IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2012

CORAM: ANSAH J.S.C. (PRESIDING)
ADINYIRA (MRS), J.S.C.
DOTSE, J.S.C.
GBADEGBE, J.S.C.
AKOTO-BAMFO (MRS)J.S.C.

CIVIL APPEAL

No. J4/34/ 2012

4TH DECEMBER, 2012

GEORGIA HOTEL LIMITED ... PLAINTIFF/RESPONDENT/ APPELLANT

VRS.

SILVER STAR AUTO LIMITED ... DEFENDANT/APPELLANT/ RESPONDENT.

J U D G M E N T

SOPHIA ADINYIRA (MRS.) JSC:

In October 2004 Hotel Georgia Limited, a limited liability company engaged in hotel and hospitality industry in Kumasi and Accra, the Plaintiff/Respondent/Appellant herein, (hereinafter plaintiff company), purchased for the use of its managing director, a brand new Mercedes Benz E240 Avant-garde at a cost of €58,500 from the Silver Star Limited, the sole dealer of German-made Mercedes Benz vehicles in Ghana, the Defendant/Appellant/Respondent herein (hereinafter defendant company)

In September 2006 the vehicle broke down at Ejisu en route to Kumasi after minor repairs at the workshop of the defendant company at Tema. The plaintiff company had the vehicle towed to Kumasi and inspected by a private mechanic who declared the car engine defective. After that the plaintiff company brought a claim against the defendant company alleging that the vehicle suffered from latent defects.

The plaintiff company claimed by its writ of summons filed on 15 February 2007:

1. The replacement of Mercedes Benz E240 Avant-garde vehicle…with a brand new one, by reason of the latent defect in the said vehicle which the plaintiff bought from the defendant in October 2004.
2. In the alternative, the payment of the full replacement value of a brand new Mercedes Benz saloonE240 Avant-garde to the plaintiff by the defendant by reason of the wrongful sale of the wrongful sale of the defective brand new vehicle to it.
3. Loss of use.
4. Costs including solicitors professional fees.

On 28 July the High Court delivered judgment in favour of the plaintiff company for recovery of €58,500, interest at the prevailing bank rate from October 2006 to the date of payment, $10,000 for loss of use and costs of GH2, 000. This decision was reversed on appeal on 2 December 2010.

The plaintiff company appeals on the grounds that:

a) On the agreed evidence by the appellant as expressed in Exhibit CE1 the Court of Appeal misinterpreted what constitutes a latent manufacturer's defect as it applied to the brand new Mercedes Benz E240NAvante-garde the Appellant bought from the respondent. The misinterpretation and misapplication of what constitutes a latent defect has occasioned the Appellant a substantial miscarriage of justice.
b) The Court erred when it relied on suspicion and conjecture to find that the fault on the car was caused by the Appellant's agent.
c) The judgment is against the weight of evidence.

What is a latent manufacturer's defect?

According to Black's Law Dictionary 8th Edition relied on by the trial judge, a hidden or latent or inherent defect is defined as 'a product imperfection

that is not discoverable by reasonable inspection" A manufacturing defect is defined as an "imperfection in a product that departs from its intended design." According to the High Court judgment, the imperfection must thus exist at the delivery of the product. The Court took into account the implied fitness for which the vehicle was intended as well. Thus, a new vehicle should be free from defects at the time it is delivered from seller to buyer.

The Court of Appeal considered what Black's Law Dictionary, 6th Edition defines a latent defect as a "hidden or concealed defect, one which could not be discovered by reasonable or customary observation or inspection; one not apparent on the face of the goods, product or document… Defect which the owner has no knowledge or which the owner has no knowledge of[1] as held in *Bichl VRS Poinier*;"[2] The Appeals Court referred to the case of US *vs. Lembke Const Co. Inc*, CA[3]; where the term was described as "one which cannot be discovered by observation or inspection made with ordinary care.[4]

The Appeals Court also referred to Shroud's Judicial Dictionary[5] which described the term latent defect as " a latent defect is not simply any defect not discoverable through ordinary use and maintenance, but a defect or a

[1] See judgment of Court of appeal at page 385 of record.
[2] 71 Wash 2d 492, 429 p2d 228, 231
[3] CA Ariz. 786 F 2d 1386-87
[4] Ibid. 1
[5] 5th Edition, volume 2 page 663.

flaw, generally in the metal or material itself, which could not be discovered by any known and customary test.' The Appeals Court referred to *Parente (Robert A) vs. Bayville Marine Inc. and General Insurance of America* [6] *Parente* defines a latent defect as "a defect generally in the metal or material itself which could not be discovered by any known and customary test."

