

CITATION: *JMT Builders Pty Ltd v Bikes Top End Pty Ltd t/a Cyclone Motorcycles*
[2014] NTMC 010

PARTIES: JMT BUILDERS PTY LTD
v
BIKES TOP END PTY LTD trading as
CYCLONE MOTORCYCLES

TITLE OF COURT: Local Court

JURISDICTION: Civil

FILE NO: 21311993

DELIVERED ON: 5 June 2014

DELIVERED AT: Darwin

HEARING DATES: 25 and 26 March 2014

JUDGMENT OF: JMR Neill

CATCHWORDS:
When evidence might support a claim different from the claim pleaded – whether different claim inherent in pleaded claim or essentially a difference in particulars; interaction between section 165 Consumer and Fair Trading Act and Motor Vehicles Act.

REPRESENTATION:

Counsel:

Plaintiff: Mr Crawley
Defendant: Mr McConnel

Solicitors:

Plaintiff: Bowden McCormack
Defendant: Hunt & Hunt

Judgment category classification: B
Judgment ID number: 010
Number of paragraphs: 79

IN THE COURT OF
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No.

BETWEEN:

JMT BUILDERS PTY LTD
Plaintiff

AND:

**BIKES TOP END PTY LTD trading as
CYCLONE MOTORCYCLES**
Defendant

REASONS FOR JUDGMENT

(Delivered 5 June 2014)

Mr JOHN NEILL SM:

Introduction

1. The Plaintiff is a building corporation operated by its principal Bradley Carl Hagen (“Hagen”). The Defendant corporation carries on the business of selling mainly motorcycles, but also other vehicles such as recreational off road vehicles, including the Ranger Diesel Crew 900 four wheel six seater motor vehicle (“the vehicle”).
2. Hagen became aware of the vehicle through his business and personal relationships with Mr Stephen Harris (“Harris”) and Mr Scott Smith (“Smith”), both of whom owned and operated off road vehicles of this type, purely for recreational purposes. Hagen was impressed by the characteristics of the vehicle. He decided he wanted to buy one, in part for his personal recreational use but mainly for his business. His business operated in bush locations where it was difficult to access work sites in

the wet season. He believed the vehicle would be able to access these work sites in these conditions.

3. Hagen attended at the Defendant's premises in about May 2012 where he spoke with an employee of the Defendant Mr David Curtis ("Curtis"). Hagen purchased the vehicle on behalf of the Plaintiff and on Curtis's recommendation he also purchased an "NT registration kit" ("the rego kit") to assist in enabling the vehicle to be registered on some basis. The Plaintiff took delivery of the vehicle on 21 August 2012.
4. Hagen liaised with the Northern Territory Motor Vehicle Registry ("MVR") but in due course was unable to obtain even conditional registration of the vehicle. During this time he used the vehicle off road for purely recreational purposes.
5. When the Plaintiff became aware it could not register the vehicle even conditionally it sought to rescind the contract, return the vehicle to the Defendant and recover the purchase price of the vehicle. The Defendant declined to accept the rescission of the agreement, which led to the institution of these proceedings. The Plaintiff has not used the vehicle since the purported rescission of the contract.

The Pleadings

6. The Plaintiff pleaded that Hagen explicitly told Curtis he wished to purchase the vehicle only if it was capable of being registered unconditionally on Northern Territory roads ("the purpose") – paragraph 3 of the Statement of Claim.
7. The Plaintiff pleaded that Curtis on behalf of the Defendant represented that the vehicle could be registered if the Plaintiff also purchased and installed the rego kit and, by implication, that such registration would be unconditional - paragraph 4 ("the representations") and that this was a

false or misleading representation and constituted misleading or deceptive conduct - paragraph 6 (“the marketing representation”).

