



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 26
DUN-A229-19**

Sheriff Principal S F Murphy KC
Sheriff Principal G A Wade KC
Appeal Sheriff I M Fleming

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL SEAN F MURPHY KC

in the appeal in the cause

SANTANDER CONSUMER (UK) PLC

Pursuer, Appellant and Cross-Respondent

against

RENATA DIKMONE, as executrix dative of the late RAMUNAS DIKMONAS

Defender, Respondent and Cross-Appellant

**Pursuer, Appellant and Cross-Respondent: Tosh; DWF LLP
Defender, Respondent and Cross-Appellant: Heaney; MML Law**

3 September 2025

Introduction

[1] The dispute in this appeal is primarily concerned with: (i) whether an Audi Q7 motor vehicle, bought by the late Mr Ramunas Dikmonas on 24 October 2018, was of satisfactory quality and fit for purpose at the point of sale; and (ii) whether he was entitled to exercise his right to reject the vehicle under the Consumer Rights Act 2015 (“the 2015 Act”). The respondent and cross-appellant in the present appeal is Mr Dikmonas’s executrix dative, Ms Dikmone.

Background

[2] In October 2018 Mr Dikmonas located an Audi Q7 at a motor car dealership, Car World Berkshire (“Car World”). He viewed the car at their premises on 24 October 2018 and enquired as to whether the mileage displayed on the vehicle was accurate and whether the vehicle had been involved in any accidents. Mr Dikmonas stated that the salesman told him that the mileage displayed was accurate and that the vehicle had not been involved in any prior accidents. He decided to buy it.

[3] Car World engaged via a credit intermediary, Orange Motor Finance Limited (“Orange Finance”), with Santander Consumer (UK) PLC, the pursuer, appellant and cross-respondent, to finance the transaction. Car World sold the Audi Q7 to Santander who entered into a conditional sale agreement for the vehicle with Mr Dikmonas. The purchase price was £20,995. Mr Dikmonas paid a deposit of £8,000 and Santander provided finance of £12,995. Mr Dikmonas was to repay the figure of £12,995, plus interest of £1,987.72, over the term of the agreement with Santander: a total of £14,982.72.

[4] Mr Dikmonas drove the vehicle back to his home in Dundee. Both on the way and once back in Dundee he found various faults with the vehicle that had not been apparent to him. He complained to Car World and Orange Finance in December 2018 and January 2019. On 13 February 2019, an engineer, Mr Forrest, inspected the Audi Q7 on behalf of Orange Finance. He concluded the vehicle was in poor condition for its age and mileage and should not be driven until repairs were made; it also seemed to have been in an accident at some time. However, he was not in a position to say whether the damage he identified had been present at the point of sale on 24 October 2018.

[5] On 29 May 2019 Mr Dikmonas wrote to the appellant via his solicitor to notify it that the vehicle sold to him was not as had been advertised. This was the first occasion on which he had contacted the appellant since 24 October 2018. He asserted that Car World had made two misrepresentations: (i) the mileage was not accurate; and (ii) the vehicle had been involved in an accident previously. The letter to the appellant stated that the vehicle was not of satisfactory quality in terms of the 2015 Act and that Mr Dikmonas formally rejected it. He requested a full refund, as well as costs incurred from repairs and hire charges.

[6] On 16 July 2019 the appellant responded. It advised that it required evidence from an independent source that the vehicle was not of satisfactory quality as at 24 October 2018. It considered that Mr Forrest's report provided insufficient evidence of that.

[7] Having rejected the vehicle, Mr Dikmonas ceased making payments to the appellant. Considering that the agreement remained in force, the appellant served a default notice upon him on 31 July 2019. The conditional sale agreement was thereafter terminated by the appellant on 6 September 2019 on the basis of what it considered to be Mr Dikmonas's breach of the agreement due to non-payment. The total amount of finance then outstanding under the agreement was £10,647.76.

