IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2018-004-002437
[2019] NZDC 11751

BETWEEN	CAMPERVAN WORLD 33 LTD Plaintiff
AND	ANDREW PUDLAS Defendant

Hearing: On the papers

Judgment: 24 June 2019

JUDGMENT OF JUDGE A P CHRISTIANSEN

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[1] On 13 May 2019 I indicated the parties had been unable to settle their issues, and having received their submissions that I would provide a judgment promptly. Unfortunately the file has only just been returned to me. Accordingly I apologise for the delay that has occurred.

[2] The Motor Vehicle Disputes Tribunal held:

(a) The vehicle suffered significant engine damage and was not of an acceptable quality, and

(b) The engine damage was a failure of a substantial character and Mr Pudlas was therefore entitled to reject the vehicle and obtain a refund of the purchase price.

[3] The Tribunal reviewed the facts in full.

[4] Previously I have indicated that of those matters raised on behalf of the appellant, only that relating to the absence of any allowance being made for the cost of the use of the van for three months, was likely to influence any outcome.

[5] The appeal highlights a number of issues. I will quickly review these. The van had no issues for almost three months and had travelled nearly 7,000 kms before breaking down.

[6] The appellant says Mr Pudlas acknowledged the van had performed well and the only repairs required were by the choice of Mr Pudlas.

[7] The appellant suggests there is evidence that engine coolant was not topped up when it ought to have been. Also it is believed Mr Pudlas made a decision to change the CV joint when it was not truly needed; that Mr Pudlas made no complaints about the van until it "actually died" due to overheating caused by blown hose.

[8] The appellant refers to a number of decisions of the Tribunal when they say purchaser claims involving newer vehicles and less mileage travelled were dismissed.

[9] The second issue concerns the appellant's claim that the van was not subject to rejection according to the Consumer Guarantees Act.

[10] The appellant says the van was custom built for Mr Pudlas and that he had returned to the appellant a number of times to ensure it was built as he wished; that Mr Pudlas had made an informed decision about the age, quality and condition and cost of work involved. The appellant says that had they not designed the van as Mr Pudlas required then its cost would have been only around $4,000.

[11] The appellant is concerned that Mr Pudlas would not accept his insurance cover when the van broke down; that had he done so any claim of losses would have been much less. Nor has he returned the van which remains in Te Anau and far away from the appellant.

[12] Finally, concern is expressed regarding there having been no allowance made for the cost of the use of the van for three months. The appellant says had he rented

the van it would have cost $6,000 and all the appellant asks for is the sum of $3,218 being the amount of the "cheapest rate guarantee rental company" quote for the period in question.

[13] Mr Pudlas has responded. He says he has incurred storage fees of $1,240 from 7 January to 9 May 2019 and has attached invoices to support this claim.

[14] Responding to the appellant's submissions Mr Pudlas says, inter alia: That reference to the low coolant level had been discussed with the mechanic and that necessary coolant had been added to the same level as when the vehicle had been purchased. He says the oil level was checked daily and while the engine was hot the coolant was checked in the morning when the engine was cold. He says he paid for a mechanic's assessment to understand the cause and extent of the damage and unlike the cases referred to by the appellant there was not in this case any warning of the engine overheating. Also he pulled over as soon as a ticking noise was heard.

[15] Mr Pudlas does not accept the claim that the vehicle was custom built for him and notes the appellant specialises in the sale of vehicles for camping. He had two vehicles to choose from; each with a regular built up design. He tested the larger of those and was told the vehicle would be back from its technical exam later when it would be available for pick-up. He provided copies of an email exchange as proof of those sent by way of opposition to claims of the vehicle having been built to his specification.

[16] Regarding his claim that he would not accept insurance cover when the vehicle broke down he comments that the Tribunal had taken into account that he was entitled to a remedy under the Consumer Guarantees Act and regardless of any warranty provided. He said he had not completed his trip when the vehicle broke down and he provided to the Tribunal an outline of additional accommodation and car rental expenses incurred. The Tribunal accepted that evidence. He had wanted to continue the journey as soon as repairs could be done.

[17] Regarding the Tribunal's decision not to make any allowance for the cost of the use of the van for three months Mr Pudlas notes that he informed the Tribunal that

storage fees may be incurred in the future and that because of this appeal he has incurred storage fees of $1240 from January to 9 May 2019 and that those would continue at $10 per day until the vehicle leaves the facility. Noting the Tribunal ruled an amount of $8,940.89 was payable Mr Pudlas requests now a sum of $10,297.20 plus fees to be paid.

Decision

[18] The appellant asks the Court to draw conclusions regarding the evidence provided to the Tribunal. He has asked the Court to compare the Tribunal's decision to others where the claims of Pudlas, the appellant says, would have been rejected.

[19] These claims notwithstanding it is not this Court's purpose to review the evidence but rather the process by which the Tribunal hearing proceeded. As I earlier noted by my minute of 18 February 2019 the appeal process is not about the correctness of the Tribinal's decision and is not about whether the Tribunal was right or wrong by that decision.

[20] It is apparent a proper opportunity was given to both parties to provide the evidence for consideration by the Tribunal. This opportunity was adopted. There was certainly nothing unfair about the conclusions reached in that outcome.

[21] In the circumstances and for the reasons identified by the Tribunal, it is clearly the responsibility of the plaintiff to meet the costs of vehicle repairs and of vehicle storage – the appellant having had sufficient opportunity before now to recover the vehicle.

[22] The appeal is dismissed.

A P Christiansen
District Court Judge