car.

[7] The first defender averred that he cancelled the finance and purchase of the car less than two weeks after he purchased the car. He did not make a single monthly repayment for the finance. He rejected the car due to mechanical issues.

[8] The second defender averred that it was simply waiting for the ruling of the court to decide who was responsible to pay the outstanding storage charges. Their terms and conditions stated that it did not release vehicles from storage until charges were paid in full.

[9] The pursuer sought a debate on its preliminary pleas and a debate took place in person on 21 March 2024.

Authorities

[10] I was referred to the following authorities:

- Consumer Credit Act 1974, sections 66A, 67 – 73, 90 and 92;
- Consumer Rights Act 2015, section 19;
- *Combined Parking Solutions* v *Stephen Thomas,* unreported, October 2008
- *Jamieson* v *Jamieson* 1952 S.C. (H.L.) 44;
- *Robb* v *School Board of Logiealmond* (1875) 2 R. 417;
- Macphail, *Sheriff Court Practice* (4th edn), chapter 9; and
- Ordinary Cause Rules, chapters 2 and 9.6.

Pursuer's Submissions

[11] The pursuer submitted that neither defence contained any relevant plea-in-law and accordingly, decree *de plano* should be granted. Neither defence was properly pled. In *Robb* v *Logiealmond* it was held that before a ground of defence can be sustained, it was necessary to be put on record. In *Jamieson* v *Jamieson* it was held that if it can be shown that the pursuer's case was bound to fail, it was highly advantageous that time and money should not be spent on fruitless inquiry into the facts. That principle applied to the defenders' pleadings in this case.

[12] Both defenders failed to answer the calls placed on them to aver: (i) the terms of any storage contract between the first and second defender; and (ii) what steps the second defender had taken to seek payment of the storage charges from the first defender. The defences were lacking in specification and candour and should be excluded from probation.

[13] The first defender claimed to have rejected the car and cancelled the agreement. If he had rejected the car, which was denied, the first defender had no entitlement to retain possession of the car and could not resist the craves for recovery / delivery. If he cancelled the agreement, which was denied, he was obliged to return the car and repay any credit

provided, together with interest. Rejection of the car and cancellation of the finance agreement were mutually exclusive remedies and the first defender could not rely on both.

[14] The second defender averred that either the pursuer or the first defender were responsible to pay the storage charges, yet failed to plead the existence of any legal relationship, contractual or otherwise, that would obligate the pursuer to make any payment to the second defender. The second defender's pleadings were irrelevant.

First Defender's Submissions

[15] Mr Leighton was candid that he had "no clue" what he was doing, nor where to start during the debate. I asked him to tell me why this case should go to a proof and he was unable to do so. I asked him to tell me why he should not return the car and he told me that he did try to return the car and was ignored. He put the car in storage because he could not leave it on the street because he did not have any insurance for the car, nor road tax. He put the car in storage and paid for the first four weeks, yet it was still in storage some three years later. I asked him to tell me why he should not have to pay the sum due to the pursuer in terms of the agreement and he told me that after Motech Garage carried out a check on the car, he told the motor dealer he did not want the car anymore but he felt bullied into keeping the car. He had since bought another car on finance, for which payments were up to date. He had cancelled the car within the 14 day cooling off period under the Consumer Rights Act 2015.

Second Defender's Submissions

[16] Ms Taylor submitted that as per her terms and conditions, cars were not released until payment had been made for storage charges and that was why the car had been kept.

CPS v *Thomas* was an example of someone being held to have entered into a contract. She did not think she had done anything wrong. This was the first time her business had been taken to court. In telephone calls in January 2024, the pursuer admitted liability for storage charges from January 2024. Chapter 2 of the Ordinary Cause Rules provided relief from failure to comply with court rules.

