

**IN THE DISTRICT COURT
AT HAMILTON**

**CIV-2016-019-001139
[2016] NZDC 26009**

BETWEEN	L W MOTORS LIMITED Appellant
AND	JAMES TAMATI HOLDER Respondent

Hearing:	19 December 2016
Appearances:	D Wan for the Appellant Respondent appears in Person
Judgment:	19 December 2016

ORAL JUDGMENT OF JUDGE R L B SPEAR

[1] This is an appeal brought by L W Motors Limited against a decision of the Motor Vehicle Dealers Disputes Tribunal given on 23 September 2016. The dispute proceeding was commenced by the respondent to this appeal, James Holder, and brought against L W Motors Limited from whom Mr Holder had purchased a 2014 Ford Kuga vehicle in July 2016 for the sum of \$18,350. The result of the dispute proceeding was that L W Motors Limited was ordered to pay to Mr Holder the sum of \$6000. Loss was assessed at \$7500 however the Adjudicator determined that there had effectively been carelessness on the part of Mr Holder in relation to the condition of the motor vehicle and reduced the required sum by \$1500 or 20 percent down to \$6000.

[2] The principal of L W Motors Limited is Mr Da Wan who appeared before the Tribunal and also appears today representing his company. He was assisted at the Disputes Tribunal hearing by a Court-appointed interpreter as his first language is Mandarin. This is a matter of some note as Mr Wan complains that the interpreter did not translate everything for him and that it became difficult for him to follow the

proceeding. Mr Wan is assisted today by another Court-appointed interpreter who has assisted Mr Wan in the course of this appeal presentation. That notwithstanding, I note from the transcript of the proceeding that the Adjudicator covered the question of Mr Wan's grasp of English right from the outset; and I will return to that in due course when dealing with the appeal points.

[3] As the amount to which this appeal relates is less than \$12,500, the only available ground for appeal is that the proceeding was conducted in a manner that was unfair to the appellant and prejudicially affected the result of the proceeding. More exactly, this appeal cannot enter into a consideration as to whether the decision was wrong in fact or law or both. It can only be in respect of the unfairness of the proceeding and whether that prejudicially affected the result of the proceeding. This limitation is pursuant to s. 82(4) and paragraph 16 of Schedule 1 of the Motor Vehicle Sales Act 2003:

16 Appeals from decision of Disputes Tribunal

(1) Any party who is dissatisfied with a decision given by a Disputes Tribunal may, within 10 working days after notice of the decision is given to that party, appeal to a District Court Judge.

(2) If the amount of the claim exceeds \$12,500, the appeal may be brought on either of the following grounds:

(a) that the Disputes Tribunal's decision was wrong in fact or law, or in both fact and law; or

(b) that the proceedings were conducted by the Disputes Tribunal in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings.

(3) If the amount of the claim does not exceed \$12,500, the appeal may be brought on the ground that the proceedings were conducted by the Disputes Tribunal in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings.

(4) For the purposes of this section, the Disputes Tribunal is taken to have conducted the proceedings in a manner that was unfair to the appellant and prejudicially affected the result if—

(a) the Disputes Tribunal fails to have regard to any provision of any enactment that is brought to the attention of the Disputes Tribunal at the hearing; and

(b) as a result of that failure, the result of the proceedings is unfair to the appellant.

(5) The District Court's decision given under this clause is final.

(6) To avoid doubt, nothing in this clause affects the right of any person to apply, in accordance with law, for judicial review.

(emphasis mine)

[4] Mr Wan appeals on the grounds that the proceedings were conducted by the Tribunal in a manner that was unfair to him and that this prejudicially affected the result of the proceeding. In this respect he asserts that the Chinese interpreter did not translate the entire proceedings for him and this was particularly so when Mr Holder and the Adjudicator were talking to each other. He states that this made it *“very hard to understand the situation to make defence for myself:*

[5] The notice of appeal contained some attachments as well and they include a series of text messages sent between Mr Wan and Mr Holder. They relate to findings of fact made by the Adjudicator that are outside the scope of this appeal unless it can be demonstrated that the hearing was conducted in a manner that was unfair to the appellant and prejudicially affected the result of the proceeding. Essentially, Mr Wan is contending that as he was not able to follow the Disputes Tribunal proceeding as closely as he would have liked and accordingly he was not able to respond to the central allegation made by Mr Holder relating to a misrepresentation on his part.

[6] The vehicle concerned was purchased by Mr Wan's company at an auction in Australia. It had been de-registered over there. An issue before the Adjudicator was whether the vehicle had been written off as a result of flood damage. Mr Wan now says that he has evidence that he had no knowledge that it had been written off for that purpose. However, unless that issue can be seen as relating to the manner in which the proceeding was conducted, it not amenable to appeal because of the amount concerned.

