



(Disputes Tribunals Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court: Marton

Case number: CIV-2015-034-000011

APPLICANT **Bruce Campbell and Patricia Loveridge**
5 Oxford Street
Marton 4710

RESPONDENT **Wanganui Motors 1963 Limited**
Att Mark Quirk/Murray O'Hara
PO Box 86
Wanganui 4500

The Tribunal hereby orders:

Wanganui Motors 1963 Limited is to pay Mr Bruce Campbell and Ms Patricia Loveridge \$6,000 on or before Friday 28 August 2015.

**Reason
Background**

1. Mr Bruce Campbell and Ms Patricia Loveridge purchased a 2014 Ford Kuga Titanium Ecoboost AWD (Ford Kuga Titanium) vehicle from Wanganui Motors 1963 Limited on 16 April 2014.
2. Mr Bruce Campbell and Ms Patricia Loveridge contend that they purchased the vehicle on the understanding that its fuel economy would be 7.7 litres per 100km based on the vehicle window card, and what Mr Bruce Campbell was told by Mr Murray O'Hara, Sales Manager for Wanganui Motors 1963 Limited.
3. Mr Murray O'Hara denies that he had told Mr Bruce Campbell that the vehicles fuel economy would be around 7.7 litres per 100km.
4. After the first few months the vehicles fuel economy was averaging only 12.9 litres per 100km.
5. Mr Bruce Campbell contacted Wanganui Motors 1963 Limited who stated that there was a "bedding-in" period and fuel efficiency will improve with more mileage.
6. Wanganui Motors 1963 Limited after receiving advice from Ford New Zealand advised Mr Bruce Campbell that the best fuel economy the vehicle could achieve was 100km.
7. When Mr Bruce Campbell and Ms Patricia Loveridge received no satisfaction they traded Ford Kuga Titanium and purchased a more economical vehicle from Wanganui Motors 1970 Ltd, trading as Robertson Holden on 15 December 2014. Mr Bruce Campbell and Ms Patricia Loveridge were given \$37,750 as the trade in value for the vehicle.

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8. Mr Bruce Campbell and Ms Patricia Loveridge travelled approximately 11,000 kms in the Ford Kuga Titanium before they traded it in.
9. Mr Bruce Campbell and Ms Patricia Loveridge claim \$8,250.00 from Wanganui Motors 1963 Limited, calculated as the loss they incurred in trading in the Ford Kuga Titanium; i.e. the monetary difference between the purchase price and the trade in value received.

The Law

10. The relevant law is the Consumer Guarantees Act 1993 (CGA), the Contractual Remedies Act 1997(CRA) and the Fair Trading Act 1986 (FTA).
11. The transaction is governed by the CGA because the good supplied by Wanganui Motors 1963 Limited to Mr Bruce Campbell and Ms Patricia Loveridge was of a kind ordinarily acquired for personal use. Section 6 of the CGA provides a guarantee that goods supplied to a consumer must be of acceptable quality, fit for the purpose for which goods of this type are commonly supplied, acceptable in appearance and finish, free from minor defects, safe and durable.
12. Section 8 of the CGA provides a guarantee that the goods supplied must be reasonably fit for any particular purpose that the consumer makes known at the time of making the contract. This does not apply where the circumstances show that the consumer does not rely on the supplier's skill and judgement or it would be unreasonable to do so.
13. The CGA provides that where a consumer has the right of redress against the supplier in respect of the failure of any goods to comply with a guarantee, then the consumer may require the supplier to remedy the failure within a reasonable time. If a supplier fails to remedy the good within a reasonable time then the consumer can have the failure remedied elsewhere and obtain from the supplier all reasonable costs incurred or reject the goods. For the consumer to be able to reject the goods, the fault must not be able to be remedied or be of a substantial character.
14. Section 20, CGA provides that the right to reject the goods shall not apply if that right is not exercised within a reasonable time. Reasonable time is defined as "a period from the time of supply of the goods in which it would be reasonable to expect the defect to become apparent having regard to the type of goods, their likely use by the consumer, the length of time for which it is reasonable for them to be used and the amount of use to which it is reasonable for them to be put before the defect becomes apparent
15. The transaction is governed by the CRA if a party has been induced to enter into a contract by a misrepresentation.
16. Section 6 of the CRA provides that a party shall be entitled to damages if they have been induced to enter into the contract by a misrepresentation, whether innocent or fraudulent, made to them by or on behalf of the other party to the contract.
17. Section 13 (a) of the FTA provides –
"No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services,—