Legislation

[17] The relevant sections of the Consumer Credit Act 1974 provide as follows:

> **"66A Withdrawal from consumer credit agreement**
>
> (1) The debtor under a regulated consumer credit agreement, other than an excluded agreement, may withdraw from the agreement, without giving any reason, in accordance with this section.
>
> (2) To withdraw from an agreement under this section the debtor must give oral or written notice of the withdrawal to the creditor before the end of the period of 14 days beginning with the day after the relevant day.
>
> (3) For the purposes of subsection (2) the relevant day is whichever is the latest of the following—
> (a) the day on which the agreement is made;
> (b) where the creditor is required to inform the debtor of the credit limit under the agreement, the day on which the creditor first does so;
> (c) in the case of an agreement to which section 61A (duty to supply copy of executed consumer credit agreement) applies, the day on which the debtor receives a copy of the agreement under that section or on which the debtor is informed as specified in subsection (3) of that section;
> (d) in the case of an agreement to which section 63 (duty to supply copy of executed agreement: excluded agreements) applies, the day on which the debtor receives a copy of the agreement under that section.
>
> …..
>
> (9) Where the debtor withdraws from an agreement under this section—
> (a) the debtor must repay to the creditor any credit provided and the interest accrued on it (at the rate provided for under the agreement), but
> (b) the debtor is not liable to pay to the creditor any compensation, fees or charges except any non-returnable charges paid by the creditor to a public administrative body.

72 Cancellation: return of goods

…..

(3) The possessor shall be treated as having been under a duty throughout the pre-cancellation period—
 (a) to retain possession of the goods, and
 (b) to take reasonable care of them.

(4) On the cancellation, the possessor shall be under a duty, subject to any lien, to restore the goods to the other party in accordance with this section, and meanwhile to retain possession of the goods and take reasonable care of them."

[18] The relevant sections of the Consumer Rights Act 2015 provide as follows:

"9 Goods to be of satisfactory quality

(1) Every contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory.

…..

19 Consumer's rights to enforce terms about goods

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(3) If the goods do not conform to the contract because of a breach of any of the terms described in sections 9, 10, 11, 13 and 14, or if they do not conform to the contract under section 16, the consumer's rights (and the provisions about them and when they are available) are—
 (a) the short-term right to reject (sections 20 and 22);
 (b) the right to repair or replacement (section 23); and
 (c) the right to a price reduction or the final right to reject (sections 20 and 24).

20 Right to reject

(1) The short-term right to reject is subject to section 22.

(2) The final right to reject is subject to section 24.

(3) The right to reject under section 19(6) is not limited by those sections.

(4) Each of these rights entitles the consumer to reject the goods and treat the contract as at an end, subject to subsections (20) and (21).

(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.

(6) The indication may be something the consumer says or does, but it must be clear enough to be understood by the trader.

(7) From the time when the right is exercised—
(a) the trader has a duty to give the consumer a refund, subject to subsection (18), 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.

…..

(14) If the contract is a hire-purchase agreement or a conditional sales contract and the contract is treated as at an end before the whole of the price has been paid, the entitlement to a refund extends only to the part of the price paid.

22 Time limit for short-term right to reject

(1) A consumer who has the short-term right to reject loses it if the time limit for exercising it passes without the consumer exercising it, unless the trader and the consumer agree that it may be exercised later.

…..

(3) The time limit for exercising the short-term right to reject (unless subsection (4) applies) is the end of 30 days beginning with the first day after these have all happened—
(a) ownership or (in the case of a contract for the hire of goods, a hire-purchase agreement or a conditional sales contract) possession of the goods has been transferred to the consumer,
(b) the goods have been delivered, and
(c) where the contract requires the trader to install the goods or take other action to enable the consumer to use them, the trader has notified the consumer that the action has been taken.

23 Right to repair or replacement

…..

(2) If the consumer requires the trader to repair or replace the goods, the trader must—
(a) do so within a reasonable time and without significant inconvenience to the consumer, and
(b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).

(3) The consumer cannot require the trader to repair or replace the goods if that remedy (the repair or the replacement)—
(a) is impossible, or
(b) is disproportionate compared to the other of those remedies.

(4) Either of those remedies is disproportionate compared to the other if it imposes costs on the trader which, compared to those imposed by the other, are unreasonable, taking into account—
(a) the value which the goods would have if they conformed to the contract,
(b) the significance of the lack of conformity, and
(c) whether the other remedy could be effected without significant inconvenience to the consumer.