[7] The transcript of the Tribunal hearing commences with the Adjudicator addressing both Mr Holder and Mr Wan for the respondent company. As I have indicated, an interpreter assisted Mr Wan. The Adjudicator said this after dealing with Mr Holder:

Adjudicator ... And then once you've finished going through your piece (referring to Mr Holder), we'd like to hear from you Mr Wan. I've spoken rather slowly, Mr Wan, in the hope that that may help and but if you don't understand what I'm saying, please look to the interpreter and she can assist you with the, the interpretation of the English into Mandarin, is that all right by you?"

Mr Wan: "Yeah, no problem."

Adjudicator: "You have, you have some English, I take it? You've previously appeared before the Tribunal in February this year without an interpreter?"

Mr Wan: "Yeah."

Adjudicator: "So I hope that you're able to follow but if you can't understand something, look to the interpreter and if she, and if you do so, perhaps you can assist please, Ms Interpreter? Then when you've finished saying what you would like to say, Mr Wan, and answered any questions that Mr Gregory or I may have for you, we'll give you the opportunity on what Mr Wan has said, Mr Holder, so I'd ask you if you could refrain from interrupting Mr Wan when he's speaking, then Mr Wan can I ask you the same courtesy please of Mr Holder not to interrupt him."

[8] The proceeding then proceeded.

[9] In essence, the dispute was taken on the basis that the vehicle was misrepresented in a significant way and that was indeed the finding of the Tribunal. That finding is not amenable to this appeal unless it is clear that the appeal proceeding was conducted in a manner that was unfair procedurally to Mr Wan.

[10] The Adjudicator cannot be criticised for the care taken by him in his explanation of the nature of the disputes proceedings and his explanation also to Mr Wan as to how the proceeding was to be conducted.

[11] The complaint that Mr Wan was not able to follow some parts of the proceeding because, as he says in his points of appeal, the interpreter had not translated everything to him while Mr Holder was talking or while the Adjudicator was talking to Mr Holder, I simply do not accept. Mr Wan has addressed me and clearly he has reasonably good English. He is indeed conducting a business here in New Zealand which obviously caters for the wider community and not just the Chinese community. He has addressed me today and appears to have a reasonable

grasp of English. It was explained to him what he needed to do at the dispute hearing if he did not understand what was happening.

[12] He now says that he did not understand some aspects of the case and found it difficult to respond accordingly. That certainly would be a matter of procedural unfairness if that was indeed the case but Mr Wan is a motor vehicle dealer running a business and the point in issue here was not complicated. It was to do with the how the motor vehicle was represented by him. I simply cannot accept that Mr Wan was not aware of this point.

[13] Indeed Mr Wan started the appeal proceeding today as saying he had new evidence effectively which seems to suggest that he did not have this evidence at the time of the Tribunal hearing as to how he represented the motor vehicle. It is important that matters in issue at any level are dealt with completely at the time. Just because the hearing goes against a party and they then go out seeking further information about it does not mean to say that they should be allowed, effectively, a second run at the dispute. There is a need for matters to be brought to a conclusion. Taking up the principle espoused in *Port of Melbourne Authority v Anshun Pty Ltd*,¹ parties to a dispute need to lay out all their cards in front of the Tribunal to enable to the Tribunal, effectively at first instance, to determine the dispute. If they choose not prepare adequately and the decision goes against them, they are left with that decision unless their failure to answer a point or address an issue can be seen to have arisen through some form of procedural unfairness.

[14] The issue of representation was so central to this dispute. I consider that it is simply incredible for it to be suggested now by Mr Wan that he was not aware what was in issue before the Tribunal; that is, that the vehicle had been written off as a result of flood damage. Indeed, he represented that the vehicle was (I am quoting here from one of the texts that he has annexed to his notice of appeal), “*It absolutely in as new from its overall condition,*” which I take to mean that it was in “*as new*” condition. However, Mr Holder brought the dispute on the basis that this representation was wrong and the Adjudicator found for Mr Holder on that point.

¹ *Port of Melbourne Authority v Anshun Pty Ltd* [1981] HCA 45, (1981) 147 CLR 589, 55 ALJR 621, 36 ALR 3

[15] This was an issue before the Tribunal and indeed the central point of the dispute. Mr Wan has now gone out and tried to find further material seeking to re-open this dispute. That can only be permitted in the event that there has been procedural unfairness and there has been nothing of that sort established here.

[16] Accordingly, the appeal is dismissed and the order requiring L W Motors Limited to pay Mr Holder \$6000 stands.