

BETWEEN

HI
APPLICANT

AND

RR
RESPONDENT

Date of Order:

22 June 2018

Referee:

Referee: J Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that Ms RR is to pay the sum of \$4839.88 directly to Ms HI on or before 13 July 2018; and Ms HI is to make the Toyota Hilux vehicle with registration plate number PLATE available for collection within three weeks of the above amount being received (ownership of the vehicle transfers to Ms RR once she collects the vehicle).

Facts

[1] Ms HI purchased a 1994 Toyota Hilux from Ms RR on 23 June 2017, paying \$4250.00.

[2] The initial price discussed between the parties was \$2800 because the vehicle had no warrant and needed to go through recompliance as its registration had lapsed. However the parties finally agreed that Ms RR would get the vehicle warranted and recomplied and that the purchase price would be \$4250.00.

[3] After the vehicle was delivered on 23 June 2017, Ms HI took it to her mechanic for a regular service on 22 July 2017, following Ms RR advising her (shortly after the purchase) to do so. During that service, ball joints were replaced at a cost of \$474.88. On 16 August 2017, Ms HI's vehicle overheated and she had it towed to her mechanic's workshop. She has since been advised that the vehicle has serious problems, including a blown head gasket, and is uneconomic to repair.

[4] Ms HI wishes to reject the vehicle, and claims a refund of the \$4250.00 purchase price as well as consequential losses of the ball joint repair of \$474.88 and towing fee of \$115.00, for a total claim of \$4839.88.

Issues

- a. Was Ms RR selling the vehicle privately or was she 'in trade'?
- b. Was the Hilux of acceptable quality, taking into account its age and mileage, the price paid and any statements Ms RR made during the sale process?
- c. What remedies, if any, are available to Ms HI?

Did Ms RR sell the vehicle privately or was she 'in trade'?

[5] The level of protection available to a purchaser is different according to whether they buy privately or whether they purchase from either a registered motor vehicle trader or another seller who is 'in trade' for the purposes of the Consumer Guarantees Act 1993 ('CGA').

[6] Ms RR does not sell enough vehicles per year to be required to be registered as a motor vehicle trader, but she does sell several vehicles per year for the purpose of making a profit, therefore she is selling 'in trade', as a business. The CGA therefore applies to this transaction and Ms HI has the benefit of the statutory guarantees it provides.

Was the Hilux of acceptable quality, having regard to its age and mileage, the price paid and any statements Ms RR made during the sale process?

[7] Sections 6 and 7 of the CGA provide a guarantee that goods will be of acceptable quality, meaning that they will be as free from minor defects, safe and durable as a reasonable consumer, fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable, having regard to various factors. The factors relevant in this case are the age and mileage of the vehicle, the price paid and the representation made by Ms RR that the vehicle was 'in mint condition' (for its age).

[8] Ms HI's mechanic, Mr AH of RHR Ltd, gave evidence by telephone about the extent and nature of the engine issues. He says that there was no evidence of leaking at the time he carried out the service in July 2017, and that the problems that led to the engine failure only weeks later in August could not have been identified prior to the failure because they involved internal engine components. He concluded that the failure occurred as a result of pre-existing underlying corrosion and noted that this vehicle had not been well maintained.

[9] Ms RR provided written evidence from her mechanic, Mr HR, but I prefer the evidence of Mr AH because he inspected and worked on the vehicle, whereas Mr HR had never viewed the vehicle and was necessarily basing his statements on supposition.

[10] The inclusion of hidden defects in the wording of the CGA guarantee is particularly relevant in this case. It means that the actual state of the vehicle at the time it was sold is relevant, regardless of whether anyone knew or could have known of a particular (hidden) defect. Because of the age and high mileage of this vehicle, a 'reasonable consumer' would be aware of some level of risk of engine failure. However Ms RR told Ms HI, who she knew was looking for a reliable vehicle, that the vehicle was in 'mint condition' – obviously 'mint condition' in this context means 'for its age', whether or not she specifically said that – but

Mr AH has given evidence that the vehicle was actually poorly maintained and at the poor end of the spectrum for its age.

[11] Ms RR also provided evidence that \$4250.00 was a low purchase price for such a vehicle in the form of two online advertisements for similar age and mileage vehicles. The asking prices shown for the other vehicles were \$6000.00 and \$6500.00, but as these are only asking prices, the evidence does not provide any proof that those higher prices are realistic. \$4250.00 is a not-inconsiderable sum for a 24 year old vehicle with high mileage – it is certainly not a sum that suggests the buyer was willingly taking on the risk of the vehicle failing catastrophically within two months of purchase.

[12] For all these reasons, I find that the vehicle was not of acceptable quality as it was not as free from defects, safe and durable as a reasonable consumer would regard as acceptable given the price paid and the statement that it was in 'mint condition'.

What remedies, if any, are available to Ms HI?

[13] The failure was one of substantial character, under section 21 of the CGA, so Ms HI may reject the vehicle and obtain a full refund as well as any losses that were reasonably foreseeable as resulting from the failure.

[14] The 'failure' in the CGA refers to the vehicle failing to comply with the guarantee of acceptable quality and that failure occurred at the time it was sold (as opposed to the failure of the engine in August). Ms HI's costs of having the vehicle serviced, and some repairs carried out, are therefore losses that were reasonably foreseeable particularly given that she took it for inspection and service at the suggestion of Ms RR, shortly after the failure of guarantee that occurred at the time of purchase. Those repair costs of \$474.88 are therefore awarded as are the towing costs of \$115.00 claimed, as those were directly related to the problems with the vehicle.

[15] The refund of \$4250.00 is awarded as well as the costs above and because the vehicle cannot be driven as a consequence of the failure of guarantee, Ms RR is to collect the vehicle at her expense, once the ordered amount is paid.