(a) make a false or misleading representation that goods are of a particular kind, standard, quality, grade, quantity, composition, style, or model, or have had a particular history or particular previous use:

Issues

18. Was the 2014 Ford Kuga Titanium Ecoboost AWD vehicle capable of having a fuel economy of 7.7 litres per 100km?

19. If not, did Wanganui Motors 1963 Limited misrepresent to Mr Bruce Campbell and Ms Patricia Loveridge the fuel economy of the Ford Kuga Titanium?
20. If so, what remedy, if any, is available to Mr Bruce Campbell and Ms Patricia Loveridge?

Decision

Was the 2014 Ford Kuga Titanium Ecoboost AWD vehicle capable of having a fuel economy of 7.7 litres per 100km?

21. I am satisfied that the 2014 Ford Kuga Titanium Ecoboost AWD vehicle under normal running conditions is not capable of achieving a fuel consumption of 7.7 litres per 100 km.
22. On or about 6 November 2014 Mr Murray O'Hara told Mr Bruce Campbell that Ford Motor Company of NZ Limited had advised that the 2014 Ford Kuga Titanium Ecoboost AWD vehicle would only do around 9.4 km per 100kms. This is the fuel economy the vehicle was achieving for Mr Bruce Campbell and Ms Patricia Loveridge after they had completed 8000kms.
23. The evidence from Ford Motor Company of NZ Limited persuades me of this.

If not, did Wanganui Motors 1963 Limited misrepresent to Mr Bruce Campbell and Ms Patricia Loveridge the fuel economy of the Ford Kuga Titanium?

24. I find that Wanganui Motors 1963 Limited did misrepresent the fuel economy of the Ford Kuga Titanium to Mr Bruce Campbell and Ms Patricia Loveridge.
25. I am satisfied that this was an innocent misrepresentation by Wanganui Motors 1963 as they relied on incorrect information given to them by the Ford Motor Company of NZ Limited.
26. There was conflicting evidence given in respect of whether Mr Murray O'Hara and Mr Mark Quirk, Manager, Wanganui Motors 1963 Limited told Mr Bruce Campbell that the Ford Kuga Titanium would have a fuel economy of 7.7 litres per 100 km.
27. Mr Bruce Campbell contends he was told this by both Mr Murray O'Hara and Mr Mark Quirk. This claim was denied by Mr Murray O'Hara and Mr Mark Quirk.
28. Unfortunately I have been unable to resolve this conflicting evidence and therefore this evidence cannot be relied on.
29. Notwithstanding the above, I am satisfied that the fuel economy certificate did misrepresent the fuel economy that the vehicle was capable of achieving. While there was a disclaimer on the notice stating that fuel consumption will vary from that shown, as it is dependent on vehicle condition, any vehicle modification, driving style, traffic condition and distance travelled, the fuel economy stated irrespective of the disclaimer is incorrect.
30. The evidence of the Ford Motor Company of NZ Limited that the expected fuel economy of the Ford Kuga Titanium was 9.4 litres per 100 km persuades me that even taking into account the factors that could contribute to fuel economy of a vehicle, that the statement that the fuel economy of the Ford Kuga Titanium was 7.7 litres per 100 km was incorrect and a misrepresentation, irrespective of factors that could contribute to a lower fuel economy.
31. Interestingly a fuel economy of 9.4 litres per 100km is what Mr Bruce Campbell and Ms Patricia Loveridge did achieve after 8000 km.
32. A misrepresentation is a false statement of fact made by one party to a contract that induces or causes the other party to enter into the contract in question. Misrepresentations can be made negligently or innocently.

