

BETWEEN

DF
APPLICANT

AND

VU
RESPONDENT

Date of Order:

8 September 2014

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed

Reasons

[1] DF purchased a truck from VU in October 2013. At around the same time he signed a "Sub-contractor's Agreement" (with no fixed term) with a third party company that VU had been driving for. Apparently DF was under the impression that VU owned or represented that company and was selling him a franchise business.

[2] DF acknowledges that he did not read the document or seek advice or translation with regards to it. However, it is clear that VU facilitated DF's involvement with the third party company and that everybody knew that DF was purchasing VU's truck so that he could drive for the third party company.

[3] DF paid \$34,000 for the truck, took possession of it in October 2013 and in January 2014, when the truck did not pass COF inspection, DF sought to return the truck to VU for a full refund, claiming VU had misrepresented the truck in several different ways. VU declined to take the truck back, and DF is claiming for the cost of repairs to the truck (quoted at between \$7000 to \$12,000 plus GST), COF inspection fee and insurance and registration costs for the period the truck has been off the road. The total claim is \$15,000.00.

[4] The relevant law is the law of contract and the Contractual Remedies Act 1979.

The issues to determine are:

[5] Did VU make any false or misleading statements about the truck prior to DF's purchase?

[6] Was DF induced into entering the contract by any false or misleading statements made by VU?

[7] Are there any remedies available to DF?

Did VU make any false or misleading statements about the truck prior to DF's purchase?.

[8] DF says that VU told him the truck had recently had a big engine repair, that it had done 750,000km, that it had had regular services and that his driver (who worked the first two weeks before DF took over the sub-contractor work) had worked for him for a long time.

[9] VU disputes saying any of those things except for the statement about the 750,000km which he acknowledges in a phone call some time after the purchase which DF recorded. Apart from that, DF cannot prove that any particular statements were made, let alone that they were misleading or false. Most of DF's evidence, including recorded conversations with VU and his driver 'AA' after the purchase, goes to establishing the facts relating to these issues (for example, that the truck does not appear to have been regularly serviced or that the driver had been with VU only a short time) but does not address what representations VU made in the first place.

[10] With respect to the odometer, the actual odometer in the truck read 230,000 in October 2013 so the fact that VU told him a much higher mileage cannot be seen as misleading, even though the actual mileage now appears to have been higher still. It was though a false statement, given the actual higher mileage. However, the inaccuracy, about which he was told, should have alerted DF to the need for a simple check via 'carjam' or similar report (which he has done subsequently) and this will be addressed further in point 12 below.

[11] DF also contends that the COF was over four months old when the truck was sold to him, that VU refused to tell him where he could get a pre-purchase inspection done and failed to tell him about Road User Charges even though he had also used the size of the truck as a selling point. There is also the issue of an inadequate repair that was done to the cab.

[12] Much of the detail of this case paints a picture of DF as someone who was inexperienced and ill-prepared to operate a truck as an owner-driver. He says that he simply trusted VU but he cannot seek legal remedy based on his own failure to adequately assess the wisdom of the contract he was entering into. VU had no particular obligation to direct DF to the appropriate pre-purchase inspection place or to explain Road User Charges to him. It was apparent to DF that the COF was four months old and again, this is something that should have prompted him to persevere until he worked out where to take the truck for a pre-purchase inspection.

[13] The repair to the cab is something that VU says resulted from a minor collision in the two week period where his driver AA was operating the truck for DF, after DF had purchased it. He says that the repair was adequate and in any event, happened while DF owned the truck. It may be that DF can still make an insurance claim if he can find out from the driver more detail about how and when the damage occurred and if further repair is needed. There

is insufficient evidence to prove that this damage existed at the time the truck was sold to DF.

Was DF induced into entering the contract by any false or misleading statements made by VU?

[14] It has been established that VU made a false statement about the truck's mileage. However I find that DF was not induced into entering the contract because of this statement and inducement is a necessary condition for the remedy of damages for misrepresentation to be awarded. The statement about mileage that VU made, should have alerted DF to the need for a check on the odometer (because of the discrepancy between what VU said and the actual reading) and also for a more general inspection of the vehicle given the much higher mileage.

[15] DF apparently asked both VU and the AA about where he could obtain a pre-purchase inspection on the truck. He has produced evidence to show that, in a previous vehicle purchase, he did have a pre-purchase inspection done. The fact that he decided not to get one done for the truck is a decision that DF obviously must regret in hindsight. Unfortunately for DF, this is a "buyer beware" situation and I cannot find that he was induced into entering the contract because of the false statement about mileage. None of the other alleged misrepresentations is able to be proven because of the verbal nature of the contract.

Are there any remedies available to DF?

[16] For all the above reasons, no remedies are available to DF.