The Court of Appeal then stated that: "From the above it is clear that a latent defect is a term of art that is generally used to describe a thing or situation of which one has no knowledge whatsoever; it is a matter of total absence or lack of knowledge or justifiably be expected that a person would talk or complain about that state of affairs that he had no knowledge of. A person would only become aware of that state of fact when it becomes patent, i.e. when he gains knowledge of it."

In the view of this Court, by the mere definition of latent defect, it means the defect is a manufacturing defect, which must exist at the time of production and delivery of the product. By being a hidden or latent defect both the seller and most importantly the buyer could not detect or be aware of the defect upon reasonable examination at the time of conveyance. Reasonable inspection of the vehicle and the acceptable time period for

[6] (1975) 1 Lloyds Reports 333

claiming that a latent defect exists are also factors to be weighed in determining the outcome of this case.

In the case *Lempke v. Dagenais*,[7] the court found that latent defects "become manifest after the subsequent owner's purchase and [were] not discoverable had a reasonable inspection of the structure had been made prior to purchase. *Lempke* states that the "implied warranty of . . . quality for latent defects is limited to a reasonable period of time." See also *Richards*,[8] *Terlinde*[9]; and *Redarowicz*[10] some US cases on this point. *Terlinde* states that the length of time for latent defects should be controlled by [a] standard of reasonableness and not an arbitrary time limit created by the Court.

The definition of latent or hidden manufacturer's relied upon by the plaintiff company is "a product imperfection that is not discoverable by reasonable inspection," or "an imperfection in a product that departs from its intended design." The plaintiff company relies on the definition of latent defect from *Stroud's Judicial Dictionary of Words and Phrases Sixth Edition* Vol. 1: "a latent defect is not simply a defect not discoverable through ordinary use and maintenance, but a defect or a flaw generally in

[7] 130 N.H. 782,
[8] 139 Ariz. At 245, 678 P.2d at 430
[9] 275 S.C. at 398, 271 S.E.2d at 769
[10] 92III 2d at 185, 441 N.E.2d at 331

the metal or material itself, which could not be discovered by any known and customary test."

Were there latent defects in the vehicle?

The High Court and Court of Appeals differ on whether the existence of latent defects were established. The learned trial judge found that the car had a latent manufacturing defect which the Court of Appeal rejected. What does a second appellate court do when confronted with two conflicting findings of a fact; one from a trial court and the other from a first appellate court? Does it automatically accept the appellate court's finding, it being the higher of the two courts?

This Court per Georgina Wood, CJ said at pages 307 to 308 of *Continental Plastics [2009] SCGLR 298* that:

> "An appeal being by way of rehearing, the second appellate court is bound to choose the finding which is consistent with the evidence on the record. In effect the court may affirm either of the two findings or make an altogether different finding based on the record."

It is therefore pertinent to set out the evidence produced at the trial.

Plaintiff's Case

In paragraph 11 of the statement of claim the plaintiff company gave the particulars of the latent defects as follows:

“Paragraph 11. The performance of the vehicle, later on, revealed its latent defects.

Particulars

i. The vehicle in being put to its normal use could freeze and become immobilized.
ii. When the vehicle is in motion, it would keep a very slow pace although the accelerator pedal had been pressed to secure fast movement.
iii. When (ii) above happens, the vehicle would then over-accelerate putting the driver and the passengers in danger.
iv. The entire engine is defective by reason of the malfunctioning of the oil pump.
v. The air mass sensor and the pedal sensor are both defective.
vi. There is a massive noise in the vehicle when you start it up.”

Mrs. Georgina Konadu Kusi, the owner and the Managing Director (MD) of the plaintiff company in her evidence said on the day she paid for the vehicle she could not take delivery as the lights were not working. She eventually took delivery of the car and in less than a year she saw ‘visit the workshop’ sign on the dashboard and she took it to the workshop for

repairs. She said the defects in the vehicle included the sudden surge of speed in the vehicle on pressing the accelerator and noise in the engine. She said she always sent the vehicle for repairs when she sees the fault. She said she was not comfortable driving the car as it was not as smooth as her other 7 Mercedes Benz cars.