8. The Plaintiff pleaded that it was induced to purchase the vehicle by both the representations and the marketing representation and in reliance on those the Plaintiff paid a total of \$27,840 for both the vehicle and the rego kit, and it took delivery of the vehicle on 21 August 2012 - paragraph 7 of the Statement of Claim.
9. The Plaintiff pleaded that both the representations and the marketing representation were untrue in that the vehicle was never capable, even with the rego kit installed, of being registered unconditionally for use on Northern Territory roads – paragraph 9a of the Statement of Claim.
10. The Plaintiff did not plead any other purpose for the its purchase of the vehicle than the purpose, namely its being capable of unconditional registration for use on Northern Territory roads - paragraph 3 of the Statement of Claim. The Plaintiff pleaded the vehicle was not fit for the purpose - paragraphs 5, 6 and 9 of the Statement of Claim.
11. The Defendant traversed the Plaintiff’s claims and pleaded that Curtis represented to Hagen that conditional, not unconditional, registration of the vehicle might be obtainable if the rego kit was installed but even then there was no guarantee – paragraph 4 of the Amended Defence. The Defendant denied ever representing that the vehicle could be registered unconditionally – paragraph 3 of the Amended Defence.
12. Quite separately from the other pleadings, the Plaintiff pleaded its reliance on section 165(1) of the *Consumer Affairs and Fair Trading Act* (“CAFTA”) which provides that it is a condition of the sale of a motor vehicle by a dealer that the vehicle is of a standard fit to meet the requirements of the *Motor Vehicles Act* with respect to registration. The Plaintiff pleaded that the vehicle was a motor vehicle for the purpose of

s.165 and the Defendant was a dealer who sold the vehicle thereby breaching the statutory condition because, the Plaintiff said, it was not of the required standard – paragraphs 8 and 9b of the Statement of Claim.

13. The Defendant pleaded that section 165 of CAFTA did not apply to this sale – paragraph 8 of the Amended Defence. In the alternative, if it did apply the vehicle was of the required standard – paragraph 8A of the Amended Defence. In the further alternative, if section 165 did apply and if the vehicle was not of the required standard the Plaintiff had waived any right to terminate the contract for any breach of the section 165 implied condition of the contract because the Plaintiff had used the vehicle after delivery – paragraph 8B of the Amended Defence.

The Evidence

14. The hearing proceeded on 26 and 27 March 2014. Previously, the Plaintiff had filed an interlocutory application on 30 October 2013 seeking summary judgement of the proceeding on the basis of the section 165 CAFTA argument. That interlocutory application was not successful.
15. Hagen on behalf of the Plaintiff swore two affidavits in support of the interlocutory application, the first on 29 October 2013 and the second on 26 November 2013. These affidavits were also in evidence at the hearing.
16. In the first affidavit Hagen deposed to being told by Curtis that the vehicle could be registered if the Plaintiff purchased the rego kit. Hagen deposed that he was not told that any registration of the vehicle would be conditional only. He deposed that he ordered the vehicle and the rego kit on the basis of a representation that the vehicle with the rego kit could be unconditionally registered – paragraphs 5 and 7 of the first affidavit.
17. In Hagen’s second affidavit he deposed to driving the vehicle over a long weekend “for a few hours” to test its capabilities on rough and sandy terrain. He deposed to 17.4 hours of such use of the vehicle, covering 142

kilometres. He deposed to not knowing there would be any issue with obtaining registration and if he had been aware of that potential problem he would not have purchased the vehicle or in any event tested it before the registration was approved – paragraphs 4 to 8 inclusive.

18. A book of documents was tendered as exhibit P1. Document 11 is an email dated 12 September 2012 from Hagen to Curtis advising the Plaintiff could not get conditional registration and requesting the Defendant either sort out the problem with the MVR, or alternatively the Defendant refund the cost of the rego kit. Nothing was said at this point about rescinding the contract or returning the vehicle.
19. By email dated 13 September 2012 – document 13 - Hagen wrote to the Defendant and made the claim that when Hagen first inspected the vehicle he was advised by Curtis that the vehicle could be registered if the rego kit was also purchased and installed. Hagen appeared to be talking about unconditional registration.
20. By email dated 25 September 2012 – document 21 – Hagen wrote to the Defendant and demanded the Defendant organise unconditional registration for the vehicle or else legal proceedings would be commenced.
21. Document 27 in exhibit PI is a letter dated 4 October 2012 from Northern Territory Consumer Affairs to the Defendant. That letter summarises a complaint lodged by Hagen in respect of the vehicle. In the third dot point of the summary the claim is made that Hagen specifically asked the Defendant if the vehicle could be registered and he was told it could, if he also purchased and installed the rego kit.
22. The Plaintiff's claims in documents 21 and 27 were to the effect that it purchased the vehicle and the rego kit on the basis it, through Hagen,