[8] The appellant raised this action at Dundee Sheriff Court on 25 September 2019 seeking that sum. During the course of the action, the vehicle was returned to the appellant and was sold at auction. Costs of £525 were incurred to repossess the vehicle. The vehicle was sold for £12,272.01, which sum was applied to the balance due and outstanding under the agreement. The net sale proceeds of £1,739.75 were then paid to Mr Dikmonas.

[9] Mr Dikmonas lodged a counterclaim seeking either: (i) declarator to reduce his conditional sale agreement with the appellant on the basis of the alleged misrepresentations made by the employees of Car World; or (ii) declarator that: (a) Santander was in breach of

the conditional sale agreement by not providing a vehicle of satisfactory quality; (b) he had validly rejected the vehicle on 29 May 2019; and (c) he was entitled to damages as a result.

[10] To support his position Mr Dikmonas instructed another expert, Mr Bathgate, who considered Mr Forrest's report and concluded that the car was worth approximately £11,000 - £12,000. Mr Bathgate concluded that, at the time of the sale of the car, it had not conformed to the condition represented by Car World to Mr Dikmonas.

[11] A diet of proof before answer called before the sheriff on 20 September 2021. Mr Dikmonas was ordained to lead. In advance of the diet, Mr Dikmonas lodged an affidavit and the appellant lodged a note of objections to certain pieces of evidence contained within it. The sheriff acknowledged the note and allowed Mr Dikmonas's affidavit to be led as evidence under reservation of its relevance and admissibility. The sheriff made avizandum on 10 February 2022. He issued his judgment on 27 September 2022.

The sheriff's judgment

[12] The sheriff considered that the counterclaim could be determined solely by reference to the claim for rejection under the 2015 Act. He accepted Mr Dikmonas as a credible and reliable witness, in particular with regard to his interactions with Car World and Orange Finance. He made a finding in fact that Car World was an agent of the appellant in the antecedent negotiations on the basis of a joint minute of agreement agreed by the parties. However, he also held that Orange Finance was an agent of the appellant, contrary to the objection which the appellant had made at the outset of the proof before answer. On the basis of the latter finding, the sheriff held that the appellant had become aware of the issues with the vehicle on 13 February 2019, the date on which Mr Forrest had inspected the

vehicle on the instructions of Orange Finance. While Mr Forrest had not been able to say whether the defects in the vehicle had been present at the point of sale on 24 October 2018, the sheriff, under reference to section 19(14) of the 2015 Act, found that, as the defects had been identified within 6 months of 24 October 2018, a statutory presumption applied that the vehicle was presumed not to have been of satisfactory quality as at 24 October 2018.

[13] Having reported the defects to an agent of the appellant, who had not undertaken any action to remedy the situation, the sheriff held that Mr Dikmonas was entitled to exercise his final right of rejection in terms of sections 19 to 24 of the 2015 Act.

[14] The sheriff found that three misrepresentations had been made by employees of Car World, (albeit only two had been pled on record). However, the sheriff made no further comments on the respondent's case in relation to misrepresentation.

Submissions for the appellant

[15] The sheriff had made crucial findings in fact which were not supported by the evidence. In particular, the appellant took issue with finding in fact [21]:

“The following statements were made to the defender by the salesman and should be considered representations for the purposes of the Consumer Rights Act 1995 [sic]: (a) the vehicle was a quality car and in retail condition that would cause the defender no problems; (b) the mileage was accurate (c) the vehicle had not been in any accident requiring repairs.”

The appellant considered that in turn formed the basis for finding in fact [35]:

“The vehicle, at the point of sale was not conform to the condition represented by the vendors for which the pursuers are responsible.”

The statements made by the salesman to Mr Dikmonas, referred to in finding in fact [21] above, had no basis on record and were not established on the evidence. Even if there had been such evidence, the respondent would have required to amend to allow the sheriff to

make such a finding in fact: *Miller v Miller* [2024] SAC (Civ) 51 at para [15]. Similarly, many findings in fact were made on the basis that Orange Finance was Santander's agent, when there was no record nor any evidence to allow for such findings.

