

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CIV-2022-004-000744
[2025] NZDC 9866**

BETWEEN

AKASHI TRADING CO LTD a company
duly incorporated in Japan, carrying on
business as a vehicle wholesaler.
Plaintiff/ Defendant to a counter claim

AND

JAP IMPORTS LIMITED a duly
incorporated company having its place of
business at 132 Stoddard Road, Mt Roskill,
Auckland carrying on business as a vehicle
retailer.
Defendant/Plaintiff to counter claim

Hearing: 1 & 2 May 2025

Appearances: D Shahtahmasebi and P Grant for the Plaintiff/Defendant to
counter claim
Z Dost in person for the Defendant/ Plaintiff to counter claim

Judgment: 6 June 2025

RESERVED DECISION OF JUDGE DJ SHARP

Introduction

[1] This proceeding relates to supply of motor vehicles between the plaintiff and defendant.

[2] The plaintiff's contention is that the defendant purchased 185 vehicles from it. The defendant maintains that the purchases it made were from another party and that there is and was no contractual relationship between the plaintiff and defendant.

[3] The plaintiff company arranges for motor vehicles to come to New Zealand on a wholesale basis. The plaintiff purchases motor vehicles in Japan and then on sells them around the world.¹

[4] The plaintiff says that it uses a commission agent in the United Kingdom. That being Auto For Trade Limited (AFT).² The procedure as contended by the plaintiff is that AFT facilitates the sale of vehicle to wholesalers in New Zealand. The plaintiff's position is that the sales process is carried out via AFT's web platform.³ The plaintiff says potential retailers select a vehicle from AFT's lists, the retailer then orders the vehicle, and then makes payment. For Japanese stock, the vendor is stated as being the plaintiff company. The account number given is the plaintiff's company name. The procedure adopted by AFT confirms commercial invoices will be issued by the plaintiff. The plaintiff contends that the requirements of Japanese law mean that the defendant's claim that AFT was the contracting party was not and can never have been correct.⁴

[5] In AFT's procedure summary the make of the vehicle, year, chassis number, dollar price, and colour are set out. Photographs are included. In the majority of cases it is this information that the plaintiff maintains a retailer views before making a decision whether or not to purchase a vehicle.⁵

[6] In the transactions which the plaintiff maintains it had with the defendant, AFT's sale agent Fahad Rasool (also known as Neil Foster) for the most part provided the above details including the make of the vehicle, year, chassis number, dollar price and the colour directly to the defendant. The plaintiff maintains that for all intents and purposes the defendant's contact person was Zabihulla Dost (Zab).

[7] The plaintiff contends that between January 2021 and January 2022 the defendant had delivered from the plaintiff 185 Japanese motor vehicles. The plaintiff

¹ See affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [5]. Trial bundle, 052.

² See affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [6]. Trial bundle, 052.

³ Affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [7]. Trial bundle, 052.

⁴ NOE p 9 lines 15 – 23. Evidence of Abdul Mohit Gandhi. This relates to the ability to obtain export certificates.

⁵ Affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [9]. Trial bundle, 053.

has produced evidence to suggest the agreed purchase price (via the AFT web platform) was ¥112,423,650.00.⁶

[8] The defendant has paid into the plaintiff's bank account the sum of ¥87,236,445.00.⁷ These payments have left a balance outstanding of ¥25,187,205.00 on the plaintiff's account of events.

[9] The 185 vehicles have been delivered to the defendant. The plaintiff has suggested both in submissions and in affidavits that these were per orders placed or as the result of direct agreement. The vehicles were shipped to New Zealand and went through the New Zealand customs process.

[10] The plaintiff points to the following documentation:

- (a) A commercial invoice from the plaintiff to the defendant. These invoices did not include GST, which needed to be paid by the defendant (as consignee) to NZ Customs before the vehicles could be uplifted.
- (b) The plaintiff's remittance deposit slip.
- (c) Shipping mark – shipping order. This document confirmed the plaintiff as the shipper and the defendant as the consignee.
- (d) Bill of lading naming the plaintiff as shipper and the defendant as consignee.
- (e) Japanese language export certificates, showing the respective status of the plaintiff and defendant.
- (f) Waybill, confirming the respective status of the plaintiff and defendant in relation to the transaction.⁸

⁶ Affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [11]. Trial bundle, 053.

⁷ Affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [12]. Trial bundle, 053.

⁸ Affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [14]. Trial bundle, 053-054.

[11] The plaintiff contends that when the vehicles arrive in New Zealand, it is the obligation of the purchaser (in this case, the defendant) to pay the GST component. The defendant is also required to complete a customs declaration and complete a New Zealand Transport Authority (NZTA) declaration. These documents are prepared by the defendant.⁹

[12] In order that the defendant may uplift the vehicles that have been imported into New Zealand, it is required to pay the New Zealand Government, GST that being 15 per cent of the commercial invoice price. Fifteen per cent of the total sales of ¥112,423,650.00 is ¥16,863,574.50. At the current rate of exchange (¥112 to \$NZD100) the GST payment would amount to \$NZD188,871.73.¹⁰

[13] The plaintiff contends that the defendant has paid the New Zealand Government this sum, via New Zealand Customs.

[14] The plaintiff has sought details from the defendant as to why the full sum has not been paid for the vehicles.¹¹ The plaintiff holds 13/14 export certificates which are required for New Zealand registration.

[15] In response the defendant has indicated that it is not involved in a contract with the plaintiff (rather the seller is AFT). In addition, Zab alleges that the defendant did not agree to the purchase price on each occasion set out in the commercial invoices that were forwarded to it.¹² The defendant has refused to pay on this basis.

[16] By way of counter claim the defendant seeks a declaration granting the defendant the right to register 13 or 14 vehicles without the provision of export certificates.

[17] In the alternative for the plaintiff to be required to remove alleged illegal securities placed on the vehicles.

