DISTRICT COURT OF QUEENSLAND

CITATION:	*Lear v GRP Trading Enterprises Pty Ltd* [2023] QDC 25
PARTIES:	**MICK LEAR** (Plaintiff) **v** **GRP TRADING ENTERPRISES PTY LTD (ACN 152 004 727) AS TRUSTEE FOR THE OZRODS TRADING UNIT TRUST** (Defendant)
FILE NO/S:	BD 3450/2023
DIVISION:	Civil
DELIVERED ON:	15 February 2023 (ex tempore)
DELIVERED AT:	Brisbane
HEARING DATE:	13, 14 February 2023
JUDGE:	Barlow KC DCJ
ORDERS:	**1. There be judgment for the plaintiff in the sum of $592,175.95, including interest in the sum of $120,935.95.** **2. The defendant pay the plaintiff's costs of the proceeding.**
CATCHWORDS:	TRADE AND COMMERCE – COMPETITION, FAIR TRADING AND CONSUMER PROTECTION LEGISLATION – CONSUMER PROTECTION – GUARANTEES, CONDITIONS AND WARRANTIES IN CONSUMER TRANSACTIONS – GUARANTEES, CONDITIONS AND WARRANTIES – the plaintiff made known to the defendant the purpose for which the defendant's services were to be acquired the product delivered as a consequence of the application of the services was not suitable for the purpose – whether the plaintiff was a consumer – whether there was an implied guarantee under s 61 of the *Australian Consumer Law* TRADE AND COMMERCE – COMPETITION, FAIR TRADING AND CONSUMER PROTECTION LEGISLATION – CONSUMER PROTECTION – GUARANTEES, CONDITIONS AND WARRANTIES IN CONSUMER TRANSACTIONS – GUARANTEES, CONDITIONS AND WARRANTIES – the plaintiff engaged the defendant to modify the plaintiff's classic vehicle – whether the defendant undertook the work with

	due care and skill - whether the plaintiff was a consumer – whether there was an implied guarantee under s 60 of the *Australian Consumer Law*
	INTEREST – RECOVERABILITY OF INTEREST – AWARD OF INTEREST AS DAMAGES – IN QUEENSLAND – damages were awarded to the plaintiff for breach of contract – the plaintiff had paid most of the amount under the contract – whether it is appropriate to award interest on part of the damages
LEGISLATION	*Australian Consumer Law* (Cth) ss 3, 18, 60, 61 *Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation* 2010 (Qld) s 13 *Uniform Civil Procedure Rules* 1999 (Qld) r 476
CASES	*Bunnings Group Ltd v Laminex Group Ltd* (2006) 153 FCR 479, cited
COUNSEL:	J C Faulkner, for the plaintiff
	No appearance for defendant
SOLICITORS:	HW Litigation for the plaintiff
	Defendant not represented by solicitors

Introduction

[1] Since he was a child, Mr Lear - the plaintiff - and other members of his family have had what he has described as a passionate interest in cars, including attending car shows and reading car magazines.

[2] The defendant trades as OzRods, operating a business that includes vehicle restoration and customisation. It contends, in paragraph [9] of its defence (which the plaintiff admitted in his reply), that it held itself out as a hot rod and street machine specialist and its business was restoring and customising classic vehicles, hot rods and street machines.

[3] In this proceeding, Mr Lear is suing the defendant for breach of contract, breach of statutory guarantees and misleading or deceptive conduct. The trial began on Monday, 13 February 2023. The defendant did not appear but sent to the Court and to Mr Lear's solicitors notice that a controller had been appointed to its assets and undertaking under a fixed and floating charge. The controller is, in fact, the sole director and shareholder of the defendant, Mr Graeme Parmenter. As the defendant did not appear, the plaintiff proceeded to call evidence, as it may do under r 476(1) of the *Uniform Civil Procedure Rules* 1999 (Qld). I heard that evidence orally on 13 and 14 February 2023. The following summary of the facts derives from that evidence.

