

[4] The argument for Spot One derives from the finding of the Tribunal that the vehicle sold to Mr Wong did not comply with the guarantee of acceptable quality in s 6 of the Consumer Guarantees Act 1993 at the time of sale because it was not as durable as a reasonable consumer would regard as acceptable for a vehicle of its age, price and mileage. The appellant argues that the Tribunal has incorrectly interpreted, or rather perhaps failed to take account of the entirety of, certain sections of the Consumer Guarantees Act, resulting in a flawed decision. The appellant points to s 2(2) of the Consumer Guarantees Act which provides that:

In any case where it is necessary under this Act to determine the time in which a guarantee in this Act commences to apply –

- (a) Goods shall be treated as supplied at the time when the consumer acquires the right to possess the goods.

[5] The appellant says that the guarantee of acceptable quality (which the Tribunal found applied) can only apply at the time of sale and not afterwards. It says that in the present case the time of sale occurred before the vehicle was being driven out of Spot One's yard and before the question was asked, and incorrect advice given in relation to, the appropriate fuel that should be put into the vehicle. By that time (of question and answer) Mr Wong had already, it is said, acquired the right to possess the goods. And at that time there is no evidence that the vehicle was not "durable" or that there was anything wrong with the vehicle. So the argument runs that it was subsequent events which the Tribunal took into account (that is, advice by the appellant of the use of the wrong fuel type) occurring after the sale and after possession.

[6] The appellant says that there are two possible consequences that follow from the decision. The first is that the Tribunal considered the Consumer Guarantees Act when it did not apply. The second is that it considered s 2 of the Consumer Guarantees Act but failed to consider that section in its entirety (that is, s 2(2)(a) – referred to above).

[7] The appellant in its submissions says that:

This is not an application or an appeal complaining the Tribunal misapplied the provision drawn to its attention. This is a case where the Tribunal has applied the Consumer Guarantees Act when the Act does not apply and/or where it has considered a section but not in its entirety.

[8] The respondent Mr Wong notes in his submissions (and it is a good point) that it is not contended here that the Tribunal did not have regard to the Consumer Guarantees Act or any provision brought to its attention. The respondent submits that the appellant's contention is essentially that the Tribunal erred in law in failing to consider properly the application of s 2(2) of the Act. This ground of appeal is not available as the claim falls under the threshold of \$12,500.00. The appeal right is limited strictly to cases of procedural unfairness and this ground does not extend to corrections of errors of law. The respondent submits that in any event the Tribunal did not err in law in the application of s 2(2) of the Act.

[9] It seems to me that the appellant is first effectively cloaking as procedural unfairness the Tribunal's alleged misinterpretation of the Consumer Guarantees Act. It is apparent that the Tribunal has considered the Act. The fact that an appellant complains that the Tribunal reached the wrong conclusion in relation to that Act or misread it or failed to read all of any part of it is immaterial. It simply does not amount to procedural unfairness that the Referee, having evidently considered the Consumer Guarantees Act, has in the view of the appellant reached the wrong conclusion in relation to it, or may not have read s 2(2) or indeed any other section properly or as the appellant reads or would prefer it.

[10] Moreover, it is not clear at all whether the Referee has failed, as the appellant suggests, to consider s 2(2) in its entirety or any other relevant section in its entirety. It is entirely possible, as the respondent indeed submits, that the Referee has considered the entirety of the section.

[11] The time of supply could in any event embrace events, representations and advice given in relation to petrol or anything else at the time of the sale transaction which might mean that a vehicle was not durable or of acceptable quality all "at the time" Mr Wong was entitled to possession.

[12] In any event, even on the alternative view, the vehicle was always not durable with the wrong fuel, including just prior to and at any point of sale or possession time.

[13] There is a variation on the argument, or a supplementary submission, advanced by Mr Swan:

- (a) The Tribunal approached this matter as if the Consumer Guarantees Act applied, and it did not apply (because of the s 2(2) argument);
- (b) If the parties knew it did not apply there would have been a different approach to the evidence.

[14] I do not accept that. The fact is that the essential issues (“durable”, and fuel) were before the Tribunal, the subject of evidence, investigated, considered, and the subject of a reasoned decision. No procedural unfairness arose out of that process. The Tribunal did its job. The parties had the opportunity to give evidence and address what was relevant.

[15] And even if there were procedural unfairness it has not prejudicially affected the result. The Tribunal, on any view, considered what was in issue and came to a decision which has all the hallmarks of fair and correct process and determination.

[16] This appeal must be and is accordingly dismissed. The result is that the decision and orders of the Tribunal stand.

L I Hinton
District Court Judge