⁹ Affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [16]. Trial bundle, 054.

¹⁰ Affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [17]. Trial bundle, 054.

¹¹ Affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [18]. Trial bundle, 054.

¹² Affidavit of Abdul Mohit Gandhi dated 18 April 2022 at [18]. Trial bundle, 054.

[18] The defendant seeks compensation for the loss of the opportunity to be able to sell the vehicles.

[19] Further the defendant seeks legal costs, operational costs, and for non-economic loss. The amount being sought is \$NZ500,000.00, or higher if the judge deems fit. That being non-economic loss. In addition the plaintiff seeks that Abdul Gandi and Alli Dad be held accountable for allegedly taking part in international fraud, consequently causing misery and suffering to the defendant.

Legal position

[20] The formation of contracts is subject to offer and acceptance. The most commonly accepted definition “*a promise or set of promises which the law will enforce*”.

[21] To constitute a valid contract:

- (a) There must be an agreement between separate and existing parties;
- (b) Those parties must intend to create legal relations as a consequence of their agreement; and
- (c) The promises made by each party must be supported by consideration, or by some other factor which the law considers sufficient.

[22] In the ordinary case, the law does not require a contract to be made in any particular form, nor according to any particular formalities. The general rule is that a contract can be made quite informally. The contract may be validly made either orally or in writing, or partly orally and partly in writing.¹³

[23] To determine whether an agreement between parties has been reached, it has long been usual to employ the concepts of offer and acceptance. In other words the

¹³ Halsbury's Laws of England 5th Ed Vol 22 page 135 at 220.

Court examines all the circumstances to see if one party has made an offer that the other party subsequently accepted.

[24] This idea envisages contractual agreement as being sequential, consisting of one party at one point in time expressing a willingness to contract, and the other party subsequently assenting. Many complex commercial contracts result not from a simple offer and acceptance but from a series of communications between the parties.¹⁴ In determining whether there is an agreement sufficient for contract formation, a court must carefully examine the communications between the parties to determine whether an offer has been made by one party that was then accepted by the other.

[25] There are some circumstances, however, where an analysis in terms of offer and acceptance is difficult or unhelpful, and in such cases a broad approach may instead be applied.¹⁵

It is only the precise analysis of this complex of relations into the classical offer and acceptance, with identifiable consideration, that seems to present difficulty, but this same difficulty exists in many situations of daily life, for example, sales at auction; supermarket purchases; boarding an omnibus; purchasing a train ticket; tenders for the supply of goods; offer of reward; acceptance by post; warranties of authority by agent; manufacturers guarantees; gratuitous bailment; bankers commercial credits. These are all examples which show that English law, having committed itself to a rather technical and schematic doctrine of contract, in application takes a practical approach, often at the cost of forcing the facts to sit uneasily into the marked slots of offer, acceptance and consideration.

[26] In some cases the precise requirements for an offer and acceptance in such cases a wider approach has been called for:¹⁶

The real question... is whether an implied contract can be spelt out of the words and acts of the parties. As indicated in *Boulder Consolidated Ltd v Tangaere* [1980] 1 NZLR 560 and having regard to the authorities there cited, I would not treat difficulties in analysing the dealings into a strict classification of offer and acceptance as necessarily decisive in this field, although any difficulty on that head is a factor telling against a contract. The acid test in a case like the present is whether, viewed as a whole and objectively from the point of view of reasonable persons on both sides, the dealings show a concluded bargain.

¹⁴ *Welch v Crawford* (1905) 25 NZLR 361 (CA).

¹⁵ *New Zealand Shipping Co Limited v AM Satterwhaite & Co Limited* [1975] AC 154, [1974] 1 NZLR 505, [1974] 1 ALLER 1015 (PC).

¹⁶ *Meates v Attorney-General* [1983] NZLR 308 (CA) at 377 per Cooke J.

[27] Conduct alone may objectively establish acceptance, such as where a consumer pays, by cash or electronically, for goods or services from an automated vending machine.¹⁷

[28] In considering offers the Court considers the point of view of a reasonable person in the shoes of the offeree.¹⁸ Agreement for the purposes of contractual formation, is generally based on the manifestation of mutual assent. This may be written, oral or by virtue of conduct of the parties. For example, Lord Hoffmann in *Carmichael v National Power Plc* noted that:¹⁹

In the case of a contract which is based partly on oral exchanges and conduct, a party may have a clear understanding of what was agreed without necessarily being able to remember the precise conversation or action which gave rise to that belief.

The defendant's position

[29] The defendant denies any money is owed to the plaintiff as the plaintiff was not the party it contracted with. The defendant's secondary position is that he had overpaid the plaintiff and that the plaintiff's claim is fraudulent.

[30] Mr Abdul Mohit Gandhi says:²⁰

A: Because, in a situation where, because it happens a couple of times that we tag the car to a customer and a customer inform us that: (sic) "*We don't want the car*", so shipping company contact us, we tag the car to, ie. X customer, and X customer refuse the car, (sic) so Akashi receive an email and then we contact Auto For Trade that: "*you tag this car to X customer and he refused it*", so, then they make an arrangement for their customer, or we ship car to some other regions.

Q: So what you say is that, unless the customer informs you that it is rejecting the vehicle, then it is presumed by the process that it has been accepted.

A: Yes.

Q: So, from Akashi's point of view, what would it mean if a purchaser paid the amount shown on that invoice?

¹⁷ *Thornton v Shoe Lane Parking Ltd* [1971] 2 QB 163, [1971] 1 ALL ER 686 (CA).

¹⁸ *Boulder Consolidated Ltd v Tangaere* [1980] 1 NZLR 560 (CA) at [563].

¹⁹ *Carmichael v National Power Plc* [1999] 1 WLR 2042 at [2050].

²⁰ NOE p 13 lines 24-34.

