

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Grehan & Anor v Westpoint Autos QLD Pty Ltd trading as Salters Cars* [2020] QCAT 275

PARTIES: **JAMES MARTIN GREHAN**  
**AMY HOLZBERGER**  
(applicants)

v

**WESTPOINT AUTOS QLD PTY LTD TRADING AS  
SALTERS CARS**  
(respondent)

APPLICATION NO/S: MVL061-19

MATTER TYPE: Motor vehicle matters

DELIVERED ON: 24 July 2020

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Cranwell

ORDERS: **The application is dismissed.**

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 of acceptable quality

*Australian Consumer Law, s 54*

*Competition and Consumer Act 2010 (Cth), Schedule 2*

*Fair Trading Act 1989 (Qld), s 50A*

*Queensland Civil and Administrative Tribunal and Other  
Legislation Amendment Act 2019 (Qld), s 286*

*ACH Computing Pty Ltd v Austral Pty Ltd trading as*

*Brisbane City Jaguar Land Rover* [2020] QCAT 176

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

*Medtel Pty Ltd v Courtney* (2003) 130 FCR 182

APPEARANCES &  
REPRESENTATION:

Applicant: Self-represented

Respondent: Self-represented

### **REASONS FOR DECISION**

- [1] On 17 January 2020, Mr Grehan and Ms Holzberger (the applicants) filed an Application – Motor Vehicle Dispute with the Tribunal.
- [2] The named respondent was Westpoint Autos QLD Pty Ltd trading as Salters Cars (the respondent).
- [3] The applicants are the owners of a 2013 Toyota Tarago (the motor vehicle).
- [4] The applicants purchased the motor vehicle from the respondent on 6 July 2018 for \$24,990.
- [5] The applicants seek relief under the Australian Consumer Law, which is Schedule 2 to the *Competition and Consumer Act 2010* (Cth). The relief sought by the applicants is a refund plus damages.
- [6] 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.

### **Procedural history**

- [7] The application was originally commenced as a minor civil dispute on 6 March 2019.
- [8] The applicants sought to increase the amount claimed to \$31,329 in an application for miscellaneous matters filed on 12 September 2019.
- [9] The application for miscellaneous matters was granted by an adjudicator on 1 November 2019, notwithstanding the provisions of s 286 of the *Queensland Civil and Administrative Tribunal and Other Legislation Amendment Act 2019* (Qld), which relevantly provides:

#### **Existing motor vehicle matters before the tribunal**

(1) This section applies in relation to—

(a) a motor vehicle matter that, on the commencement, is the subject of a proceeding before the tribunal exercising its original jurisdiction; ...

(2) This Act and the relevant Act, as unamended, continue to apply in relation to the matter as if the *Queensland Civil and Administrative Tribunal and Other Legislation Amendment Act 2019* had not been enacted.

(3) Without limiting subsection (2), the tribunal and the relevant appeal entity—

(a) must deal with the matter under this Act as unamended; and

(b) have, and only have, functions under this Act or the relevant Act, as unamended, in relation to the matter.

- [10] The application was then transferred by a member to the motor vehicles list on 8 November 2019, even though the Tribunal was required to deal with the application under the unamended legislation.
- [11] The decisions made on 1 November 2019 and 8 November 2019 have not been the subject of appeal.
- [12] The applicants subsequently filed a Form 59: “Application – Motor Vehicle Dispute” on 17 January 2020, and paid the filing fee of \$345.80. Attached to the Form 59 were an affidavit of the first applicant which attached 48 annexures, including 43 annexures which were previously filed as part of the minor civil disputes claim. The applicant also filed extensive written submissions, both with the Form 59 and as part of the minor civil dispute.
- [13] I made directions relating to the filing of evidence on 11 March 2020. No further evidence was filed by the applicants. The respondent filed evidence: a single invoice and accompanying notes on 23 March 2020. The applicants filed no evidence in reply.
- [14] I invited the parties to make submissions as to whether the proceedings could be determined on the papers or by telephone on 20 April 2020. No response was received from the respondent, but the applicants submitted that the matter could be heard on the papers. They also requested an opportunity to provide written submissions.
- [15] I directed that the application be heard on the papers on 15 May 2020. No provision was made for the filing of written submissions, given that the applicants had already filed extensive written submissions, but nor did I preclude the filing of further written submissions. No further written submissions have been filed, and no application was made by the applicants for the filing of such submissions.
- [16] In order to give the applicants every benefit of the doubt, I have proceeded on the basis that I am determining the application for a motor vehicle dispute filed on 17 January 2020 as if it were a fresh application. However, for the reasons which follow, the outcome would have been the same had I applied the unamended legislation to the minor civil dispute application filed on 6 March 2019.

### **Guarantee of acceptable quality**

- [17] Section 54(1) of the Australian Consumer Law provides that, where a person supplies goods in trade or commerce, the goods are guaranteed to be of ‘acceptable quality’.
- [18] The time at which goods are to be of acceptable quality is the time at which the goods are supplied to the consumer: *Medtel Pty Ltd v Courtney* (2003) 130 FCR 182 at [64] and [70]. However, information available after the time of supply may be taken into account in deciding whether the goods were of acceptable quality at the time of supply.
- [19] Sections 54(2) and (3) of the Australian Consumer Law define acceptable quality as follows:

(2) Goods are of *acceptable quality* if they are as:

- (a) fit for all the purposes for which goods of that kind are commonly supplied; and
- (b) acceptable in appearance and finish; and
- (c) free from defects; and
- (d) safe; and
- (e) durable;

as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable having regard to the matters in subsection (3).

