

**IN THE DISTRICT COURT
AT AUCKLAND**

CRI-2009-004-023666

COMMERCE COMMISSION
Informant

v

DOLBAK FINANCE LIMITED
Defendant

Appearances: J Donkin for the Informant
K Gould for the Defendant

Judgment: 31 May 2010

NOTES OF JUDGE P A CUNNINGHAM ON SENTENCING

[1] On 21 May 2007, Mr Dolbak and Mr Baker appeared before Judge Aitken in this Court, having been charged in their capacity as partners of Dolbak Finance, a partnership which was providing finance to consumers, mostly people who were wanting to buy cars. The charges were breaches of the Credit Contract and Consumer Finance Act 2003. Mr Baker and Mr Dolbak pleaded guilty to all charges. They received substantial fines, and also were required to pay statutory damages.

[2] I have read Judge Aitken's judgement. It is plain from reading the decision, that notwithstanding the breaches, the Judge was satisfied that these were not deliberate breaches, they were, as a result of non-compliance with the strict requirements of the Credit Contracts and Consumer Finance Act, that Act requires

lenders to advise consumers about all relevant details of the Credit Contract, with a view to protecting the interests of the consumers, and making sure that they have full information about the loans, and to prevent misleading and deceptive conduct, false representations and unfair practices.

[3] As a result of that decision, Mr Baker and Mr Dolbak incorporated a company called Dolbak Finance Limited, and transferred contracts in existence to Dolbak Finance to that company. In the process of doing so, they had advice and assistance to prepare new forms, which was sought to avoid the problems that had arisen earlier. Unfortunately in two respects, the forms and/or the processes to try and comply with the Act, were not as they should have been in relation to the interest rate, and also failing to disclose the cost, if there was a repossession of the vehicle.

[4] That has led to a number of further informations being laid both against Dolbak Finance Limited and Mr Baker. Today, all but two of those informations, including all the informations against Mr Baker, have been withdrawn by leave.

[5] There have been amendments to two of the charges, informations ending 6597 and 6573. The former one relates to the interest rate, that is the annual interest rate under the Credit Contract. It would appear that the system being used to calculate interest, had not properly calculated it, and that was because the system used by the automobile and/or finance industry generally, had not been used, but rather, another system thought to be reliable, but was not reliable. The rate varied depending on where in the month, that is at the beginning, the middle or the end, the contract was entered into. This morning, Mr Gould as counsel for Dolbak Finance Limited, has entered a guilty plea to that charge.

[6] The other information relates to the failure to put the costs of repossession fairly and squarely in the new form, therefore, failing to advise people who had the benefit of the contract in terms of the cash advanced of the cost of repossession. That is acknowledged as being a breach of the Credit Contracts and Consumer Finance Act. That is a breach of the Fair Trading Act s 13(i). Again, having amended that to a representative charge, Mr Gould as counsel for Dolbak Finance entered a guilty plea on behalf of the company.

[7] Both the informant, the Commerce Commission, and Mr Gould on behalf of Dolbak Finance, have filed written submissions, which I have had the opportunity to read prior to coming into Court. Those submissions disclose that in view of the background to this matter, that I should impose a fine of \$1000 each on the two charges, that is essentially to adopt a starting point of around \$1500, and to enter a fine of \$1000.

[8] First of all, I should say that the acts complained of were not deliberate, and were not serious. The finance ones, sometimes the amount was under. Mostly it was over, but not by more than one percent. My understanding is, that that did not actually result in any harm to consumers, or any loss to consumers. The level of fine is also to recognise that efforts have been made by the two men associated with Dolbak Finance Limited, to comply with the requirements of the Act.

[9] In relation to the non-disclosure of the repossession costs, none of those contracts have been enforced, again, resulting in no loss to the consumers who had the benefit of these contracts.

[10] I have already indicated that I do not intend to interfere with the agreement that has been reached.

[11] Part way through this sentencing, it came to light that the amendment to 6573 did not reflect the charges as intended. That has now been amended, to make it plain, that Dolbak Finance Limited had attempted to enforce contracts either by way of acts of repossession of the car or by legal proceedings, when in fact it was not entitled to enforce the contracts, because disclosure of the repossession costs had not been made to the person who had the benefit of the contract. My understanding is that, those enforcements have not proceeded against, so no consumer of the finance has been disadvantaged.

[12] But having said that, I remain prepared to go along with the agreement that has been reached. I should make it plain, that this should not be seen as any precedent. This is a rather unusual situation, where following the 2007 prosecutions,

there has been follow up, and these discrepancies or problems have been discovered, resulting in further charges.

[13] Having said that, Dolbak Finance Limited must now be aware, that it simply has to make sure that it complies with the Credit Contracts and Consumer Finance Act and any other applicable legislation in all ways that it is required to comply.

[14] On each charge, a fine of \$1000 will be imposed.

[15] No Court costs are sought.

A handwritten signature in cursive script, appearing to read "P A Cunningham".

P A Cunningham
District Court Judge