expected and believed the vehicle with the rego kit installed would be capable of unconditional registration.

23. Item 29 in exhibit P1 is a letter dated 18 October 2012 from Bowden McCormack, lawyers for the Plaintiff. In the second paragraph of this letter the lawyers said they were instructed their client was induced into the contract for the sale of the vehicle by a representation by the Defendant's sales representative that the vehicle could be registered if the rego kit was also purchased and then installed. They said the vehicle was not able to be registered and therefore the Plaintiff was seeking a full refund of the purchase price of \$27,840. They appear to have been talking about unconditional registration.
24. There is some suggestion in the third paragraph of the letter from Bowden McCormack that the Plaintiff was complaining that the vehicle could not be conditionally registered either. However the Plaintiff's pleadings do not raise any such alternative position.
25. The letter went on to state in its third-last paragraph that the Plaintiff had made an alteration to the vehicle by relocating the air intake. The Plaintiff had also rust-proofed the vehicle. The letter stated that the Plaintiff considered those steps to be improvements but nevertheless it did not seek recompense for those improvements - it would accept the purchase sum of \$27,840 in full settlement of its claim, and it would return the vehicle upon receipt of the purchase price.
26. Hagen gave evidence in cross examination that he told Curtis he wished to drive the vehicle on the road. When asked whether he understood at that time that the availability of registration would depend on the use he intended to make of the vehicle, he denied this. He said: "No, I assumed I could register the vehicle for all purposes".

27. As cross examination proceeded it became clear that Hagen had known precisely which vehicle he intended to purchase and that he had not considered any others. I interrupted Mr McConnell's cross examination with a question of my own. I asked Hagen whether at the time of his discussion with Curtis prior to purchasing the vehicle, he was aware that conditional registration was the only registration potentially available for this vehicle. Hagen admitted he was aware of this.
28. Mr McConnell then further cross examined Hagen on this issue. He took him to his affidavit sworn 29 October 2013 and asked him if he understood what an affidavit was. Hagen answered that he understood he had to tell the truth in an affidavit. Mr McConnell took him then to paragraph 9 in that affidavit, where Hagen had deposed on oath that he did not learn conditional registration was the only registration available until after he had purchased and attempted to register the vehicle. Hagen then admitted in cross examination that he had always understood that unconditional registration was "unlikely".
29. Hagen provided no explanation or clarification either in cross examination or re-examination for this conflict in his evidence.
30. Hagen's friend Stephen Harris gave evidence. He owned a vehicle of the same sort as the vehicle purchased by the Plaintiff. He understood that off road vehicles of this type could not be registered. He was present when Hagen talked with Curtis about purchasing the vehicle. He heard Hagen tell Curtis he wanted to be able to drive the vehicle on roads to the extent necessary to access the beach for recreational purposes, and to access remote work sites. He heard Curtis tell Hagen that would be difficult to get registration for those limited uses on the road but "...if you have a good reason for it, it can be done".
31. Harris remembered this conversation well because he, Harris, was also interested in being able to register his off road recreational vehicle for

limited use on roads so as to avoid having to drive through salt water to access and drive on the beach. Harris had earlier given evidence that Hagen was his friend and had accompanied him on off road ventures of this type.

