IN THE DISTRICT COURT
AT NORTH SHORE

CIV-2017-044-001610
[2018] NZDC 5805

BETWEEN	REVOLUTION INDUSTRIES LIMITED Appellant
AND	BAYLY CONSTRUCTION LIMITED Respondent

Hearing: 23 March 2018

Appearances: C McKeown for the Appellant
L Bayly for the Respondent

Judgment: 23 March 2018

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. This is an appeal by Revolution Industries Limited against a decision of the Motor Vehicle Disputes Tribunal of 20 November 2017. Revolution Industries Limited had sold a 1981 Toyota Hilux vehicle on 17 January 2017 to Bayly Construction Limited for $5500. The vehicle had an odometer reading of 144,009 kilometres at the time of sale. In July 2017, the vehicle failed a warrant of fitness inspection, having been found to have structural corrosion in its rear crossmembers and left side door surround, roof and a pillar. Bayly Construction then rejected the vehicle and sought a refund of all amounts paid.

[2] The decision of the Tribunal was essentially that the structural corrosion in the vehicle was a failure of a substantial character. The Tribunal found the vehicle was not up to warrant of fitness standard when it was sold because of the structural corrosion. The decision of the Tribunal was that a reasonable consumer would not have paid $5500 for a 25 year old vehicle that had travelled 144,000 kilometres at the date of purchase if it knew that it had pre-existing structural corrosion that would cause

it to fail a warrant of fitness inspection and require repairs costing more, the Tribunal held, than $2000.

[3] Appeals to this Court are governed by the Motor Vehicle Sales Act 2003. Clause 16 of Schedule 1 to the Act specifies the grounds of appeal to this Court. Clause 16(3) provides:

> If the amount of the claim does not exceed $12,500, the appeal may be brought on the ground 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.

[4] The wording of that clause is in identical terms to s 50 Disputes Tribunals Act 1988, which again limits appeals to this Court to the ground of procedural unfairness only. There is no effective appeal alleging erroneous findings of fact or of law by the Tribunal.

[5] The most relevant authorities are, firstly, a decision of Smellie J in *Inland Holdings Ltd v District Court at Whangarei & Anor.*[1] At page 669, the Judge said:

> …I am persuaded as Thorp J. was in the *NZI* case that the responsibility for finding the facts is with the Referee. The very limited right of appeal envisaged by the Act under s. 50 precludes any conclusion that a District Court Judge on appeal should be performing that function. …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.

[6] The second authority is that of Fogarty J in *Shepherd v Disputes Tribunal & Anor.*[2] At para (37) of the decision the Judge said:

> It is even more appropriate that this aspect of the law of *res judicata* should be applied to proceedings under the Disputes Tribunals Act 1988. The goal of that statute is to provide for low cost speedy and final resolution of small disputes. To achieve that end Parliament was not interested in providing appeals on the merits of decisions.

[7] And at para (38) he said:

> That may result in what might be described as rough justice from time to

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[1] *Inland Holdings Ltd v District Court at Whangarei & Anor* (1999) 13 PRNZ 661
[2] *Shepherd v Disputes Tribunal & Anor* [2004] NZAR 319

> time. That has to be balanced against the overall goal of the Act to enable persons who could not possibly afford the very expensive litigation costs in the District and High Courts, the opportunity of taking claims before referees and getting justice…

[8] Those decisions are equally applicable to appeals pursuant to the Motor Vehicle Sales Act for the reasons I have stated; that the grounds of appeal are in exactly the same terms as the grounds of appeal permitted from the Disputes Tribunal.

[9] Turning then to consider the grounds of appeal in this matter, Mr McKeown for the appellant company has expressed concern that at the hearing Mr and Mrs Bayly of the purchaser company had with them their young daughter who was ill and was indicating signs of being disruptive. At the commencement of the hearing the Adjudicator discussed with the parties whether the hearing should proceed and he said, "(If) I think the hearing is being disrupted or if the trader is not getting a fair hearing with interruptions then I'll let you know but I'm prepared to be – I understand the situation you're in so I'm prepared to be flexible. What I would ask if you're able to though is just to keep her occupied and try to stop her from walking around." It seems that Mr Bayly then left the hearing room with the child and remained out of the hearing until he returned to give his evidence, whereupon Mrs Bayly left the room to care for the child and returned when she had fallen asleep. The only other reference in the transcript of the proceedings appears at page 87 of the transcript where the Adjudicator says, actually confirming the absence of one or other from the hearing room, "Mrs Bayly and Mr Bayly, we've got you both back now your little girl seems to have" and Mrs Bayly said, "finally settled." That indicates to me that even if there had been some initial disruption of the hearing, the appellant was not prejudiced by that.

[10] There are references throughout the transcript where it is plain that the Adjudicator was at pains to ensure that Mr McKeown for the appellant was given a full opportunity to present his case. At p 53 of the transcript he says, after a discussion involving the Consumer Guarantees Act 1993, "So that's why I've spent all of this time, the last 15 minutes with you, Mr McKeown. It's just to make sure I'm giving you the opportunity to respond to the relevant issues because it was apparent to me that you hadn't really turned your mind to them before the hearing because you didn't know that this was what the case was necessarily about. You thought perhaps it was a

case about a Fair Trading Act claim rather than perhaps a Consumer Guarantees Act. So that's why I've spent this time trying to work it through with you."

[11] There are further comments throughout the transcript indicating the desire of the Adjudicator to ensure a fair hearing. It seems that the hearing occupied in the order of three hours and ran to 94 pages of transcript. At page 90 of the transcript the Adjudicator said "This has been a bit of a marathon here and I really appreciate the way in which all three of you have participated and presented your cases. We've had to work through a bit of detail to make sure that we got to the bottom of the issues and everybody understood where we were and I appreciate the way both sides approached your task of presenting your case to the Tribunal." That again indicates to me that both parties were given every opportunity to present their cases to the Tribunal and that as a consequence there was no procedural unfairness whereby matters that should have been raised were not permitted to be raised.

[12] The consequence of that is that there can be no appeal against the Adjudicator's finding of fact nor decisions on legal matters and, for the reasons given, I am satisfied that there was no procedural unfairness that would warrant remitting the matter back to the Tribunal. For those reasons, therefore, I have no option but to dismiss the appeal and it is dismissed accordingly.

G M Harrison
District Court Judge