Paul Tsimekpe, PW1 an auto mechanic was called in by the MD to repair the broken down vehicle. He did not work on it and came back with a diagnostic machine. He said he could not spark the car so he had to use his battery to jumpstart the car. He heard some noise in the engine as if there was no oil in the car. He checked the dashboard, but it indicated the oil was okay, but when he checked the oil tank he saw that the oil has congealed. He concluded that the oil pump was defective and recommended that the vehicle be sent to the dealer for repairs and to change the engine. He said when he plugged in the diagnostic machine, the faults that showed were Air Flow Censor, Pedal Sensor and Out writer. He was able to correct some of the faults leaving the Airflow Censor and Pedal Censor.

Benito Owusu Bio, PW2 a director of the plaintiff company and a nephew of the MD, did not mention any defect in the Mercedes Benz car in his evidence in chief. His centered mainly on the breakdown of the vehicle at Ejisu after picking it up from the workshop of the defendant company and

the cost of hiring a vehicle for the MD's use after the breakdown of the vehicle. It was in cross-examination that he said they sent the vehicle to the workshop after seeing the 'visit the workshop' sign on the dash board.

Defendant's Case

The defendant company gave evidence per Mr. Hussein Mohammed Noubani, the after-sales General Manager. He said the Plaintiff Company did not keep to any maintenance schedule and from their records the vehicle came to the workshop on only 3 occasions: March 2006, June 2006 and September 2006. The first visit was to change the trafficator bulb due to an accident, replacement of left mirror light and normal servicing and cleaning of engine compartment area. The other 2 occasions were also for repairs. He indicated during cross-exam that they do not have any record of the faults or defects that the plaintiff mentioned in its pleadings and evidence.

The trial court ordered an inspection of the vehicle to be carried out by Mr. Hussein Mohammed Noubani in the presence of the Registrar of the Court, PW1, a son of the MD and others. His report was tendered in evidence as Exhibit CE1. The faults that were detected were: Engine Noise(Tappet Noise),and with the aid of a diagnostic machine the faults detected were Idle speed , Engine Control Unit, Anti Lock Brake System, Upper Control

Panel. The diagnostic machine indicated the faults were due to low voltage. He said the plaintiff company allowed the battery to discharge, resulting in the faults the machine diagnosed. He said from his experience the noise in the engine was tappets noise, and "a tappets noise is some element to regulate the clearance of the valves." The other fault detected was the Audio System which was due to an open circuit. With regard to the air mass sensor, accelerator pedal sensor, and the oil pump which the plaintiff company claimed were defective, Mr.Noubani said the diagnostic machine did not detected any fault in them. He said the oil pump was working otherwise he couldn't have sparked the car. He also said this type of vehicle does not splash oil as there a protective blade under the cylinder head cover. So the fact that the oil does not splash does not mean the oil has congealed. He also said PW1 wrongly sparked the vehicle which could cause damage to the control unit of the two batteries in the car.

The witness concluded that all the faults were minor and could be easily repaired, and there was no need to change the engine. He added that at the time the vehicle broke down it was still covered by a warranty and all the repairs could have been easily done including replacing the engine if it had become necessary.

In assessing the above evidence the trial court and the Court of Appeal differed on whether the existence of latent defects have been established. The trial Court in assessing the evidence before it held that two defects i.e. noise in the engine, and idle speed had been proven and concluded that coupled with the other defects; namely, Audio System, Upper Control Panel, Anti Lock Brake System, and Engine Control Unit the defects in the car were quite substantial. The High Court accordingly held that the vehicle was not fit for the purpose for which it was bought and it suffered from latent defects. See pg. 233-34.

The Court of Appeals on its part found the plaintiff company failed to prove latent defects in the vehicle. The Lordships were of the view that the noise in the engine did not exist anytime in the life of the car prior to 26 September 2006. Customarily, the vehicle should have been sent for servicing after attaining 5,000km. Rather, the plaintiff company did not bring it in for servicing until it has done 9,486 km and almost two years after having retained delivery of the car. This may be viewed as negligence on the part of the plaintiff company, as the Appeals Court found, since the service was not carried out in due time, and that the reappearing "visit workshop sign" in the vehicle does not necessarily prove that there was a latent defect.

The plaintiff company argues that the abnormality, which was hidden initially, did not manifest until after delivery and therefore was latent at the time the buyer retained possession. This is a valid point as a latent defect would only manifest itself after the buyer of the product has tested it or put it to its normal use. Accordingly the burden of proof is on the plaintiff company to prove the existence of latent defects in the car.

