NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 1632

MELISSA CADIERE

VERSUS

WHOLESALE AUTOPLEX, L.L.C.

Judgment Rendered: JUN 05 2015

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On Appeal from the City Court of Houma
In and for the Parish of Terrebonne
State of Louisiana
No. 14-00260

Honorable Jude Thaddeus Fanguy, Judge Presiding

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Higginbotham, J. Concurs.

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

McCLENDON, J.

In this redhibition action, the purchaser of a used automobile appeals a judgment in favor of the seller. We affirm.

On September 3, 2013, Melissa Cadiere purchased a 2000 Lincoln LS automobile with 199,684 miles from Wholesale Autoplex, L.L.C. (Wholesale Autoplex) in Houma, Louisiana. Ms. Cadiere had the vehicle for thirty-seven days when it failed to start, and she was advised that it needed a new engine. After making amicable demand for repair or replacement of the engine, Ms. Cadiere filed a petition for redhibition in the City Court of Houma against Wholesale Autoplex. After a trial, the matter was taken under advisement, and on July 22, 2014, the trial court signed a judgment in favor of Wholesale Autoplex, dismissing Ms. Cadiere's suit with prejudice.

Ms. Cadiere appeals, asserting that the trial court erred in concluding that she failed to prove a defect in her car or that the defect existed at the time of her purchase.

Redhibition is the avoidance of a sale on account of some vice or defect in the thing sold which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it, had she known of the vice. LSA-C.C. art. 2520; **Burch v. Durham Pontiac Cadillac, Inc.**, 564 So.2d 380, 382 (La.App. 1 Cir.), writ denied, 569 So.2d 968 (La. 1990). In a suit for redhibition, the plaintiff must prove: 1) the seller sold the thing to her and it is either absolutely useless for its intended purpose or its use is so inconvenient or imperfect that, judged by the reasonable person standard, had she known of the defect, she would never have purchased it; 2) the thing contained a non-apparent defect at the time of sale; and 3) the seller was given an opportunity to repair the defect. **Crow v. Laurie**, 98-0648 (La.App. 1 Cir. 2/19/99), 729 So.2d 703, 705-06.

The warranty created against redhibitory defects applies to the sale of used equipment, but it is not as extensive as in the sale of new equipment. However, what is required is that the equipment must operate reasonably well

for a reasonable period of time. **Burch**, 564 So.2d at 382-83. Therefore, obviously the sale of an older car does not carry the same warranty as does the sale of a new one. Inherent in the sale of an older car is the knowledge that the machinery and parts are worn and subject to breakdown and that the vehicle will require mechanical work from time to time to keep it in good running condition. **Burch**, 564 So.2d at 383.

A buyer of an automobile who asserts a redhibition claim need not show the particular cause of the defects making the vehicle unfit for the intended purposes, but rather must simply prove the actual existence of such defects. **Morrison v. Allstar Dodge, Inc.**, 00-0398 (La.App. 1 Cir. 5/11/01), 792 So.2d 9, 14, writ denied, 01-2129 (La. 11/2/01), 800 So.2d 878. A defect is presumed to have existed before the sale if it manifests itself within three days immediately following the sale. LSA-C.C. art. 2530.

The existence of a redhibitory defect is a question of fact, which cannot be disturbed on appeal unless the record as a whole establishes that the finding is manifestly erroneous or clearly wrong. **Landaiche v. Supreme Chevrolet, Inc.**, 602 So.2d 1127, 1131 (La.App. 1 Cir. 1992). Similarly, the avoidance of a sale as a remedy for defects in a product is a factual question, the resolution of which is best left to the trier of fact. **Morrison**, 792 So.2d at 14. A court of appeal may not set aside a fact finder's finding of fact in the absence of manifest error or unless it is clearly wrong. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). Before an appellate court may reverse a fact finder's determinations, it must find from the record that a reasonable factual basis does not exist for the findings and that the record establishes that the findings are clearly wrong (manifestly erroneous). **Stobart v. State through Dept. of Transp. and Development**, 617 So.2d 880, 882 (La. 1993).

In support of her claim, Ms. Cadiere testified at the trial. She stated that her vehicle worked for thirty-seven days, but on October 10, 2013, after she and her husband went to Wal-Mart, the car would not start. Ms. Cadiere further testified that she had the car towed to one mechanic, who said it needed a new

motor, and then to another mechanic for a second opinion, who said the same thing. On cross-examination, Ms. Cadiere admitted that for thirty-seven days, "the car ran and drove good." In connection with her testimony, Ms. Cadiere introduced into evidence the bill of sale for the vehicle; an invoice from Kevin's Auto & Wrecker Service that described the car's problem as "don't Run"; and a demand letter from her attorney to Wholesale Autoplex requesting the repair or replacement of the car's engine.

Ms. Cadiere asserts that the demand letter from her attorney, together with the fact that the engine failed after thirty-seven days, was sufficient to establish the defective condition of the engine. We must disagree. In thorough written reasons for judgment, the trial court correctly recognized that although the vehicle was sold "as is," there is an implied warranty that the vehicle was suitable for transportation. However, there was no testimony or evidence that indicated how many miles the car was driven in the thirty-seven days it worked. The trial court also found that there was "no testimony regarding what particular mechanical condition existed on October 10, 2013 to prevent the vehicle from starting." The court continued:

> I realize the jurisprudence is that the buyer need not show the particular cause of the defects making the vehicle unfit for the intended purpose. However, without me knowing the particular mechanical issue, I am unable to determine if in fact the engine needs to be replaced.
>
> There was no expert who gave testimony regarding the mechanical issue. Without having some idea about what particular mechanical issues plague the car, I am unable to evaluate the suggestion the engine needs to be changed.
>
> Without some idea about what the particular mechanical issue is, I am unable to determine if that "defect" existed on September 3, 2013. This car was driven, ostensibly daily for 37 days and Mrs. Cadiere's testimony was she experienced no problems during those 37 days.
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> Without knowing the particular mechanical issue, I am unable to determine the probability of it existing on September 3, 2013 and yet, being able to be driven without any problems for 37 days.
>
> * * *

> Melissa Cadiere did not prove by a preponderance of the competent evidence that whatever defect manifested itself on October 10, 2013 requires the engine to be replaced. Nor did she prove by a preponderance of the competent evidence that whatever defect manifested itself on October 10, 2013 existed on September 3, 2013.

Upon our own review of the record, we find that a reasonable factual basis exists for the trial court's factual findings. Therefore, we cannot say that the trial court's findings were manifestly erroneous or clearly wrong.

Considering the foregoing, we affirm the July 22, 2014 judgment of the trial court. Costs of this appeal are assessed to Melissa Cadiere.

AFFIRMED.