

BETWEEN

FF Ltd (FF)
APPLICANT

AND

TU Ltd (TU)
RESPONDENT

AND

TUU Ltd (TUU)
SECOND RESPONDENT

Date of Order:

21 September 2016

Referee:

Referee: Paton-Simpson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that TU Ltd and TUU Ltd, jointly and severally, are to pay the sum of \$3,978.09 to FF Ltd on or before 5 October 2016.

The claim against XX is dismissed.

Facts

On 16 November 2012, FF Ltd (FF) purchased a Jeep Wrangler station wagon from a private seller. The Jeep had originally been imported into New Zealand as a new vehicle in 2010 by TUU Ltd (TUU), which was the New Zealand distributor for the manufacturer Chrysler Jeep Dodge (CJD) at the time. In October 2013, with less than 70,000 km on the odometer, the Jeep's transmission failed.

FF now claims \$3,978.09 for the cost of the repairs to the transmission. The original claim was against TU Ltd (TU), the current distributor for CJD. The previous referee joined TUU, and also XX Ltd (XX), being the CJD franchisee that serviced the vehicle.

Issues

The issues to be determined are:

Did the transmission fail due to an inherent defect or due to some other cause?
Was the Jeep of acceptable quality and, in particular, was it sufficiently durable under the Consumer Guarantees Act 1993?

Do any of the parties qualify as the "manufacturer" of the vehicle?

Is FF entitled to recover damages from any of the parties, and if so, how much?

**Did the transmission fail due to an inherent defect or due to some other cause?
Was the Jeep of acceptable quality and, in particular, was it sufficiently durable under the Consumer Guarantees Act 1993?**

Since a Jeep station wagon is ordinarily acquired for personal, domestic, or household use or consumption, and FF's purchase of the vehicle for use transporting dance costumes does not fall within the specified exclusions from the definition of "consumer", the Consumer Guarantees Act 1993 (CGA) applies.

Section 6 of the Consumer Guarantees Act 1993 (CGA) provides that where goods are supplied to a consumer, there is a guarantee that the goods will be of acceptable quality. Section 7 defines acceptable quality to include being as durable and fit for common purposes as a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable. Factors taken into consideration include the nature of the goods, the price, any statements on the packaging, any representations by the supplier or manufacturer, and other relevant circumstances. Under section 7(4) of the CGA, goods will not fail to comply with the guarantee of acceptable quality if the real cause of the failure is that the goods have been used in an unreasonable manner or to an unreasonable extent.

TUU's representative, Mr XY, said that since the failure was sudden and was unusual in a vehicle of such low mileage, he concluded the failure must have been caused by loading. However, I find no evidence that the Jeep had been used in an unreasonable manner or to an unreasonable extent. As FF pointed out, the Jeep had to be fit for the purpose of towing, since that is a common purpose for this type of vehicle. In any case, FF gave evidence that it had never used the Jeep to tow anything, only to transport costumes. The previous owner may have used the Jeep for towing, but there is no evidence that any load was excessive or unreasonable, or that any excessive towing caused the failure, bearing in mind that the Jeep travelled over 25,000 km since the change of ownership.

I therefore find that s 7(4) does not apply, and that the Jeep failed to be as durable as a reasonable consumer would have expected in all the circumstances.

Do any of the parties qualify as the “manufacturer” of the vehicle?

The definition of “manufacturer” in CGA s 2 allows for more than one party to qualify as the manufacturer. Where goods are manufactured outside New Zealand and the foreign manufacturer of the goods does not have an ordinary place of business in New Zealand, the definition includes “a person that imports or distributes those goods”. It is not entirely clear whether that means the party that imported or distributed the particular goods in question, or the current importer or distributor of the manufacturer’s goods at the time of the hearing, or both. *Gault on Commercial Law* CG2.07.01 states, “It is apparent from the definition that the Act is intended to give the consumer the maximum ease of access to a manufacturer for redress.” In this spirit, I find that the definition should be interpreted inclusively, and that both the current CJD importer/distributor and the actual importer/distributor of the goods are liable for the manufacturer’s guarantees.

TUU gave evidence that the terms of the agreement transferring the distributorship from TUU to TU also transferred liability for all warranties, contractual and implied. Any such transfer may potentially oblige TU to indemnify TUU, but that issue is not before me, and the agreement between TU and TUU cannot affect FF’s rights under the CGA. Therefore, I find TU and TUU jointly liable as deemed “manufacturers” of the vehicle.

On the other hand, I am unable to find that XX is a “manufacturer”. On the evidence before me, I gather that XX was a franchisee that retailed and serviced CJD vehicles but did not import or distribute them. The definition also includes a party that “holds itself out to the public as the manufacturer of the goods”. However, although FF saw XX as its “point of contact” for CJD, the evidence falls short of showing that XX held itself out as the manufacturer. Therefore, the claim against XX must be dismissed.

Is FF entitled to recover damages from any of the parties, and if so, how much?

TUU and TU both objected that they were neither made aware of the failure nor approached for assistance with the repair. However, while under s 18(2) suppliers are entitled to an opportunity to remedy minor faults, the CGA does not require a consumer to give the manufacturer such an opportunity unless the fault is covered by a contractual warranty. CGA s 27(1)(a) and (b) allow the consumer to obtain damages in compensation for any reduction in value of the product below the price paid, together with damages for any reasonably foreseeable consequential losses.

I find that the cost of repairing the transmission was a reasonably foreseeable consequence of the failure to comply with the guarantee of acceptable quality, so TU and TUU are jointly liable to pay FF the sum of \$3,978.09.