Speedo Motoring Pte Ltd *v* Ong Gek Sing
[2014] SGHC 71

Case Number : Small Claims Tribunal Appeal No 1 of 2013

Decision Date : 14 April 2014

Tribunal/Court : High Court

Coram : George Wei JC

Counsel Name(s) : Lee Chay Pin (Chambers Law LLP) for Appellant/Respondent; Respondent/Claimant, in person.

Parties : Speedo Motoring Pte Ltd — Ong Gek Sing

Commercial Transactions – Sale of Goods – Consumer Protection

Courts and Jurisdiction – Jurisdiction

14 April 2014 Judgment reserved.

George Wei JC:

Introduction

1 When the buyer of a second-hand hybrid vehicle finds out a few months down the road that he has to fork out a few thousand dollars to replace the hybrid battery on the ground that the battery is defective, should he be allowed to avail himself of the newly enacted "lemon law" provisions in Part III of the Consumer Protection (Fair Trading) Act (Cap 52A, 2009 Rev Ed) ("CPFTA")? In the event that the CPFTA is applicable, has there been a breach of any of the provisions and, if so, what would be an appropriate remedy? These are the core issues that have arisen in the present appeal from the decision of the learned referee, Mr Awyong Leong Hwee, of the Small Claims Tribunal. After hearing the submissions of both parties, I am dismissing the appeal. I now give the reasons for my decision.

The facts

2 The respondent ("the Buyer") in this appeal entered into a "Purchase/Sales Agreement" ("the Sales Agreement") with the appellant ("the Seller") for the sale of a second-hand Lexus GS 450 Hybrid Super Lux ("the Vehicle") on 3 September 2012. According to the Sales Agreement, the Vehicle was a 2008 model and was registered in Singapore on 30 April 2009. As at the date of purchase, the Vehicle was about three years old and had two previous owners. According to the STA Evaluation Report dated 5 September 2012, the mileage of the Vehicle at that time was 53,842 km.

3 The purchase price of the Vehicle was $138,000. The Sales Agreement signed on 3 September 2012 indicated that a non-refundable deposit of $3,000 had been paid by the Buyer and that the Vehicle was to be handed over on or before 5 September 2012.

4 The Buyer paid a total sum of $80,511 (inclusive of the transfer and processing fees) after trading in his previous car for $58,000. At this juncture, it is useful to note that the Seller has emphasised that the purchase price of $138,000 was discounted from the original selling price of $139,800 as the Buyer had "opted-out" of the extended warranty offered by the Seller.

5 The Seller further asserts that on 3 September 2012, its sales manager had advised the Buyer to send the car for an evaluation test but the Buyer decided against it. Nevertheless, in order to provide the Buyer with the "peace of mind" and to avoid future disputes in relation to the condition of the Vehicle, the Seller decided to send the Vehicle for the STA evaluation test. The Vehicle eventually went through the STA evaluation test on 5 September 2012 and received an overall "B" grading. After the Vehicle had undergone the STA evaluation test, the Buyer took delivery of the Vehicle on the same day. The balance of the purchase price was paid by the Buyer and an official receipt ("the Official Receipt") was issued. The Official Receipt, which was signed by the Buyer, stated that the Vehicle was sold on a "as is where is" condition and "without warranty from the seller".

6 The Buyer, in his Statement of Sequence of Events ("the Buyer's SSE"), asserts that in the course of the sale process, the Seller's sales manager, one Javier Er, told him that the Vehicle was serviced regularly at the authorised dealer, Borneo Motors, in accordance with the maintenance schedule and that the Vehicle was in a "very good condition". In relation to the alleged discount from the original sale price of $139,800, the Buyer asserts that he was only told that the purchase price was a "special price" and that it did not include any form of warranty by the Seller. The date when these statements were made by Mr Er is not entirely clear. Nonetheless, according to the Buyer's SSE, the statements appear to have been made on 5 September 2012, although it has to be noted that the Sales Agreement was signed on 3 September 2012.

7 Subsequently, the Buyer asserts that on 11 October 2012, he sent the Vehicle for servicing at Borneo Motors for the first time after taking delivery of the Vehicle. He was then informed that the car had not been serviced by Borneo Motors since 7 March 2011. To this end, the Buyer has provided a copy of the "Service Maintenance Record Book" of the Vehicle as supporting evidence. The Buyer was also told that the tyres were worn out and that the Vehicle's front disc brakes were not in good condition. As a result, the Buyer paid $305.82 to replace the front disc brakes.

8 Less than a month after the servicing, on 5 November 2012, the Buyer noticed a warning on the Vehicle's instrument panel, indicating an error with the hybrid system. The Vehicle was brought back to Borneo Motors for the problem to be rectified. The Buyer complains that thereafter on 26 November 2012, the hybrid system warning appeared once again on the instrument panel. The Vehicle was sent back to Borneo Motors. The Buyer was then informed by Borneo Motors that the hybrid battery was no longer working and had to be replaced.

9 The Buyer asserts that he proceeded to contact the Seller on 12 December 2012. During the conversation with the General Manager of the Seller, the Buyer was asked to provide the name of his agent in Borneo Motors and he was thereafter told that they would contact him again. The Buyer further asserts that he did not receive any reply from the Seller and he proceeded to contact the Seller a week later on 19 December 2012. The Buyer states that he was told that they would contact him but similarly, the Seller failed to respond to his queries.

10 As a result, on 9 January 2013, the Buyer proceeded to replace the defective hybrid battery and the front rotor discs at Borneo Motors for $5,800 and $1009.18 respectively (excluding GST). On 17 January 2013, the Buyer replaced all four tyres at Soon Tyre & Battery for $1,280 (excluding GST). To this end, the Buyer has provided copies of all relevant tax invoices as supporting evidence of the amount of money that had been expended by him to rectify the defects in the Vehicle.

11 The Buyer further asserts that he made subsequent attempts to contact the Seller but the dispute remained unresolved. As a result, the Buyer approached the Consumers Association of Singapore ("CASE") before subsequently commencing proceedings against the Seller at the Small

Claims Tribunal ("SCT").

The decision of the SCT

12 The learned referee identified three major issues in the Grounds of Decision ("GD"): [note: 1]

(a) Is the Buyer able to bring a claim against the Seller under s 12B of the CPFTA?

(b) Has the Seller breached its obligations to the Buyer under s 12B of the CPFTA?

(c) What is the fair measure of damages due to the Buyer?

13 On the first issue, it was held that the Buyer was able to bring a claim against the Seller under s 12B of the CPFTA, despite the fact that the Buyer had turned down the extended warranty offered by the Seller at the time of purchase. This was in response to the Seller's argument that the purchase should not be subject to Part III of the CPFTA as the Vehicle was sold without warranty.

