

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Groves v Sunshine State Recreational Vehicles Pty Ltd trading as Sunshine State RV* [2020] QCAT 157

PARTIES: **WARNER ALEXANDER GROVES**  
(applicant)

v

**SUNSHINE STATE RECREATIONAL VEHICLES  
PTY LTD TRADING AS SUNSHINE STATE RV**  
(respondent)

APPLICATION NO/S: MVL064-19

MATTER TYPE: Motor vehicle matter

DELIVERED ON: 12 May 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Cranwell

ORDERS: **Sunshine State Recreational Vehicles Pty Ltd trading as Sunshine State RV is required to pay Warner Alexander Groves the amount of \$22,000 within 28 days of the date of this order.**

CATCHWORDS: TRADE AND COMMERCE – COMPETITION, FAIR TRADING AND CONSUMER PROTECTION LEGISLATION – CONSUMER PROTECTION – GUARANTEES, CONDITIONS AND WARRANTIES IN CONSUMER TRANSACTIONS – GUARANTEES, CONDITIONS AND WARRANTIES – whether motor vehicle corresponded with description or sample – whether failure to comply with consumer guarantee a major failure – whether goods rejected during the rejection period – whether consumer entitled to refund

Australian Consumer Law, s 3, s 56, s 57, s 259, s 260, s 262, s 263  
*Competition and Consumer Act* 2010 (Cth), Schedule 2  
*Fair Trading Act* 1989 (Qld), s 50A, s 50C  
*Motor Dealers and Chattel Auctioneers Act* 2014 (Qld), s 12

*Haisman v Drive (Aust) Pty Ltd* [2020] QCAT 44

REPRESENTATION:

Applicant: Self-represented

Respondent: Self-represented

APPEARANCES: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

## REASONS FOR DECISION

### Preliminary matters

- [1] On 12 November 2019, the applicant, Warner Alexander Groves, filed an application – motor vehicle dispute with the Tribunal. The respondent is Sunshine State Recreational Vehicles Pty Ltd trading as Sunshine State RV.
- [2] The applicant entered into a contract with the respondent on 3 April 2019 to purchase a Navian 601 Sunliner motorhome. The applicant paid a deposit of \$22,000 to the respondent in respect of the motorhome.
- [3] ‘Motor vehicle’ is defined in s 12(1) of the *Motor Dealers and Chattel Auctioneers Act 2014* (Qld) to mean:
- (a) a vehicle that moves on wheels and is propelled by a motor that forms part of the vehicle, whether or not the vehicle is capable of being operated or used in a normal way; or
  - (b) a caravan.
- [4] The motorhome falls within this definition.
- [5] On 16 July 2019, the applicant purported to cancel the purchase of the motorhome.
- [6] The applicant seeks relief under the Australian Consumer Law, which is schedule 2 to the *Competition and Consumer Act 2010* (Cth). The relief sought by the applicant is:
- (a) a refund of his deposit of \$22,000;
  - (b) loss of interest on \$22,000 in the amount of \$4,269.15;
  - (c) additional expenses of \$4,515.92;
  - (d) the filing fee of \$345.80.
- [7] Section 50A of the *Fair Trading Act 1989* (Qld) vests the Tribunal with jurisdiction in relation to motor vehicles in respect of certain actions under the Australian Consumer Law.
- [8] Pursuant to s 3(1)(b) of the Australian Consumer Law, a person is taken to have acquired goods as a consumer if “the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption”. This includes the applicant’s motor vehicle.

### Consumer guarantees

- [9] Section 56 of the Australian Consumer Law imposes a guarantee of correspondence with description. It relevantly provides:

(1) If:

(a) a person supplies, in trade or commerce, goods by description to a consumer; ...

there is a guarantee that the goods correspond with the description.

...

(3) If goods are supplied by description as well as by reference to a sample or demonstration model, the guarantees in this second and in section 57 both apply.

[10] Section 57 of the Australian Consumer Law relevantly provides:

(1) If:

(a) a person supplies, in trade or commerce, goods to a consumer by reference to a sample or demonstration model; ...

there is a guarantee that:

(c) the goods correspond with the sample or demonstration model in quality, state or condition; ...

(2) If goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in section 56 and in this section both apply.

### **Evidence**

- [11] The applicant provided a written statement in which he stated that he dealt with the respondent's salesperson, Clinton Uebergang.
- [12] The applicant stated that he advised Mr Uebergang that his wife suffered from claustrophobia, and that they needed a light and airy motorhome. The applicant looked at a display model Switch 541, but decided to purchase the larger Navian 601 for this reason. Mr Uebergang gave the applicant a brochure, and advised him that the model was superseded but they did not have a brochure for the new model.
- [13] The applicant stated that Mr Uebergang gave them samples to choose a colour scheme. Mr Uebergang wrote down their choices on a piece of paper. The parties then signed a contract for the purchase of the Navian 601.
- [14] Sean McEvoy provided a written statement for the respondent, in which he said that the word claustrophobic was not mentioned in discussions with Mr Uebergang. There is no evidence that Mr McEvoy was present during those discussions. Mr Uebergang did not provide evidence in the proceedings. In these circumstances, I accept the applicant's version of events.
- [15] Mr Uebergang emailed on 11 April 2019 the applicant with a selection of new colour options. Mrs Groves responded on 14 April 2019, advising that they did not like any of the new colour options and would like to keep with the colours they originally chose. Mr Uebergang replied on 15 April 2019 that they would leave the colours as per the original choice.
- [16] The applicant attended at the respondent's premises on 27 June 2019 to collect the motorhome, but found that the colours were incorrect. In the application – motor vehicle dispute, the applicant stated:

The colours we selected for the cupboards were white. The motor home they built for us had a timber look finish in dark brown. Both upper and lower cupboards were the dark brown timber.