[16] The sheriff failed to provide sufficient reasoning as to: (i) why the appellant's objection to Orange Finance being held to be its agent was not upheld; (ii) why Mr Dikmonas's evidence was deemed credible and reliable, notwithstanding inconsistencies between his written and oral testimony; (iii) why the vehicle was held to be of unsatisfactory quality as at 24 October 2018; and (iv) why Mr Dikmonas had validly rejected the vehicle.

[17] The sheriff heard the respondent's oral evidence on 20 September 2021. He did not issue his judgment until 27 September 2022. It could reasonably be inferred that the sheriff had forgotten or failed to understand the evidence, in particular, Mr Dikmonas's oral evidence: *MacLeod's Legal Representatives v Highland Health Board* [2016] CSIH 25; 2016 SC 647 at para [93].

[18] Even if the sheriff was entitled to find that the vehicle was not of satisfactory quality at the point of sale and that Mr Dikmonas had the final right to reject it, the sheriff erred in law in finding that Mr Dikmonas's purported rejection of the vehicle was effective in terms of section 24(5) of the Consumer Rights Act 2015. The sheriff had made no finding in fact that any of the conditions required under section 24(5) had been satisfied. In particular, he made no finding that there had been any prior request for repair or replacement of the vehicle made by the respondent to the appellant, or that repair or replacement of the vehicle was impossible. The respondent, in his first communication to the appellant on 29 May 2019, had simply rejected the vehicle. In the absence of any finding in fact that the respondent had required the appellant to repair or replace the vehicle or that that was

impossible, the sheriff erred in law in holding that the respondent had been entitled to exercise the final right to reject the vehicle in terms of section 24(5) of the 2015 Act.

[19] Even if the sheriff was entitled to find that the vehicle had been validly rejected, Mr Dikmonas had lost the right to reject due to personal bar. Mr Dikmonas, on his own evidence, had been aware of the defects from the point of sale. Despite that, he continued to make payments to Santander for the vehicle and drove it for 13,000 miles. In the circumstances, Mr Dikmonas acquiesced in the condition of the vehicle, waived any breach and affirmed the contract. Mr Dikmonas was personally barred from rejecting the vehicle.

[20] If Mr Dikmonas was not personally barred from rejecting the vehicle, he was barred from exercising the remedies that flowed from his rejection by reason of his post-rejection use of the vehicle. It was conceded that the 2015 Act envisaged some post-rejection use: *King v Black Horse Limited* [2024] CSIH 3; 2024 SC 296 at paras [39] - [44]. However, the Inner House had refrained from consideration of the operation of personal bar upon the 2015 Act: *King* at para [33]. It was submitted that it remained available as a remedy and was applicable in the circumstances of this appeal.

[21] The final grounds of appeal related to quantum and certification. In short, even if any damages were due, the sheriff had not calculated them correctly. The sheriff also erred in certifying both of the vehicle experts, as there had been a duplication of effort.

Submissions for the respondent

[22] The question of whether the car was of satisfactory quality was a question for the sheriff to assess in the round. He was clearly right about the quality of the vehicle at the time of sale: there were numerous defects. Defects found within the first 6 months are to be presumed to have been present at the sale: section 19(14) of the 2015 Act. The evidence

given by the motor engineers, Mr Forrest and Mr Bathgate, was cogent and convincing.

The sheriff had given a sufficient explanation as to why he accepted the evidence of Mr Dikmonas, Mr Forrest and Mr Bathgate. The sheriff reached the only reasonable conclusion: the vehicle was not of satisfactory quality at the time of sale.