32. Scott Smith gave evidence. He was a friend of both Hagen and Harris. He too had an off road vehicle of the same type. Hagen had gone on off road ventures with him. Smith gave evidence that he too found it was a problem to access off road sites such as beaches, without driving on roads to some extent. He said he had discussed with Hagen his belief that he couldn't register his vehicle to use it on roads. He gave evidence Hagen told him he wanted to purchase the vehicle both for work and for recreational purposes.
33. Smith too was present when Hagen spoke with Curtis at the Defendant's premises. He heard the discussion between Hagen and Curtis about buying the rego kit. It was Smith's prior understanding that these types of off road vehicles could not be registered and although he did not hear Hagen or Curtis use the words "conditional" or "unconditional", Smith understood Hagen's discussion with Curtis about purchasing the rego kit occurred in the context of a means of achieving some sort of limited registration.
34. Curtis gave evidence in the Defendant's case. He had been a salesman employed by the Defendant for about 3 years. In relation to the sale of the vehicle and the rego kit he denied telling Hagen that the vehicle could be registered unconditionally if the Plaintiff purchased and installed the rego kit. Curtis said Hagen expressed an interest in trying to obtain registration to use the vehicle around bush communities in the wet season and that was why Curtis told him about the rego kit, and ended up selling it to him.
35. Curtis said the Defendant did not involve itself in obtaining registration of the vehicles it sold through its personnel. The customers were referred

to the MVR. Even so, he had some knowledge of requirements and processes at the MVR through his work in this industry including his reading bulletins issued by the MVR. Curtis could not recall details of his discussion with Hagen about what might be involved in getting the vehicle registered. He said overall he remembered his dealings with Hagen because he had presented as "...a very strong-minded individual" who seemed to be fully aware of what he wanted. He referred Hagen to the MVR and "assumed" Hagen understood the process.

36. Steven Armitage ("Armitage") gave evidence in the Defendant's case. He was the principal of the Defendant corporation. He confirmed the Defendant was a dealer for the purposes of CAFTA.
37. Armitage gave evidence that Hagen requested the contract for the sale of the vehicle be backdated for the purpose of some unspecified benefit to the Plaintiff. Armitage declined to do this.
38. Armitage gave evidence that the cheque provided by the Plaintiff for the purchase of the vehicle bounced - it was not honoured by the bank. When this was raised with Hagen he organised payment.

Findings

39. On the basis of the abovementioned claims made by or at the direction of Hagen, on the basis of Hagen's unexplained conflicting and irreconcilable evidence on affidavit and at the hearing, on the basis of Hagen's demeanour in giving his evidence and on the basis of the evidence of Harris, Smith, Curtis and Armitage, I find that Hagen was a witness lacking credibility. I am satisfied I should not accept any evidence of Hagen where it conflicts with or differs from the evidence of Harris, Smith, Curtis or Armitage, all of whom I am satisfied were credible witnesses.

40. I find that vehicles such as the vehicle the subject of these proceedings are sold not for use on public streets but for off road recreational activities.
41. I am satisfied on the balance of probabilities and I find that Hagen, and therefore the Plaintiff, was aware before he attended at the Defendant's premises and spoke with Curtis that vehicles such as the vehicle were not sold for use on roads.
42. I am satisfied on the balance of probabilities and I find that at the time of the purchase of the vehicle Hagen, and therefore the Plaintiff, knew the vehicle could not be unconditionally registered.
43. I am satisfied on the balance of probabilities and I find that all Hagen's dealings with the Defendant leading up to the purchase of the vehicle occurred against the background it could not be unconditionally registered and Hagen and Curtis were exploring some means of achieving conditional registration of the vehicle for limited use on roads, whether or not Hagen at the time used or even knew the terms "conditional" and/or "unconditional" in relation to registration.
44. I am satisfied on the balance of probabilities and I find that at the time of the purchase of the vehicle Hagen, and therefore the Plaintiff, knew the vehicle could not be registered even conditionally without some modifications and that is why Hagen agreed to purchase the rego kit.
45. I am satisfied on the balance of probabilities and I find that Hagen understood that even with the rego kit installed he would have to present a case to MVR to persuade it to grant him some limited form of registration— conditional registration - to use the vehicle on roads to any extent at all.