At the end of the trial the only evidence or fault that was established was the noise in the engine. Clearly all the other defects including the idling speed recorded in Exhibit CE1 were diagnosed by the diagnostic machine as due to low voltage. These defects by no stretch of imagination are latent manufacturer defects. The blame for the low voltage falls squarely on the plaintiff company under whose custody the vehicle's battery was allowed to completely discharge to cause these faults. The High Court accordingly erred in coming to the conclusion that the noise in the engine as well as the other defects in the vehicle showed that the vehicle suffered latent manufacturer's defects.

In our view, the mere existence of noise in the engine, by itself is not proof of a latent defect existing at the time of delivery and which could not have been discovered upon reasonable examination of the vehicle. PW1 and PW2 described the noise as that of a corn mill and definitely anyone would have

noticed it if it had existed at the time of delivery or the occasions that the vehicle visited the workshop. At the time the MD went to take delivery of the vehicle the only fault she detected were faulty lights and she refused to take delivery. When she later took delivery of the car definitely she would have heard the noise in the engine if it had existed then.

PWI diagnosed the noise was due to a faulty oil pump and this cannot be correct as this did not appear on the diagnostic machine. Significantly PW1 in further examination by counsel for plaintiff company after the court inspection of the vehicle said there was no indication of an engine fault on the diagnostic machine. He said the engine indicated 'correct'.[11] On the other hand Mr. Noubani's diagnosis that the noise in the car was due to tappets noise is more likely. This according to him could easily be corrected.

The Mercedes Benz car was used for almost two years after its purchase and we note that the plaintiff company was unable to prove that the faults complained of existed, and were brought to the notice of the defendant company before the breakdown at Ejisu. The driver who used to send the vehicle to the workshop and thus we consider as a material witness was not called to give evidence. Pw2 who accompanied the driver to service the car on the last occasion said they visited the workshop because 'visit the

[11] Page 84 of record of proceedings

workshop' sign was showing on the dashboard. He never mentioned any of the defects particularized in Paragraph 11 of the statement of claim.

The plaintiff company could not produce any evidence to show the vehicle had been at the workshop more than three occasions. The defendant company claims the only job done was based on those complaints received upon which a job card was raised. The plaintiff company could not produce any evidence to counter that.

Incidentally the only job cards produced at the trial were for those 3 occasions only. We note that the repairs done on the car was mostly on lights; i.e. trafficator light, driving mirror light and battery light sign that was flashing on the dashboard and fixing of screw and washer. The receipts tendered were for jobs done on only those days that the defendant company claimed the vehicle was brought to their workshop. The receipts the plaintiff company produced was for the last visit.

The overall evidence does not provide significant proof that would allow the burden to shift to the defendant company. The auto electrician PW1 was not an expert and did not have the requisite experience to examine and repair the vehicle. Even the trial judge disregarded his evidence. Consequently the conclusion by the trial court that the car had hidden or latent defect was not borne out by the evidence. His conclusion that the vehicle had hidden

defects flies in the face of the evidence that the diagnostic machine indicated the engine was correct.

Accordingly we hold that the plaintiff company failed to prove the existence of latent defects in the vehicle. The Court of Appeal rightly set aside the High Court's findings in favour of the plaintiff company on this issue.

Is there a breach of the Sale of Goods Act?

The High Court further held that there was a breach of the Sale of Goods Act as the Mercedes Benz car was not fit for the purpose for which it was bought.

It is provided by section 13 (1) of the Sale of Goods Act, 1962 (Act 137), that:

"13. Quality and fitness of the goods

(1)Subject to this Act and to any other enactment, there is no implied warranty or condition as to the quality or fitness for a particular purpose of goods supplied under a contract of sale except

(a) that there is an implied condition that the goods are free from defects which are not declared or known to the buyer before or at the time when the contract is made, but that condition is not an implied condition

(i) Where the buyer has examined the goods in respect of defects, which should have been revealed by the examination;

(ii) In the cases of a sale by sample, in respect of defects which could have been discovered by a reasonable examination of the sample;

(iii)where the goods are not sold by the seller in the ordinary course of the seller's business in respect of which the seller was not, and could not reasonably have been aware;

(b)that where the goods are of a description which are supplied by the seller in the course of the seller's business and the buyer expressly or by implication makes known the purpose for which the goods are required, there is an implied condition that the goods are reasonably fit for that purpose."

From the above provisions, a buyer can avail himself of the implied condition that goods purchased are free from defects which are not declared or known to the buyer before or at the time when the contract is made. However there is no such implied condition where the buyer has examined the goods in respect of defects which should have been revealed by the examination. Accordingly section 13(1) can only avail a buyer where there are latent defects in the goods which could not be revealed by examination at the time of the contract of sale.