(5) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of—
(a) the nature of the goods, and
(b) the purpose for which the goods were acquired.

(6) A consumer who requires or agrees to the repair of goods cannot require the trader to replace them, or exercise the short-term right to reject, without giving the trader a reasonable time to repair them (unless giving the trader that time would cause significant inconvenience to the consumer).

(7) A consumer who requires or agrees to the replacement of goods cannot require the trader to repair them, or exercise the short-term right to reject, without giving the trader a reasonable time to replace them (unless giving the trader that time would cause significant inconvenience to the consumer).

(8) In this Chapter, 'repair' in relation to goods that do not conform to a contract, means making them conform.

24 Right to price reduction or final right to reject

…..

(5) A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both), and may only do so in one of these situations—
(a) after one repair or one replacement, the goods do not conform to the contract;
(b) because of section 23(3) the consumer can require neither repair nor replacement of the goods; or
(c) the consumer has required the trader to repair or replace the goods, but the trader is in breach of the requirement of section 23(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.

(6) There has been a repair or replacement for the purposes of subsection (5)(a) if—
(a) the consumer has requested or agreed to repair or replacement of the goods (whether in relation to one fault or more than one), and
(b) the trader has delivered goods to the consumer, or made goods available to the consumer, in response to the request or agreement.

(7) For the purposes of subsection (6) goods that the trader arranges to repair at the consumer's premises are made available when the trader indicates that the repairs are finished.

(8) 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).

(9) 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 at an agreed time.

(10) No deduction may be made if the final right to reject is exercised in the first 6 months (see subsection (11)), unless—
(a) the goods consist of a motor vehicle, or
(b) the goods are of a description specified by order made by the Secretary of State by statutory instrument.

(11) In subsection (10) the first 6 months means 6 months beginning with the first day after these have all happened—
(a) ownership or (in the case of a contract for the hire of goods, a hire-purchase agreement or a conditional sales contract) possession of the goods has been transferred to the consumer,
(b) the goods have been delivered, and
(c) where the contract requires the trader to install the goods or take other action to enable the consumer to use them, the trader has notified the consumer that the action has been taken."

Decision

[19] Beginning with the form of the defences, rule 9.6(2) of the Ordinary Cause Rules provides that defences shall be in the form of answers in numbered paragraphs corresponding to the articles of condescendence and shall have appended a note of the pleas-in-law of the defender. Neither the first defender's pleadings nor the second

defender's pleadings contained any pleas-in-law and consequently, they were not in the correct form.

[20] Moving on to look at the clarity of the defences, MacPhail at para 9.20 provides that:

> "It is a general rule of pleading that every statement of fact made by one party must be answered by the other party. A party is accordingly obliged to respond to each averment made by an opponent in one of three ways: by admitting it, denying it, or stating that the matter is not known and not admitted…..If a party leaves unanswered a statement of fact made by its opponent, that party is deemed to have admitted it."

Applying those principles to the pleadings in this case, although both sets of defences contained numbered paragraphs, they did not answer every statement of fact made by the pursuer. For example, in response to the pursuer's detailed averments in condescendence 2 about: (i) the conditional sale agreement; (ii) the repairs at a local garage; and (iii) the complaint to the Ombudsman, the first defender simply stated in answer 2 that he rejected the car because it was not fit for purpose and cancelled the finance within days of purchase. Similarly, in response to the pursuer's averments in condescendence 5 about the prohibition on the first defender from granting any security or lien over the car, the second defender simply stated that it had a legal right to retain the car until the owner had paid the storage charges in full. Neither set of defences contained a general denial and so each of the defenders were deemed to have admitted the statements of fact they had left unanswered. Consequently, the content of both sets of defences was somewhat confusing and it was not immediately clear what was admitted, not known or not admitted, or denied.

[21] Neither of the defences answered the calls placed upon the first and second defenders in condescendence 1 to aver the terms of any contract between the first and second defender and what steps the second defender had taken to seek payment of storage charges from the first defender. Consequently, the defences were lacking in candour and

specification as far as the contractual relationship between the defenders was concerned and mitigation of loss.