[4] In 2004, Mr Lear bought a 1953 Ford Mainline utility vehicle, which he saw advertised in a car magazine. He paid $26,000 for the vehicle. It had been painted and a modern engine had been installed, apparently at the behest of the person who sold it to

him, who told him that it had previously been owned since new by the postmaster in Gympie, who had then parked it in his shed when he retired.

[5] Over the next 10 years after purchasing the vehicle, Mr Lear would drive it for his own enjoyment and that of his daughter, while he saved enough money to have it completely renovated as a custom vehicle that could be entered into classic car shows, which was a dream of his.

[6] In January 2014, Mr Lear felt that he had sufficient funds to have the vehicle renovated. He spoke to a Mr Rodney Brewer, who was then a project manager employed by the defendant. He showed Mr Brewer the car and told him that he was looking to have it renovated into an elite show car, but one that he could still register and drive on public roads. He told Mr Brewer that he wanted to enter it into the annual Summernats car show in Canberra in January 2015. For that purpose, he would need it to be ready by about November 2014, so that he could test-drive it and have any issues promptly fixed. He and Mr Brewer had a long discussion about what could be done. Most relevantly, Mr Lear's evidence was the following in an exchange with his counsel.

> Mr Faulkner: What did he say to you?
>
> Mr Lear: That there was no problems at all. They were very excited to be able to make that happen and - and the journey started from there. It was a very exciting time for - for me, and the things that they, sort of, had promised. They had vehicles and all that he was showing me right at that day when I took the car in there - of the works that they had completed, the awards that other customers had won, and it was an exciting time.
>
> Mr Faulkner: Did he - Mr Brewer mention the quality or the skills of the tradespersons that might undertake the work?
>
> Mr Lear: Yeah. It was in their representation that OzRods had - that their ability that was different to other companies was that they were - they had all of the skills in the one roof, so they were able to perform all of these works in-house, which he sold to me was going to be a much better finish and also quicker, to be able to do it that way.
>
> Mr Faulkner: And did he say anything to you about how you might feel about the works when they were completed?
>
> Mr Lear: That I'd be very impressed.
>
> Mr Faulkner: And in relation to those statements that Mr Brewer made to you, did that have any impact on your decision-making at that point?
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> Mr Lear: Absolutely. That's - that's what got me across the line. I was convinced that they were the right company to be able to take on my project and to be able to do this for me.

[7] Mr Brewer told him, among other things, that one of the advantages of getting the defendant to do the work, as I have just quoted, was that it had all the skills under one roof so that it would be able to do all the works in-house, which would be quicker and would result in a much better finish. He said that Mr Lear would be very impressed, effectively, by the completed car.

[8] Mr Lear said in his evidence that Mr Brewer's statements convinced him to leave the car with the defendant to have the works done. Mr Brewer wrote some details on a notepad - which may be Document 2 in the trial bundle, exhibit 1 - and Mr Lear signed a document described as terms and conditions and left the car with the defendant.

[9] Mr Lear said that, thereafter, during 2015, he paid numerous invoices given to him by the defendant for the works. Those invoices appear in the trial bundle and totalled $401,405.85.

[10] Mr Lear collected the vehicle from the defendant in 2014. His evidence, in short, was that when the car was delivered to him there were a total of 69 defects in the paintwork and mechanical parts, which he discovered while it was in his possession in December 2014 and January 2015. The defects were in a list that he gave to the defendant in January 2015 and is tab 49 in the trial bundle. He was still able to take the car on a trailer to Summernats in January 2015 and to present it and show it there, but then he returned it to the defendant to fix the defects that he had identified and to complete the works in order to have the modifications certified as safe, which was a statutory requirement that the defendant had not yet undertaken.

[11] Mr Lear returned the car to the defendant shortly after Summernats. It was returned to him in March 2015 with a modification plate attached, a copy of which is at page 85 in the trial bundle, document 6; and it had been certified as complying with all necessary safety requirements, a copy of which is document 3 in the trial bundle. However, Mr Lear soon discovered that it still had numerous defects, which he described in a much longer list that he sent to the defendant on 1 April 2015: trial bundle document 50.

