IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2019CV01012

BETWEEN	**RECARDO ONEIL LUGG**	**CLAIMANT**
AND	**ATL AUTOMOTIVE LIMITED**	**DEFENDANT**

IN OPEN COURT

Ms. Affia McBean and Ms. Cheffanie West instructed by 876 Legal Suites for the Claimant.

Mr. Conrad George and Ms. J. Khara East instructed by J. Khara East for the Defendant.

Heard: January 28, 2026, and February 6, 2026

Breach of contract – Whether a contract has been established between the parties – Whether the court can consider causes of action that have not been specifically pleaded

CARR, J

Introduction

[1] The claimant (Recardo Oneil Lugg) filed a claim form supported by particulars of claim on March 13, 2019. His claim is against the defendant (ATL Automotive Ltd.) for what he has described as a breach of contract. It is his averment that the defendant failed to replace “default mechatronic”.

[2] In summary he contended that he took his VW Polo motor vehicle to the service department of the defendant on January 15, 2016. At the time the mechatronic in

the motor vehicle was found to be defective. He indicates that the mechatronic was removed and an adaptive drive and software update and repairs were carried out on his vehicle which was returned to him on or about January 18, 2016.

[3] In April of 2018 a similar problem arose with his vehicle, and he returned to the service department for the mechatronic to be replaced. The defendant has failed and/or refused to replace the mechatronic and as a result he has suffered loss and incurred expenses.

Issues

[4] The pleadings in this claim were limited to a breach of contract. However, the witness statement of the claimant referred to issues concerning misrepresentation, detinue and or conversion and special damages. In her submissions, counsel Ms. McBean referred to the Sale of Goods Act. This was never pleaded in the claim form or referred to in the particulars of claim. The issues therefore regarding the court's determination are as follows:

a. Whether there was a valid contract between the parties.

b. If so, whether there was a breach of that contract.

c. If there was a breach of contract is the claimant entitled to damages.

d. Whether the court can consider a cause of action that was not specifically pleaded in the claim form or particulars of claim.

Submissions on behalf of the claimant

[5] Ms. McBean submitted that under common law as well as the Sale of Goods Act there is an implied obligation on the part of a vendor of goods to deliver goods of merchantable quality. It was also her submission that any services performed by a company ought to be done with reasonable care and skill.

[6] It was suggested that this was not what occurred in this case. The claimant took his vehicle to the defendant's service department, and they failed to replace that

part with a new one. She relied on the cases of **Lovelace v. Murdock**[1], **Trebor Bassett Holdings Ltd. v. ADT Fire and Security PLC**[2] and **Jason Samuels v. ATL Automotive Limited**[3] in support of this point.

[7] It was further contended that the defendant misrepresented to the claimant that the mechatronic was replaced when this was not the case. Submissions were also made relative to the tort of wrongful "retention" and a failure to deliver property. Although the claim only referred to damages, her submission also included special damages.

Submissions on behalf of the defendant

[8] Mr. George commenced his submission by indicating that the claim could not stand as pleaded. There were no contractual terms that had been identified for the court to determine that there was a contract between the parties. It was argued that the claimant's vehicle was under a two-year warranty that had expired on November 18, 2014. The mechatronic was replaced in 2016 with a new one and the claimant has failed to establish otherwise.

[9] Further, the pleadings did not include the Sale of Goods Act, a claim for misrepresentation or wrongful detention. As such the court ought not to consider those causes of action in the determination of the case.

Analysis

Whether there was a valid contract between the parties

[10] The evidence in this case was short. The claimant's witness statement, and the statement of Mr. Davin Mullings on behalf of the defendant stood as their evidence

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[1] [1950]1 WLR 1209

[2] [2012] EWCA Civ 1158

[3] [2024] JMSC CIV 79

in chief. Several documents were agreed between the parties which formed Exhibits 1-8.

[11] In assessing the merits of the claim that a contract existed, I rely on the case of **Keith Garvey v Ricardo Richards**[4] Harris JA stated:

> *"…it is a well – settled rule that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into the contractual relationship and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain there must be positive evidence that a contractual obligation, born out of an oral or written agreement is in existence."*

[12] In summary, for a legally binding contract to be formed there must be an agreement, an intention to create legal relations and consideration.

[13] What is the evidence of an agreement between the parties? There is no dispute that the claimant purchased the car from ATL sometime in 2012. The warranty for the vehicle expired on November 18, 2014. The vehicle was taken to the defendant's service department on January 15, 2016, this was approximately one year and two months after the expiration of the warranty.

[14] Mr. Mullings in his evidence accepts that a diagnostic test was done on the vehicle, and it was discovered that the mechatronic was defective. It was removed and software update and adaptation drive were carried out. The mechatronic and the bolts were changed on the vehicle. This was at a minimum charge to the claimant, who was required to pay the cost of labour. The invoice outlining this was admitted by way of agreement as Exhibit 4.

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[4] [2011] JMCA CIV 16

[15] The claim form speaks to a breach of contract for failure to replace default mechatronic. The first mechatronic on the evidence of Mr. Mullings was replaced. The claimant in his evidence however stated that sometime in April 2018 he had similar issues with the vehicle and that this compelled him to return to the defendant's service department. He was advised that the clutch was defective and needed to be replaced. He advised them to go ahead with the repairs and provide full service for the vehicle.

[16] He was quoted the sum of Three Hundred and Seventy-Eight Thousand Six Hundred and Thirty-Seven Dollars and Seventy-Five Cents ($378,637.75) as the total cost to change the clutch and service the vehicle.

