



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 137

APPLICANT BC

APPLICANT KC

APPLICANT SS

APPLICANT TC

RESPONDENT QK

**The Tribunal orders:**

1. The claim is dismissed.

**Reasons:**

1. After seeing an advertisement for a caravan for sale on social media SS engaged with QK and after viewing the caravan she purchased it. SS alleges QK misrepresented the caravan saying it had no leaks and no mould. Part way during the hearing of the claim SS alleged QK was in trade and the Consumer Guarantees Act applied to her claim. SS claims \$15000.00.
2. QK strongly disputes the claim.
3. Both parties provided a significant number of documents to the Tribunal between the six hearings held over a year long period and which involved 11 hours and 35 minutes of hearing time. In this decision I will neither refer to all the documentary evidence nor all the oral evidence. Instead, I will refer to the evidence that is material for me to decide this claim.
4. The issues I must determine are:
  - a. Is QK in trade?
  - b. If yes, is the caravan of acceptable quality?
  - c. If not, has QK refuse or failed to remediate any failures or is the failure of a substantial character?
  - d. If QK is not in trade, did QK misrepresent the caravan as being free from leaks and mould and those misrepresentations induced SS to purchase the caravan?
  - e. Is the amount claimed reasonable?

## Is QK in trade?

5. The Consumer Guarantees Act 1993 (“the CGA”) implies guarantees into contracts for the sale of goods supplied by suppliers in trade to consumers. The term “trade” is defined in s 2 of the CGA as “any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services.” The term “business” is defined as any undertaking, whether carried on for gain or reward or not, or any undertaking in the course of which goods or services are acquired or supplied, whether free of charge or not. The term “undertaking” has been interpreted to mean a project or enterprise organised and directed towards an end result, as opposed to a series of unrelated actions. A pattern of related commercial transactions is required or, at least when a person’s regular occupation, profession or trade is involved, the supply needs to be for business purposes.
6. SS states QK is in trade because he makes and sells trailers for a living and the definition of vehicles, in other legislation, includes trailers and caravans.
7. QK states he does make trailers to sell but he does not make or sell caravans. He states he purchased this caravan to provide for holidays for his daughter and this is what he did. He states he has never sold any other caravans, and this was a private sale.
8. There is no evidence of a pattern of related transactions selling caravans. I do not accept that the sale of caravans and trailers are one and the same and for these reasons I find QK is not in trade for the sale of caravans and this sale is therefore a private sale.

## Did QK misrepresent the caravan as being free from leaks and mould and those misrepresentations induced SS to purchase the caravan?

9. Section 35 of the Contract and Commercial Law Act 2017 allows SS to claim compensation for a loss suffered or cancel a contract as a result of a misrepresentation, provided the misrepresentations induced her to enter into the contract for the purchase of the caravan. It is for the applicant to prove their claim in the Tribunal. This means that SS must prove that it is more likely than not that QK did misrepresent the condition of the vehicle and that but for the misrepresentations she would not have purchased the caravan.
10. Further there needs to be proof that QK either intended SS would be induced by the misrepresentations to enter the contract (It is an element of actual or constructive intention as to result which is required) or wilfully used language calculated, or of a nature, to induce a reasonable person in the circumstances of the case to act as SS did **and** the representation caused SS to act enter the contract **and** while the misrepresentation does not have to be the only reason inducing SS to enter the contract it needs to have been material **and** SS must show that she relied on the representation when entering the contract and that such reliance was reasonable.
11. SS states she was very clear in her messages and when viewing the caravan that it was important the caravan was free from leaks and mould. She states QK told her, in front of her children, the caravan did not leak and did not have mould. She states he also told her there were no leaks in a message. She states she viewed the caravan twice. Once during the day and second, on the night before the purchase was finalised. She states she did not observe any leaks or mould and it wasn’t until she got the caravan home and the next day decided to remove some carpet off the wall that she noticed there was mould and a wet/damp wall. She states it had rained the night before. She also states she raised this problem with QK immediately and he refused to address her concerns.
12. Two of SS’s children were witnesses at the hearing. One of the children (SS’s daughter) described the viewing of the caravan in great detail including checking for rust, looking at the walls, Mum feeling spots on the walls for any wet spots, the seals on the windows, the felty carpet on the walls and checking in the cupboards. She told the Tribunal she was pretty sure QK said there was no mould or leaks. The other child (SS’s son) also described viewing the caravan in

great detail including Mum feeling the walls for any wet spots and checking cupboards and checking the seals on the windows. He said he thought Mum asked about leaks and mould and general questions. He said he had no specific recollection of comments or responses by QK.

13. QK states he does not recall saying there were no leaks, but he may have because that is what he believed. He strongly states mould was never discussed and only came up after the purchase and the dispute was raised. He states he only owned and used the caravan over the summer months prior to selling it to SS. He states SS viewed the caravan and spent at least half an hour viewing the caravan with her children and there was later a lengthy negotiation about price, and he agreed to a price reduction. He states that during the price negotiation he stated the caravan was as is where is. He states SS again viewed the caravan on the night of the purchase prior to paying for the caravan.
14. The strongest independent evidence available to the Tribunal are the messages between the parties. All that is required is that the statement will assist in persuading the formation of the contract in some way. Providing information about the caravan was a natural part of facilitating a sale. QK response was part of a negotiation. QK did state to SS in a message on 28 January at 8.19pm, "No leaks or rust...". He also stated later, in relation to the WOF, "As is or I can get WOF on Tuesday" and "Come and have a look is the best bet ...".
15. That said SS viewed the almost 50 year old caravan and was able to make her own inspection; once in daylight on Saturday 29 January 2022 for about 30 minutes and again on the night of purchase, 4 February 2022. Both children were very clear and unambiguous about the viewing and the actual checks conducted by their mother which as they both described were very thorough. Both children were ambiguous about the questions relating to leaks and mould and particularly about QK's response. For this reason, I place very little weight on their evidence about alleged conversations about leaks and mould. Further SS's questions on social media never made any reference to mould. This act, combined with QK' evidence leads me to find that most likely there was not a discussion about mould before the caravan was purchased.
16. QK did state in a message "no leaks" which he believed was accurate and was his honest belief. I find QK did not intend SS to be induced by a misrepresentation nor wilfully used language calculated to induce SS to purchase the caravan. QK suggested SS have a look at the caravan before purchase and subsequent to this statement SS conducted her own thorough investigation and viewing of the caravan. SS was purchasing an almost 50 year old caravan, after a lengthy viewing and negotiation through messages and I find these actions combined are what informed and induced her to purchase. For these reasons I find SS relied on statements made by QK and two viewings to induce her to purchase and the requirements for a purchase induced by a misrepresentation are not met. Therefore I must dismiss the claim.

**Referee:** C Murphy  
**Date:** 5 June 2023



## Information for Parties

### Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

### Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact. Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

### Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

### Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.