33. In deciding whether there has been a misrepresentation then the Tribunal needs to distinguish between what can be regarded as "mere puffery" and representations which are statements of fact.
34. Puffery serves to "puff up" an exaggerated image of what is being described. I am satisfied the fuel card was a statement of fact and that Mr Bruce Campbell and Ms Patricia Loveridge were induced to purchase the vehicle by this misrepresentation.
35. Wanganui Motors 1963 Limited claim that Mr Bruce Campbell had researched his requirements and asked for Wanganui Motors 1963 Limited to arrange a test drive of the Ford Kuga Titanium and claimed that at no time did Mr Bruce Campbell express an interest or discussed any other make or model.
36. Mr Bruce Campbell stated that he did not take the Ford Kuga Titanium for a test drive and the only vehicle he drove was a Ford Kuga Trend the vehicle model he originally was interested in purchasing.
37. Mr Bruce Campbell claims he purchased the Ford Kuga Titanium when there was not a Ford Kuga Trend readily available and was told and/or read that both vehicles had the same fuel economy rating.
38. Wanganui Motors 1963 Limited deny that Mr Bruce Campbell discussed with them or made known to them that the fuel economy of a vehicle was important to him or make it known to Wanganui Motors 1963 Limited that he required the vehicle he purchased to achieve the published fuel economy rating.
39. Mr Bruce Campbell denied this claim and contends that the matter of fuel consumption was discussed.
40. I am satisfied that whether Mr Bruce Campbell discussed with Wanganui Motors 1963 Limited the matter of fuel economy or not is irrelevant.
41. What is relevant is that there was a written statement contained in the vehicle window card giving the fuel economy of the vehicle.
42. Mr Bruce Campbell and Ms Patricia Loveridge were entitled to rely on this statement and I am satisfied were induced to purchase the Ford Kuga Titanium because of that statement.
43. I am satisfied that the fuel economy rating was a statement of fact despite the disclaimer conditions.
44. To repeat, despite the disclaimer conditions, I find that the displayed fuel economy rating was incorrect and misleading given that the Ford Motor Company of NZ Limited have since stated that the Ford Kuga Titanium would do at best about 9.4 litres per 100km.

If so, what remedy, if any, is available to Mr Bruce Campbell and Ms Patricia Loveridge?
45. Mr Bruce Campbell and Ms Patricia Loveridge have contended that there were remedies available to them pursuant to the Consumer Guarantees Act 1993 or the Contractual Remedies Act 1997 or the Fair Trading Act 1986.
46. I am satisfied that there is no remedy available pursuant to the CGA.

47. I find that the Ford Kuga Titanium was of acceptable quality as defined by s 8 of the Consumer Guarantees Act 1993 and therefore no breach by Wanganui Motors 1963 Limited of s 6 of the Consumer Guarantees Act 1993.
48. I find that Wanganui Motors 1963 Limited are in breach of s6 of the Contractual Remedies Act 1997 by misrepresenting the fuel economy rating of the Ford Kuga Titanium and s13 (a) of the Fair Trading Act 1986 by falsely representing that the fuel economy rating of the Ford Kuga Titanium was of a particular standard.
49. I find that Mr Bruce Campbell and Ms Patricia Loveridge are entitled to damages of \$6,000.00 calculated as the proportion of the loss they suffered up until the point that the vehicle achieved a fuel economy of 9.4 litres per 100 km. This point was when the vehicle had travelled 8,000 km. At that time Mr Bruce Campbell and Ms Patricia Loveridge could have traded their vehicle in without incurring any further loss in value based on kilometres travelled.
50. I am satisfied up until that time Mr Bruce Campbell and Ms Patricia Loveridge were relying on assurances from Wanganui Motors 1963 that the fuel economy of the Ford Kuga Titanium would improve. This was correct until it reached the standard of 9.4 litres per 100 km. This is the standard that Ford Motor Company of NZ Limited advised was probably the best that could be achieved.
51. The loss in value equates to 0.75 cents per km. Therefore the loss in value up to 8000 km is \$6,000.00. (8,000 km x 75 cents per km =m \$6,000.00.)
52. Damages of \$6,000.00 are awarded pursuant to S 6 of the Contractual Remedies Act 1997 and S 43 (f) of the Fair Trading Act 1986.

Referee: J. S. Dryden
Date: 7 August 2015





Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available or a mistake was made.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 28 days of the decision having been made. If you are outside of time, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings.

A Notice of Appeal may be obtained from the Disputes Tribunal website or from any Tribunal office. The Notice must be filed at the office of which the Tribunal that made the decision, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. If you are outside of time, you must also complete an Application for Leave to Appeal Out of Time.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: www.justice.govt.nz/fines/civil-debt

Help and Further Information

Further information and contact details are available on our website: www.justice.govt.nz/tribunals/disputes-tribunal.