

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

**CIV-2019-054-000473
[2020] NZDC 23039**

UNDER	the Motor Vehicle Sales Act 2003 and the Consumer Guarantees Act 1993
IN THE MATTER	of an appeal against a decision of the Motor Vehicles Disputes Tribunal
BETWEEN	JONO WHITE LIMITED (trading as MTF Mt VICTORIA) Appellant
AND	SANTBEER SINGH Respondent

Hearing: 12 October 2020

Appearances: A O'Connor for Appellant
D G Livingston for Respondent

Judgment: 10 November 2020

RESERVED JUDGMENT OF JUDGE C N TUOHY

Introduction

[1] This is an appeal against a decision of the Motor Vehicle Disputes Tribunal dated 8 August 2019. The decision related to the purchase by the appellant (Mr Singh), of a repossessed 2012 Honda Insight motor vehicle from the respondent (JWL) on 28 September 2018 for the sum of \$10,500. The entire price was financed by JWL under a contemporaneous credit contract. Because of its mechanical condition, Mr Singh had rejected the vehicle after the purchase. That rejection was not accepted by JWL.

[2] In its decision the Tribunal:

- Upheld Mr Singh's rejection as at 25 October 2018;
- Vested Mr Singh's rights and obligations under a credit agreement with JWL in JWL with effect from 25 October 2018;
- Required JWL to refund all principal and interest payments made by Mr Singh under that credit agreement.
- Ordered JWL to pay \$208.75 to Mr Singh to reimburse him for some expenses incurred by him in respect of the vehicle.

[3] The submissions of JWL at the appeal hearing addressed the following issues:

- Whether the Consumer Guarantees Act applied to the sale.
- Whether the vehicle was of acceptable quality.
- Whether Mr Singh was entitled to reject the vehicle.
- Whether Mr Singh could claim consequential losses.
- Whether the credit contract was a collateral credit agreement in terms of the Act.
- Whether the vehicle was of a kind ordinarily acquired by consumers for personal, domestic, or household use.

[4] Many of those issues went to the jurisdiction of the Tribunal. Counter-submissions were made by counsel for Mr Singh. I reserved judgment.

[5] After the appeal hearing, I read the contents of the Court file in more depth than I had had the time to before it. I came upon the notice of opposition filed by Mr Singh personally. It is in perfect legal form and the grounds so clearly and concisely stated they bear reproduction in full:

2. The grounds on which the respondent opposes the appeal are as follows:
 - a. The notice of appeal does not comply with 18.9(1) District Court Rules 2014 because:
 - i. the notice of appeal does not specify the alleged errors of fact or law; and
 - ii. the notice of appeal does not specify the grounds of appeal in sufficient detail to give full advice of the issues involved. The notice merely says that “*inter alia*” the orders made by the Tribunal were wrong in fact or law (or both) but does not describe why. Nor does it describe the other errors the appellant says were made. These grounds of appeal are only available where the amount of the claim exceeds \$12,500 and the notice of appeal does not plead the basis on which the claim in the Tribunal was above this amount.
3. The respondent seeks an order that the appeal be dismissed and the Appeal Conference scheduled for 7 October 2019 be cancelled.
4. The respondent relies on Schedule 1, cl 16 of the Motor Vehicle Sales Act 2003 and 18.9 of the District Court Rules 2014.

[6] The appeal conference scheduled for 7 October 2019 did not take place. Instead the matter was transferred to Wellington and the point raised by Mr Singh was never addressed either before or at the hearing.

[7] When I became aware of it, it seemed obvious to me that Mr Singh was right. The amount of the claim was well under \$12,500. The grounds of the appeal did not relate to unfairness in the manner in which the Tribunal conducted the proceeding. Thus, there was no right of appeal under cl 16 of Schedule 1 of the Act.

[8] I sent a Minute dated 15 October 2020 pointing out that the grounds of appeal relied on at the hearing were not available and inviting memoranda regarding the issue within a 14 day period. I advised that in the absence of any memoranda, the appeal would be dismissed.

[9] Neither party has filed a memorandum. The appeal is therefore dismissed.

[10] In the circumstances, I am not inviting a costs application as neither counsel addressed Mr Singh's point at the hearing. However, if the appellant is seeking costs, a memorandum is to be filed within 7 days.

C N Tuohy
District Court Judge