[12] Over the next two and a-quarter years until June 2017, Oz Rods had possession of the car for most of the time, allegedly fixing defects found in it. Oz Rods invoiced Mr Lear an additional $10,501.50 in May 2015 (trial bundle document 47) and a further $22,356.50 in July 2015 (trial bundle document 48).

[13] Mr Lear paid all OzRods' invoices, which together totalled $434,263.80.

Defects in the works

[14] Mr Lear ultimately collected the car from OzRods on 17 June 2017. It was not working. In March 2018, he produced a list of a total of 165 defects in the car. That list was sent by his solicitors to the defendant on 20 March 2018. The email is document 71 and the list is document 51 in the trial bundle. The list, in a slightly different format that numbered the defects and showed when they were first discovered by Mr Lear, ultimately became a list that was used by expert witnesses to comment on the defects listed and on those that they had observed when they inspected the car. That list appears at pages 43 to 50 of the trial bundle, as part of the report of one of the experts called before me, Mr Owen Webb, whose report is at document 5.

Mr Webb

[15] Mr Webb is a very experienced spray-painter and panel beater, and he has been an elite car show judge for vehicle paint and bodywork in Australian and overseas car shows. As well as producing his report on the joint instructions of the parties, Mr Webb also gave oral evidence before me. Relevantly, Mr Webb said that there were three recognised levels of show car in Australia, which he described in some detail in his report. I shall just

describe them as an elite show car, a street show car and a burnout car. His descriptions of those categories are at page 52 of the trial bundle. Mr Lear contends that he and the defendant agreed that the defendant would produce a street show car.

[16] One issue raised in the defence is an allegation that Mr Lear asked for a burnout car. In my view, that allegation is shown to be false by a number of the facts that have been proved in this trial. First, the level of restoration that the defendant, obviously, attempted to undertake was far above that of a burnout car. Secondly, as Mr Webb said in his oral evidence, a burnout car is made to be as light as possible, even to the extent of removing as many as possible of the internal fittings, including seating. It would not have had air-conditioning or a radio installed, as happened with this car. Thirdly, it would not have such special and expensive paint as the defendant recommended to Mr Lear, as it would be very difficult to repair damage to the rear end of the vehicle that is often caused by conducting burnouts at a show.

[17] I find that OzRods contracted with Mr Lear to renovate the car to the standard of a street show vehicle. That requires that the standard of fitting and finishes on the car be very high and indeed, be as high as those of an elite show car, other than underneath the car. Mr Lear clearly had pride in the vehicle and he wanted to enter it into prestigious car shows, as well as being able to drive it from day to day as a special experience for him and his daughter. As it was to be driven on public roads, it could not be an elite show car, as they are rarely, if ever, driven, except, potentially, during shows. But, conversely, it was to be modified and renovated to such an extent and in such ways as not to be suitable as a burnout car. I accept Mr Lear's evidence that he informed OzRods what he wanted the car for and that the parties agreed that it would be a top-level street show car.

[18] Mr Webb and Dr Ray Hope (a very experienced mechanical engineer also engaged on the joint instructions of both parties) inspected the car and compared it with the March 2018 list of defects. Each of them produced a report in which he commented on the defects within his own area of expertise. While they did not find all the listed defects, each found that there was a substantial number of serious defects in the work done by OzRods. I should describe them briefly, without listing every defect and their comments on them.

[19] Mr Webb, of course, concentrated on painting and panel beating aspects. He found that there is a large number of defects in the paint work, including mottling and running in a number of places, bulging paint around fittings, fittings improperly installed, with inadequate or excessive gaps between them and surrounding or adjacent parts of the body work and poor painting around them. In some cases, those gaps were filled with Sikaflex or a similar product (that is, an elastic joint sealant). In many areas, the paint work had been so badly prepared that defects in underlying coats of paint or filler were showing through the top coat of paint.

[20] Mr Webb scraped away all layers of paint and other products on one small section of the car. He found that there were 13 layers of product: namely, four layers of primer, two layers of body filler, one layer of old paint of a different colour, a polyester filler spray, a ground coat, two layers of the final paint colour and a layer of clear coat over each layer of that paint. He said that having so many layers would inevitably cause problems in providing an appropriately even and finished product. The many layers result in a pinching of the top coat film, and paint bulging around mirrors, moulds and other fittings. In addition, inadequate preparation for the new colour resulted, as I have said, in old paint defects showing through the new areas.

