
CONSUMER LAW

TURNING LEMONS INTO LEMONADE: FA WAGEN SDN BHD V PORATHA CORPORATION SDN BHD

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INTRODUCTION

The excitement of purchasing a brand-new car is hard to match, but this joy can quickly turn sour if the vehicle fails to meet expectations. Cars that consistently fail to perform, despite multiple repairs, are often referred to as 'lemons.' With the implementation of Lemon Law, consumers can seek remedies such as price reductions or direct replacements for defective vehicles and other products. These laws have been adopted in various jurisdictions, including the United States, China, South Korea, the Philippines, and neighboring Singapore.

This article examines the pressing question of whether Malaysia should adopt Lemon Law, particularly in light of the recent Court of Appeal's decision in ***FA Wagen Sdn Bhd v Poratha Corporation Sdn Bhd***.

BRIEF FACTS

In March 2013, Poratha Corporation Sdn Bhd ("**Respondent**") purchased a brand-new Volkswagen Polo Sedan from FA Wagen Sdn Bhd ("**Appellant**"), an authorized Volkswagen dealer, for RM104,509.22, with a warranty valid until April 2018. By May 2013, the Respondent discovered numerous mechanical faults and defects in the vehicle that required repeated servicing, but the issues were never fully resolved. The Respondent was ultimately forced to leave the vehicle at the service center in October 2013, and it was only ready for collection in March 2016. During this time, the Respondent incurred additional expenses by hiring another car at RM200.00 a day.

In September 2016, the Respondent filed a lawsuit for breach of contract. The Sessions Court ruled in favor of the Respondent, awarding RM1,779.20 in special damages and RM88,300.00 for loss of use¹. Both the [High Court](#)² and the Court of Appeal upheld the [Sessions Court](#)'s decision.

Firstly, reference were made to Sections 32 and 33 of the Consumer Protection Act 1999 ("**CPA**") which established implied guarantees that goods supplied to consumers must be of **acceptable quality** and **fit for purpose** from the **perspective of a 'reasonable consumer'** and also the supplier's obligation to **remedy any defect within a reasonable time**.

In this case, the Respondent had purchased a brand-new car, and not a second-hand car. It was only right and reasonable that there should be an implied guarantee that the brand-new car sold and delivered by the Appellant shall be of acceptable quality and fit for its purpose. Unfortunately, evidence showed that that the car was not in proper working order and of unacceptable quality since the car had the following defects:

¹ [2021] 1 SMC 250

² [2022] 1 LNS 173

- (a) Numerous defects with its gearbox, engine mounting, brake disc and air-conditioning;
- (b) Short life-span of the car's battery and tyres;
- (c) Defective brake disc which caused juddering; and
- (d) Faulty driver's seat.

Additionally, these defect and faults of the car was within the Appellant's obligation to repair and rectify. However, the car was ready for collection only in March 2016, which meant that the Appellant took 29 months to complete the repairs and rectify the defects.

Following the defects and delays in repairs, the court held that the Appellant breached Sections 32 and 33 of the Consumer Protection Act (CPA). The Appellant failed to ensure that the car was of acceptable quality and fit for purpose, and did not repair or rectify the defects within a reasonable timeframe. Sessions Court Judge Mabel S. Muttiah notably described the car as a clear example of a 'lemon'.

Accordingly, the Respondent had the right to affirm the contract for the purchase of the 'lemon' car and to treat the breaches as a breach of warranty only pursuant to Section 12 of the Sale of Goods Act 1957 ("**SOGA**"). Therefore, the court held that the Respondent was entitled to seek redress for the sour experience and claim damages pursuant to Section 59 of the SOGA.

KEY TAKEAWAYS

The Court of Appeal's ruling underscores the consumer's right to receive a vehicle that meets basic quality and performance standards, as well as the right to seek redress when these expectations are not met. However, the Respondent had to satisfy the provisions of the Consumer Protection Act (CPA) and the Sale of Goods Act (SOGA) for the court to hold the car manufacturer liable.

This case highlights the pressing need for the introduction of Lemon Law in Malaysia to protect consumers from prolonged and costly repair processes. The adoption of such a law would not only provide financial protection for consumers but also enhance road safety by ensuring that defective cars do not remain in circulation. Lemon Law would empower consumers, promoting accountability among manufacturers and fostering a more trustworthy automotive market.

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