14 With regard to the second issue, it was held that the Vehicle did not conform to the applicable contract under s 12B of the CPFTA at the point of delivery from the Seller to the Buyer. In arriving at this decision, the learned referee made a finding of fact that "the car was not a car in good condition" and was not "sent regularly for servicing at Borneo Motors". It was further noted that the Seller was unable to demonstrate that the defects did not exist at the time of delivery, as the evidence showed that the STA evaluation test did not deal with the hybrid battery of the Vehicle. On this basis, it was held that the Seller was obligated to repair or replace the defective parts of the Vehicle pursuant to s 12C of the CPFTA. As the Seller had failed to do so, the learned referee acknowledged that it was reasonable for the Buyer to send the car for repairs and thereafter seek reimbursement from the Seller.

15 Finally, in relation to the third issue, the learned referee was of the view that the Buyer's claim in relation to the tyres and brake discs should not be allowed as they were items subject to "wear and tear". On that basis, the learned referee awarded the Buyer a sum of $4,500, which was approximately half of what the Buyer had originally claimed against the Seller.

16 Dissatisfied with the decision of the learned referee, the Seller applied for leave to appeal to the High Court on 1 July 2013. The application was granted by Senior District Judge Leslie Chew and the Seller proceeded to file its Notice of Appeal on 7 August 2013. The appeal was heard before this court on 6 December 2013.

Issues

17 Essentially, the present appeal raises the following core issues:

(a) Whether the SCT has exceeded its jurisdiction under s 5 of the Small Claims Tribunal Act (Cap 308, 1998 Rev Ed) ("SCTA")?

(b) Whether the CPFTA is excluded from application on the basis that the Buyer had turned down the extended warranty offered by the Seller?

(c) Whether Part III of the CPFTA applies on the basis that the Vehicle did not conform to the applicable contract at the time of delivery under s 12B(1) of the CPFTA?

(d) On the facts of the present appeal, what would be an appropriate remedy under Part III of the CPFTA?

Issue 1: Whether the SCT has exceeded its jurisdiction

18 Before moving on to the substantive issues in this appeal, I note that the Seller has, in its written submissions, argued that the SCT had exceeded its jurisdiction in the present case. [note: 2] Given that this threshold issue was not fully canvassed during the actual hearing of the appeal, I will only deal with this argument in passing.

19 The jurisdictional limit of the SCT is set out in s 5 of the SCTA. Given that the Seller's objection was confined to the quantum of the claim, as opposed to the subject matter, the relevant provision would be s 5(3) of the SCTA, which states that:

> Except where this Act expressly provides otherwise, the jurisdiction of a tribunal shall not extend to a claim —
>
> (a) which exceeds the *prescribed limit*; or
>
> (b) after the expiration of one year from the date on which the cause of action accrued.
>
> [emphasis added]

20 The prescribed limit is further defined in s 2 of the SCTA to mean "$10,000 or such other sum as the Minister may, after consultation with the Chief Justice, by order published in the *Gazette*, substitute therefor". The monetary limit is further extended to $20,000 pursuant to s 5(4) of the SCTA, in the event that parties to the claim so agree by a memorandum signed by them.

21 In this regard, the Seller has referred to the High Court decision of *Mohammed Akhtar and others v Schneider and another* [1996] 1 SLR(R) 731 ("*Mohammed Akhtar*"), where it was held that in determining whether the monetary limit was exceeded, the value of the underlying contract is the relevant figure, as opposed to the quantum of the claim. However, it must not be overlooked that on the facts of that particular case, the remedy sought by the respondent buyer was for the return of the deposit paid. In that context, Warren L H Khoo J made the following observations (at [5]):

> In the instant case, the claim was in the nature of a *claim for rescission of the contract on the ground of the sellers' misrepresentation*. Although the sum of money sought to be returned was $5,000, the return of the money was merely *a consequence of the claim for rescission being upheld*; unless the contract was held to be rescinded, there would be no question of upholding the claim for the return of the money. So the value of the claim was not $5,000 but $10,000, the latter being the value of the contract sought to be impugned.
>
> [emphasis added]

22 Therefore, the decision of *Mohammed Akhtar* should not be taken as having laid down a blanket rule that in all cases involving contractual disputes, the relevant figure would be the value of the contract as opposed to the quantum of the claim. The facts in *Mohammed Akhtar* are clearly different as the remedy sought was based on the rescission of the underlying contract. This can be contrasted with the facts in the present appeal, where the Buyer's claim is in no way based on the rescission of the sales contract. On this basis, the value of the contract should not be the relevant sum in determining whether the monetary limit of the SCT has been exceeded.

23 In the context of the CPFTA, the only remedy that involves the rescission of the underlying contract is found in s 12D(1), which states that:

> If section 12B applies, the transferee may —
>
> (a) require the transferor to reduce the amount to be paid for the transfer of the goods in question to the transferee by an appropriate amount; or
>
> (b) *rescind the contract with regard to those goods*,
>
> if the condition in subsection (2) is satisfied.
>
> [emphasis added]

24 Therefore, the Seller's objections with regard to the issue of jurisdiction will only bear some semblance of merit if the Buyer is seeking a rescission of the contract under s 12D(1)(b) of the CPFTA. However, in the present appeal, it is undisputed that the Buyer is claiming monetary compensation for the money that he had expended in repairing the Vehicle. On this basis alone, in contrast to the decision of *Mohammed Akhtar*, the relevant sum is the *quantum of the claim*, as opposed to the *value of the contract*.

25 Therefore, I am of the view that the SCT has not exceeded its jurisdiction, given that the Buyer's claim was for a sum of $9,027.53, which is clearly within the monetary limit set out in s 5(3) read with s 2 of the SCTA.

Issue 2: Whether the CPFTA is excluded from application

26 At the hearing below, the Seller placed great emphasis on the fact that the Buyer had "opted-out" of the extended warranty offered by the Seller. This can be gleaned from the Seller's submissions, as reflected in the following extracts from the notes of evidence recorded by the learned referee: [note: 3]

> Respondent: When C came to our showroom to view the car, they test drive the car. Price offered at $138,000 was a discounted and it was after discussion, it was agreed that it was sold without warranty. No STA warranty. ...
>
> Even official receipt on 5/9/12, it also stated Claimant opted out of warranty.
>
> *We had stated that car is sold without warranty, so not subject to lemon law. If sold without warranty, it would not cover.* ...
>
> [emphasis added]

27 In arriving at his decision, the learned referee rejected the Seller's arguments and observed that "despite not having an extended warranty, [the] Claimant can still claim under the lemon law". [note: 4] While the Seller appears to have abandoned this argument in the appeal before me, I am of the view that it would be helpful to make a few brief observations to substantiate the learned referee's reasoning behind rejecting the Seller's arguments at the hearing below.