[21] Mr Webb said that in his opinion, to renovate this car to show car standard would require that it be stripped back to bare metal before repainting. The stripping could be done by sandblasting or by an acid bath. The failure of OzRods to do this before undertaking body and paint works has resulted in the overly thick accumulation of layers and many of the consequent defects. Mr Webb said that, in order to rectify the work now, because of the multiple layers of product he would recommend acid baths, because to sandblast the vehicle would likely damage the underlying metal panels, especially flat panels, given the power and amount of sandblasting that would be necessary to complete the job. Acid baths would also remove rust that is likely to be present in such an old car. Ultimately, although acid baths are likely to be more expensive than sandblasting, they will result in a better job and therefore be less expensive, I infer, in the long run.

Dr Hope

[22] Dr Hope, as I said a highly experience mechanical engineer, looked at the mechanical work identified in the list of defects and that he saw from his inspection of the car. He also compared the mechanical features of the car with the requirements of a Vehicle Standards Bulletin produced under the National Code of Practice for Light Vehicle Construction and Modification and relevant Australian design rules. The code is published by the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications and, for the record, I note that it applies in Queensland under s 13(7) of the *Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation* 2010.

[23] Dr Hope reached conclusions about whether each apparent defect was present and, if so, its cause. He identified that most of the listed defects were not caused by the use or misuse of the car, as the defendant alleged in its defence, but rather by the manner in which components had been constructed or installed. Examples, by no means all, of the defects that Dr Hope identified, include:

(a) The fuel hoses were not suitable for this vehicle, whether it was a show car, a street show car or a burnout car, as they were not suitable for use with unleaded fuel and they gave rise to a safety risk.

(b) Welding of the suspension system was of poor quality, uneven and inadequate for the tasks required. Furthermore, there was no evidence that any engineering design, calculations, analysis or tests had been undertaken for the welds, as are required to be undertaken and to be documented under the applicable vehicle standard. This gives rise to a safety risk, particularly a risk of welds failing at critical moments.

(c) The rear suspension bars were attached to their mounting brackets by a single bolt instead of by a spherical joint. The effect of this was that the suspension of each wheel did not operate independently of other wheels and the chassis, as it was supposed to do, resulting in a poor driving experience and creating potentially high physical stresses on the components. Also, the suspension bars were installed without sufficient clearance from other components, including an exhaust flange and a metal bar. This caused wear on the various components. These issues, Dr Hope said, would adversely affect the driveability, road holding and handling of the car, as well as causing large stresses in the mounting bolts and brackets that are likely to cause premature fatigue. They are inconsistent with the applicable modification standards, and they created a safety risk. Additionally,

there was no evidence of any designs, drawings, calculations or tests for the suspension system, which was also contrary to the standards and safety requirements.

(d) There were also problems with the front suspension installation, causing the suspension air bags to contact other surfaces that could lead to premature failure. There was also damage to front suspension bushes, probably caused by inadequate design or selection or poor installation and which indicated that they were probably inadequate for the vehicle.

(e) There was misalignment between the vehicle body, rear wheels, rear axle, drive shaft and differential, which would be likely to cause drivability problems and would pose a safety risk.

[24] Dr Hope concluded that the vehicle did not meet the applicable standards in many respects and, taking into account Mr Webb's description of the different categories of show car, many of the defects resulted in the car not meeting any of those categories.

Mr Woodward

[25] Another issue that Mr Lear has had with the car since he has collected it from OzRods is that the engine has stopped working. He eventually had the engine looked at by the company that built the engine to go into the modified car, a company known as Fataz Competition Engines.