A: So, its time to time that if customer don't agree with us (sic) they contact the shipping company because the shipping company is the one who issue the GST and collect the GST on behalf of the government and then later the person who registered entity and registered for GST claim, (sic) claim on behalf of that so if they have any issues in terms of GST they should contact the shipping company and the shipping company make right amount can be calculated (sic) by asking us to amend the commercial invoice and we didn't receive any such request throughout the 885 vehicle transaction.²¹

[31] The defendant alleges that all vehicle transactions were conducted exclusively with AFT, not Akashi Trading Company Limited. The defendant contends the plaintiff's claim relies on altered documents, retrospective narratives, and coercive tactics that disregard contemporaneous evidence.

[32] The defendant suggests that AFT both in its initial approach and subsequent dealings indicated it was acting as a principal in the sale of vehicles.

[33] The defendant said that it reasonably understood and had justification to believe AFT was the seller of the vehicles. The defendant said this understanding governed all transactions up to the final purchase on 9 December 2020.

[34] The defendant said that this is by virtue of an absence of reference to Akashi Trading in the early communications. The defendant contends that Akashi Trading only became visible after the offer and acceptance between the defendant and AFT and on commercial invoices which were used for logistical purposes.

[35] The defendant suggests that the first mention of Akashi Trading was after acceptance of offers from AFT and point to an email chain.²²

[36] The defendant relies upon evidence from Mr Rasool,²³ stating "*Ok, so Akashi's an agent*". In addition the defendant suggests the acceptance by Mr Rasool of issuing commercial invoices to shipping companies indicates he had a greater degree of control over the contract than might be considered appropriate for an agent.²⁴

²¹ NOE p 17 lines 10-20.

²² Trial Bundle 2842 -2844 dated 25 January 2021.

²³ NOE p 93 lines 19-95.

²⁴ NOE p 125 line 4.

[37] The defendant wishes to rely upon a Yusen Logistics email,²⁵ and relies upon s 19 of the Evidence Act 2006 for admissibility of the document. Notwithstanding objections to the document from the plaintiff, the document appears to be an ordinary business record and I am prepared to consider the document. The document is said by the defendant to point to contract of shipping being organised also refers to “*only 2 from 20 vehicles where I am also certain that our offer will be the highest price just for the 2*”.²⁶ However it should be noted that the plaintiff’s witness’ position was that it was a bulk deal contemplated which was not completed “*no done deal*”.²⁷

[38] The defendant points to Abdul Mohit Gandhi,²⁸ saying that switching cars was a practice which AFT carried out.

[39] The defendant points to evidence showing the primacy of Mr Rasool in relation to records, shipping, and invoicing. The defendant suggests that the evidence of Mr Rasool should be treated with caution. The defendant also suggests that the transactions and communications involving Mr Rasool were formal and any suggestion at informality should be discounted.

[40] The defendant points to Mr Rasool operating under the name of Neil Foster and suggests this is an aspect that should be considered credibility wise.

[41] The defendant has submitted it is unfair and incorrect to portray him as uncooperative and he refers to numerous documents where he has engaged in communications and at various stages has attempted to resolve disagreement. The defendant identifies aspects of evidence which it says points to a lack of reliability on the part of Mr Abdul Mohit Gandhi and has suggested that the plaintiff’s references to New Zealand Inland Revenue Department and the potential for tax fraud in relation to GST payments were illegitimate aspects of pressure applied to him.

²⁵ Trial bundle 1028.

²⁶ Detailed in point 8 of the defendant’s submissions dated 27 April 25.

²⁷ NOE p 111 lines 5 – 8.

²⁸ NOE p 51 line 19.

[42] In addition the defendant submits there was a refusal to co-operate in preparation of the trial bundle limiting the defendant's ability to fairly cross-examine the plaintiff's witnesses on the basis of communications.

[43] The defendant says that in proceedings brought by the defendant there was initially a failure to distinguish between AFT and Akashi Trading because "*the defendant did not initially distinguish between the two, as dealings with Auto For Trade often involve Akashi Trading on shipping or invoicing documentation*".

[44] The defendant suggests that a failure to provide records on the part of the plaintiff meant that the Court has incomplete information but that this has been clarified by admissions made by the plaintiff.²⁹

[45] The defendant has produced a series of submissions relating to the prices for motor vehicles.³⁰ The defendant's submission is that a matching of the chassis number of vehicles shows that the spreadsheet created by Zab is a more reliable document than the accounts which the plaintiff has relied upon with reference to declared commercial values. The defendant also says that the rolling account that existed supports the defendant's contention that it has paid a greater sum than that which is owing to the plaintiff.

[46] The defendant submits that agreed prices were less than the commercial values shown in the invoices which may be seen in the shipping documents and upon which the defendant paid GST. The defendant points to what it submits are selective excerpts from WhatsApp exchange, on the part of the plaintiff.³¹ The defendant submits the practice referred to did not reflect the true commercial terms agreed between the defendant and AFT.³²

[47] The defendant further submits that the plaintiff has cherry-picked excerpts from the defendant's communications and maintains that Mr Rasool specifically

²⁹ Defendant's closing submissions dated 15 May 2025 at paragraph [77].

³⁰ Ibid Paragraph [78] – [84].

³¹ NOE p 217 line 20, p 218 line 24.

³² Defendant's submissions 15 May 2025 para [96].

acknowledged in a 25 October 2021 WhatsApp message,³³ that he had no authority to set commercial invoice values and was compelled to follow Akashi's directives:

I was actually not in the office on Saturday and Sunday, so hopefully I can provide you by today or tomorrow morning. And the way I told you, I hope you remember that. The invoices were given, just because of the taxes, the implementation has been given to us, ok? So it would be like we are the actual price I can provide. (sic)

Yeah, I have no problem with that. And I can also, you know, there is not a huge difference in the prices. Like, the old vehicles you can get to see, and also these vehicles, all similar in between that.

Because what we are going to purchase, we are kind of similar vehicles with similar prices, ok?