28 At the outset, it must be recognised that the CPFTA clearly envisions the consumer being in a

weaker bargaining position as compared to the vendor or supplier. To this end, the CPFTA serves as a protective framework which consumers can rely on in seeking recourse against vendors and suppliers, over and above any rights that they may already have under general law, such as the usual contractual and tortious remedies.

29 In order for the CPFTA to be effective in protecting consumers' interests, s 13 of the CPFTA clearly states that:

> (1) The provisions of this Act shall prevail notwithstanding any agreement to the contrary and any term contained in a contract is void, if and to the extent that it is inconsistent with the provisions of this Act.
>
> (2) Any waiver or release given of any right, benefit or protection conferred under this Act shall be void.
>
> …

30 It is clear that the provisions of the CPFTA cannot be "contracted out" by either the consumer or the supplier. The scope of s 13 is extremely broad as it goes as far as to strike down even express terms of the contract which are inconsistent with the provisions of the CPFTA.

31 On this basis, the Seller's argument that Part III of the CPFTA is excluded as a result of the Buyer "opting-out" of the extended warranty appears to be rather doubtful. If the Seller relies on the argument that this conduct somehow gives rise to either an express or implied term to exclude the CPFTA, the effect of s 13(1) is to render such a term void insofar as it is inconsistent with the CPFTA.

32 In the alternative, if the Seller argues that the Buyer "opting-out" of the extended warranty somehow amounts to a waiver or release of "any right, benefit or protection" conferred under the CPFTA, s 13(2) will be applicable and any such waiver or release will be rendered void at law.

33 Furthermore, the remedies provided in the CPFTA exist over and above any rights that parties may already have under general law. In this regard, the fact that the goods may have been sold without any form of warranty, extended or otherwise, only means that the consumer may have a more limited scope of rights in general law. However, this does not in any way result in the consumer being precluded from relying on any provision in the CPFTA. This was highlighted by the Minister of State for Trade and Industry, Mr Teo Ser Luck, in the recent parliamentary debate concerning the enactment of Part III of the CPFTA as set out in *Singapore Parliamentary Debates, Official Report* (9 March 2012) vol 88 (Teo Ser Luck, Minister of State for Trade and Industry):

> Retailers have also asked if goods can be excluded if they are sold "as is" or "as seen". Even under the existing law, the retailer cannot deny the consumer his rights to remedies by stipulating that the sale is "as is" or "as seen", except in the case of auctions or a competitive tender. As such, *retailers cannot exclude the transaction from the Lemon Law*, by simply displaying a notice saying, "we do not give refunds under any circumstances" or that "an item has been sold as it is". …
>
> [emphasis added]

34 In my view, this approach is clearly justified as it gives recognition to the fact that the consumer is generally in a weaker bargaining position as compared to the vendor. To this end,

arguments that the protective framework of the CPFTA may be wholly excluded on the basis that the goods are sold "without warranty" must be treated with great circumspection. In the circumstances, I agree with the learned referee's conclusion that on the facts of this case, the Buyer was entitled to rely on Part III of the CPFTA in spite of having turned down the extended warranty offered by the Seller.

Issue 3: Whether the Vehicle conformed to the applicable contract at the time of delivery

35 The main issue that has arisen in this appeal concerns the learned referee's finding that the Vehicle had not conformed to the applicable contract at the time of the delivery. Before moving on to examine the facts in this present appeal, I will first make a few passing observations on Part III of the CPFTA, more commonly known as the newly enacted "lemon law" provisions.

36 In brief, Part III of the CPFTA essentially grants the consumer additional rights in respect of non-conforming goods. This is over and above any rights that the consumer may already have pursuant to the other provisions of the CPFTA, such as those relating to unfair practices in Part II of the Act.

37 In order for Part III of the CPFTA to be applicable, the conditions set out in s 12B(1) have to be fulfilled:

(a) the transferee deals as consumer;

(b) the goods do not conform to the applicable contract at the time of delivery; and

(c) the contract was made on or after the date of commencement of section 6 of the Consumer Protection (Fair Trading) (Amendment) Act 2012.

In the present appeal, it is noted that there is no dispute that the Buyer was dealing as a consumer, and that the contract was entered into after 1 September 2012, which is the date of commencement of Part III of the CPFTA.

38 With regard to the issue of whether the goods conformed to the applicable contract at the time of delivery, s 12A(4) further states that:

For the purposes of this Part, goods do not conform to —

(a) a contract of sale of goods if there is, in relation to the goods, a breach of an express term of the contract or a term implied by section 13, 14 or 15 of the Sale of Goods Act;

...

In the present appeal, the Buyer has not relied on the breach of any express term of the contract. As will be further elaborated below, the principles governing the application of ss 13–15 of the Sale of Goods Act (Cap 393, 1999 Rev Ed) ("SGA") are similarly applicable to the issue of non-conformity under Part III of the CPFTA.

39 More importantly, it bears noting that s 12B(1)(b) of the CPFTA specifically states that the reference point for non-conformity must be at the "time of delivery". From a practical perspective, cases of non-conformity can be broadly divided into two groups. The first group involves cases where the goods in question are obviously defective right from the start. Examples include an electrical appliance that could not be turned on the moment it was unpacked or a car that could not be

operated shortly after it was driven off by the consumer. Under these circumstances, the consumer is unlikely to face much difficulty in establishing that the goods did not conform to the applicable contract under Part III of the CPFTA at the *time of delivery*.

40 On the other hand, the second group involves cases where the goods appear to be functioning normally at the time of delivery. Subsequently, faults or problems become apparent after a period of usage. A good example would be an electrical appliance that was working properly and did not reveal any signs of defect during the first three months of usage, but suddenly started malfunctioning soon after. Is this a case where the fault or defect (*ie*, non-conformity) existed at the time of delivery (but was, for example, masked or not yet apparent) or a case where the defect or problem is due to some new event that has occurred after delivery (such as an accident or improper use)?

41 The burden of proving non-conformity at the time of delivery rests on the consumer. Where a defect or problem only appears sometime after delivery, the consumer may well encounter difficulties in establishing that, under s 12B(1)(b) of the CPFTA, the non-conformity was present at the *time of delivery*. Indeed, in the absence of any evidence to the contrary, given that the product had been apparently functioning properly for a period of time, the natural assumption would be that the goods *did* conform to the applicable contract at the time of delivery. A consumer may not be able to easily marshal the necessary evidence to show that the defect or problem (*ie*, non-conformity) was in fact present at the time of delivery. Hence, to aid the consumer in discharging the burden of proving that the goods did not conform to the applicable contract at the *time of delivery* in situations where the defect was only discovered sometime after, s 12B(3) states that:

> For the purposes of subsection (1)(b), goods which do not conform to the applicable contract at any time within the period of 6 months starting from the date on which the goods were delivered to the transferee must be taken not to have so conformed at that date.