[26] Ian Woodward, the director of Fataz, gave evidence. He investigated why the engine would not start at some time in 2015. He found that there was plastic coating on the inside of the aluminium fuel tank. Some of that coating had broken down and blocked, or at least contributed to the blocking of, the fuel filter and the fuel pump. Mr Woodward explained that, when a fuel tank is being built by a vehicle modifier such as OzRods, the aluminium sheets that are used to build the tank are bought covered with a protective film. The builder will often leave some of the film on the aluminium while the builder is shaping and welding the tank, so that the outside of the fuel tank will not be scratched in the process, which is important for a show car. In this case, though, the protective coating, or some of it, was left on the inside of the fuel tank as it was built and it was this coating that had broken down and contaminated the fuel and the fuel pump.

[27] Mr Woodward also said that, when he inspected the fuel filter and pump, he found aluminium swarf (that is, as Mr Woodward described it, offcuts of aluminium from when the builders of the tank ground and shaped it). He found that swarf in the filter and the pump and, on cleaning out the fuel tank, at the bottom of the tank. That swarf had also blocked the fuel lines and some had got into the filter and the pump, causing the engine to stop. Mr Woodward said he thought the fuel tank had not been properly cleaned out before fitting it to the car.

[28] I accept Mr Woodward's evidence. It appears, from OzRods' invoices to Mr Lear, that it removed the original fuel tank, which is shown in the invoice that is document 9, and it built and installed the fuel tank as part of the works under its contract with Mr Lear (see the work at document 28 - the invoice included drawing out plans for fuel tank fabrication, at document 30 - it listed materials that included a stainless-steel fuel tank.

[29] OzRods then undertook a number of further works on the fuel tank, including:

(a) (referring to document 34) fabricating then drilling the filler tube in the fuel tank, and removing the tank and welding the filler tube and breather;

(b) (in document 35) fitting the fuel tank and reinstalling the air tank and fuel tank;

(c) (in document 38) removing the fuel tank and all air tanks;

(d) (in document 41) drilling, tapping then fitting a fuel pump, modifying the fuel tank and then fitting the sender unit; drilling, then welding fittings to the tank; drilling holes, then clamping fuel and air lines around the tank; and then

(e) (in document 42) it connected wiring to the fuel tank sender.

[30] It is likely, in my conclusion, I should say, that in the course of those works OzRods caused swarf to fall into the tank and did not clean it out. It is also likely that it left swarf, as well as the protective coating, inside the tank when it made it and when it installed it, finally, in the vehicle.

[31] OzRods was the obvious cause of both aspects of contamination of the fuel. The method of works and the results of leaving protective coating and swarf in the tank were not acceptable levels of work.

[32] Finally, I note that two of the faults in the car are that the doors, which are intended to pop open with a remote control or a push-in panel instead of a handle, do not open as intended, nor do the windows, which are electrically controlled. Since recovering the car from OzRods, the only way to open the doors is to reach in through the driver's side window (which is permanently open and unable to be closed) and to use the internal handle to open that door.

Findings on breach of contract

[33] I accept the evidence of Mr Lear and of each of the experts who gave evidence. I find that many of the engineering and mechanical works undertaken by OzRods on the car were unsuitable and, in many cases, dangerously inadequate. Additionally, Oz Rods did not undertake any of the engineering designs and tests necessary to ensure the car was safely and properly modified and many of the works were totally unsuitable for the purpose of driving the vehicle safely on public roads, or indeed at all. Additionally, the quality of the bodywork, including welding, preparation for painting and painting, was also entirely inadequate for a street show car.

[34] I therefore find that OzRods breached its contract with Mr Lear to modify the vehicle in such a manner that it would become a street show car.

Implied Guarantees

[35] Mr Lear also claims that, having told OzRods the purpose for which he wanted the works to be undertaken, there was implied in the contract a guarantee under s 61 of the *Australian Consumer Law* that the works and the product of those works, namely the modified vehicle, would be reasonably fit for that purpose. There was also a guarantee under s 60 of the *ACL* that the works would be undertaken with due care and skill. Mr Lear claims that Oz Rods breached each of those guarantees.

[36] I find that OzRods did not undertake the works with due care and skill, as evidenced by all of the defects about which Mr Webb, Dr Hope and Mr Woodward gave evidence. Had the works been undertaken properly, skilfully and carefully, the defects would not have existed. I also find that the product of the works – the vehicle in its various states when collected at various times by Mr Lear – is not suitable for the purpose of the car being a street show car: again, for the reasons described by Mr Webb and Dr Hope in particular. Therefore, if the guarantees apply, OzRods breached them, and in that way also breached its contract with Mr Lear.

