

[5] The Tribunal adjudicator assessed the evidence and concluded that the agreed price of the vehicle was \$14,600. In the meantime, the vehicle had been sold to other purchasers and at the price of \$16,549 which the adjudicator held, and I agree, was a clear repudiation of the contract. The adjudicator went on to consider what damages Bulls Electronics was entitled to pursuant to s 37 of the Contract and Commercial Law Act of 2017. The adjudicator determined that the general rule in such a situation is that the purchaser should be placed into the position it would have been if the contract had been performed. It, therefore, concluded that Bulls Electronics was entitled to recover its deposit, but also the difference between the agreed selling price and the ultimate sale price of the vehicle which it assessed at \$1400 which when added to the deposit total \$2400 which 1 Stop Cars was directed to pay to Bulls Electronics.

[6] Appeals to this Court from decisions of the Motor Vehicle Disputes Tribunal are bought pursuant to clause 16 of the First Schedule of the Motor Vehicle Sales Act 2003. Subclause 3 provides:

- (1) If the amount of the claim does not exceed \$12,500, the appeal may be bought on the grounds 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.

[7] That is to say, for claims of less than \$12,500 an appellant is not entitled to argue that the Disputes Tribunal's decision was wrong in fact or in law. It is restricted to establishing that the manner in which the hearing was conducted prejudicially affected the result of proceedings. The wording of "subclause 3" is in exactly the same terms as for appeals under the Disputes Tribunal Act 1988.

[8] There are a number of High Court authorities that have interpreted the relevant provisions of the Disputes Tribunal Act and what challenge can be made on an appeal where only procedural unfairness may be advanced as a ground of appeal. The most direct decision in a point was that of Smellie J in *Inland Holdings Limited*.¹ That Judge concluded that the referee was the finder of fact and in particular, that the

¹ *Inland Holdings Limited v District Court at Whangarei* (1999) 13 PRNZ 661 (HC).

District Court Judge, on appeal, did not have jurisdiction to disagree with those findings.

[9] In taking my lead from that decision, in this case, Mr Nazif now representing 1 Stop Cars was concerned that the facts had not been considered properly and that the award was excessive. For the reasons I have given, and the restriction imposed by clause 16 of the First Schedule, I have no jurisdiction to investigate whether or not the incorrect factual conclusion was reached by the Tribunal. On my reading of the decision, it appears to me that the adjudicator was entitled to reach the conclusions he did.

[10] Mr Nazif raises further matters for consideration and in particular, that he made a number of efforts in an attempt to settle the dispute with Mr Liang on behalf of Bulls Electronic company. That failure to reach a settlement cannot amount to a ground of appeal in itself and certainly the adjudicator took into account efforts by 1 Stop Cars to settle the matter. In paragraph 20 of the decision the adjudicator stated, "... further 1 Stop Cars did attempt to resolve this matter before the hearing. Lance Warren who appeared on behalf of 1 Stop Cars provided an email dated 24 June 2019 in which 1 Stop Cars offered to refund the deposit and pay the \$50 filing fee to Bulls Electronics. Although that offer was less than has been awarded in this decision, it was nonetheless, a credible settlement offer. On that basis, I do not consider that Bulls Electronics is entitled to recover the costs of time spent in pursuing this application or the cost of parking or the filing fee."

[11] Consequently, 1 Stop Cars did receive some consideration from the adjudicator in respect of its efforts to try and settle the matter by the adjudicator declining to award further costs in favour of Bulls Electronics.

[12] For the reasons I have given, there can be no challenge to the factual findings of the Tribunal. Consequently, there is no basis upon which I can allow the appeal and it is dismissed accordingly.

G M Harrison
District Court Judge