

22 AUG 1989

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Decision No: Ch 21/89
M.V.D. No: 49/89IN THE MATTER of the Motor Vehicle
Dealers Act 1975ANDIN THE MATTER of a disputeBETWEEN [REDACTED]PurchaserAND [REDACTED]DealerBEFORE THE CHRISTCHURCH MOTOR VEHICLE DISPUTES TRIBUNALMr J.G. Matthews - Chairman
Mr H.G. Hunt
Mr A.T.F. BeereHEARING at CHRISTCHURCH on the 2nd day of May 1989APPEARANCES[REDACTED] - in person
[REDACTED] - for the dealerDECISION

[REDACTED] bought a 1982 Ford Econovan from the dealer on 27 October 1988 for the sum of \$10,999. He arranged finance on the van so he did not hold the ownership papers and he did not see them before he purchased the van. In making his purchase he relied on a statement on the window card to the effect that it was a one owner vehicle. He was looking for a one owner vehicle with low kilometres. When he received the papers, having paid off the hire purchase early, he found that it showed there were in fact two previous owners, namely:

1. [REDACTED],
Christchurch, and
2. [REDACTED],
Christchurch.

In this circumstance [REDACTED] complained to the Tribunal that he should be compensated for the difference in value between a two owner vehicle and a one owner vehicle, and this is a matter which is covered by section 101. The allegation made by the

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purchaser is essentially that the vehicle is substantially different from the vehicle as represented in the notice attached to it.

For the dealer, [REDACTED] said that the vehicle had been advertised as a one owner vehicle because the [REDACTED] [REDACTED] were really the same body under a different name. [REDACTED] was abolished by the [REDACTED]. The [REDACTED] was

incorporated under the State Owned Enterprises Act by listing in the Schedule to that Act under the provisions of the State Owned Enterprises Amendment Act 1988. The State Owned Enterprises Act contains provisions in section 23 onwards for the transfer of assets from Ministries to new Corporations at the option of the Corporation. Clearly, the Corporation elected here to take over this asset from the Ministry and accordingly the van was transferred, that transfer being registered on 2 June 1988.

Although the matter is a reflection of a change in Government policy from Crown ownership of assets to Crown ownership of shares in asset-owning Corporations, the legal situation is that the Corporation is a separate legal entity from the Ministry. The Motor Vehicle Dealers Act defines the word "owner" in section 2 and says that it "...means the person lawfully entitled to possession thereof".

In our view there were two owners as thus defined, namely the Ministry and then later, the Corporation, these being separate from each other as we have said. Furthermore, we note that under section 18 of the Transport Act 1962, any change in ownership of a motor vehicle which takes place by operation of law is deemed to be a sale or dispossession of it for the purpose of that Act. It was thus necessary for this change of ownership to be registered, and we find that there were two previous owners of this vehicle. Accordingly, the vehicle as sold does differ from the vehicle as described on the window card.

The question under section 101 is whether in this case, this vehicle was substantially different from the vehicle as represented in the notice. If it was we have power to rescind the contract or award compensation. If not, the complaint must be dismissed.


[REDACTED] told us that he was unable to give any indication of how much difference in value the van might have had with two owners instead of one. He said he thought it would be a few hundred dollars but really he was relying on a general view he had, and admitted in evidence that he had not made any inquiries at all in relation to this particular van.

[REDACTED] told us that in his view the van had no difference in value whatsoever, even if it were a two owner van which, of course, he denied anyway.

This issue has come before the Tribunal a number of times before and in some cases the evidence has shown that there was clearly a difference in value and in other cases, not so. We have made inquiries in relation to the value difference of vans of this mileage and age in Christchurch, and based on those inquiries and our experience in similar matters, we are satisfied that there was no difference in value in this van with two owners compared with one owner. This vehicle is rather different from, for example, late model low mileage saloon cars, where a distinct difference can often be evidenced.

In these circumstances we find that whilst there was a difference between the vehicle as described on the window card, that difference was not substantial and the purchaser has not suffered a loss. We therefore dismiss the complaint.

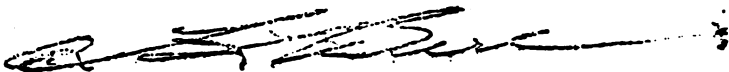
DATED at CHRISTCHURCH this 30th day of May 1989.



J.G. Matthews



H.G. Hunt



A.T.F. Beere