So don't worry about that. I can provide you, not a big deal, ok?

Why we are providing a high-value invoices?

Because of the taxes, ok?

Because of the implementation of the taxes in Japan, ok? So these things I've already been acknowledged to you, I guess?

[48] The plaintiff is said by the defendant to have wrongfully retained control of necessary import documentation for 13 or 14 vehicles for which the defendant has paid in full.

[49] The defendant's position is that it made direct contracts with AFT without any reference to the plaintiff. That the defence only recognise the plaintiff as a person engaged in the shipping of the motor vehicles. Further that the price which was referred to as the commercial price nominated in the shipping documents was a price in excess of the actual agreed price.

[50] By virtue of this the stated excess pricing in the commercial invoices is said by the defendant to relate to AFT's banking situation (and unrelated to the true agreed price for the vehicles) this has meant that there had been an over payment made on the part of the defendant.

³³ Trial bundle 3170, 11:30.

[51] The defendant suggests by reference to various communications that there were credits granted to the defendant in respect of vehicles which the defendant says indicates figures less than the nominated commercial price of the vehicle were the actual agreed sale price between the defendant and AFT.

[52] The defendant has claimed that because of interference with the defendant's computer-generated records, it has been deprived of the opportunity show the correspondence indicating the true purchase price of vehicles. The defence maintain that the evidence produced by the plaintiff and by Fahad Rasool is untrue and with a fraudulent intent.

[53] The defendant explains that he paid GST and completed the formalities to uplift the vehicles was because the GST calculation was unilaterally declared by the plaintiff or AFT without input from the defendant. The defendant claims that emails and WhatsApp communications show the commercial invoices were inflated for the purposes of a bank loan and did not represent the agreed price for the defendant. The defendant suggests that the total agreed price is as documented in emails, WhatsApp messages, and Google Drive records and that the real prices fell below the amount paid by the defendant into the AFT nominated bank account.

[54] The defendant submits the defendant's calculation also incorporate the amount owed by AFT to the defendant for undertaking repairs to damaged vehicles to meet entry compliance standards. The defendant suggests he has paid slightly more than the amount owed to AFT and is not indebted any further to AFT or the plaintiff.

[55] The defendant suggests that repair costs now exceed \$NZD88,202.00 as some invoices were pending at the time the initial defence documents were filed. The defendant suggests the amount owed is to be offset against any balance which comprises the sum of the respective agreed purchase prices. The defendant submits that contrary to the plaintiff's claim these costs were not part of discounted prices on vehicles supplied to the defendant.

[56] The defendant maintains that it disputes the value of work carried out and counterclaims for the release of the 13 vehicles' export certificates, or a declaration

allowing New Zealand registration without export certificates, the removal of securities registered against the vehicles and for loss of opportunity due to unavailability of funds and damage in terms of the wear and tear on vehicles which has occurred in the meantime. As to repair costs the defendant submits significant costs were incurred on the defendant's behalf. The defendant refers to parts which are shown in documentation.³⁴ The defendant advised Mr Rasool that approximately \$40,000 had been invested, \$35,000 being the vehicle price and \$5,000.00 in parts.

[57] Further, photos and eBay receipts confirm parts were necessarily sourced from Australia.³⁵

[58] The defendant also relies upon WhatsApp exchanges.³⁶

[59] The plaintiff referred to its inability to reconcile invoices with vehicles. The defendant maintains that the invoice corresponds with particular chassis numbers.³⁷

[60] The defendant submits that the absence of invoices asserted by the plaintiff is incorrect and refers to documents found,³⁸ and supporting invoices,³⁹ with a summary.⁴⁰ The defendant submits the only element not reflected is the application of the corresponding credit. The defendant submits these were never processed.

[61] The defendant's submission is that the plaintiff's claim should be dismissed and that the Court is invited to draw appropriate inferences to consider the counter claim.

The plaintiff's case

[62] The plaintiff submits that when the auction sheets, customs declaration, commercial invoice, pre-inspection document, shipping invoice and GST payments

³⁴ Trial bundle 3006, Trial documents showing purchases for a turbo unit and a full tank with supporting bank screen shots.

³⁵ Trial bundle 3007.

³⁶ Trial bundle 3028.

³⁷ NOE p 269 line 6.

³⁸ Trial Bundle 2529, 2537

³⁹ Supporting invoices. Trial Bundle 2552 and 2577

⁴⁰ Trial Bundle summary 2557.

are considered alongside the actual payments made on the defendant's behalf together with the references given to the export certificates and bill of lading, the combined documents together with the exchanges provided in evidence by Mr Rasool and Mr Gandhi provide irresistible evidence on a concluded contract with Mr Rasool acting at all times as an agent with authority to commit the plaintiff.

[63] The plaintiff also submits the defendant has been inconsistent (referring to 10 December 2021 Zab messaging Mr Rasool's saying "*about you, my thoughts are, you are well brought, a decent person, trying you (sic) best for customer. But your position is middleman, between customer and supplier*").⁴¹

[64] Further, by WhatsApp on 22 June 2021 from Zab to Mr Rasool:

Can you email me a excel sheet of cars purchased to date and our price that Akashi wants us to pay. I started with good intention, paid for cars thinking quality was to be as good as better. Unfortunately, Akashi cars are having too many issues and costs us too much. We want to clear the current accounts... and decide if we will do any further purchasing form (sic) Akashi.⁴²

[65] The plaintiff submits many of these messages were put to Zab during cross examination. The plaintiff submits that the specific message above was put to Zab and the following exchange demonstrates how Zab's response served no purpose other than to confirm the plaintiff's case.

[66] As regards prices, the plaintiff submits the amount to be paid is shown on a commercial invoice for each vehicle, addressed under the heading "commercial invoices".

[67] The plaintiff said the defendant clearly agreed to these amounts when it paid the GST sum which has been calculated on those commercial invoices, further this may be shown because –

- (a) The defendant disagrees and says the majority of vehicles had separately agreed prices.