(3) The matters for the purposes of subsection (2) are:

- (a) the nature of the goods; and
- (b) the price of the goods (if relevant); and
- (c) any statements made about the goods on any packaging or label on the goods; and
- (d) any representation made about the goods by the supplier or manufacturer of the goods; and
- (e) any other relevant circumstances relating to the supply of the goods.

### **Evidence**

[20] The first applicant's affidavit contains the following evidence:

- (a) The motor vehicle was purchased on 6 July 2018. It had an odometer reading of approximately 61,173 km.
- (b) The motor vehicle had the rear brake pads replaced on 25 October 2018. By this stage, the odometer reading was 67,952 km.
- (c) The motor vehicle had a tyre replaced on 20 November 2018.
- (d) The motor vehicle did not seem to be running properly, and the oil light came on, on 13 January 2019.
- (e) The RACQ inspected the motor vehicle, and the mechanic expressed concern in relation to the oil pressure.
- (f) The motor vehicle was towed to Grand Motors at Southport on 14 January 2019. The mechanic found what he believed to be metal in the oil, said to be most likely from a bearing or piston. The applicants were quoted \$3,000 to \$4,000 to continue with the diagnostic process. If the engine was unable to be repaired, a new engine would cost at least \$10,000. The applicants decided not to continue with the diagnostic process.
- (g) The applicants purported to reject the vehicle on 15 January 2019. This prompted ongoing correspondence with the respondent, which it is unnecessary to set out here.

- (h) In further discussions with Grand Motors on 24 January 2019, the applicants were advised that there was no way of knowing whether it was the balance shaft gears, whether there was an issue with oil getting around the motor which caused the balance shaft gears to break, or whether the balance shaft gears broke independently affecting the ability of the oil to get around the motor. One possibility that may have caused the gears to break was if the engine heated up because there was insufficient oil being pumped around the engine which caused the gears to crack and shatter.
- (i) The applicants were provided with a copy of the roadworthy certificate on 8 February 2019. This indicated that the steering shaft had been replaced prior to supply.

[21] The respondent filed a single invoice and accompanying notes dated 24 January 2019. This indicated that the balance shaft was replaced, and the engine was running “all ok”.

### **Consideration**

- [22] I am not satisfied that having to replace the rear brake pads in a second hand vehicle amounts to a defect, or otherwise amounts to the motor vehicle as being not of acceptable quality. The vehicle had driven 6,779 km since purchase, and 67,952 km in total. There is no evidence that the brake pads needed replacing at the time of supply.
- [23] Similarly, I am not satisfied that having to replace a tyre in these circumstances amounts to a defect, or otherwise amounts to the motor vehicle as being not of acceptable quality. There is no evidence that the tyre needed replacing at the time of supply.
- [24] I am not satisfied that the steering shaft having been replaced prior to supply amounts to a defect, or otherwise amounts to the motor vehicle as being not of acceptable quality. To the contrary, failure to replace the steering shaft may have amounted to a defect. There is no evidence that the respondent made representations relating to the steering shaft prior to supply, or that the applicants experienced difficulties with the steering shaft after supply.
- [25] I am satisfied that the applicants experienced a problem with oil pressure in the engine on 13 January 2019. However, there is insufficient evidence to enable me to be satisfied that there was a defect in existence at the time of supply, or that the motor vehicle was otherwise not of acceptable quality at that time. In particular:
  - (a) despite me directing the filing of witness statements, “including any expert”, no expert evidence was filed by the applicants; and
  - (b) the mechanic from Grand Motors, who did not provide evidence but was quoted by the applicant, stated there was no way of knowing which of the possibilities he enumerated was the cause of the problem.
- [26] If there is no way of knowing what the cause of the problem was, it follows that there is no way of me being satisfied that the motor vehicle was not of acceptable quality at the time of supply.

- [27] The respondent's evidence was that the balance shaft required replacement. The applicants submitted:

The engine of the car was not free from defects because the balance shaft gears failed within 6 months of the purchase and the Applicants submit this defect was present at the time of the purchase because it is more likely than not that the balance shaft gears wore over the previous five years and 62,000 km than it is they were perfectly fine at the time of purchase and wore and failed over the preceding ,000 km (sic) and six months.

- [28] In *Haisman v Drive (Aust) Pty Ltd* [2020] QCAT 44 and *ACH Computing Pty Ltd v Austral Pty Ltd trading as Brisbane City Jaguar Land Rover* [2020] QCAT 176, I was prepared to infer that defects were present at the date of supply where the defects manifested themselves within a short period after supply. However, in the absence of expert evidence, I am not prepared to make a similar inference in the circumstances of this case where the defect did not manifest itself until over six months after the date of supply. As noted above, no such expert evidence was provided.

- [29] On the basis of the evidence before me, I am therefore not satisfied that a reasonable consumer fully acquainted with the state of the motor vehicle at the time of purchase would not regard the motor vehicle as being of acceptable quality as at the time of supply.

#### **Orders**

- [30] The application is dismissed.