QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Gibson & Anor v Port City Autos Pty Ltd* [2020] QCAT 46
PARTIES:	**NOEL GIBSON** **and** **LINDA GIBSON** (applicants) **v** **PORT CITY AUTOS PTY LTD** (respondent)
APPLICATION NO/S:	MVL007-19
MATTER TYPE:	Motor vehicle matters
DELIVERED ON:	12 February 2020
HEARING DATE:	11 February 2020
HEARD AT:	Brisbane
DECISION OF:	Member Cranwell
ORDERS:	**The Application – Motor Vehicle Dispute filed on 3 September 2019 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 *Medtel Pty Ltd v Courtney* (2003) 130 FCR 182
APPEARANCES & REPRESENTATION:	
Applicant:	Self-represented
Respondent:	Self-represented

REASONS FOR DECISION

[1] On 3 September 2019, Mr and Mrs Gibson (the applicants) filed an Application – Motor Vehicle Dispute with the Tribunal.

[2] The named respondent was 'Adrian Harding Dealer Principal of Port City Autos'. By directions dated 11 November 2019, the respondent was changed to Port City Autos Pty Ltd (the respondent).

[3] The applicants are the owners of a 2017 Holden Commodore (the motor vehicle).

[4] The applicants purchased the motor vehicle from the respondent on 29 April 2019 for $33,500.

[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.

[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.

Guarantee of acceptable quality

[7] 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'.

[8] 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.

[9] 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

[10] The applicants' complaint is that the motor vehicle emits excessive water from its exhaust pipes.

[11] The respondent led evidence from Hemi Tanuvasa, a Technical Customer Support Manager for Holden. Mr Tanuvasa is a qualified automotive mechanic with a Certificate IV in Automotive Studies and GM accreditation as a 'Gold Level Technician'. Mr Tanuvasa's report dated 28 November 2019 stated:

> The photos provided to General Motors Holden by Noel/Linda Gibson and Port City Auto regarding the water liquid exiting from the rear exhaust is a normal characteristic for the 4 cylinder 2.0 litre turbo petrol engine installed in the vehicle VIN W0VZT6EC8J1063305.
>
> The reason for this is that approximately 1 kilogram of water vapour is generated for every litre of fuel that is combusted in the engine. This water comes from hydrogen in the fuel reacting with the oxygen in the air.
>
> This water vapour is a by-product of the combustion process of the air and fuel mixture combusting in the engine and is the primary source of water vapour in the exhaust. When the exhaust system cools (particularly overnight) this water vapour will condensate and collect in the exhaust system as a liquid.
>
> The atmospheric humidity is also a factor, higher humidity will create more water vapour.
>
> When the engine is started in the morning, the exhaust gas heat will vaporise the accumulated water back into steam which can be noticed coming out the tailpipe, and if the driver blips the throttle (rapid rev of the engine) then it is normal to see water droplets spit out with higher exhaust gas flow. Furthermore, the tailpipe is also the coolest point in the exhaust system therefore, it is possible that steam can condensate back into liquid on steel tailpipe walls and then drip out.
>
> When the vehicle is driven gently after cold start and only for short distances, the liquid water that has accumulated in the exhaust may not have evaporated, leading to increased water accumulation over drive cycles, more steam and water dispersion until properly warmed-up.

[12] When asked during cross-examination about use of the vehicle for short distance driving, Mr Tanuvasa stated that Holden assumes the average consumer will drive the vehicle 20-30 km per day. The applicant's account was that he only drove his around 10 km per day.

[13] The applicants provided a report from Garry Cook of G&C Cooks Garage dated 1 August 2019. Mr Cook stated:

> I have done a full mechanical inspection on a Holden ZB Commodore registration number 685 YOI and after dismantling and re assembling the exhaust and doing a complete engine test and a through [sic] inspection on the vehicle that showed everything to be correct and can find no reason for the vehicle to produce this amount of water...
>
> Normal small amounts of droplets were emitted during start up and initial few minutes of idle as is normal with all cars and the owner agreed with this...
>
> The owner showed me photos supplied by Mr Harding from Port City Autos and both the owner and I agree this would be normal...
>
> I also viewed the photos the owner supplied and there is a very marked difference between the photos Port City Autos sent and the photos the owner had taken...
>
> After taking the vehicle for a test run three times in four days I found once the vehicle reaches running temperature water forms and is emitted from both exhaust pipes... This continues for 5 kilometres or more leaving water on the road behind the vehicle...
>
> The exhaust pipe outlets are very wet and have a lot of carbon build up within the pipes… I have no idea how this water or carbon build up is formed or the cause… This I consider not to be normal operation of a new vehicle after reaching running temperature...
>
> If this water is being produced in conjunction with the turbocharger then it would be causing severe damage to the internal components of the engine... That is the cylinders, pistons, valves and exhaust system would all be damaged...
>
> The days were sunny and temperature was in the mid 20's while humidity was in the low to mid 40s when the road tests were done...
>
> In my 39 years of continual mechanical work the amount of water produced by this vehicle is normally associated to [sic] either a cracked head or blown head gasket... Neither of these two major causes showed up on the engine tests...
>
> It is my independent unbiased opinion that there is a problem with this vehicle as I can see no logical reason for the vehicle to produce the amount of water it does…
>
> The owner says Holden states the vehicle is "operating normal" [sic] but after inspecting the vehicle I have my doubts that the vehicle is operating normal [sic] and therefore strongly disagree with Holden...

[14] Mr Cook did not give oral evidence.

[15] Notwithstanding Mr Cook's observations that the motor vehicle is not 'operating normal[ly]', he was unable to identify any defect with the vehicle responsible for the water emissions. In these circumstances, I accept Mr Tanuvasa's evidence that the water emitted is a normal characteristic of the motor vehicle's engine. I also accept

Mr Tanuvasa's evidence that any increased water emissions are likely to be a feature of the use of the motor vehicle for short distance driving.

[16] I am therefore satisfied, on the evidence available to me, that a reasonable consumer fully acquainted with the state of the motor vehicle at the time of purchase would regard the motor vehicle as being of acceptable quality having regard to the matters contained in s 54 of the Australian Consumer Law.

Orders

[17] The application is dismissed.