⁴¹ WhatsApp messaging (WAM) – 166.

⁴² BOD 3088.

- (b) The plaintiff submits it can demonstrate the defendant has misstated the position with reference to key examples:⁴³
- (i) Mr Rasool sent an email to the defendant which includes an invoice for 30 per cent payment of the vehicle.⁴⁴
 - (ii) The total of the invoice is ¥1,531,000.00. The defendant paid this exact sum on 12 March 2021, one day later.⁴⁵
 - (iii) The receipt of this invoice and its immediate payment is submitted by the plaintiff to be proof that the defendant accepted the price of those particular vehicles, by paying the invoice for 30 per cent in advance. The plaintiff submits there is no evidence to the contrary.
 - (iv) The plaintiff submits the logical inference from this for a number of the vehicles is that the defendant has claimed the agreed price has a different value. The defendant has provided no proof of an agreed separate price.
 - (v) Specifically, the defendant says vehicle ACA38-5147497; the price claimed by the plaintiff is ¥554,000.00 as per the commercial invoice. The defendant claims the agreed price is ¥450,000.00.⁴⁶ The 30 per cent price of this vehicle as per invoice referred to above is ¥166,200.00. This sum was paid.
 - (vi) Therefore, this confirms the total price of this vehicle was ¥554,000.00.

⁴³ BOD 2218

⁴⁴ BOD 2219 is a copy of the invoice.

⁴⁵ Noe pp224 and 230.

⁴⁶ BOD 208.

[68] There is no proof of an alternative agreement. The defendant's position is inconsistent with the defendant paying the 30 per cent invoice in advance on the price claimed by the plaintiff.

[69] Further, no proof of repair costs have been provided despite the defendant's sworn statement alleging repairs of \$NZD1,150.00.⁴⁷

[70] The NZTA inspection records no damage, and the AA check provided by the defendant also notes only "replace front wiper blades".⁴⁸

[71] The plaintiff claims the above is true for vehicle AVV50-1028859, AW50-1034265; and NKE165-7091810.⁴⁹

[72] Further, the plaintiff accepts that three invoices were provided by AFT reflecting the discounts for the first three invoices. The plaintiff submits this was explained by Mr Rasool as invoices were promissory invoices.⁵⁰ A discount was offered because the vehicles were already sitting in the yard and were incurring storage charges.⁵¹ The plaintiff submits the way discounts were to be applied is, as explained by Mr Gandi, that the purchase price would be paid in full however the discounted amount would be credited or applied to future purchases.

[73] The plaintiff submits the discounts in relation to those three invoices have already been applied to future purchases by applying a credit.⁵² The evidence shows that the defendant's future purchases included 183 vehicles. The plaintiff's evidence is that the prices in the commercial invoices for the subsequent 183 vehicles had already been adjusted to reflect this credit.⁵³

⁴⁷ BOD 307.

⁴⁸ See AA check at BOD 1606.

⁴⁹ All three of these vehicles feature on the 30 per cent invoice in question. Yet the defendant has claimed different prices for these vehicles in its initial statement of defence. It is also true that of these three vehicles, there is no proof of any repairs or issues.

⁵⁰ NOE p 9113 line 5 -10.

⁵¹ NOE p 22-23 and 104.

⁵² NOE p 105 lines 25 – 30.

⁵³ Evidence of Mr Rasool NOE p 117 – the plaintiff says this was unchallenged by the defendant.

[74] The plaintiff submits that at trial Zab was relying on a spreadsheet he had created as proof of separately agreed prices.⁵⁴ The plaintiff says Zab shared the spreadsheet with AFT and asked them to prove the prices that Akashi wanted to pay. This spreadsheet is submitted by the plaintiff to be proof of Zab attempting to negotiate prices after the fact.

[75] During trial the plaintiff submits Zab also relied on a WhatsApp message,⁵⁵ to demonstrate that there had been an offer and acceptance for 20 hybrid vehicles at a price of ¥10,450,000.00.⁵⁶ However, the defendant has only produced one page of the relevant message chain in his affidavit of 11 October 2023.⁵⁷ The full chain of messages are, on the plaintiff's submission, evidence that there was no confirmation of this bulk offer. During the course of the conversation it is clear that Zab has decided not to continue and includes a message which says "*I am not co-operating.*"⁵⁸

Repairs

[76] Mr Rasool said in evidence that discounts required an NZTA invoice.⁵⁹ Further, the plaintiff submits that in evidence Mr Rasool said with the exception of one invoice he did not receive sufficient proof and without sufficient proof there would be no reduction in price.⁶⁰

[77] Mr Rasool also confirmed that the plaintiff would not cover costs for minor issues such as wheel alignment, changing tyres, but only for major compliance issues.⁶¹ The plaintiff submits this was accepted by Zab.

[78] The plaintiff points to the defendant owning a mechanical repair shop called Northcote Auto Services Limited. Zab is a shareholder of this entity and so is the defendant company.

⁵⁴ Final question to Mr Dosts NOE p 282.

⁵⁵ BOD p 553.

⁵⁶ NOE p 48-50.

⁵⁷ BOD 553.

⁵⁸ WhatsApp (WAM) 163.

⁵⁹ NOE p 98 lines 5-10.

⁶⁰ NOE p 99 lines 15-25 and WAM 045 and NOE p 100.

⁶¹ NOE p 119.

[79] The plaintiff points to cross examination showing that repairs claimed in set off were carried by Northcote Auto Services Limited. Despite this Zab was unable to provide any direct proof of the costs incurred by his own workshop.

[80] In addition, the plaintiff submits that where vehicles passed their initial inspection, the plaintiff cannot be expected to take responsibility for failures occurring after one, two or three years.⁶²

[81] This submission is repeated by the plaintiff in relation to the Mercedes Benz belonging to Mr Dost.