Under the Sales of Goods Act, the buyer bears the burden to prove the existence of latent defects in goods bought at the time the contract was concluded.

In order for there to be a breach of Section 13 (1) of the Sale of Goods Act, a purchaser must show that the seller of the vehicle knew or was in the first place aware of defects in the vehicle they sold to him at the time of sale or delivery, and also that the seller deliberately or negligently failed to disclose his knowledge of the defects to the purchaser.

A case that addresses this issue is *Continental Plastics Engineering Co. Ltd vs. I.M.C. Industries Technik* GMBH (2009) SCGLR 298.The facts were that in July 1998, the plaintiff company sold a plastic machine HBD to the defendant company "as is, as seen/inspected, without warranty, delivered to the factory without inspection." The plaintiff company claimed the defendant company inspected the equipment before the contract of sale was concluded and certified it to be in good and perfect condition. The defendant denied this claim and asserted that it could only rely on the plaintiff company's representation at the time of the purchase, as the machine has not be installed, and that it was only after the installation and a test run that it discovered a number of latent defects. The defendant company failed to make a report of the alleged defects until payment was

due. The plaintiff company therefore sued for the cost of equipment with interest. In its defence the defendant company claimed the plaintiff company was in breach of section 13 (1) of the Sales of Goods Act. The defendant company's position was rejected by both the high Court and the Court of Appeal.

The Supreme Court affirming the decision of both courts held section 13 (1) of the Sales of Goods Act can only avail buyer who has succeeded in establishing the existence of defects in goods bought at the time the contract was concluded. The Supreme Court held on the evidence that there was no proper proof that the defects complained of existed or were real and as such the plaintiff company cannot be held to have breached the implied condition that the equipment was free from defects.

The plaintiff company in his statement of case relied heavily on the English case of *Rogers and Another vs. Parish (Scarborough) Ltd and Others*.[12] In the Rogers case, the plaintiffs bought a brand new Range Rover for abut £16,000 in November 1981. After a few weeks use, the Range Rover proved unsatisfactory and was replaced with another. After six months use and having driven it for 5.500 miles the plaintiff rejected it. The court of Appeal held the car was not fit for the purpose that it was bought and found for the plaintiffs.

[12] 1987 2 All ER 232 at page 237

The plaintiff company in this case had no cause to complain about any latent defect until September 2006. Even then instead of taking advantage of the warranty period as was done in the Rogers case to have the vehicle repaired or have the engine replaced the plaintiff company went to Court. We find no evidence of a manufacturer's defect at the time of the purchase Accordingly the Court of Appeal correctly held that Section 13 (1) of the Sales of Goods Act cannot avail the plaintiff company.

The trial Court also found that the replacement of new parts on the vehicle was an admission that the original parts were either defective or did not measure up to the high standards expected in the vehicle. The Court of Appeals found that the issue of global recall and replacement of parts and not the vehicle itself was not indicative of an admission of latent defects. The replacement was carried out with appellant's knowledge and consent without complaints. We find no reason to depart from this conclusion.

The other ground of appeal is that the Court of Appeal erred when it relied on suspicion and conjecture to find that the fault on the car was caused by the plaintiff company's agent.

The Court of Appeal reiterated that the plaintiff company's witness, Paul Tsimekpe (PW1), was not an auto-mechanic with sufficient knowledge about the type of luxury vehicle he was working on. Mr. Tsimekpe's work

on the vehicle could have contributed to some of the faults found and registered at the time of inspection. Due to the negligent inspection undertaken by an individual who did not have sufficient knowledge to properly repair the vehicle, there is less proof that the problems experienced by the vehicle were in fact latent defects. The auto electrician, Mr. Tsimekpe, was not an expert and did not have the requisite experience to examine the vehicle. Because of this, the trial Court ordered an additional examination, upon which the CE1 is based, but this was conducted more than three years after the vehicle was delivered, and nine months after the vehicle had remained parked with no record of regular starting. The period of time between the purchase of the car and the complaint, the lack of proper servicing suggested by the manufacturer and the incompetency of the electrician who initially examined the vehicle supports the conclusion reached by the Appeals Court. In our view the court-ordered examination of the vehicle does provide some evidence, rather than simply suspicion and conjecture as the plaintiff company contends the Appeals Court based its judgment on.

