

15 FEB 1990

Decision No. AK102/89

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Reference No. MVD 195/89IN THE MATTER of the Motor Vehicle
Dealers Act 1975ANDIN THE MATTER of a disputeBETWEENPurchaserANDDealerBEFORE THE AUCKLAND MOTOR VEHICLE DISPUTES TRIBUNALMessrs H T D Knight (Chairman)
R G Lewis
A E EntingHEARING at AUCKLAND on the 21st day of September 1989APPEARANCESNo appearance of purchaser
[REDACTED] for dealerDECISION

The purchaser in this matter did not appear. The licensee was represented by [REDACTED]. There also appeared as a witness for [REDACTED], the previous owner of the vehicle.

The complaint arose out of the sale and purchase of a 1985 Toyota Hilux double-cam diesel utility. The purchaser's complaint was that there were outstanding licence fees amounting to \$947.54 and there was a letter dated 9 June 1989 from the Department claiming that amount of money. That appeared to be the outstanding amount without any penalty charges which the Department could impose if they so wished.

It also apparently does not include an interest charge which may yet be added to it if it is not paid.

The licensee gave evidence that the previous owner had paid to the purchaser a cheque for the amount that he considered himself responsible for, namely \$246.45 leaving a balance outstanding of \$701.09. The licensee explained that he had gone to a lot of trouble without any profit in respect of this sale. In fact, it was his case that the vehicle had not been sold by him at all. He had introduced the purchaser to the previous owner, they had made their arrangements in respect of the sale, and the licensee had then been able to sell to the previous owner a new truck.

The licensee stated that he was asked if he would write an invoice for the purchaser so that the purchaser was able to obtain finance from [REDACTED] who would not have financed the vehicle if it had not been a sale through a licensee.

Therefore, an invoice was drawn up, and the licensee has signed the invoice as a "for sale on behalf". He then said a cheque received for the full amount for the utility was paid by the purchaser to the licensee. The invoice showed a sale for \$22,000 from [REDACTED] to the purchaser.

The fact that it is a sale on behalf does not of course exclude the vehicle from the provisions of the Act. The Tribunal is of the view that the licensee is unable to document a sale which he explained would have been in his vehicle register for one purpose, that is obtaining finance, and not accept responsibility for it as a sale under the terms of the Motors Vehicle Dealers Act 1975.

The next question is whether or not the licensee in this situation is responsible for the other \$701.09 of licence fees? Section 89 of the Motor Vehicle Dealers Act 1975 states that in every contract of sale by a licensee, whether as principle or agent, there shall be an implied term that the motor vehicle be free of any charge or encumbrance in favour of any third party, other than one that has been disclosed to the purchaser.

The licensee explained to the Tribunal that if he had in fact been doing what he considered to be a proper sale rather than what probably he would describe as a dummy sale, he would have in fact asked the previous owner about the question of roaduser charges and the licence.

Because he did not consider himself to be actually involved in the transaction, he did not ask whether or not the vehicle was clear.

The previous owner gave evidence that he was unaware of the fact that a licence was required. However, section 5 of the Road User Charges Act 1977 provides that this type of motor vehicle requires to have a distance licence.

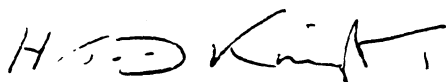
The Act provides that the current owner is responsible, that is for the purpose of collection by the Transport Department. It also provides in section 23(a) that it is an offence to operate a motor vehicle on the road in contravention of sections 5 and 6, that is, without a licence. Therefore the vehicle is not capable of being operated on a road legally unless the balance of \$947.54 owing to the Department is in fact paid. The purchaser has received part of this amount so that the only amount that he now requires is \$701.09.

The fact that the vehicle will not be able to operate on the road at all means that it is not only an amount of money that has to be paid by the previous owner, but it also must be paid before the vehicle is in fact operable. The Tribunal is therefore of the view that this constitutes an encumbrance in relation to the vehicle, i.e. it has to be paid before the vehicle can legally travel on the road.

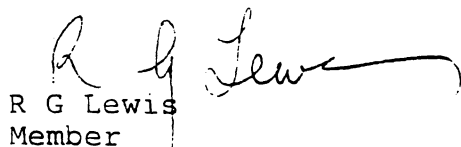
The definition of encumbrance in accordance with the Oxford Dictionary reads that an encumbrance is an "encumbered state or condition; trouble, molestation." Another definition is "that which encumbers; a burden, clog, a useless addition, an annoyance; a claim, a lien, liability attached to property as a mortgage, etc". The Tribunal is of the view that the claim relating to this vehicle is an encumbrance; it is a liability or burden and as long as it exists the vehicle is unable to be used on a road.

Therefore it is a responsibility of the licensee, in the Tribunal's view, and the vehicle should not have had this encumbrance on it at the time of sale, pursuant to section 89 of the Act. Therefore there is an order that the licensee should pay to the purchaser the sum of \$701.09.

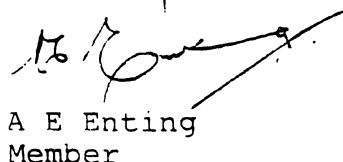
DATED at AUCKLAND this 25th day of October 1989



H T D Knight
Chairman



R G Lewis
Member



A E Enting
Member