Examination prior to purchase: a cautionary note

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Table of Contents

[there is no table of contents for this document]

Case Comment

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Legislation cited
Sale of Goods Act 1979 (c.54) s.14(2)

L.Q.R. 205 THE Court of Appeal's decision in *Bramhill v Edwards* [2004] EWCA Civ 403 is of some concern because of the court's views on s.14(2C) of the Sale of Goods Act 1979. The case arose from the purchase of a US-manufactured second hand motor home ("the MH") which was slightly wider than permitted by the Road Vehicles (Construction and User) Regulations 1986. This was not discovered until some time after purchase. The buyers had inspected the interior of the MH but not measured its outside width. They brought an action for breach of the term implied by s.14(2) that goods must be of satisfactory quality. The judge accepted that the MH was not of satisfactory quality, but he held that the buyers' examination of the MH before the purchase ought to have revealed the problem and the seller could rely on s.14(2C)(b). Section 14(2C) provides that the implied term that goods must be of satisfactory quality does not cover matters which were either drawn specifically to the buyer's attention before purchase or, "where the buyer examines the goods before the contract, which that examination ought to reveal …" 令人滿意的質量不包括在購買前特別引起買方注意的事項，或"買方在合同前檢查貨物時，該檢查應該揭示....."

On appeal, Auld L.J. (with whom Thomas and Jacob L.JJ. agreed) held that there had been no breach of the implied term. The judge had held that the MH was not of satisfactory quality because some buyers would regard the risk of prosecution for using a vehicle in breach of the 1986 Regulations as rendering the MH unsatisfactory, although there was evidence that the authorities did not take enforcement action. Auld L.J. disagreed because the buyers had not provided sufficient evidence to support this conclusion. However, rather than simply regarding this as an issue of proof, the court should have treated this as a wider policy issue. Surely goods which cannot lawfully be used for one of their intended purposes should be treated as being not of satisfactory quality, irrespective of the likelihood of prosecution. An exception could be made where it is clear that the buyer was fully aware of this problem. 無論起訴的可能性如何，都應被視為質量不盡人意。

Although the s.14(2C) point was no longer relevant to the outcome, the court dealt with this in "deference to counsel's submissions" (at [49]). Unfortunately, these *obiter* comments are the most troublesome aspect of this case. Auld L.J. agreed with the judge that s.14(2C)(b) applied because the buyers were aware of the 1986 Regulations and had been given an adequate opportunity to examine the MH. "*An* examination of the ***L.Q.R. 206*** vehicle … *ought to* have revealed its width and that the width was not revealed *simply because Mr Bramhill did not measure it*" (cited at [51]; emphasis added]. But this is a wrong reading of s.14(2C)(b), which applies where a buyer examines goods and *that* examination ought to have revealed the defect. It only applies if the buyer does, in fact, examine the goods, in which case he must do so with sufficient care. On the facts, had the buyers actually measured the width of the MH, but obtained an incorrect measurement, the sellers could rely on s.14(2C)(b). However, s.14(2C) does not impose an obligation on the buyers to examine at all, and the fact that they may have had an opportunity does not matter. Although an examination of the vehicle which included measuring its width *would* have revealed the defect, such an examination was not carried out. Consequently, s.14(2C)(b) is not applicable at all.

Counsel for the sellers also sought to argue that the sellers' representation that the interior width of the MH was 100 inches was sufficient to make the buyers aware of the fact that the MH was wider than permitted on the outside, and that this was sufficient to engage s.14(2C)(a). This argument was not permitted to proceed. Had it been accepted, this approach would broaden the scope of s.14(2C)(a) unnecessarily. That subsection applies where defects have *specifically* been drawn to the attention of the buyer, which seems to require a fairly precise identification of the particular defect. At a general level, counsel's argument was that the buyers had been given sufficient information to draw the inference that there may be a problem, but to accept that this is enough for s.14(2C)(a) to apply would be too generous to a seller at the expense of the buyer. Whether the buyers should have been alerted to this is a question that falls outside the scope of the statutory scheme.

It is of little consolation that these views are only *obiter dicta,* because this is the first time that the Court of Appeal has expressed any view on s.14(2C) and it may therefore be given some weight in subsequent decisions. It is clear that this should not happen.

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Footnotes