[82] The plaintiff said that despite multiple opportunities the defendant has not produced invoices containing timesheets, expenditure for parts and workshop details that would apply to legitimate mechanical work.

[83] The only available evidence provided by the defendant in support of its contention is an AA light vehicle entry certification,⁶³ which refers to replacement of tyres.

[84] NZTA check sheets: the plaintiff submits out of 400 pages of NZTA records only four vehicles are noted as having structural damage. The four specific vehicles.⁶⁴ Accordingly, the plaintiff submits the remaining vehicles all passed their initial inspection and submissions for work required and invoices to be paid on the part of the plaintiff needs to be viewed in the light of the limited number of vehicles failing the requisite NZTA vehicle test.

[85] The defendant has provided invoices from New Lynn Sandblasters and panel beaters with a cumulative total of \$NZD49,794.00, significantly less than the claimed \$NZD94,994.00 which the defendant says should be taken into account.

⁶² See NZTA OIA request table, attached, referred to in plaintiff's final submissions at [90].

⁶³ See NOE p 208 lines 1 – 10.

⁶⁴ BOD-1055, BOD-1069, BOD-1186, and BOD-1210

[86] The plaintiff submits the New Lynn invoices cannot be reconciled on three occasions with any of the 185 vehicles supplied by the plaintiff.⁶⁵ These relate to \$NZD2,785.30 which the Court may, on the plaintiff's submission, discount from the defendant's purported set off.

[87] The plaintiff submits in respect to the remaining New Lynn invoices there are numerous occasions in which invoices are to replace tyres and for other works outside that contemplated for reimbursement in the contract between the plaintiff and defendant.

[88] The plaintiff submits the defendant has an onus in establishing that the New Lynn invoices:

- (a) Were costs legitimately incurred; and
- (b) For costs that the plaintiff could reasonably be expected to bear under the terms of the contractual agreement.

[89] The plaintiff submits that at no stage during the trial nor in the 4,000 pages of evidence has the defendant established any of the factors required to the civil standard.

[90] The plaintiff submits the examples highlighted should incline the Court to reject the defendant's contentions regarding works required.

Zab's credibility

[91] The plaintiff submits Zab's complaints regarding receipt of the documents are not justifiable. That Zab had produced an affidavit from a witness who withdrew that evidence after being cautioned that his evidence could be self-incriminating.⁶⁶

[92] As regards the allegations of fraud made by the defendant, the plaintiff submits that these should be ignored by the Court as they are without substance or any tangible evidential proof save from the contentions made by the defendant himself.

⁶⁵ The invoices are at BOD 1549; 1594 and 1597.

⁶⁶ NOE p 191 -194.

[93] The plaintiff's submission is that the allegations his emails have been tampered with and the allegations that other entities involving personnel in common with the plaintiff's witnesses have been engaged in significant frauds is unsubstantiated and no material with the evidential force sufficient to establish fraud has been produced by the defendant.

[94] The plaintiff further submits that the defendant's counter claim is unsubstantiated and relates to allegations that are false and should be dismissed. The plaintiff seeks payment in the sum of ¥25,187,200.00 on the basis that the Court may make orders for payment in the sums expressed in foreign currency where the claim is for a debt or for damages.⁶⁷

[95] The plaintiff also seeks payment in the sum \$NZD94,994.00 to reflect discounted price based on misrepresented repair costs provided by the defendant.

[96] The plaintiff also claims interest pursuant to Interest on Money Claims Act 2016. Further that the plaintiff seeks the ability to file memoranda regarding the question of costs.⁶⁸

The plaintiff's closing submissions dated 14 May 2025

[97] These provide a compelling reference between prices and invoices. This submission is supported by paragraphs [30] to [33] of the plaintiff's closing submissions dated 14 May 2025 where the plaintiff points to the note on the GST invoices advising within seven days should there be any discrepancies.⁶⁹ No price discrepancy was raised by the defendant.

[98] The defendant did however contact the shipping company when he noticed the chassis numbers on the Akashi commercial invoice were incorrect.⁷⁰ Indicating that the defendant paid close attention to the documents but raised no issue concerning the price provided in respect of the vehicles.

⁶⁷ *Michealangelo's v George Frank (Textiles) Ltd* [1976] AC 443; *Marr v Arabaco Traders Ltd* (1987) 1 NZBLC 1002, 732.

⁶⁸ Paragraphs [68] to [82] the plaintiff's final submissions.

⁶⁹ NOE pp 250 and 251. Also BOD 2910.

⁷⁰ NOE p 254, BOD 2924.

[99] The defendant claimed it raised a complaint directly with Mr Rasool.⁷¹

[100] Further, Zab has said in evidence that he did not pay GST on 145 of the 185 vehicles.⁷²

[101] In cross examination,⁷³ Zab did however alter his position stating that he paid all the Autohub Logistics invoices. He said “I’m not disputing that”.⁷⁴ Given that Zab said that he saw AFT and Akashi trading as one and the same, his distinction between them and Autohub Logistics is hard to explain on a credible or a rational basis.

Consideration

[102] The plaintiff’s claim is relatively straight forward. The plaintiff relies upon the evidence provided by Abdul Mohit Gandi and of Fahad Rasool indicating that vehicles able to be viewed via AFT could be purchased by the defendant. This accounted for 158 motor vehicles provided to the defendant.

[103] The plaintiff acknowledged in evidence that there were occasions in which persons had ordered vehicles but for varying reasons (including the death of a purchaser) they were not able to complete the purchases. In these cases, the plaintiff agrees that there were offers made to purchases such as the defendant. This was in order for them to be able to purchase the nominated vehicles. This accounted for 27 motor vehicles provided to the defendant.

[104] Notwithstanding this the plaintiff maintains that in the ordinary course of events a vehicle and its price would be agreed in advance and the documentation in respect of an agreement to pay funds into the bank account of the plaintiff was prepared. The plaintiff accepts this was organised by AFT but the accounts produced name the plaintiff and nominate the plaintiff’s bank account for the lodgement of funds.

