

BETWEEN

EJ
APPLICANT

AND

UQ LTD
RESPONDENT

Date of Order:

29 September 2015

Referee:

Referee Ashcroft

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] On 25 July 2009 US Ltd purchased a Jeep Wrangler from UR Ltd and contracted out of the Consumer Guarantees Act 1993 as its purchase was for business purposes. EJ purchased the Jeep second hand from UR Ltd in 2010. At that time the Jeep was covered by the balance of a 3 year manufacturer's warranty which expired in July 2012.

[2] UQ Ltd is the local authorised service repair centre for Jeep. Between 2010 and 2012, at EJ's request, UQ Ltd carried out 27 warranty claims to the value of \$30,000 without cost to him.

[3] In November 2014 EJ filed a claim for \$10,887.51 from UQ Ltd. EJ is unhappy with two of the repairs undertaken in 2012 by UQ Ltd (to the front differential housing and the electrical work on the engine). He is also unhappy that the bonnet decals and heat shield disintegration were not accepted as warranty claims.

Issues

[4] The issues here are:

- a) Whether UQ Ltd's services failed?
- b) If so; what is recoverable on that failure?

Did the services provided by UQ Ltd fail?

[5] The law of contract and the Consumer Guarantees Act 1993 applies. By law UQ Ltd must perform its services (warranty repair work) with reasonable skill and care and the product of its service must be of acceptable quality, fit for purpose and durable. The test is objective. Where a failure is capable of remedy then a consumer may require the supplier in trade to remedy the failure and if they do not, may have it remedied elsewhere.

[6] I have had regard to EJ's arguments and evidence:

- a) That he has not abused the vehicle in any way and as a consumer is not expected to have any particular knowledge or expertise as the Act should provide protection for him;

- b) That UQ Ltd lacked the experience or expertise to provide the warranty services required;
- c) After the front differential housing was replaced a visible difference of 3.5mm to 5-6mm could be seen on each side of the diff where the rubber boot covers the ball joint. This variance is causing the left boot to be crushed which will lead to crushing of the ball joint. He believes this variance is due to a faulty or imperfect diff housing being manufactured and supplied or possibly freight damage to that component. He says he never requested that the differential housing be replaced as part of a broken axle repair. He believes that UQ Ltd's installed an imperfect part and it should pay the estimated \$8,385.54 it will cost him to have the diff housing replaced;
- d) On 26 November 2013 A diagnosed faults with the electrics and the engine at a cost of \$1,142.67. He is certain that this repair was necessary as UQ Ltd's failure to repair those things when the Jeep was under warranty;
- e) The heart shield and bonnet decals have both deteriorated which in his opinion must be due to a design or product fault as the Jeep is a 4WD off road vehicle which should be designed for snow and wet conditions. As UQ Ltd refused to accept either of those matters that as warranty claims they should pay the \$1,204.05 and \$155.25 respectively that he has been quoted to have them replaced.

[7] I have also had regard to the arguments made by UQ Ltd and its evidence:

- a) It has 20 years experience with the Jeep brand;
- b) EJ's Jeep has after market modifications;
- c) It has met all of their warranty obligations to EJ and at all times followed the manufacturer's specifications;
- d) Its service and products of its services meet the guarantees under the Act;
- e) It has done as much as it can and remedied all repairs that were not related to wear and tear or misuse that arose during the warranty period;
- f) When EJ broke the front axle of the Jeep it was repaired. The manufacturer's specifications required the front differential housing be replaced as part of that repair. The differential housing is manufactured for Jeep and it is a solid cast mould, it is not

cut or welded and each one manufactured is identical. There have been no worldwide recalls or bulletins that would have arisen had a mould been imperfect or faulty. There is no evidence that the item was damaged in freight or that the differential housing is faulty or imperfect in any way or that its workmanship failed. The Jeep has passed a warrant of fitness inspection as any 'crushing' is limited to the rubber boot (a dust seal) which has not disintegrated in the three years since 2012 and the ball joint knuckle is not being crushed;

- g) That variance seen could be due to the modifications made to the Jeep or any number of other mechanical issues that arise from the wear and tear on the Jeep arising from its use. For example if a steering joint knuckle had become more worn or tapered than another it would bring the ball joint on that side down lower and may appear to crush the rubber boot. Any number of wear and tear issues could affect the wear and tear of the ball joint itself including use in deep water, or over irregular and uneven terrain and angles and in extreme off road 4 wheel driving. This is an off road 4 wheel drive vehicle which prior to EJ's ownership was used by the Police for driver training;
- h) It diagnosed and remedied all electrical faults that existed up to the end of the warranty period. It is not responsible for electrical faults that arose in November 2013 after the vehicle was outside its warranty period;
- i) The disintegration of the heat shield is a wear and tear matter that is not covered by warranty. In its opinion the failure was not due to any product defect rather due to use or potentially misuse as the substance has become damaged due to immersion in water, snow, mud or when EJ has water blasted the undercarriage of the vehicle;
- j) The deterioration of the bonnet decals is another matter that is due to wear and tear and would have degraded over time (from water blasting and exposure to the elements). The decals are covered by a 12 month 12,000km warranty and the vehicle is now more than six years old and has travelled more than 60,000km;
- k) It carried out 27 repairs at a cost of \$30,000;
- l) They ceased working for EJ only after he failed to pay them for transmission repair work he had asked them to carry out and which he had agreed he would pay for as it was not covered by the warranty, and then did not pay for;

m) EJ's continued complaints are vexatious.

[8] Although EJ has obtained quotes from another Jeep approved repairer for a replacement differential housing, heat shield and the decals that party has not provided any expert opinion as to whether the diff installed was faulty or the workmanship failed and nor have they tendered any evidence that the heat shield and decals should have been rectified as a warranty claim.

[9] It is clear that EJ believes his Jeep is a lemon. He says that the registration is on hold and apart from using it on farm that it is not being driven. I note that EJ did not buy the Jeep from UQ Ltd.

[10] My findings are:

- a) EJ has not established that the front differential housing was installed faulty, imperfect or damaged in freight. Nor has he established that UQ Ltd's replacement of it failed. I conclude that any variation seen when looking at the diff is due to uneven wear and tear on adjoining or abutting mechanical parts on his 6 year old used 4WD off road Jeep. The evidence did not establish that this variance would be rectified by replacement of the diff housing.
- b) There is no persuasive evidence that the vehicle had unrectified electrical faults that affected the engine in July 2012, when the warranty period expired. That EJ may have paid to have electrical faults remedied sixteen months later, in November 2013, is not evidence of a failure by UQ Ltd in July 2012.
- c) There is no evidence that the heat shield or decals were defective or that those wear and tear items should have been covered by a warranty claim such that UQ Ltd failed in not carrying out that work under the Jeep's 3 year manufacturer warranty.

What is recoverable on a failure?

[11] The Act entitles a consumer to require a supplier in trade to remedy a failure, and if the supplier in trade does not, entitles the consumer to have the failure remedied elsewhere and to recover from the supplier in trade the cost of work.

[12] As no failures have been established it follows that nothing is recoverable.

Conclusion

[13] EJ's claim is dismissed.