In short, any defects which are discovered within six months from the date of delivery will be taken as having been present at the time the goods were delivered.

42 At this juncture, it bears noting that the CPFTA recognises the importance of setting out a balanced regime, albeit in the context of consumer protection. To this end, the potentially harsh effect of the presumption in s 12B(3) is mitigated by s 12B(4), which states that:

> Subsection (3) does not apply if —
>
> (a) it is established that the goods did so conform at that date; or
>
> (b) its application is incompatible with the nature of the goods or the nature of the lack of conformity.

43 Hence, to rebut the presumption in s 12B(3), the first way would be for the seller to adduce evidence and establish that the item *did* in fact conform to the applicable contract at the time of the delivery and that the defect had developed in the course of usage by the consumer. A good example of how this may be established would be in situations where there is clear objective evidence that the goods were of satisfactory quality at the point in time when delivery took place, such as where the goods have undergone an independent valuation and inspection by a competent third party which covered the defect or issue that had surfaced.

44 On the facts of the present appeal, if the defect that was discovered by the consumer was in relation to a component that had been inspected by the STA in the evaluation test (*eg*, the clutch

system), the fact that the Vehicle had passed the inspection will go some way towards establishing that the Vehicle did in fact conform to the applicable contract at the time of delivery. Unfortunately, as was acknowledged by the learned referee in the GD, the STA evaluation test did not in fact cover the hybrid battery of the Vehicle. [note: 5] Therefore, the Seller will not be able to rely on the STA evaluation test to rebut the presumption in s 12B(3) insofar as the defective component was the hybrid battery.

45 The seller will also be able to rebut the presumption in s 12B(3) if there is direct evidence of some other causal factor that has resulted in the defect, for instance, where the seller manages to uncover evidence of the car being involved in an accident, and where the non-conformity is attributable to accident itself.

46 Alternatively, the presumption in s 12B(3) will also be rebutted if its application is incompatible with the nature of the goods or the nature of the lack of conformity. A good example of products that may fall within the scope of this provision (in relation to the nature of goods) would be perishable or disposable items. The six-month period in s 12B(3) will be impractical in the context of fresh produce such as vegetables or fruits, which often have a shelf life of less than a week. Therefore, when the nature of goods is such that the application of the six-month period becomes absurd, the effect of s 12B(4)(b) is to render the presumption in s 12B(3) inapplicable.

47 The seller will also be able to rebut the presumption in s 12B(3) if it is able to establish that the nature of the lack of conformity is incompatible with the application of the presumption (as opposed to the nature of the goods). An example of when this may occur would be in the context of a "defect" or problem arising from normal wear and tear. For instance, it would be odd if the buyer of a car were to clock a significant mileage over a course of five months, and then proceed to complain that the vehicle is not in satisfactory condition on the basis that the tyre treads are worn down and that this was a defect or non-conformity which must be presumed to have existed at the time of delivery. Alternatively, the seller will also be able to rebut the presumption if it is able to prove that the nature of the lack of conformity can only be attributable to user error or misuse of the product in question. Examples would include damage of electrical components due to exposure to foreign liquids or burnt circuit boards as a result of operating the product beyond its intended specifications without proper ventilation. Under these circumstances, the nature of the defect will be incompatible with the application of the six-month presumption in s 12B(3).

48 To be clear, where the question arises as to whether the nature of the lack of conformity is incompatible with the application of the presumption, the focus is on the specific defect or problem which is claimed as the non-conformity. If the non-conformity concerns a torn wiper blade "discovered" four months after the delivery of the car, the question to be addressed is whether that defect is compatible with the presumption, namely that the torn wiper blade existed at the time of delivery. It goes without saying that this is a fact-sensitive inquiry. The question of compatibility must be assessed in a common sense manner. Is the nature of the defect (*eg*, torn wiper blade found four months after delivery) consistent with a presumption that the tear existed at the time of delivery? In applying this test, it is also noted that this question may overlap with the question as to whether the seller is able to show that the defect arose because of improper use or maintenance by the buyer.

49 Finally, for the avoidance of doubt, the presumption in s 12B(3) will only be applicable when it has been established that the goods do not conform to the applicable contract at any time within the period of six months from the date of delivery. In this respect, the burden of proving non-conformity with the applicable contract still lies with the consumer. While the presumption in s 12B(3) will aid the consumer in discharging the burden of proof in situations falling within the second group as discussed

at [40] above, it does not change the fact that the consumer still bears the burden of establishing that the goods are defective in the first place.

50 This can be contrasted with the other requirement under s 12B(1)(a) of the CPFTA where the burden of establishing that the transferee did not deal as a consumer falls on the *seller* as opposed to the *buyer*. This is because s 12A(3) clearly states that "it is for a transferor claiming that the transferee does not deal as consumer to show that he does not". Having said that, in situations where the presumption in s 12B(3) is relied upon by the consumer, the seller will then have the burden of establishing that either s 12(4)(a) or s 12(4)(b) applies on the facts of the case. If the seller fails to do so, the goods that do not conform within the period of six months from the date of delivery "*must* be taken not to have so conformed at that date" [emphasis added] and subject to the other requirements in s 12B(1), Part III of the CPFTA will then be applicable.

51 I now proceed to deal with the facts in the present appeal. Both at the hearing below and the appeal before me, the parties have based their arguments on the breach of the implied condition that the Vehicle sold was of satisfactory quality. This term is implied by virtue of s 14(2) of the SGA. In this regard, while s 12A(4)(a) of the CPFTA also refers to s 13 (which deals with sale by description) and s 15 (which deals with sale by sample) of the SGA, neither party has made any references to these provisions. Therefore, I will confine my observations to s 14 of the SGA, which deals with the implied terms concerning quality and fitness of the Vehicle in question.

52 In this respect, I am of the view that the general principles applicable to the interpretation of s 14 of the SGA are also relevant to the present case in the context of the CPFTA. To this end, it will be useful to refer to the observations made by Sundaresh Menon JC (as he then was) in the High Court decision of *Compact Metal Industries Ltd v PPG Industries (Singapore) Ltd* [2006] SGHC 242 ("*Compact Metal Industries Ltd*"), which was subsequently endorsed by the Court of Appeal in *National Foods Ltd v Pars Ram Brothers (Pte) Ltd* [2007] 2 SLR(R) 1048 ("*National Foods Ltd*"). In *Compact Metal Industries Ltd*, it was observed by the learned judge that the relevant principles in ascertaining the standard of "satisfactory quality" in s 14 of the SGA are as follows (at [102]):

(a) The inquiry whether the goods are of a satisfactory quality is an objective one to be undertaken from the view point of a reasonable person.