Consumer

[37] The guarantees only apply if the services were supplied by OzRods to Mr Lear as a 'consumer'. Section 3(3) of the *ACL* relevantly provides as follows:

> *A person is taken to have acquired particular services as a consumer if, and only if –*
>
> *…(b) the services were of a kind ordinarily acquired for personal, domestic or household use or consumption.*

Subsection 3(10) provides as follows:

> *If it is alleged in any proceeding under this Schedule, or in any other proceeding in respect of a matter arising under this Schedule, that a person was a consumer in relation to particular goods or services, it is presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services.*

[38] Reference in that subsection to the schedule is to the *Australian Consumer Law*.

[39] Mr Lear pleads, at paragraph [11] of his statement of claim, that he was a consumer in respect of the defendant's services. In response, the defendant denied that allegation, in paragraphs [17] to [19] of its defence, because:

> *The services were not provided for personal, domestic or household use or consumption.*

That, of course, is not the question. Rather, it is whether the services were such as would ordinarily be acquired for such use or consumption.

[40] Given Mr Lear's pleading in paragraph [11], subsection 3(10) applies so that, for the purpose of this proceeding, it is presumed that Mr Lear was a consumer in relation to OzRods' services unless the contrary is proved. There is no proof to the contrary, so the presumption applies. Mr Lear was a consumer.

[41] In any event, I would find that the services Mr Lear acquired from OzRods were services ordinarily acquired for personal use or consumption. Mr Lear did not conduct a business of, for example, trading in classic vehicles or street machines and engage OzRods for the purposes of such a business. He acquired the vehicle originally for his own personal use and enjoyment and he engaged OzRods to modify it so that he could use and enjoy it in additional ways, including by entering it into car shows. That was, in essence, his hobby. I have no doubt that many owners of such cars acquire, use them and have them modified for similar personal use. In order to do so, they acquire services of the kind offered by OzRods. Thus, those services are "commonly" or "really" acquired for

personal use or consumption: see *Bunnings Group Ltd v Laminex Group Ltd* (2006) 153 FCR 479, at paragraphs [81] to [82], where the proper approach to this section is elucidated.

[42] Mr Lear, therefore, acquired OzRods' services as a consumer. The result is that the statutory guarantees under ss 60 and 61 of the *ACL* apply. OzRods breached each of those guarantees.

Misleading or deceptive conduct

[43] Finally, on the issues of liability, I should address Mr Lear's claim that OzRods engaged in misleading or deceptive conduct. It will be recalled that that claim is based on the representations that Mr Brewer made to Mr Lear that induced Mr Lear to engage OzRods to do the modifications to his car. As pleaded in the statement of claim, those representations were that:

(a) OzRods held the requisite skills and experience to deliver the high degree of detail and quality of workmanship that Mr Lear required; and

(b) Mr Lear would be very impressed by the overall performance and finish of the vehicle once the services were complete.

[44] I described earlier Mr Lear's evidence about this conversation. Mr Brewer did not, of course, say exactly what the pleading describes. However, Mr Lear had told Mr Brewer that he wanted an elite show car that he could drive, namely a street show car. Mr Brewer's statements that OzRods could do all the necessary work in house and that they had all the skills under one roof, in my view are to the same effect as the first alleged representation. His statement that Mr Lear would be very impressed by the finished car is to similar effect as the second representation.

[45] I am satisfied that OzRods made representations to the effect pleaded. I am also satisfied that Mr Lear relied on them, among other things, in deciding to contract with OzRods.

Were the representations misleading or deceptive?

