

THE HIGH COURT

2004/45 CA

BETWEEN

JENNIFER STEWART

PLAINTIFF / APPELLANT

AND

HARMONSTOWN MOTOR LIMITED

DEFENDANT / RESPONDENT

Judgment of Finnegan P. delivered on the 14th day of March 2005

1. The Plaintiff in this matter purchased a Ford Focus motor car from the Defendant in February 2001. On the 4th January 2002 she retained the Defendant to carry out a service on the car. On the 11th March 2002 she parked the car outside her house and some little time thereafter the car went on fire and was destroyed. She grounds a claim against the Defendant as seller of the car in breach of contract and also in relation to the service in breach of contract. The claim is also grounded in negligence and breach of duty.

2. Central to the Plaintiff's case is the cause of the car going on fire. The Plaintiff claims that the fire was caused as a result of an electrical short. In the alternative the Plaintiff relies upon the doctrine of *res ipsa loquitur*. The Defendant's case is that the fire was a result of arson and in the alternative that the fire could not have been caused by an electrical short.

3. The Plaintiff herself gave evidence of having purchased the car and having had the same serviced. She had no trouble with the car except occasionally on opening or closing the driver's door she experienced what she thought was a static electric shock. On the 11th March 2002 she had driven to the local shop and returned home and parked and locked the car. Some thirty minutes later the car was observed to be on fire. In cross examination she agreed that the Insurer of the car had written to her on the 21st February 2002 indicating that they were going to terminate the insurance on the car as she was in arrears with instalments and giving her ten days notice of their intention so to do. The fire occurred eight days after the letter. In addition at that date she was in arrears with a loan which she had obtained in order to purchase the car.

4. Detective Sergeant Ronan Murtagh gave evidence. He is a Scene of Crime Inspector. He inspected the car on the 12th March 2003. The fire was confined to the engine compartment. There was no evidence of forced entry into the car. He has very considerable experience since 1987 in investigating car fires. He was cross examined about a developing means of causing car fires by means of inserting flammable material into the void to the rear of the front fender and then spraying an aerosol into that area and setting it alight. He had never heard of this and indeed did not believe it had occurred in this case. If it had he would expect damage higher up in the car than was in fact the case.

5. Mr. Mooney, Motor Engineer gave evidence on behalf of the Plaintiff. The Defendant's theory as to the manner in which the fire was caused was put to him and he did not believe it to be the cause of the fire in this case. He saw no evidence that the plastic liner within the front fender had been removed to enable flammable material to be inserted. On examining the car he had seen a white discoloration on the engine bulkhead at the point where a wiring block met the same and in his opinion this indicated excessive heat in that area: this suggested to him that the fire was electrical in origin. In cross examination he said he had investigated many car fires. Where the fire was malicious it was normal to find that the car had been broken into and this was not the case here. Where arson was involved the fire was normally set in the interior of the car. In this case to access the engine one would need a key and the bonnet had not been broken. There was no evidence of extreme temperature within the void behind the front wheel and if the fire had been caused in the manner suggested by the Defendant he would expect to find such evidence. An electrical fire can occur even if the car engine is switched off as some electricity will be passing through the electrical system: the minimum current passing for some appliances within the car is 2 volts and in some cases the voltage was higher.

6. Mr. Lyons, Engineer also gave evidence on behalf of the Plaintiff. He had inspected the car in April 2004. The main fire was in the engine bay. There was no sign of forced entry. The fire could have been caused by a particularly clever arson attack or by a fuel leakage or an electrical fault. He found no evidence of the liner of the front fender being removed or interfered with. If an aerosol had been used he would expect to find some residue in the area in which it was used and he found none. In his opinion the wiring loom had become loose and wiring then damaged causing a short circuit which in turn caused the fire. Where there is a short circuit the full length of the wire in question heats up and becomes discoloured.

7. Mr. John Butler gave evidence on behalf of the Defendant. Again he is an Engineer with experience of investigating fires. He had examined the car on three occasions. He had examined the car with an open mind to determine whether the fire was accidental or malicious. He found a tool mark on the inside of the fender which suggested to him that a screwdriver had been used to remove the lining from the fender and give access to the void behind the fender. Since 1998 originating in Oxford and Birmingham there have been cases of arson to cars carried out by inserting flammable material into the void behind the fender spraying aerosol into the same and setting it alight. In the Ford Focus there is an opening from the void behind the front fender into the engine compartment proper and this acts like a chimney in the event of a fire being set in the void. In his opinion a short circuit cannot cause burning in the wiring system. The likely cause of the fire in this case was arson effected in the manner which I have described. In cross examination he gave his opinion that the fire did not have an electrical origin as where a short occurs this will trip the fuse. His experience of investigating fires is that 80% of those caused by arson occur in the passenger compartment. Of fires which occur in the engine compartment 50% to 60% of those are likely to be electrical in origin.

8. Martin Ottinger an Electrical Engineer with the Ford Motor Company gave evidence. If the fire had been caused by an electrical short he would expect one of the wires to be damaged along its entire length and having inspected the car he did not find this to be the case. He did not agree that the white spot shown on the bulkhead which had been identified by the Plaintiff's witnesses as an indicator of extreme temperature and the probable source of the fire was such: it was more likely to be a deposit.

Disposition

1. The onus is on the Plaintiff to satisfy me on the balance of probabilities of the facts underlying her claim.
2. On the evidence I am satisfied that the fire occurred within the engine compartment. The engine compartment of the car could not be accessed other than by means of a key. There was no evidence of a break-in to the engine compartment.
3. The fire in the engine compartment could have occurred as a result of an electrical fault or alternatively as a result of

arson carried out in the manner described by the Defendant's witnesses. On the balance of probability I am satisfied that the fire most likely occurred as a result of an electrical fault: I consider the alternative explanation of arson in the manner described by the Defendant's witnesses as much less likely. I so find notwithstanding the absence of any evidence that a particular wire within the wiring loom had burnt: I have photographic evidence of the state of the wiring and it all appears to be uniformly affected by burning. I am satisfied that if a single wire within the loom short-circuited and burnt along its length the evidence of this would be obscured by the action of the subsequent significant fire within the engine compartment.

4. The foregoing findings are not sufficient however for the Plaintiff to succeed. The car was purchased on the 31st July 2001 and serviced in January 2002. In order to succeed against the Defendant Seller I am satisfied that the Plaintiff would have to show on the balance of probability that the defect in question was within the car at the date of sale. I have no evidence in this regard. With regard to what was described as a routine service in January 2002 again I would need evidence that on such a service it was incumbent upon a garage to carry out such investigations and tests as would reveal a then existing defect in the wiring loom and again I have no such evidence. I have the Plaintiff's evidence that she experienced what she thought to be a static electric shock: the fire could not on the evidence before me have been caused by static electricity. Had the Plaintiff drawn to the Defendant's attention at the time of the service what she perceived as a problem it may be that this may have placed an onus on the Defendant to check the electrical system within the car: however I have no evidence that she alerted the Defendant to the problem. I am not satisfied that these omissions in evidence can be satisfied by reliance on the doctrine of *res ipsa loquitur*.

5. Having regard to the preceding paragraph hereof I find that the Plaintiff has not established in evidence the facts necessary for her to succeed in this claim.

9. I affirm the decision of the learned Circuit Court Judge. I will hear Counsel as to the appropriate Order for costs.