Consequences of These Findings

46. In the light of these findings the Plaintiff has failed to prove its case as pleaded, excluding the section 165 CAFTA issue which I shall return to consider later in these Reasons.
47. The pleaded case was that the Plaintiff had sought to purchase a vehicle of this type which could be unconditionally registered for use on roads, that Hagen told the Defendant's representative Curtis this, that Curtis represented that the vehicle with the rego kit installed could be unconditionally registered, that the Plaintiff relied on this representation in purchasing the vehicle, and that the representation was false or misleading.
48. The Plaintiff did not at any stage before or after the close of evidence seek to amend its case to plead a different case in the light of the evidence which emerged. Specifically, the Plaintiff did not seek to plead that achieving conditional registration, rather than unconditional registration, was the purpose made known to Curtis, that conditional registration was the subject of Curtis's representation to Hagen, that Hagen relied on this different representation in purchasing the vehicle, and that this different representation was false or misleading ("the alternative case").
49. Mr Crawley for the Plaintiff submitted that no amendment to the Plaintiff's pleadings was necessary. He submitted the evidence which emerged at the hearing could support the alternative case. He submitted that the difference between the case as pleaded and the alternative case essentially involved particulars rather than any new issue.
50. Mr Crawley sought to rely on the Decision of *Dare v Pulham* [1982] 148 CLR 658 at 664 where 5 Justices of the High Court said the following:

“Pleadings **and particulars** have a number of functions: they furnish a statement of the case sufficiently clear to allow the other party a

fair opportunity to meet it (*Gould and Birbeck and Bacon v. Mount Oxide Mines Ltd. (In liq.)*); they define the issues for decision in the litigation and thereby enable the relevance and admissibility of evidence to be determined at the trial (*Miller v. Cameron*); and they give a defendant an understanding of a plaintiff's claim in aid of the defendant's right to make a payment into court. Apart from cases where the parties choose to disregard the pleadings and to fight the case on issues chosen at the trial, **the relief which may be granted to a party must be founded on the pleadings** (*Gould and Birbeck and Bacon; Sri Mahant Govind Rao v. Sita Ram Kesho*). But where there is no departure during the trial from the pleaded cause of action, **a disconformity between the evidence and particulars earlier furnished will not disentitle a party to a verdict based upon the evidence. Particulars** may be amended after the evidence in a trial has closed (*Mummery v. Irvings Pty. Ltd.*), though a failure to amend **particulars** to accord precisely with the facts which have emerged in the course of evidence does not necessarily preclude a plaintiff from seeking a verdict on the cause of action alleged in reliance upon the facts actually established by the evidence (*Leotta v. Public Transport Commission (N.S.W.)*) (emphasis added)".

51. Mr Crawley also sought to rely on the Decision of Mildren J of the NT Supreme Court in *James Laferla v Birdon Sands Pty Ltd* [1998] NTSC 80 where Mildren J quoted the above passage with approval and went on to say:

"It was clear at the beginning of the trial how the appellant was presenting his case. He said his employer gave him the classification of casual labourer. He pointed to the rate of a labourer assistant to a tradesman, the provisions of clause 35, and the rate for work boat drivers, and asserted that "it was an intrinsic part of my job where I had to drive work punts every day and throughout my whole day at work". In those circumstances, if the evidence did not support a finding that he was a work boat driver, but supported a finding that he was covered as a labourer assistant to a tradesman or by some other lesser category, the learned Magistrate should have so found, **as this was inherent in his claim** (emphasis added)".

52. Mr Crawley also drew to my attention the Decision of the High Court in *Leotta v Public Transport Commission (NSW)* (1976) 50 ALJR 666. I am satisfied that the rationale in that case too involved a change in

particulars of the claim pleaded rather than being a different claim or raising any new issue.