[22] Turning to deal with the actual substance of the defences, there was no basis for the first defender to resist recovery of the car. His position on record was that he rejected the car and left it in secure storage for the pursuer to collect. I determined that crave 2 (recovery of possession of the car), crave 3 (permission to enter premises to recover possession of the car) and crave 4 (delivery of the car, keys, registration documents and service history) as directed against the first defender should accordingly be granted.

[23] As far as his defence to crave 1 was concerned, the first defender had not set out his position on record clearly. While he averred that he rejected the vehicle and cancelled the finance agreement within days of purchase, he did not respond to the detailed averments about whether he agreed to repairs at his local garage. In the absence of any general denials, he was taken to have admitted that he agreed to repairs, rather than rejecting the car. That was consistent with the submissions he made in court that after Motech Garage carried out a check on the car, he told the motor dealer he did not want the car anymore.

[24] Applying the Consumer Rights Act 2015 Act to those circumstances, that was an attempt to exercise the short-term right to reject under section 22. However, section 23 provides that a consumer who agrees to the repair of goods cannot exercise the short-term right to reject without giving the trader a reasonable time to repair them, unless giving the trader that time would cause significant inconvenience to the consumer. The first defender did not make any averments about whether the repairs were successful, the period of time for repairs or inconvenience, which might have entitled him to exercise the short term right to reject, right to price reduction or final right to reject.

[25] The 14 day cooling off period was governed by the Consumer Credit Act 1974 Act rather than the 2015 Act. No averments were made by the first defender about the circumstances in which he gave oral or written notice of the withdrawal to the motor dealer. However, even if he did so, section 66A required the debtor to repay to the creditor any credit provided and the interest accrued on it.

[26] The first defender's pleadings did not outline a defence under the 2015 Act or the 1974 Act. In the absence of any other denials or defences, the defences were therefore irrelevant.

[27] As far as the second defender was concerned, it averred at answer 1 that *either* the pursuer or the first defender were responsible to pay the storage charges but failed to aver the existence of any legal relationship, contractual or otherwise, that would obligate the pursuer to make any payment to the second defender. Again, in the absence of any general denials, the second defender was taken to have admitted that the agreement prohibited the first defender from granting any security or lien over the car. Although reference was made in court to the second defender's terms and conditions, the defences did not set them out. There were no averments that the pursuer agreed to be bound by those terms and conditions or alternatively that the terms and conditions were incorporated into a contract between the pursuer and the second defender following adequate notice being given.

[28] The second defender's pleadings did not outline a contractual relationship that would obligate the pursuer to pay the storage charges. In the absence of any other denials or defences, the defences were therefore irrelevant.

[29] MacPhail provides at para. 9.46 that

> "an overly technical approach to the form of pleadings is to be discouraged. Regard should be had to the substance of the claim, rather than the form of the proceedings and a practical rather than a technical approach is to be preferred."

The first and second defenders in this case were representing themselves and were clearly unfamiliar with the rules of pleading and court procedure. I therefore allowed them considerable leeway to explain their position to me during the debate and endeavoured to focus on the substance of their defences, rather than the form. If the problems with the defences were confined to defects in form and clarity, I would not have sustained the pursuer's preliminary pleas.

[30] However, for the reasons outlined above, the problems with both sets of defences extended to candour, specification and most importantly, relevancy. Given the extent of the problems, it was not possible to simply exclude certain sections of the defences from probation. Instead, I upheld the pursuer's first, second, fourth and fifth pleas-in-law and granted decree *de plano* against both defenders.

Expenses

[31] The pursuer submitted that expenses should follow success, which was opposed by the second defender. The second defender submitted that it should not have been convened as a party to the action and had self-represented to avoid a hefty legal bill.

[32] Unfortunately, as is often the case, some legal advice, though expensive, may have avoided the far greater expense of this debate. The pursuer had no option but to convene the second defender as a party to the action when it refused to release the car. I saw no reason to depart from the ordinary rule that expenses follow success and accordingly found the first and second defenders liable to the pursuer in expenses.