[17] He paid a deposit of Two Hundred Thousand Dollars ($200,000.00). Two weeks later he was advised that the mechatronic was defective and needed to be replaced. He did not advise them at that juncture to proceed with the repairs. In August 2018 he called and authorized the repairs. The total cost increased to Eight Hundred and Sixty-Two Thousand Three Hundred and Sixty-Eight Dollars and Twenty-One Cents ($862,368.21). He agreed to make that payment and obtained a loan in that amount. Subsequently, on his arrival at the defendant's service department in September 2018 he was told that the price was further increased. He did not complete the payment. His vehicle has been at ATL since then.

[18] The evidence supports the finding that there was a contract between the parties for the repair of the motor vehicle in 2016. The claimant accepted in cross-examination that there was an agreement between himself and the defendant that the mechatronic would be replaced and that he was to pay 50% of the labour cost. This was confirmed by the invoice which formed exhibit 4 which outlined the work carried out and the cost.

[19] In the circumstances therefore I find that there was a contract for the repair of the claimant's vehicle that was entered into in or around January of 2016, whereby

the defendant agreed to repair the claimant's vehicle and the claimant agreed to pay the cost for labour.

Was there a breach of that contract

[20] Ms. McBean argued that the contract was breached because the defendant has failed to replace the mechatronic. This was also set out in paragraph 9 of the particulars of claim which referred to the 2016 visit by the claimant to the defendant's service department.

[21] To establish that the contract was breached the claimant would have to provide evidence that the mechatronic was not replaced. The claimant's evidence in support of this point is contained in his witness statement at paragraphs 48 and 49. He stated that the defendant's servant and/or agent provided no documentation to show that the defective mechatronic was replaced. He did not see the defective part that was removed and, as a result, it is his belief that it was not replaced, as it was the same issue he experienced with the vehicle in 2016 which occurred in 2018.

[22] Mr. Mullings stated that the vehicle service history shows that the mechatronic was replaced with a new one in 2016 and that this part was covered by a two-year warranty. In cross-examination he indicated that the mechatronic can go bad from time to time. However, he could not give a definitive time as to how long it should last. He said that this was dependent on other factors, such as whether the part was being maintained at the appropriate standard.

[23] He also told the court that it was not possible to repair a mechatronic. He admitted that Exhibit 4 did not specifically include the words replace mechatronic, but he said that the invoice details the work that is carried out on a visit to the dealership. It was suggested to him that the mechatronic was never replaced in 2016 and he disagreed.

[24] At the foot of Exhibit 4 is a line which reads *"mechatronics ordered"* below that is the date "*19/1/2016"*. Above that are the words *"customer pay shop charge for*

repair order". The line above those words state *"Est. 0.00 15Jan16"*. The invoice was dated "*16Feb16"*. It is my understanding of this document that there was an estimate of the cost of repairs that was done on January 15, 2016, on that date the repair order was made. The mechatronics was ordered on January 19, 2016, and the vehicle was returned to the claimant on February 16, 2016.

[25] It is trite law that he who asserts must prove. In this case the claimant is asserting that the mechatronic was never replaced. Exhibit 4 speaks to work that was done and there is a line item "mechatronic". Although there is no specific reference to the replacement of the mechatronic outlined on Exhibit 4, the evidence of the claimant is that in or around January 2016 the vehicle developed a transmission problem, and he took it to the defendant's service department. In cross-examination he admitted that after the vehicle was returned by the defendant in 2016 the car worked well and he agreed that there were no defects until 2018.

[26] Am I to accept that for two years following the claimant's visit to the defendant's service department the vehicle, that had transmission problems, worked well with the old mechatronic? This is in the context of the evidence from Mr. Mullings that the mechatronic cannot be repaired. If it was not repaired or changed what would account for the fact that for two years the claimant did not experience any problems with his vehicle?

[27] There is no independent evidence, expert or otherwise to suggest that the mechatronic was not replaced. The claimant's say so is not satisfactory given the evidence as previously outlined. I am hard pressed to find in these circumstances that the mechatronic was not replaced. I find therefore that the claimant has failed to satisfy me on a balance of probabilities that there was a failure or refusal on the part of the defendant to replace the mechatronic. There being no breach of contract there is no basis for a claim in damages.

Whether the court can consider a cause of action that was not specifically pleaded in the claim form or particulars of claim

[28] The purpose of pleadings is to alert the other party as to what is being claimed so that they can reasonably defend the claim. It is accepted that even though a specific cause of action has not been pleaded if it arises in the facts the court may consider it to do justice to the case as well as to ensure finality in decision making.

[29] Counsel raised several issues that were never pleaded in the claim form. Suffice it to say that there was no evidence in support of any of the causes of action mentioned by her in her submission.

[30] The reference to the Sale of Goods Act is without merit. The evidence is that the mechatronic was not replaced. There is no averment that the part was defective or that the work carried out by the defendant's service department was not up to acceptable standards.

[31] For the tort of wrongful detention and conversion, the claimant is required to establish that the vehicle was detained even after a demand was made for its return. At no point in his witness statement has the claimant indicated that he demanded the return of his vehicle. Instead, it is his evidence that he left the vehicle there because he was uncertain whether he ought to go ahead with the repairs in 2018 based on the cost. He obtained a loan and then the estimate changed and he took back his manager's cheque.

[32] Counsel also referred to a misrepresentation on the part of the defendant. They had misrepresented to the claimant that they had changed the mechatronic when this was not in fact done. Even though this was not specifically pleaded I am of the view that this issue has been covered by the discussion on whether there was a breach of contract.

Disposition

[33] The claimant has established that there was an agreement between the parties for the repair of his vehicle, however he has failed to show that there was a breach of this agreement as there is no cogent evidence to support his contention that the mechatronic was not replaced. In the circumstances, judgment is entered on behalf of the defendant on the claim.

Orders:

1. Judgment for the defendant on the claim.
2. Costs to the defendant to be agreed or taxed.