53. In *Dare v Pulham* the High Court noted the exception to the requirement for strict pleadings where the parties choose to disregard the pleadings and to fight the case on issues chosen at the trial. That choice did not arise in this case.
54. It is clear that the rationale in the above cases is readily distinguishable from the present case. Mildren J in *Laferla* found that the different evidence in that case was a matter of particulars rather than substance because "...this was inherent in his claims". The difference in the present case between the Plaintiff's case as pleaded and the alternative case is not inherent in the Plaintiff's pleaded claims nor is it simply a matter of particulars. That difference raises an entirely different case.
55. The Plaintiff went on in its case to call evidence of when, how and under what circumstances conditional registration might ever have been possible for the vehicle. Such evidence can only be relevant if it relates to an issue or question arising on the pleadings in this case. The case as pleaded by the Plaintiff was limited to the issue of unconditional registration and I find therefore that evidence in the Plaintiff's case as to how conditional registration might have been achieved, if at all, was irrelevant.
56. Even if the Plaintiff had sought and been granted leave to amend its pleadings to plead the alternative case I would have dismissed that amended claim. This is because of my finding in paragraph 39 above that I should not accept any evidence of Hagen where it conflicted with or differed from the evidence of Harris, Smith, Curtis and Armitage. On their evidence and disregarding conflicting or differing evidence from Hagen, I am not satisfied that the Plaintiff could make out the alternative case on the balance of probabilities in any event.

57. The Plaintiff has failed to prove its case as pleaded, excluding the pleading in paragraph 8 of the Statement of Claim which raises the issue of section 165 of CAFTA and I now turn to consider that issue.

The CAFTA Issue

58. Section 165 of CAFTA provides:

“(1) Subject to subsection (2), it is a condition of the sale of a motor vehicle by a dealer that the vehicle is of a standard fit to meet the requirements of the *Motor Vehicles Act* with respect to registration.

“(2) Subsection (1) does not apply to:

(a) a motor vehicle sold for wrecking, or

(b) a motor vehicle sold under a contract excluding its application, being a contract in the prescribed form.”

59. A form is prescribed by the relevant regulations for the purpose of subsection (2)(b). The evidence of Armitage established that the Defendant was a dealer for the purpose of section 165 but that no prescribed form of contract was used in the sale of the vehicle. His evidence was that his business never used the prescribed form in the sale of vehicles such as the vehicle, because in his view section 165 did not apply to the sale of off road vehicles which did not need to be registered.

60. “Motor vehicle” is defined in section 125 of CAFTA to mean “... any motor car, motor cycle, or other vehicle used on land which is propelled wholly or partly by any volatile spirit, by steam, gas, oil, hydrocarbon or electricity, or by any means other than human or animal power (whether the vehicle is new or used, and whether or not it is in working condition or complete), but does not include:

(a) a vehicle used on a railway or tramway; or

(b) a vehicle included in a class or description of vehicles declared by regulation not to be motor vehicles for this Part”.

61. Regulation 3A of the *Consumer Affairs and Fair Trading (Motor Vehicle Dealers) Regulations* identifies categories of vehicles excluded from the definition of “motor vehicle”. None of these categories is capable of including the vehicle in these proceedings.
62. I am satisfied and I find that at the time of its sale the vehicle was a “motor vehicle” as defined in CAFTA, that it was sold by a dealer, and that section 165(1) of CAFTA therefore applied.
63. I find that section 165(1) of CAFTA made it a condition of the contract for the sale of the vehicle that it was of a standard fit to meet the requirements of the *Motor Vehicles Act* with respect to registration.
64. Section 165(1) of CAFTA refers only to “registration”, without specifying what is to be registered. I am satisfied this cannot be read to relate to the unconditional registration of any and all motor vehicles. It must be limited to the vehicle the subject of the sale, and I so rule.
65. The standard and the requirements for registration referred to in section 165(1) in CAFTA and their applicability to the vehicle all have to be considered in the light of the provisions of the *Motor Vehicles Act*.
66. Section 8 of the *Motor Vehicles Act* provides as follows:
 - “Subject to this Act, the Registrar:
 - (a) shall register, and from time to time renew the registration of, a motor vehicle in respect of which the requirements of Part VIA and Schedule 4 are complied with; and
 - (b) may register, and from time to time renew the registration of, a motor vehicle on such conditions as the Registrar thinks fit”.
67. It is clear from the language and structure of this section that the requirements it identifies for registration or the conditions subject to which registration might otherwise be granted as the Registrar sees fit, relate only to a motor vehicle and not to anything else. That must be, and

I rule that it is, a motor vehicle as defined in the *Motor Vehicles Act* and not a motor vehicle as defined in CAFTA or anywhere else.