(b) The reasonable person in question is one who is placed in the position of the buyer and armed with his knowledge of the transaction and its background rather than one who is not so acquainted — *Bramhill v Edwards* [2004] 2 LI Rep 653 at [39] *("Bramhill")*.

(c) The burden of proof in this case is on the plaintiff who is alleging that the goods are not of satisfactory quality — see *Bramhill* at [41].

(d) The inquiry is a broad based one directed at whether the reasonable person placed in the situation of the buyer would regard the quality of the goods in question as satisfactory.

(e) At every stage of that inquiry, the Act clearly contemplates that the court should consider *any and all factors* that may be relevant to the hypothetical reasonable person. The Act does provide some practical guidelines to aid in structuring the inquiry.

(f) Thus, in relation to the actual quality of the goods in question, s 14(2B) of the Act provides a non-exhaustive list of the aspects of quality to be considered. Further, in relation to evaluating whether that quality is satisfactory, s 14(2A) of the Act provides a similarly non-exhaustive list of two factors, namely the way in which the goods may have been described and the price to be

paid for it.

(g) In considering the quality of the goods in question, it may be noted in particular that the first aspect to be considered is whether the goods are fit for *all* the purposes for which goods of that kind are commonly supplied. This is a higher standard than previously applied — see *Benjamin Sale of Goods* (A.G. Guest, Gen Ed) (Sweet & Maxwell, 7th Ed, 2006) at 11-038.

(h) To the extent that goods are unsatisfactory in any way and that aspect had been specifically conveyed to the buyer prior to the contract, or the buyer had examined the goods (or a sample in the case of a contract for sale by sample) and such examination ought to have revealed it, then the condition does not extend to that. This is provided for in s 14(2C) of the Act.

[emphasis in original]

In this regard, the issue of whether the implied condition of satisfactory quality has been breached inevitably involves a fact-intensive inquiry.

53 In the present appeal, the Seller has asserted that the hybrid battery is a component that is subject to normal wear and tear. It was further argued by the Seller that the hybrid battery is no different from any other component of a motor car, such as the tyres and brake discs, which the learned referee had acknowledged were subject to general wear and tear. Apart from that, the Seller has also put forth the argument that the learned referee had erred in concluding that the Vehicle was not of a "good condition" on the ground that Borneo Motors had recommended the hybrid battery to be replaced. The Seller took objection with the learned referee arriving at the conclusion that the Vehicle did not conform to the applicable contract on the basis that the Vehicle had not been serviced regularly by Borneo Motors. In summary, the general thrust of the Seller's case in this appeal was that the Vehicle did conform to the applicable contract and was of satisfactory quality at the time of delivery.

54 At the outset, I will first deal with the Seller's argument that the learned referee had erred in concluding that the Vehicle did not conform to the applicable contract on the basis that it was not serviced regularly by Borneo Motors. To this end, the Seller has argued that the learned referee could only have arrived at this conclusion if it is demonstrated that the issue of regular servicing was an express term of the sales contract. I am unable to agree with the Seller's argument for the following reasons. It must be recognised that the learned referee did not base his conclusion solely on the ground that the Vehicle had not been regularly serviced. For the sake of convenience, the relevant extract from the learned referee's GD is reproduced as follows:

At the conclusion of the hearing, I had considered the facts and evidence presented by both parties. ... As part of the car were found to be defective, I made a finding of fact that the car was not in good condition and sent regularly for servicing at Borneo Motors. As such, the car did not conform to the applicable contract under Section 12B of the Consumer Protection (Fair Trading) Act (Cap 52A) at the point of delivery from Respondent to Claimant.

In this regard, the learned referee had made a finding of fact that the Vehicle was not sent regularly for servicing at Borneo Motors. The other factor that the learned referee took into account in arriving at the conclusion that the Vehicle did not conform to the applicable contract would be the fact that part of the car was found to be defective and that the car was "not in good condition".

55 In any event, the learned referee was fully entitled to make such a finding of fact in the hearing

below. As explained above, with regard to the inquiry into whether the condition of satisfactory quality has been breached, all relevant facts will have to be taken into account by the court. In fact, s 14(2A) of the SGA states that:

> For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances.

As already mentioned above, Menon JC (as he then was) acknowledged that "the Act clearly contemplates that the court should consider *any and all factors* that may be relevant to the hypothetical reasonable person" [emphasis in original] at every stage of the inquiry under s 14 of the SGA. In this regard, taking into account the context in which the Buyer had made the allegation that the Seller's sales manager had represented that the Vehicle was serviced regularly at the authorised dealer in accordance with the maintenance schedule, the finding of fact that was made by the learned referee would have been relevant in determining whether the goods were of satisfactory quality. Therefore, the Seller's argument that this particular finding of fact will only be relevant if the issue of regular servicing were an express term of the contract is without merit. Given the broad scope in which s 14(2A) is drafted, the finding of fact that the vehicle had not been regularly serviced by the authorised dealer would have formed part of the entire matrix of relevant circumstances that the learned referee was fully entitled to take account of.

56 In relation to the core issue of whether the defective hybrid battery gives rise to the finding that the Vehicle was not of satisfactory quality at the time of delivery, this can be further broken down into two related issues:

> (a) whether the fact that the hybrid battery was defective gives rise to the finding that the Vehicle was not of satisfactory quality; and
>
> (b) whether the defect existed at the time of delivery.

57 With regard to the first issue, the Seller has objected to the learned referee's reference to the Vehicle not being in a "good condition" as opposed to being of "satisfactory quality" as set out in s 14(2) of the SGA. While it is acknowledged that the learned referee could have been clearer in terms of the reasoning set out in the GD, as a whole, I am not convinced that the learned referee had erred in arriving at the conclusion that the Vehicle failed to conform to the applicable contract at the time of delivery.

58 To be clear, there is no doubt that under the CPFTA, in the absence of an express term, goods will only be found not to conform to the contract if there is a breach of a term implied by ss 13–15 of the SGA. There is no implied term under the SGA that the goods must in a "good condition". What is required by the implied term in s 14 of the SGA is that the goods are of a "satisfactory quality". That said, as discussed above, the question as to whether the goods are of a satisfactory quality is a fact-sensitive inquiry that has to be viewed through the eyes of the reasonable person who is placed in the position of the buyer and armed with *his knowledge of the transaction* and its background rather than one who is not so acquainted.

59 Moving on, whilst the Seller has attempted to characterise the hybrid battery as being a component that is subject to wear and tear, it must be observed that most items will, to a certain extent, be subject to wear and tear over a period of usage. Therefore, any argument that a component should be wholly excluded from the consideration of whether the product is of satisfactory quality on the basis that the component is subject to wear and tear should be treated with great

circumspection.

