

BETWEEN

**DL LIMITED
APPLICANT**

AND

**VO
RESPONDENT**

Date of Order:

17 June 2016

Referee:

Referee Jaduram

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that VO is to pay DL Limited \$6,649.20 by Wednesday 6 July 2016.

Facts

[1] VO took out a loan from DL Limited of \$8,598.00 so he could purchase a motor vehicle. The loan was secured against that motor vehicle. The loan and security is documented on DL Limited's document headed "Credit Sale Agreement" and dated 22 May 2014. For the purpose of this order I will call that document the "consumer credit agreement". VO was to pay \$108.53 weekly. VO stopped making payments under the consumer credit agreement. DL Limited repossessed and sold the vehicle and is claiming \$6,936.70 they say is the shortfall following the sale of the vehicle.

[2] VO did not attend the hearing. AA appeared for DL Limited.

Law

[3] The relevant law is the law of contract, the Credit Contracts and Consumer Finance Act 2003 and the Credit (Repossession) Act 1997.

Issues

[4] The issues to be determined are whether:

- a. DL Limited can enforce the consumer credit agreement.
- b. VO breached his agreement with DL Limited.
- c. VO owes DL Limited the amount DL Limited claims.

Evidence

[5] DL Limited's evidence includes the following:

- a. The consumer credit agreement.
- b. A detailed account information showing all debits and credits and file notes.
- c. The Repossession Notice, the Post Possession Notice and the Statement of Account After Sale.

- d. A breakdown of the financial components evidencing the amounts claimed.
- e. Vehicle valuation.
- f. Supporting invoices, including an invoice from the vehicle auction company.

Can DL Limited enforce the consumer credit agreement?

[6] The consumer credit agreement was signed by VO and proper disclosure as required under the Credit Contracts and Consumer Finance Act was made. Therefore DL Limited can enforce the consumer credit agreement against VO.

Did VO breach his agreement with DL Limited?

[7] The consumer credit agreement required VO to make certain payments to pay back the loan. He stopped making payments. VO was therefore in breach of his consumer credit agreement with DL Limited.

Does VO owe DL Limited the amount DL Limited claims?

- [8] Under the consumer credit agreement, where a borrower is in default:
- a. DL Limited may call up all money owed under the consumer credit agreement even though the time for payment has not arrived. This means everything owing under the consumer credit agreement is to be paid back in full unless the borrower reinstates the consumer credit agreement within 15 days of receipt of a post possession notice.
 - b. DL Limited is entitled to take possession of its security (the motor vehicle in this case) and sell it (unless the borrower has already reinstated the agreement).

[9] The amounts claimed by DL Limited (being the shortfall following the sale of the vehicle) must be able to be claimed under its consumer credit agreement and at law. I will determine this on balance based on the evidence before me.

[10] At law DL Limited:

- a. Must “use all reasonable efforts to obtain the best price” (if the Credit (Repossession) Act applies) or “take reasonable care to obtain the best price

reasonable obtainable for the goods as at the time of the sale” (if the Credit Contracts and Consumer Finance Act applies). Because the consumer credit agreement was entered into before 6 June 2015, the Credit (Repossession) Act would apply.

- b. Cannot claim any further costs (even if the consumer credit contract says it can) because a creditor is not entitled to, and must not claim, any more than the amount being the difference between the amount required to settle the consumer credit agreement as at the date of sale of the vehicle and the net proceeds of sale of the vehicle.

[11] DL Limited repossessed the vehicle (which it was entitled to do). The motor vehicle was eventually sold through ABC NZ Ltd (a vehicle auction company) on 11 March 2015.

[12] ABC had suggested a reserve price for the vehicle of \$2,500.00. I note ABC offered to purchase the vehicle themselves for a “cash now” price for the same amount (\$2,500.00). I mentioned to AA that had ABC purchased the vehicle at that price I might not have been satisfied (on balance) that \$2,500.00 was the best price reasonably obtainable. This was because ABC was the same entity estimating the reserve price and offering to purchase the vehicle at that same price.

[13] However, in this case DL Limited got the reserve price set higher at \$3,500.00 and ultimately obtained a sale price at auction of \$3,700.00. I am satisfied that DL Limited used all reasonable efforts to obtain the best price for the vehicle as it is required to do at law. The sale proceeds (being the sale price less the various costs relating to the sale) were deducted off the amount VO owed.

[14] ABC also charged DL Limited \$287.50 which was described, in its invoice, as “Consumer Claims Protection”. DL Limited included this in the amount it is claiming.

[15] There was nothing on the file explaining what this was but it appears from AA’s explanation that this was to cover situations where the person who bought the vehicle from ABC at auction brought a claim in relation to the vehicle. This was because of the wide definition of “supplier” under the Consumer Guarantees Act 1993.

[16] I am not satisfied that I have sufficient information to determine, on balance, whether or not the “Consumer Claims Protection” charge can be claimed by DL Limited under the

consumer credit agreement or at law. Accordingly I have deducted this amount from the amount claimed.

[17] I am satisfied, on balance, that the other amounts claimed can be claimed under the consumer credit agreement and at law.

Conclusion

[18] In summary I find that VO breached his consumer credit agreement with DL Limited and must pay DL Limited the amount of \$6,649.20.