68. The *Motor Vehicles Act* defines “motor vehicle” a little differently from CAFTA. Its definition appears in section 5, a general definition section, as follows:

“**motor vehicle** means any motor car, motor carriage, motor cycle, goods vehicle, motor omnibus, motor tractor or other vehicle propelled **on public streets** (emphasis added) wholly or partly by any volatile spirit or by steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer at any time attached to a motor vehicle but does not include any vehicle used on a railway or a powered cycle”.

69. In this case the important point of distinction between the two definitions lies in the words “on public streets” which appear in the definition of “motor vehicle” in the *Motor Vehicles Act* but do not appear in the definition in section 125 in CAFTA.
70. I rule that for the purposes of the *Motor Vehicles Act* a vehicle propelled as defined but not on public streets, is not a “motor vehicle” as defined in that Act.
71. I rule that the requirements and standards identified in section 8 of the *Motor Vehicles Act* for registration of any sort apply only to motor vehicles as defined in that Act and therefore do not apply to vehicles which are not used on public streets.
72. Where there are no standards or requirements for registration prescribed for a vehicle because it is not a motor vehicle under the *Motor Vehicles Act*, the section 165(1) CAFTA condition will nevertheless be imported into the contract for the sale of that vehicle by a dealer by operation of the section if the vehicle is a motor vehicle as defined in CAFTA. However in such a case the imported condition will be of no effect.

73. In the present case the vehicle was an off road vehicle of a type which is not sold to be used on public streets - see paragraph 40 of these Reasons. The Defendant understood that the Plaintiff would liaise with MVR and attempt to persuade it that conditional registration should be allowed, however such liaison and its outcome was solely the responsibility of the Plaintiff.
74. I find that the vehicle was not a “motor vehicle” as defined in the *Motor Vehicles Act*, that there was no standard or requirement for registration applicable to the vehicle under that Act, and therefore there was no such standard or requirement imported into the contract for the sale of the vehicle pursuant to section 165(1) of CAFTA.
75. Accordingly I find there was no breach of the section 165(1) CAFTA condition in the contract for the sale of the vehicle.

Conclusion

76. I dismiss the Plaintiff’s claims against the Defendant and enter judgement for the Defendant.

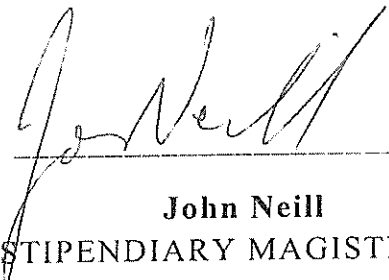
Costs

77. The Plaintiff has been entirely unsuccessful in the proceedings. This ordinarily means that costs follow the event and should be payable by the Plaintiff.
78. Where costs are ordered against a party in Local Court proceedings there remain further issues to be considered. The first is the basis on which the costs are to be assessed – that is either the usual standard basis or the rarer indemnity basis – see Rules 38.02 and 38.03(1) of the Local Court Rules and Order 63 Rules 24 to 29 of the Supreme Court Rules. The second is the percentage of the Supreme Court scale which is to be allowed in assessing costs on the standard basis – see Local Court Rule

38.04(2) - and how that is to be approached. That is relevant in the present case given the amount of the claim was between \$10,001 and \$50,000 – see Local Court Rule 38.04(3)(b)(ii).

79. I reserve all questions of costs before me for submissions on 19 June at 9:00am.

Dated this 5th day of June 2014.



John Neill
STIPENDIARY MAGISTRATE