[23] Counsel conceded that the sheriff's findings in fact that Orange Finance was an agent of Santander were wrong. That being so, counsel accepted that the first intimation of any issue to the appellant was on 29 May 2019. The appellant's position was that the respondent could only validly reject the vehicle if section 24(5) of the 2015 Act was satisfied; but section 24 was not engaged at all on the facts of this case. Section 24 was only engaged if a consumer had opted for replacement or repair. Failure to comply with section 24 did not preclude a consumer exercising a final right to reject, as had been done by Mr Dikmonas.

[24] In relation to the argument of personal bar, counsel accepted that it was possible for a trader to still argue personal bar; however, on the facts of this case, there was no basis to hold that personal bar applied. Mr Dikmonas's conduct had not been inconsistent with his rejection. He had attempted to engage with parties to try to arrange for the vehicle to be returned and a refund made.

[25] With regard to the final grounds of appeal, the figure awarded for quantum was correct. However, in terms of the cross-appeal, it was argued that there was no basis on the facts of this case to allow the sheriff to make a deduction for use. There had been no averments nor evidence led to establish what a reasonable figure for deduction would have been. Even had such evidence been led, the appellant would have required to amend:

Miller (supra) at para [15].

Decision

[26] It was not in dispute that the conditional sale agreement was a consumer contract.

The consumer's rights where goods which have been supplied do not conform to the contract terms are set out in section 19 of the 2015 Act. In the circumstances of this case the respondent had the right to repair and replacement within a reasonable time in terms of section 23 of the 2015 Act and a final right to reject under section 24. Final rejection could only take place after the trader had had an opportunity to repair or replace on one occasion and the goods still did not conform to the contract: section 24(5)(a).

[27] The respondent's counsel did not seek to rely upon any misrepresentation by the salesman; however, he submitted that the vehicle had not been of satisfactory quality at the time of sale as a basis for rejection.

[28] In our view the sheriff made a significant error in law in determining this aspect of the case. He held that Orange Finance acted as an agent for the appellant in its dealings with Mr Dikmonas (findings in fact [23] and [26]). There was no reference to such a relationship on record and the respondent did not seek to amend. The objection by the appellant's counsel at the outset of proof, challenging the lack of record as regards Orange Finance being the appellant's agent, was well-made and ought to have been upheld. Before us, counsel for the respondent accepted that he could not argue that Orange Finance had been an agent of the appellant and that aspect of the sheriff's findings was simply wrong. Accordingly, any evidence led to that effect could not be founded upon and could not form the basis of any finding in fact: *Miller* at para [15]. Initially counsel for the respondent suggested that there might be a basis for a case of ostensible authority; however, again, the pleadings did not support that position and no amendment was sought: *Miller, ibid.*

[29] Quite why Orange Finance instructed Mr Forrest's inspection of 19 February 2019 remains unclear to us, given that it was not a party to the conditional sale agreement, other than being noted as the credit intermediary between Car World and the appellant. It is equally puzzling why Car World, if it mistakenly thought it was acting on behalf of the appellant, apparently did nothing upon receipt of Mr Forrest's report.

[30] In relation to the issue of agency, we consider that the sheriff did not provide adequate reasons for his decision: his judgment contains no explanation for his finding that Orange Finance acted as an agent of the appellant in relation to its contract with the respondent. The sheriff therefore also erred in holding, at finding in fact [22], that the respondent had reported defects on numerous occasions to the appellant, as those reports had, in fact, been sent to Orange Finance.

[31] It follows that the first contact between Mr Dikmonas and the appellant was the letter sent by his solicitor on 29 May 2019 to indicate his rejection of the vehicle. Standing his earlier concession on the issue of agency, counsel for the respondent also accepted that, as a consequence of that concession, the date of rejection by Mr Dikmonas had to be 29 May 2019. In our view, that concession was correctly made. Mr Dikmonas was not entitled to exercise his right of final rejection at that point, because the terms of section 24(5) of the 2015 Act had not been met; the appellant had not been given any opportunity by Mr Dikmonas to repair or replace the vehicle. It follows that finding in fact [29], the finding in which the sheriff held Mr Dikmonas had validly rejected the vehicle, cannot be sustained.

