IN THE DISPUTES TRIBUNAL **[2018] NZDT 1065**

BETWEEN	**FI (Mr FI)** APPLICANT
AND	**TR Ltd (TR)** RESPONDENT
Date of Order:	12 April 2018
Referee:	Referee **Perfect**

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed

Facts

Mr FI hired a campervan from TR Ltd ('TR' - a registered unlimited company) on [dates] and signed a rental agreement containing terms and conditions. He also paid an additional sum to obtain a 'Collision Damage Waiver' allowing him to pay no excess under certain conditions (which were detailed in the agreement documentation) – the standard excess on the agreement would otherwise be $3000.00.

On the first day of hire, Mr FI drove the van into the parking building attached to West City Mall in Henderson. He noted on entering from the road that there was a clearance height sign showing 2.5 metres. He was aware from a sticker inside the van that the van height was 2.4 metres so proceeded into the building.

As it was a busy shopping day just prior to Christmas there was no parking on the ground level where he entered so he proceeded towards the up-ramp to Level 1, driving alongside the up-ramp before having to turn 180 degrees to head up the ramp. There is a clearance sign at the bottom of that ramp giving a clearance height of 2.0 metres.

He drove up the ramp without incident, parked the van, went shopping, and on his return, while driving towards the down-ramp on level 1, the front roof of the van collided with a steel beam that forms part of the parking building. He enlisted the help of mall security to stop traffic so that he could drive down the up-ramp to be able to exit the building.

When TR inspected the damage, it deducted $3000.00 from his credit card being the standard excess under the rental agreement. The final repair bill for the damage amounted to $1725.00 and TR have since refunded the difference of $1275.00. Mr FI contends that the Collision Damage Waiver he paid for should cover the damage sustained to the roof and claims a further refund of $1725.00. Mr FI disputes that he is liable to pay that amount under the terms of the agreement but does not dispute the quantum of repair.

Issues

Does the Collision Damage Waiver agreement cover the damage to the roof sustained in the parking building?

Did Mr FI take all reasonable care when driving and parking the vehicle

Does the Collision Damage Waiver agreement cover the damage to the roof sustained in the parking building?

Mr FI says that he was told by TR staff initially that the damage would be covered because he had purchased full Collision Damage Waiver, and then later told that roofs were not covered under that agreement.

Whether or not that is exactly what was said to him, neither of those statements are accurate. The issue of whether this particular damage is covered relies on consideration of the wording of the terms and conditions of the written rental agreement.

Collision Damage Waiver is covered by clause 14 of the rental terms and conditions, which states that CDW does not apply to any of the circumstances covered by clause 12.3 (Exclusions). Clause 12.3(c) states that indemnities shall not apply where damage, injury or loss arises when the vehicle is operated in contravention of clause 8.1, 8.2 or 8.3 of the agreement. The relevant one of those clauses is clause 8.3 which states at (a) that “the hirer shall ensure that all reasonable care is taken when driving and parking the vehicle”.

Did Mr FI take all reasonable care when driving and parking the vehicle?

I find that Mr FI failed to take all reasonable care when driving the vehicle, the collision occurring when he drove under a steel beam that was lower than the height of the vehicle, because he did not sufficiently heed clearance height signs.

Mr FI contends that the clearance signs in the parking building were not sufficient and/or not sufficiently visible from the areas in which he was driving. On entering the building, he noted the 2.5metre clearance height sign, and knowing the rental vehicle was 2.4m high, proceeded on the basis that this would apply to the whole of the parking building. However, he also acknowledged that as he drove towards the bottom of the up-ramp, he could see that there was a further clearance height sign hanging from the ceiling. I accept that he could not see the writing from the direction he was approaching because the writing was on the other side of the sign at that point, but as he did the 180 degree turn to enter the up-ramp, he should have slowed and/or angled his vehicle so that he could read that sign, given he had seen there was a clearance sign. It was not a reasonable assumption to make that the height, particularly when changing levels within a parking building, would be the same 2.5m height as marked at the entrance to the building from the outside. If he had done so, he would have seen that the clearance height at that location stated 2.0 metres.

Further, Mr FI stated at the first hearing that once on the upper level, he had "parked in the outside area near the Warehouse". The outside area near the Warehouse is a large uncovered area of parking, and the only way out from that area involves passing under a very prominent clearance sign marked 2.0 metres, which leads directly to the steel horizontal beam with which Mr FI collided.

However, in the further video evidence that Mr FI obtained for the adjourned hearing session, he marks out a different path taken on the upper level - one that does not involve him passing any further clearance signs, but one that also has him parking in the covered area, inconsistent with his statement from the first hearing. When he was asked at the second hearing about this inconsistency, he amended his statement from having parked "where the silver wagon is parked at the 23 second mark" (of the video) to having parked on the right at the top of the up-ramp in a small area of uncovered parking (before the large outside uncovered area). He added that on leaving that (latter) parking space, he reversed back towards the up-ramp and left through an aisle in the covered parking area (the same one shown in his video). This would be a highly unusual manoeuvre because it would involve reversing for some distance the wrong

way down a one-way lane towards the top of the up-ramp. The natural way out after leaving that parking space would be via the outside parking area and back into the covered area where clearance signs are located.

Conclusion

Due to the two versions above being inconsistent and also based on Mr FI's statement at the first hearing that he parked in the outside area near the Warehouse, I find that Mr FI's likely path on the day of the collision took him past clearly visible 2.0 metre clearance signs on the upper level as well as the 2.0 metre clearance sign at the bottom of the up-ramp. His failure to notice and/or heed these signs was a failure to take reasonable care while driving and he loses the right to be indemnified through the terms and conditions of his contract with TR. The claim is therefore dismissed.