- [17] The applicant and Mr McEvoy both gave evidence that the respondent agreed to replace the cupboard doors and fridge inserts, and that this would take around two weeks.
- [18] When the doors had not been replaced by 16 July 2019, the applicant sent an email to the respondent purporting to cancel the purchase of the motorhome.
- [19] Based on the evidence before me, I find that the colour scheme of the Navian 601 supplied to the applicant did not correspond with the description and samples provided by the respondent.

### **Remedies against supplier**

- [20] The remedy available to the consumer against the supplier depends in the first instance on whether the failure is a ‘major failure’. That term is defined in s 260 of the Australian Consumer Law to relevantly mean:

(b) the goods depart in one or more significant respects:

- (i) if they were supplied by description—from that description; or
- (ii) if they were supplied by reference to a sample or demonstration model—from that sample or demonstration model; or ...

- [21] In assessing whether the motorhome departed from the descriptions or samples in a “significant aspect”, I have taken into consideration the agreement reached between the applicant and the respondent to replace the cupboard doors. The applicant’s willingness to agree to the replacement of the cupboard doors suggests and otherwise accept the vehicle suggests to me that the failure to correspond with description is not a major failure.

- [22] The remedies for a failure to comply with a guarantee that is not a major failure are set out in s 259(2) of the Australian Consumer Law:

(2) If the failure to comply with the guarantee can be remedied and is not a major failure:

(a) the consumer may require the supplier to remedy the failure within a reasonable time; or

(b) if such a requirement is made of the supplier but the supplier refuses or fails to comply with the requirement, or fails to comply with the requirement within a reasonable time – the consumer may:

(i) otherwise have the failure remedied and, by action against the supplier, recover all reasonable costs incurred by the consumer in having the failure so remedied; or

(ii) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection.

- [23] In considering what is a “reasonable time” for remedying the failure in this case, I have had regard to the agreement reached between the applicant and the respondent that the cupboard doors would take around two weeks to replace. I consider this to

be a reasonable time. The failure was not remedied within this timeframe, which enabled the applicant to reject the motorhome subject to section 262.

[24] In order to obtain a refund, the consumer is required to reject within the 'rejection period'. That term is defined in s 262(2) of the Australian Consumer Law to mean:

(2) The *rejection period* for goods is the period from the time of the supply of the goods to the consumer within which it would be reasonable to expect the relevant failure to comply with a guarantee referred to in section 259(1)(b) to become apparent having regard to:

(a) the type of goods; and

(b) the use to which a consumer is likely to put them; and

(c) the length of time for which it is reasonable for them to be used; and

(d) the amount of use to which it is reasonable for them to be put before such a failure becomes apparent.

[25] As the motorhome was rejected before being delivered to the applicant, I am satisfied that the rejection took place before the rejection period had ended,

[26] In *Haisman v Drive (Aust) Pty Ltd* [2020] QCAT 44 at [24], I found that the Tribunal has jurisdiction to make an order requiring the supplier to pay to the consumer a stated amount of money, namely the amount of the refund payable under s 263(4)(a). In this case, the applicant has notified the respondent that the goods have been rejected in accordance with s 263(1) of the Australian Consumer Law. The applicant will be entitled to a refund of his deposit of \$22,000 pursuant to s 263(4).

#### *Damages*

[27] As noted above, the Tribunal is vested with jurisdiction in respect of actions under s 259(4) of the Australian Consumer Law, which provides:

The consumer may, by action against the supplier, recover damages for any loss or damage suffered by the consumer because of the failure to comply with the guarantee, if it was reasonably foreseeable that the consumer would suffer such loss or damage as a result of such a failure.

[28] In *Vautin v BY Winddown, Inc (formerly Bertram Yachts) (No 4)* [2018] FCA 426 at [294], Derrington J stated:

It would appear that this subsection is concerned with the recovery of 'reliance losses' as the inclusion of the limitation of 'reasonable foreseeability' pertains to such losses rather than expectation losses.

[29] In the present case, the applicant has claimed damages of \$4,269.15 for loss of interest on the \$22,000 deposit. This is an expectation loss and not a reliance loss, and is not recoverable.

[30] The applicant also claims \$4,515.92 for the purchase of a car trailer, generator, generator box and car tie-down straps. While these may be regarded as reliance losses, the applicant has not provided any evidence as to the current value of the items or as to any attempts to sell the items. The respondent is not required to pay the applicant in full for these items if the applicant is able to sell the items to offset

part of his losses. In the absence of such evidence, the applicant is not entitled to recover damages in relation to these items.

### **Costs**

- [31] Section 50C of the *Fair Trading Act* 1989 (Qld) provides that the Tribunal may make a costs order against the respondent in the amount of the prescribed filing fee paid by the applicant. This power is subject to s 102(1) of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld), which provides that the Tribunal may make a costs order if the interests of justice require it.
- [32] Given that the applicant inflated his claim by including items which I have found not to be recoverable, such that the matter could otherwise have been dealt with by an adjudicator as a matter under \$25,000, I do not consider that it is in the interests of justice to order the respondent to pay the filing fee of \$345.80.

### **Orders**

- [33] The order of the Tribunal is:
1. The respondent is required to pay to the applicant the amount of \$22,000 within 28 days of the date of these orders.