[32] Accordingly, neither findings in fact [39] nor [40] can be sustained either. These findings were in the following terms:

“[39] The defender intimated the defects within a reasonable time and conform to the provisions of the said Act of 2015.

[40] The pursuers and their agents were aware of the defects and in particular of the accident damage and poor repairs identified by their own expert and took no action to remedy them.”

As the defects were not brought to the attention of the appellant until 29 May 2019 there was no basis for the sheriff to find that it was aware of any defects until that date. Finding in fact and law [2] cannot be sustained for the same reason.

[33] As these erroneous conclusions formed the basis of the sheriff’s decision to assoilzie the respondent in the principal action and to grant decree in its counterclaim, it follows that we must sustain this appeal.

[34] The respondent sought to argue that, in terms of section 19(3) of the 2015 Act, where goods were not of satisfactory quality at time of sale, the consumer’s rights included both the right to repair and replacement and the final right to reject, so that he might elect to proceed straight to rejection. We cannot accept that argument because section 24(5) begins with these words:

“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 replacement, the goods do not conform to the contract;”
(emphasis added)

While it is clear from the statute that the consumer may select one of the remedies available to him, and only one, the final right of rejection can only operate after the seller has had an opportunity to repair or replace the goods, which did not occur in this case. That remains the case regardless of whether the consumer has sought to proceed to exercise the right of rejection as their first remedial option. Accordingly, we refuse the respondent’s cross-appeal.

[35] We agree that the question of personal bar at common law was not excluded by the opinion of the Inner House in *King (supra)*. Whether it applies depends upon the

circumstances of the case. The sheriff did not make any decision on this point as he considered that the 2015 Act was fully engaged so that he founded his decision only upon statutory considerations. We have made our decision on a similar basis.

[36] The appellant challenged the sheriff's decision to certify both Mr Forrest and Mr Bathgate as experts required by the respondent. In our view, that was a matter within his discretion since they were assisting the court in relation to different matters: Mr Forrest in relation to the condition of the car and Mr Bathgate in relation to its value, in light of the findings set out in Mr Forrest's report.

Disposal

[37] In the event its appeal was successful, the appellant invited us to uphold its first and third pleas-in-law and grant decree, as first craved, for the sum of £10,532.26 plus interest at 8% per annum from 24 October 2020 which as at the date of this opinion, comes to a global figure of £14,555.41. To account for the sum it was paid upon selling the car at auction, the appellant invites us to deduct the sum of £12,272.01 from that figure. In other words, decree is sought in the sum of £2,283.40.

[38] Having considered the matter, the court has decided to fix a by order hearing for parties to address it on the final wording of its interlocutor in respect of: (i) the disposal of the appeal; (ii) the issue of expenses at first instance; and (iii) separately, the expenses of the appeal.

[39] When this action was raised on 25 September 2019, Mr Dikmonas, despite having rejected the vehicle, had not returned it to the appellant. The vehicle was, ultimately, returned to the appellant. It was sold by it at auction for £12,272.01. Of that sum, £10,532.26

was used to settle the outstanding sum due under the agreement from Mr Dikmonas.

Thereafter, £1,739.75 was paid over to Mr Dikmonas on 29 September 2020.

[40] Thus, the appellant recouped its debt by 29 September 2020, a little over a year after it had raised the principal action. The outstanding sums due under the agreement were also repaid prior to 24 October 2020 - the date upon which the appellant claims interest ran on the sum sought at crave one; however, if the debt sought at crave one was settled prior to 24 October 2020, there was no sum upon which interest could accrue.

[41] The court considers the above has implications in relation to which pleas-in-law and craves of the appellant fall to be granted in the principal action, as well as the expenses of both the procedure before the sheriff at first instance and on appeal. We will instruct the clerk of court to liaise with the parties and identify a suitable date for a by order hearing to call.