IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2019-004-001023
[2019] NZDC 25709

BETWEEN	AUCKLAND BUDGET CAMPERVAN LIMITED Appellant
AND	OLIVER BALSS Respondent

Hearing: 17 December 2019

Appearances: A Edward for the Appellant
Respondent appears in Person

Judgment: 17 December 2019

ORAL JUDGMENT OF JUDGE G M HARRISON

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[1] This decision is subject to correction and editing but the substance of it will not change.

[2] This is an appeal from a decision of the Motor Vehicle Disputes Tribunal of 17 May 2019. The brief facts were that Mr Oliver Balss, purchased from Auckland Budget Campervan Limited, trading as D&M, a 1991 Toyota Hiace vehicle for $8500. Mr Balss rejected the vehicle on the basis that it had significant pre-existing defects that amounted to a failure of a substantial character for the purposes of the Consumer Guarantees Act 1993.

[3] The hearing before the tribunal received a request for an adjournment from a Mr Marjomaki, one of the directors of D&M. The tribunal declined that request, noting that the notice of hearing was sent on 16 April 2019, nearly one month before the adjournment request was received. The tribunal considered there was plenty of

time to arrange representation at the hearing. It also noted that Mr Edward, who appears today, had earlier appeared on prior occasions and so the absence of Mr Marjomaki from New Zealand was not a valid reason according to the tribunal for refusing to grant an adjournment. Furthermore, on the morning of the hearing, an email was sent to the tribunal by D&M advising that it considered that Mr Balss should not be entitled to reject the vehicle. The email said that the faults were minor and it was prepared to rectify those faults.

[4] The tribunal went on then to consider whether or not the vehicle had faults that breached the acceptable quality of guarantee required by the Consumer Guarantees Act. The tribunal found that the vehicle was returned to D&M for work to be performed and that Mr Balss uplifted the vehicle from D&M on 13 March 2019. He then had the vehicle inspected by Vehicle Testing New Zealand, which found several defects, including unresolved corrosion and a fault with the headlights.

[5] The tribunal held at: [12] Mr Balss then returned the vehicle to D&M to rectify the defects found by VTNZ. On 19 March 2019 the vehicle was returned to Mr Balss. Mr Balss then had the vehicle inspected by West Motors, who found that the corrosion had been poorly repaired, that the front headlights were still not aligned and out of focus. The front seatbelt buckle could not be fastened and both side windows could not be locked. Mr Balss then took the vehicle to VTNZ for a further warrant of fitness inspection and the vehicle failed on several grounds, including that it had structural corrosion in both front A pillars and in its front chassis rail.

[6] So according to the tribunal D&M had the vehicle on two occasions to rectify the problems. Mr Edward appeared on behalf of D&M today. His principal ground of appeal was that the vehicle was not returned to D&M for repairs to be done but the tribunal clearly state that D&M had the vehicle on two separate occasions to repair it to an appropriate standard.

[7] The tribunal ultimately held that the vehicle faults were a failure of substantial character for the purposes of s 21(a) of the Act and that as a consequence Mr Balss was entitled to reject the vehicle. He was therefore entitled to have the purchase price refunded to him and the tribunal ordered that D&M pay him within 10 working days

of the decision $9,276. That amount has not been paid. Mr Balss still has the vehicle and it can be returned.

[8] Appeals to this Court against decisions of the Motor Vehicle Disputes Tribunal are brought pursuant to clause 16 of schedule 1 of the Motor Vehicle Sales Act 2003. As relevant, it provides 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. The schedule then makes a vital distinction, it says that:

> If the amount of the claim exceeds $12,500 the appeal may be brought on either of the grounds that the tribunal erred in fact and law or both. Or, that the proceedings were conducted by the tribunal in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings. If, however the amount of the claim does not exceed $12,500 the appeal may be brought only on the grounds that the proceedings were conducted by the tribunal in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings.

[9] The wording of that clause is in exactly the same terms as the wording which permits appeals to this Court from the Disputes Tribunal, pursuant to the Disputes Tribunals Act 1988. The phrase that the hearing was conducted in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings, relates only to the procedure that was followed by the tribunal and not to its findings of fact or law.

[10] The leading case in that regard was a decision of Smellie J in the case of *Inland Holdings Limited.*[1] In that case he said:

> In summary then I uphold the plaintiff's submission that the referee was the finder of fact. And further, that the District Court Judge did not have jurisdiction to disagree with those findings.

[11] As far as any procedural unfairness is concerned, I have referred to the opportunity that D&M had to attend the hearing but also the email sent to the tribunal on the morning of the hearing, where it was claimed that the faults were minor and could be rectified. That is a point that as I have already said, Mr Edward raised before me today. As stated, the vehicle was returned on two occasions for it to be repaired. And despite what was done to it, it was not repaired to a good enough standard to

[1] *Inland Holdings Limited* District Court Whangarei [1999] 13 PRNZ 661.

avoid a finding that there had been a failure of substantial character in the quality of the vehicle at the time of sale. Consequently, I have no jurisdiction to come to any finding of fact different from the tribunal. But in any event the sole ground now advanced on the appeal was clearly dealt with by the tribunal in its findings, that D&M had opportunities to repair the vehicle. As a consequence, I have no option but to dismiss the appeal and it is dismissed accordingly.

G M Harrison
District Court Judge