60 Invariably, the degree and rate of wear and tear will vary across different components across an entire spectrum. On one hand, there will be components which require frequent replacement due to their short operational life. In the context of motor cars, this would include items such as the engine oil and the oil filter as these components are replaced at every servicing interval in accordance to the maintenance schedule. On the other hand, there are also components which do not have to be replaced over the entire operational life of the product in question. Similarly, in the context of motor cars, this would include items such as the metal chassis and the engine control unit. Under normal usage patterns, these components will not have to be replaced over the entire operational life of the motor car. This is clearly a matter of degree as all other components will fall somewhere between the two extremes.

61 Apart from the issue of durability, it will also be easier to arrive at the conclusion that the vehicle, as a whole, is not of satisfactory quality if the defective part in question was an integral part of the vehicle. For instance, it would not be easy for the court to find that the vehicle was not of satisfactory quality if the defect lies in minor components that are relatively easy to replace, such as the windshield wipers or the cabin light. This can be contrasted with the major components of the vehicle, such as its engine or the gear box, which will result in the vehicle not being able to satisfy its intended purpose if they happen to be defective.

62 Apart from the factors considered above, there is also a need to refer to s 14(2B) of the SGA, which states that:

> For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods:
>
> (a) fitness for all the purposes for which goods of the kind in question are commonly supplied;
>
> (b) appearance and finish;
>
> (c) freedom from minor defects;
>
> (d) safety; and
>
> (e) durability.

This list of factors is clearly not exhaustive and some of the factors will not be applicable depending on the factual matrix of each individual case. For instance, in the Court of Appeal decision of *National Foods Ltd*, it was held that the factor of "freedom from minor defects" was not a good indicator of quality in agricultural products where freedom from minor defects may be impossible to achieve. The Court of Appeal also noted that this aspect of quality was mainly targeted at "mass-produced manufactured consumer goods" (at [62]). Similarly, in the context of second-hand goods, such as in the present case, it would be too exacting a standard if the goods are to be free from minor defects in order to be of satisfactory quality. Such a standard would be impractical as minor defects and general wear and tear are almost bound to arise when the product is being used.

63 In my view, the standard of satisfactory quality will always be dependent on the individual facts of each case and to this end, it will not be helpful to lay down a blanket rule that applies to all second-hand goods in general. However, it must be recognised that certain factors set out in s

14(2B) of the SGA will not be appropriate in the context of second-hand goods, as explained in the paragraph above. In fact, at para 11–048 of *Benjamin's Sale of Goods* (M. Bridge gen ed) (Sweet & Maxwell, 8th ed, 2010), the learned author made the following observations:

> There is little authority as to second-hand goods. It was clear before the enactment of the present, and indeed the earlier, statutory definition that a lesser standard is to be exacted than that applicable to new goods. ... The fact that goods are second-hand affects the description applied to them, their price and may give rise to "other relevant circumstances": and the exception as to examination will be more relevant in second-hand sales. It may also affect their appearance and finish, freedom from minor defects and durability.

Therefore, the relevance of each factor set out in s 14(2B) of the SGA will have to be carefully considered on the precise factual matrix of each case. This fact-sensitive approach in the context of second-hand goods was also alluded to by the Minister of State for Trade and Industry, Mr Teo Ser Luck, in the recent parliamentary debate concerning the enactment of Part III of the CPFTA as set out in *Singapore Parliamentary Debates, Official Report* (9 March 2012) vol 88 (Teo Ser Luck, Minister of State for Trade and Industry):

> Secondhand goods and vehicles are included in the proposed legislation as *protection is likely to be most needed for such goods*. This is also in line with Lemon Laws in overseas jurisdictions. However, the definition of "satisfactory quality" would take into account *the goods' age at the time of delivery, and the price paid*. In other words, someone buying a 10-year-old car from a dealer *could not reasonably expect it to be like a brand new car*. However, he can expect it to perform in a manner that may be reasonably expected of a car of that mileage and model. If it does not do so, the consumer can seek remedies from the dealer.
>
> [emphasis added]

64 Returning to the facts in the present case, I am of the view that the hybrid battery is an integral component of any hybrid vehicle. Even though there was no evidence before this court as to the life expectancy of a hybrid battery, this court notes the Buyer's assertion (made several times during the course of the appeal) that the hybrid battery was a key feature of the Vehicle in question: a Lexus 450 Hybrid Super Lux. From the perspective of a reasonable consumer, the main impetus behind purchasing a hybrid vehicle, which is often sold at a premium as compared to its regular variants, would be to reap the advantages that are associated with the hybrid system, such as a better fuel economy. To this end, the hybrid battery plays a crucial role in allowing the hybrid vehicle to fulfil its intended purpose. It should not be equated to the regular battery that is found in almost every vehicle on the road today.

65 The Seller, in arguing that the Vehicle was of satisfactory quality at the time of delivery, has placed substantial reliance on the English Court of Appeal decision *Bartlett v Sidney Marcus Ltd* [1965] 1 WLR 1013 ("*Bartlett*"). In that case, the defendant was a motor car dealer who had sold the plaintiff a second-hand Jaguar motor car after their sales executive had told the plaintiff that the clutch was not operating properly and that he thought it could be rectified by a minor repair. The price of £950 was reached on the understanding that the plaintiff would rectify the problem at his own cost. The plaintiff drove the car over a period of four weeks before taking it to his garage where it was discovered that the engine would have to be dismantled in order to repair the clutch system. Therefore, the total cost of the repairs came up to higher than what the plaintiff had expected and he then brought an action against the defendant. While the buyer prevailed at first instance, the lower court's decision was reversed on appeal. In finding that the car was of "merchantable quality", Lord Denning MR made the following observations (at 1016–1017):

> ... It means that on a sale of a secondhand car, it is merchantable if it is in usable condition, even though not perfect. This is very similar to the position under section 14(1). A secondhand car is "reasonably fit for the purpose" if it is in a roadworthy condition, fit to be driven along the road in safety, even though not as perfect as a new car.
>
> Applying those tests here, the car was far from perfect. It required a good deal of work to be done on it. But so do many secondhand cars. A buyer should realise that when he buys a secondhand car defects may appear sooner or later; and, in the absence of an express warranty, he has no redress. Even when he buys from a dealer the most he can require is that it should be reasonably fit for the purpose of driving along the road. This car came up to that requirement. The plaintiff drove the car away himself. It seemed to be running smoothly. He drove it for four weeks before he put it into the garage to have the clutch repaired. ...

On this basis, the Court of Appeal arrived at the conclusion that there was no evidence of a breach of the implied conditions. I am of the view that the Seller's reliance on *Bartlett* is problematic for the following reasons.