[46] Were the representations misleading or deceptive? As for the first, there is, of course, no direct evidence about the skills and experience of OzRods and its employees. Indeed, the absence of records about the skills of the employees who undertook the mechanical works was the subject of criticism by Dr Hope. But the nature and extent of all the defects in both the mechanical and the bodywork in the completed car is a strong indication either that the skills of the employees undertaking the work were deficient or that, regardless of their skills and experience, they did not apply them adequately in undertaking the work. In my view, a representation such as this implies that the skills and experience will be properly applied in undertaking such work. It would be misleading or deceptive were that not the case. I find that the representation was misleading or deceptive. The result of the works demonstrates to me that OzRods employees did not have or use appropriate skills or experience to do the works.

[47] The second alleged representation is, of course, a representation as to the future. As such, under s 4 of the *ACL*, if a person makes a representation with respect to any future matter and the person does not have reasonable grounds for making the representation, the representation is taken, for the purposes of the *ACL*, to be misleading.

Furthermore, for the purposes of applying that provision in relation to a proceeding concerning a representation made with respect to a future matter by a party to the proceeding, that party is taken not to have had reasonable grounds for making the representation unless evidence is adduced to the contrary.

[48] Of course, in this trial the defendant did not call any evidence to show that it had reasonable grounds for making the representations. Indeed, it did not even plead that it had such grounds, nor what those grounds might have been. Therefore, it is taken not to have had such grounds and the representations are taken to be misleading. Therefore, for OzRods to make that representation was misleading or deceptive conduct, contrary to s 18 of the *ACL*.

[49] I find that Mr Lear relied on each representation in deciding to engage OzRods to do the modifications to his car.

Damages

[50] I now turn to the question of damages. Mr Lear claims damages for each cause of action.

Damages for breach of contract

[51] For the breaches of contract, including the breaches of the implied guarantees, damages should, as closely as possible, put Mr Lear into the position in which he would have been if the breaches had not occurred. In this case, he would have been in the position that, at the end of the modifications and the works, he would have owned a properly modified and safe vehicle that was suitable for him to drive on public roads and to enter into car shows as a street show car. To put him into that position now, the effect of the evidence of Dr Hope and Mr Webb is that he will almost have to have the works started again from scratch: for which, of course, he will have to pay a further substantial amount of money.

Mr Phie

[52] Mr Corey Phie is an automotive engineer with a certificate III in automotive refinishing, as well as a motor vehicle painter. He has considerable experience in automotive restoration and, since 2012, has owned his own business, known as Street Elite Industries. It appears that it operates essentially a similar business to that of OzRods.

[53] Mr Phie inspected Mr Lear's car in August 2017. He has since read the reports of Mr Webb and Dr Hope and he said that he agrees with their conclusions. He has categorised the main defects as:

(a) bodywork and paintwork;

(b) chassis and fabrication;

(c) brakes and suspension; and

(d) electrical works.

[54] His evidence, in a report that he produced and that is document 7 in the trial bundle, was as follows:

> To rectify the body and paintwork on the vehicle, I recommend that the whole vehicle would have to be fully disassembled of all components and parts so that it could be put into an acid tank to remove all paint and body filler. The reason for the process is that, as mentioned by Mr Owen Webb, that the build-up and microns is at a very large scale. The safest way to remove all this product is in an acid tank. I believe that sandblasting would not be appropriate or preferred method for removing that amount of product, as it would likely damage the panels on the vehicle. The positive of the acid dipping is that it would also treat all the rust, which would also be evident in this type of vehicle due to the age. I believe that the chassis and fabrication work done is really at a substandard level and unsafe, as mentioned by Dr Ray Hope in his report. I recommend that these issues should be rectified by building a new chassis with all new components and parts, including all the right braking and suspension systems for this vehicle, which would be needed to resolve any safety concerns and for this vehicle to pass an engineering inspection.

[55] He concludes that to rectify each individual defect identified would be nearly impossible and really could surpass the cost of a quote to rectify in the manner that he suggests. In his opinion, a full rebuild is the best and most cost-effective way to resolve the issues surrounding the vehicle, as identified in the reports. Mr Phie provided, in a quote attached to his report, a detailed description of the works that would be required to rebuild the vehicle afresh. The total estimate for those works is $471,240, including GST.