The plaintiff company also failed to prove that the defendant company had sometimes failed to open job cards when it sent the vehicle to the workshop. The driver of the plaintiff company who took the car for

servicing was a vital witness on this issue, but was never called by the plaintiff company. On the last visit before the breakdown of the vehicle, PW2 who accompanied the driver in his evidence only said the vehicle was sent to the workshop because the visit the workshop sign appeared on the dashboard. Accordingly we hold that the plaintiff company did not complain to the defendant company about the defects enumerated in their statement of claim. In regards to the claim that the Court was surmising and guessing that the life span of the brand new Mercedes Benz could be below two years because of failure to service every 5000kms, may be justified. We think there is some fault on the part of the plaintiff company for not adhering to the servicing guidelines for such a luxury vehicle. The fact that the plaintiff company failed to inspect the vehicle at the times suggested by the manufacturer does not necessarily prove that the defects were not discoverable by inspection. It is possible that upon proper inspection on behalf of the plaintiff company any defect on the part of the manufacturer could have been discovered and remedied.

The conduct of the plaintiff company in deciding to tow the vehicle to Ejisu and call an inexperienced auto mechanic to repair the car is rather surprising. It is not far-fetched to say that the reasonable thing for the plaintiff company to do in the circumstances was to call the defendant

company to come and tow the vehicle back to their Tema workshop to change the engine if that was the solutions to end the complaints the plaintiff company alleged the car suffered then; since the warranty on the car was still valid. The significant lapse of time between delivery of the Mercedes Benz car and the complaint of latent defects is relevant to determine whether the plaintiff company had a right to reject the vehicle after the breakdown.

Did the Appellant reject the vehicle?

Benjamin's Sale of Goods 5th Edition states that intimation for a rejection of goods need not necessarily be express, but must be clear. Under Section 50 of the Sales of Goods Act, the buyer is not necessarily bound to return the car to the seller. When the price of the purchased goods has been paid, the buyer may retain possession of the goods until the seller repays or tenders the amount the seller had received from the buyer. While the High Court found that rejection had been made within a reasonable amount of time, the Court of Appeals disagrees. The Court of Appeals found that the plaintiff company had not rejected the vehicle. In *Ghana Rubber Products Ltd vs. Criterion Co.* (1984-86) 2GLR 56 Apaloo C.J., the Court found that there could be no right of rejection after the goods had been delivered and the purchase price paid. Rejection, in its ordinary meaning, is to refuse to

accept goods or unacceptable goods. In this case, the Court found it was less than accurate to say that a rejection of goods has occurred when a company took delivery of merchandise it intended to buy into a warehouse and paid the contractual price.

In relation to the present case, under normal and ordinary circumstances, it would be difficult to find that the vehicle had been rejected after delivery. The Court of Appeals found that the trial judge had applied the wrong understanding of the legal requirement for what amounted to a rejection of goods.

The fact that there were no complaints about latent defects until a significant time after delivery is evidence that the goods were not rejected. The plaintiff company used and enjoyed the car for almost two years after its purchase. From the evidence, the conclusion by the High Court was unjustified.

Conclusion:

A latent manufacturer's defect is generally defined as a fault in a product that cannot be discovered by reasonable inspection upon its delivery to the buyer. A complaint should be made within a reasonable time and after

reasonable inspection for defects. If the car is new, it is reasonable to expect that it be free from defects. Since the plaintiff company failed to follow the guidelines for inspection of the Mercedes Benz after a certain mileage and did not have a properly licensed or experienced electrician conduct the inspection after the vehicle broke down en route to Kumasi, there is evidence suggesting there are other potential causes to the faults in the vehicle rather than latent defects. The existence of noise in the engine after 2 years of use is not by itself proof of latent defect. The burden is on the plaintiff company to prove the existence of the latent defect at the time of purchase which it failed.

Since Plaintiff Company had the car in their possession for almost two years without any complaints, and did not bring the car in for proper servicing, without proof of any latent defects, it cannot legally reject the vehicle, and mount an action. The plaintiff company remedy was to request the defendant company to repair the vehicle under the existing warranty. The appeal accordingly fails on all grounds.

From the foregoing we dismiss the appeal and affirm the decision of the Court of Appeal.

(SGD) S. O. A. ADINYIRA {MRS.}

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) J. V. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO-BAMFO {MRS.}

JUSTICE OF THE SUPREME COURT

COUNSEL;

ATTA AKYEA (WITH HIM MRS. PHILIPPINA AKYEA) FOR THE PLAINTIFF/RESPONDENT/APPELLANT.

ACE ANKOMAH FOR THE DEFENDANT/APPELLANT/RESPONDENT.