66 First, as the Seller has recognised in its own written submissions, cases that are decided on its own facts are of limited assistance in determining whether the condition of satisfactory quality has been breached. It bears repeating that the inquiry is extremely fact-dependent. In the Court of Appeal decision of *National Foods Ltd*, it was observed that (at [15]):

> As a general (but important) preliminary point, we note that a number of cases were cited to us by the parties – principally by way of analogy. However, as Lord Wilberforce observed generally in the House of Lords decision in *Henry Kendall & Sons (a firm) v William Lillico & Sons, Ltd* ... "the 'fact to fact' approach is not merely circuitous but perilous". Indeed, as the number of possible fact situations is vast and variegated in the sale of goods context (if nothing else because of, *inter alia*, the variety of possible products and the respective variations therein), it is, in our view, more productive to focus on the relevant provisions of the SOGA as they apply to the precise facts in the case at hand. ...

Therefore, insofar as the Seller is relying on *Bartlett* for the general proposition that all second-hand motor cars should be regarded as being of satisfactory quality so long as they are in a roadworthy condition and fit to be driven along the road in safety, I am not convinced that this is entirely sound. In any event, I am of the view that the number of possible fact situations, even if one confines the scope of the inquiry to only second-hand motor cars, is "vast and variegated", in the words of the Court of Appeal. By way of example, it would be absurd if a relatively new second-hand car that was sold at a price close to the original purchase price (*ie*, the price when it was brand new) is to be held to the same standard as a second-hand car that is close to the end of its operational life and was bought at a mere pittance. Therefore, I am not convinced that the standard of roadworthiness as set out in *Bartlett* should be applied indiscriminately across *all* second-hand cars.

67 Second, as a further example of how prior decisions are often decided on its own facts, it must be recognised that in *Bartlett*, the purchase price of the second-hand motor car was expressly reduced on the basis that the plaintiff would have the faulty clutch repaired at his own cost. In other words, the plaintiff already had the knowledge that the clutch was faulty at the point in time when the sale was executed. In fact, it bears noting that a large part of the repair cost was attributable to the engine being dismantled in order for the clutch system to be repaired and renewed. This was clearly a factor that was taken into account by the Court of Appeal, as revealed by Lord Denning MR's observations (at 1017):

> ... He drove it for four weeks before he put it into the garage to have the clutch repaired. *Then more work was necessary than he anticipated.* But that does not mean that, at the time of the sale, it was not fit for use as a car. ...
>
> [emphasis added]

In fact, this was made even clearer in Salmon LJ's judgment of the same case (at 1018):

> ... The evidence to which I have already referred is very pertinent on this test also, and it is also important to notice that *the buyer's attention was drawn to the defect in the clutch at the time of the sale*. He knew how the clutch behaved on the road; all he discovered later was that *the extent or the cause of the clutch's misbehaviour was rather graver than had been anticipated and would cost more than estimated to put in order.* ...
>
> [emphasis added]

Therefore, the decision of *Bartlett* is not strictly relevant as the facts in that case are rather different from the facts in the present appeal. While the buyer in *Bartlett* had bought the vehicle with the knowledge that the clutch was already defective and that further repairs would be needed, the Buyer in the present appeal had no such knowledge in relation to the defective hybrid battery. For all intents and purposes, it appeared to be a regular sale of a second-hand motor car with no known defects, unlike the case in *Bartlett*. Herein lies the danger of attempting to reason by analogy to previous decisions when the inquiry is heavily dependent on the individual facts of each case.

68 Finally, while the Seller has brought the decision of *Bartlett* to my attention, it bears noting that this decision was reviewed in the later English Court of Appeal decision of *Business Applications Specialists Ltd v Nationwide Credit Corporation Ltd* [1988] RTR 332 ("*Business Applications*"). Although this later decision was not cited before me, I have not found it necessary to invite parties to make any submissions upon it as the principles laid down in that decision are relatively clear.

69 In the case of *Business Applications*, the English Court of Appeal was once again confronted with the issue of whether a second-hand car was of merchantable quality under the Sale of Goods Act 1979 (c 54) (UK). In arriving at the decision that the car was of merchantable quality, the Court of Appeal made a few pertinent observations on its previous decision in *Bartlett*. Parker LJ, in delivering the leading judgment of the court, observed (at 336):

> I have no hesitation in saying that I am *wholly unable to accept that the old tests necessarily apply in the case of every second-hand car*. It appears to me that if a Rolls Royce motor car, with no more than perhaps 1500 miles on the clock, is being sold for the sort of price that such a car might reasonably command, it would be *insufficient for that car to be driven in safety on the road and nothing else would matter*. ...
>
> [emphasis added]

Without delving further into the facts of that case (as parties have not made any submissions upon it), it must be recognised that the decision in *Bartlett* must be treated with great circumspection in light of its subsequent treatment in *Business Applications*. In any event, the decision of *Business Applications* lends further support to the proposition that the standard of roadworthiness as set out in *Bartlett* should not be applied indiscriminately across *all* second-hand vehicles.

70 In summary, drawing from the decisions that I have referred to above, I am not prepared to

accept the Seller's argument that the test of roadworthiness as laid down in the case of *Bartlett* should be applied on the facts of this case. However, I do recognise that in general, a reasonable purchaser of a second-hand motor car will find a certain degree of wear and tear in relation to its components to be acceptable. The second-hand motor car should not be held to the standard of being free from minor defects and its durability would also largely depend on the age and mileage of the motor car. On this basis alone, I am not prepared to accept the Buyer's argument that the Seller should be held responsible for the worn out tyres or the faulty brake discs. However, in relation to the defective hybrid battery, I am not prepared to depart from the learned referee's decision that this would give rise to the finding that the Vehicle was not of satisfactory quality at the time of delivery. In arriving at my decision, I have also taken into account the fact that the Vehicle was relatively new, that the mileage was around 53,842 km at the material time, and that unlike the case of *Bartlett*, there was no signs of any major defects with the Vehicle which could have indicated a potential problem with the hybrid battery.

71 For the avoidance of doubt, I would hasten to add that I am in no way saying that the Seller has acted in an underhanded manner or that they have concealed any knowledge of the defective hybrid battery. In all likelihood, both parties were in the dark as regards the faulty hybrid battery as the problem only revealed itself two months after the Buyer took delivery of the Vehicle. I also acknowledge the fact that the Seller had tried its best to ascertain the condition of the Vehicle and they had even gone to the extent of sending the Vehicle for the STA evaluation test at their own expense. Unfortunately, the STA evaluation test did not involve any examination of the hybrid battery in question. Coupled with the way in which the framework of the CPFTA is structured, given that the defect had revealed itself within the six-month period as specified in s 12B(3), in the absence of any evidence to the contrary, the Seller will have to bear the burden of rectifying the defective hybrid battery.