⁷¹ NOE p 244.

⁷² Opening submissions day 2 of trial.

⁷³ NOE p 237 line 14.

⁷⁴ NOE p 250 lines 25 – 30

[105] The plaintiff has produced evidence of the payment of these sums by the defendant and contends that this together with the delivery of the vehicles, there being 185 Japanese vehicles, to the defendant by the plaintiff for an agreed purchase price forms the basis upon which a contract may be seen. The absence of any documentation between the plaintiff and defendant evidencing a contract is not referred to by the plaintiff nor need it be.

[106] The defendant on the other hand maintains that this lack of documentation is symbolic in the sense that the defendant had no knowledge of the involvement of the plaintiff. The defendant's evidence on this point is difficult to accept given the nature of the documentation. The fact that the defendant paid money to a bank account that was noted as belonging to the plaintiff. The cross examination showed:

Q But you've already said you've purchased vehicles from the plaintiff and let me help you through this Mr Dost. What was the summary judgment application for?

A: This was for, it was for the 13 certificates.

Q: What about the 13 certificates?

A: Its (sic) supposed to be delivered to me because I already paid for the cars.

Q: Yes an application seeking a mandatory injunction for the release of the 13 export certificates, right?

A: Yes

Q: From who?

A: From who was holding it (sic) so –

Q: The plaintiff yes who was holding it?

A: Well, in this case –

Q: Why didn't you sue Auto For Trade then for the release of those export certificates?

A: Because Auto For Trade – so Auto For Trade, Akashi were the same people to us...⁷⁵

⁷⁵ NOE pp 213 – 214 lines 25-6.

[107] The defendant is an experienced businessman. He was aware of his discussions with Fahad Rasool from AFT and the invoices raised specifically identify the plaintiff company. To repeatedly carry out transactions such as this and to follow through by accepting goods as consignee, completing a customs declaration and paying the GST component calculated on what the plaintiff says was the purchase price, are all tangible and highly probative aspects of the contract contended for by the plaintiff. The defendant in cross examination was referred to occasions he spoke of a “deal” between the defendant and plaintiff companies.⁷⁶

[108] There are exceptions to the prices which are set out in the commercial invoices included in the bill of lading. Also it is clear from the documentation that from time-to-time some vehicles did not meet the standard required to pass the NZTA requirements for which the plaintiff agrees credits were provided to the defendant.

[109] The plaintiff’s position is that items such as oil filters, tyres and other matters that relate to the day-to-day maintenance of vehicles were not matters upon which credits would be provided. However, if there was some structural problem with the vehicle requiring work, then from time to time there were agreements with defendant that credits off future purchases would be allowed. The plaintiff says this is the explanation for, on occasions, figures less than the declared commercial price of vehicles being accepted. The defendant has produced a schedule of what is claimed to be the costs in relation to necessary works. Two issues arise:

- (a) The schedule provided by the defendant is not accompanied by timesheets, invoices, other details that might indicate how the value of necessary works could be calculated and for any object of assessment of such works; and
- (b) In the evidence of Fahad Rasool:⁷⁷

Q: So, that message I just read to you that is from you to Mr Dost it says:

⁷⁶ NOE p 236 lines 10-15.

⁷⁷ NOE p 99 lines 16 – 29.

You can forward all the receipt with me (sic) so I will check and properly assist.

Ok then on the second half of the page you say “*so if we go through messages down at 11.52 you say:*

Please send all the repair invoice (sic) which you paid.

Do you see that?

A: 11.52

Q: The time is 11.52 in the message.

A: Yes so what message you talk about?

Q: It say (sic) *Please send all the repair invoice which you paid.* (sic)

Do you see that.

A: Yeah

Q: So did he ever send you the repair invoices from your memory.

A: I don't think so Sir. Maybe just one to maybe, I don't think so I was able to get these I don't think so. I don't recall but I don't remember that.

[110] And Mr Mohit Gandhi said further:⁷⁸

A: So, the first communication was through our dealer, Ahmed, ok, and he kept repeating the same thing, that I was fooled by Neil, I was did by this Neil, I was this by Neil, and obviously, in a good corporate organisation you listen to your customer and you do what is right for you, ok? So, the first couple of months (sic) we did what we did. We tried to find the reason. We given him so many ample opportunities to provide invoices, provide documents, provide commitments, provide whatever he did. All he did one thing. “*I took a oath (sic) I'm not going to speak to you. Give me the documents. Then I'll speak with you.*”. That is what he used to do all the time. So after investigating Neil we realised that we (inaudible 12:44:41) realised that Neil was on the right, (sic) surprisingly.

[111] The plaintiff expressly rejected any unrecorded contract at a lesser rate than the declared value of the vehicle. I accept the plaintiff's evidence on this point that the value agreed between the plaintiff and defendant is that which is shown in the documentation which accompanied the vehicles and upon which the defendant has paid GST in an amount which is broadly consistent with 15 per cent of the value of

⁷⁸ NOE p 25 lines 16–25.

the vehicles for which payment was due. It was accepted in evidence that from time to time credits might be provided to the defendant in respect of work that was needed to be done or issues in terms of vehicles that had not originally been sought by the defendant but which for one reason or another were not uplifted by a proposed purchaser once arriving in New Zealand:⁷⁹

A: Because obviously he didn't provide any evidence. He didn't had (sic) anything. He didn't make an opportunity, even though, till this date, he never make an opportunity to amend those prices which were given to Akashi and on which he made a GST on (sic) all he had to do is just contact Autohub.