[56] I accept Mr Phie's evidence. The works for which Mr Lear has paid OzRods are essentially worthless. It would be necessary, in order to rectify the defects, effectively to start again from scratch. In order for damages to put Mr Lear as nearly as possible in the position in which he would have been if OzRods had not breached the contract, damages should be awarded in the amount it is estimated to cost him to restore the vehicle to the appropriate standard: that is, $471,240.

Damages for misleading or deceptive conduct

[57] Damages for misleading or deceptive conduct should be determined differently. They should, in essence, be sufficient to put Mr Lear in the position in which he would have been if the conduct had not occurred. His pleaded case is that he would not have engaged OzRods to undertake the works if it were not for the representations. Instead, he would have engaged another company to do so.

[58] I am not satisfied that that is the case. Mr Lear was already impressed by OzRods, having seen vehicles on which they had worked outside their premises, in car magazines and possibly in car shows. He had a long conversation with Mr Brewer, and a week or so earlier he had had a preliminary discussion with a Mr Silich. Both conversations, but particularly that with Mr Brewer, no doubt impressed him with their knowledge of car restoration and show cars in particular. I consider that, even if Mr Brewer had not made the particular misleading representations, it is likely that Mr Lear would nevertheless have engaged OzRods to do the work. While it is possible that he would have instead also spoken to other companies, and perhaps engaged another, I consider that it is more probable than not that he would have engaged OzRods in any event. In that case, he would have been in the same position as he now is: that is, he has paid (and he would still have paid) a total of $434,263.80 to OzRods and has received in exchange an extremely substandard, unsafe and inoperable vehicle.

[59] Therefore, I am not satisfied that Mr Lear has in fact suffered any loss as a result of OzRods' misleading or deceptive conduct. If I were wrong in that conclusion though, given my conclusion that the works are worthless, his loss would be the amount he has paid OzRods; namely, $434,263.80.

[60] The upshot is that Mr Lear should be awarded damages for breach of contract but not for misleading or deceptive conduct.

Interest

[61] I turn to interest. In his statement of claim, Mr Lear claims interest on damages, pursuant to s 59 (although it is clearly intended to refer to s 58) of the *Civil Proceedings Act* 2011. Under s 58, the Court may include, in a judgment amount, interest at an appropriate rate on part or all of the amount and for part or all of the period between the date when the cause of action arose and the date of judgment.

[62] Had I awarded damages for misleading or deceptive conduct, I would have awarded interest on those damages, at 4% per annum, from the date that Mr Lear finally collected the vehicle from OzRods, which was 17 June 2017, to today. That would amount to $120,935.95.

[63] The damages for breach of contract are based upon the current cost of modifying and restoring the vehicle at this stage. On one view, Mr Lear should not have any interest on that cost, as he has not yet had to pay for those works. But on another view, he has suffered at least a substantial portion of that loss since he collected the vehicle, at least insofar as he has already paid most of that amount that is now required to put him into the appropriate position.

[64] I consider it appropriate, in those circumstances, to award interest on part of the damages for breach of contract, that is equivalent to the money that Mr Lear has paid to OzRods. I shall therefore include, in the judgment sum, interest in the sum of $120,935.95, to which I have already referred.

[65] The plaintiff claims costs of the proceeding, to which he is clearly entitled.

Orders

[66] Subject to receiving any submissions to the contrary, the orders I propose to make are that:

(a) there be judgment for the plaintiff in the sum of $555,199.75, including interest in the sum of $120,935.95;

(b) the defendant pay the plaintiff's costs of the proceeding.

Post script

[67] Having delivered the above judgment, the plaintiff's solicitors informed my Associate, later the same day, that I appeared to have made an error in calculating the total amount of the judgment. The amount of $555,199.75 comprises the amount that Mr Lear paid to OzRods plus interest on that amount, whereas in my reasons above I intended to give judgment for the amount needed to rectify the vehicle ($471,240), plus interest on the

amount that he had paid to OzRods, such interest totalling $120,935.95. Those sums total $592,175.95.

[68] I agree that I erred in calculating the proper amount of the judgment. Before the judgment was issued formally, I shall correct that error under rule 388. The judgment will therefore be for $592,175.95, including interest in the sum of $120,935.95.