72 While not strictly relevant to the case at hand, I will also add a few passing observations on how such disputes over the sale of second-hand motor cars can be minimised to a certain extent. To be clear, these are general comments and this court makes no criticism as to how the sale in the present case was conducted. First, allowing the motor car to be evaluated by an independent third party is recommended as this may help to reveal any potential defects in the motor car. This will also enable the Seller to protect itself in the event that a component that was examined and found to be in good condition subsequently turns out to be damaged few months down the road. The Seller may be able to rely on the objective evidence available to rebut the presumption in s 12B(3) in the event that the defect occurs within six months of the delivery date. This case, however, shows that whilst such evaluations can be helpful, much will depend on the specific defect in question and whether such a defect would have been covered by the inspection. This court is certainly not taking the position that the conducting of an independent evaluation pre-sale is a panacea.

73 Second, it bears noting that s 14(2C) of the SGA specifically states that:

> The condition implied by subsection (2) does not extend to any matter making the quality of goods unsatisfactory —
>
> (a) which is specifically drawn to the buyer's attention before the contract is made;
>
> (b) where the buyer examines the goods before the contract is made, which that examination ought to reveal ...
>
> ...

On this basis, it would be prudent for the seller of any second-hand motor car to document and highlight to the buyer any potential defects that are already present before the contract is made. The buyer will be placed in a better position to decide whether to proceed with the sale and the seller will be able to avoid further disputes down the road. This would apply to both defects in relation to the internal components of the motor car or in terms of its external appearance and finish. With regard to the latter, it would also be prudent for the seller to allow the buyer to physically examine the second-hand motor car before the contract is made, as such examination will likely reveal any cosmetic defects that the motor car may already suffer from. This will also likely apply to components which can be examined visually to ascertain the degree of wear and tear, such as the car tyres.

Issue 4: Appropriate remedy under Part III of the CPFTA

74 Having found that the Vehicle did not conform to the applicable contract at the time of delivery under Part III of the CPFTA, the only remaining issue would be whether the learned referee erred in awarding the Buyer $4,500 in reimbursement of the money expended by the Buyer in replacing the hybrid battery. In this respect, the Seller's main objection appears to stem from the belief that the Buyer should not be entitled to a brand new hybrid battery as this would "work oppressively against Sellers of second hand motor vehicles". [note: 6] The Seller further argued that even if the order is correctly made, under s 12C of the CPFTA, the Buyer must first require the Seller to repair or replace the hybrid battery. The Seller asserts that there is no objective evidence that the Buyer had done so. [note: 7]

75 At the outset, it must be recognised that, at least from a perusal of the notes of evidence recorded by the learned referee, the Seller did not dispute the Buyer's account of events at the hearing below, even after the Buyer gave details of the attempts that he had made to contact the Seller. [note: 8] In fact, the Buyer has provided a copy of the letter written by CASE dated 19 February 2013 and the advice of receipt by Singapore Post which documents the Seller's acknowledgement that it had received the letter. The Buyer has also provided a copy of an email that was sent to the Seller's sales manager, Mr Er, on 4 February 2013. Therefore, taking into account the evidence that is placed before me, I am unable to accept the Seller's argument that the Buyer had failed to give the Seller a reasonable opportunity to repair or replace the defective hybrid battery.

76 With regard to the Seller's argument that the Buyer should not be entitled to a new hybrid battery, it bears noting that the cost of replacing the hybrid battery came up to $5,800 excluding GST, as evidenced by the tax invoice from Borneo Motors dated 10 January 2013. After taking into account GST, the Buyer would have paid a total sum of $6,206 to replace the defective hybrid battery (inclusive of labour charges).

77 To this end, the learned referee, in awarding the Buyer a sum of $4,500, has already factored in a reduction (amounting to almost 30%) from the original sum that the Buyer had incurred. I am of the view that the learned referee was fully entitled to do so as s 12F of the CPFTA grants a wide discretion to the courts in relation to the remedies that may be awarded under Part III of the CPFTA. In any event, it would be not accurate for the Seller to make the assertion that the Buyer was effectively given a new hybrid battery, taking into account the fact that the Buyer was not fully reimbursed for the entire expense he had incurred in replacing the hybrid battery. In the circumstances, I see no reason to depart from the learned referee's decision to award the Buyer a sum of $4,500 as partial reimbursement of the expenses incurred.

Conclusion

78 Under s 39(2)(a) of the SCTA, it is clear that this court, in hearing the appeal from the SCT, may not "reverse or vary any determination made by a tribunal on questions of fact". In any event, I am of the view that the learned referee's findings of facts are beyond reproach, based on the evidence that is placed before me. More importantly, I am not convinced that the learned referee has erred in law. For the reasons above, I am dismissing the appeal.

79 While it must be acknowledged that this has been a difficult case in view of the relatively thin body of evidence that was placed before me and the relative brevity of the learned referee's GD, I am of the view that it is equally important to recognise that the primary rationale behind the establishment of the SCT is for disputes to be resolved in a quick, efficient and cost-effective manner. To this end, s 12(1) of the SCTA states unequivocally that the primary function of the SCT is to attempt to bring the parties to a dispute to an agreed settlement. It is only when it appears to be impossible to reach a settlement within a reasonable time that the SCT is to proceed to determine the dispute. Such was the position in the present case as had been made clear in the notes of evidence and GD of the learned referee. Further, it is worth noting that s 22(1) of the SCTA provides that proceedings are to be conducted in an informal manner and that under s 28(1), the SCT is not bound by the rules of evidence "but may inform itself on any matter in such manner as it thinks fit". That said, all evidence and information received and ascertained by the SCT must of course be disclosed to the parties as is provided for by s 28(4) of the SCTA.

80 Finally, this Court notes that s 12(4) of the SCTA provides that the SCT is to determine the dispute according to the "substantial merits and justice of the case" and that "in doing so shall have regard to the law but shall not be bound to give effect to strict legal forms or technicalities". In hearing the appeal, this court has found it helpful to bear s 12(4) of the SCTA in mind when approaching the GD of the learned referee.

81 With regard to the issue of costs, given that the Buyer was a litigant in person, in accordance to O 59 r 18A of the Rules of Court (Cap 332, R 5, 2006 Rev Ed), he will be entitled to such costs as would reasonably compensate him for the time expended by him, together with all expenses reasonably incurred. In the event that parties are unable to agree on the quantum, costs are to be taxed. For the avoidance of doubt, the Buyer shall only be entitled to costs incurred in relation to the present appeal. There shall be no order as to costs for the hearing below.

[note: 1] Record of Appeal ("RoA") filed 8 October 2013 at pp 25–28.

[note: 2] Appellant's Submissions filed 4 December 2013 at pp 26–28.

[note: 3] RoA at p 21.

[note: 4] RoA at p 23.

[note: 5] RoA at p 28.

[note: 6] Appellant's Submissions filed 4 December 2013 at p 25.

[note: 7] Appellant's Submissions filed 4 December 2013 at p 25.

[note: 8] RoA at pp 18–24.