[112] There is no other credible evidence that the defendant was willing to pay the GST as assessed other than that reflected in the actual price to be paid for the vehicles. The defendant willingly paid GST as assessed based on the commercial price set out in the bill of lading. The defendant's explanations for acting upon the price which the plaintiff says was the actual price for the vehicle, in the vast majority of cases has little credibility. The defendant availed itself of the right to challenge an invoice as set out in the bill of lading on the basis that the chassis number was incorrect,⁸⁰ but otherwise did not ever challenge the commercial invoices as not reflecting the price agreed.

[113] The plaintiff has accepted that there were discounts provided in certain circumstances but maintains that those discounts were provided for in calculating the amount of the claim. The account between the plaintiff and defendant was a rolling account which took into account some occasions prepayment also allowing for credits legitimately provided to the defendant. The rolling nature of the account is further evidence of continued commercial relations on the basis of offer and acceptance between the plaintiff and defendant companies.

[114] In addition, there is evidence in the form of a telegraphic transfer on the part of the defendant company dated 24 December 2021 under which the sum of \$NZ51,386.02 was claimed to have been forwarded by money transfer in partial satisfaction of moneys outstanding in respect of the disputed vehicles for which

⁷⁹ NOE p 25 line 29-35.

⁸⁰ NOE p 254. BOD 2924.

vehicle documentation had been retained by the plaintiff. This was on the basis of permission to release vehicle documentation.

[115] Mr Fahad Rasool swore an affidavit on 27 September 2022 in which he said:⁸¹

[18] Mr Dost responded by indicating that he had made telegraphic transfers (TTs) of ¥8,000,000.00, and he requested that I release documents for some of the vehicles based on those payments. At [6] is a copy of one of the TTs notice (sic) in the sum of ¥4,000,000.00 which was provided to me.

[19] Based on the TT notices provided to me I sought permission to release some of the vehicle documentation. I was denied permission on the basis that the plaintiff required the monies to actually be in its account before release of the documents. As it happened, I understand that neither the ¥8,000,000.00 of payments (nor even the ¥4,000,000.00 referred to in the attached TT) was ever received. I presume the TT's were therefore fake.

[116] The plaintiff's position is that the defendant in providing a telegraphic transfer which was unmet is a factor able to be taken into account in considering the contentions made. The defendant has explained the document which has the appearance of a TT as a transaction where the defendant sought to purchase Japanese Yen. That does not however explain the timing and correlation with the plaintiff's witness's claims that this demonstrates an agreement by the defendant to settle outstanding costs and to obtain the export certificates that he wanted to be able to further trade with the vehicles in his possession.

[117] In addition, the defendant has made submissions that by some unknown means his electronic records have been tampered with.

[118] There is no evidence from any expert to support this contention and the absence of documents to support assertions made by the defendant is a further reason to be sceptical about claims made of conspiracies or other matters on the part of persons or companies that are not party to these proceedings as having any real impact upon the relationship between the parties or the financial circumstances between them.

[119] The defendant's credibility in terms of Zab giving evidence was not assisted by his changes in position and an apparent unwillingness to accept that weight of

⁸¹ Affidavit of Fahad Rasool dated 27 September 2022 at [18] and [19].

documentation, nature of the transactions and the pattern of payment as demonstrating that Mr Rasool was acting as an agent between AFT and the plaintiff providing for contractual agreements with the defendant company.

[120] The absence of knowledge in the hands of Zab, as to the fact that AFT is a British based company that is without the means of lawfully operating in Japan and providing for export certificates for the vehicles undervalues Zab's commercial acumen.

[121] The plaintiff has submitted that significant commercial barriers were known to Zab to exist, meaning that despite his contentions to the contrary AFT were not in a position legally or practically to be the principal vendor in respect of the individual Japanese vehicles. That overall commercial reality is unlikely to have escaped Zab given his understanding of the marketplace and his obvious abilities as demonstrated by the way that he has conducted his case.

[122] What appears to have occurred is that Zab has misconceived the legal principles relating to offer and acceptance and as is shown by the WhatsApp communications found himself in an extremely difficult commercial position as a result of COVID-19 and the difficulties of the then trading environment. What appears to have occurred is that the defendant company has been poorly placed to meet its obligations and has sought to resile from them and, on my appreciation of the facts, has created an alternative scenario as far as the pricing system which was agreed.

[123] Consequentially I set to one side the defendant's contentions. These have included allegations of fraud without tangible evidence in support, allegations of some international conspiracy resulting in the defendant's accounts being interfered with electronically, again without tangible support and allegations that all the witnesses who have given a view contrary to that of the defendant have assembled materials after the fact to establish their version of events.

[124] These are serious claims but they are not supported by evidence and I reject them.

[125] There is some doubt about the level of expenditure which was required with regards to repair of vehicles. The evidence provided by the defendant was confused, unsupported by effective evidence of repair costs, payment for parts, invoices, timesheets, and other records which should be available to support an argument that an unspecified and unquantified reduction in price was due for expenditure. The plaintiff has submitted that the defendant's deductions for expenditure in the sum of \$NZD94,994.00 has misrepresented repair costs.

[126] The plaintiff has, for reasons known to the plaintiff, accepted these repair costs. There has been discounting allowed in relation to vehicles. While the material provided by the defendant is unsatisfactory the plaintiff with its own working knowledge of the circumstances, which I acknowledge are complicated, approved these credits.

[127] While the plaintiff has succeeded in relation to the agreed price for the vehicles, I am left unsure to the required standard that the plaintiff should be reimbursed on the basis of representations concerning parts and repairs which were false on the part of the defendant. This was an active and ongoing commercial situation in which there was a rolling account kept. There is sufficient confusion concerning exactly the nature of credits allowed for me to be left in significant doubt as to whether or not the repair figures or other credits available were properly provided. I decline the plaintiff's claim to be reimbursed on the basis of repair costs previously approved as credits by the plaintiff.

[128] Interest is ordered from the date of issue of proceedings pursuant s 10 of the Interest on Money Claims Act 2016.

[129] The parties are invited to file memoranda concerning the decision with regard to the question of costs.

Judge D Sharp

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 06/06/2025