



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 773

APPLICANT **BD**

RESPONDENT **F Ltd**

The Tribunal orders:

1. The claim is dismissed.
2. BD is to collect the E bike currently in the possession of F Ltd on or before 8 January 2024. If the E bike is not collected by BD by that date, or such later date as agreed between the parties, F Ltd can dispose of the bike as it sees fit.

Reasons:

1. In October 2018, BD purchased a [E bike] from a [Town 1] store for \$4,999.00.
2. In September 2019, BD took the bike to F Ltd's store in [Town 2] for a frame pivot service.
3. On various dates from September 2019 to December 2021, BD brought the bike to F Ltd in [Town 2] for services and other work to be carried out.
4. In late December 2021, it was determined after testing that the motor on the E bike was no longer working.
5. F Ltd attempted to try to resolve the matter under warranty with [manufacturer] but was unable to do so.
6. In June 2022, BD was advised by F Ltd of the cost of having a new motor installed.
7. BD did not ask F Ltd to install the new motor.
8. BD claimed for the E bike on his insurance policy, but the claim was declined.
9. BD is seeking \$5,000.00 from F Ltd as he says the E bike was not fit for purpose from the time of sale and F Ltd should have diagnosed the issue with the motor earlier and have not fixed his bike. He also claims that F Ltd have been negligent in looking after the bike while it was in its possession and the bike is now useless.
10. The issues the Tribunal has to consider are:
 - a. Was F Ltd the supplier of the bike to BD?

- b. Did F Ltd breach the Consumer Guarantees Act 1993 (“CGA”) by either -
- failing to carry out its service with reasonable care and skill and / or
 - if it was the supplier of the bike, by supplying a bike that was not of acceptable quality?
- c. If yes, what remedy is BD entitled to?
- d. Is F Ltd, as bailee of the bike, liable to BD in the amount sought of \$5,000.00 or any other amount?

Was F Ltd the supplier of the bike to BD?

11. Section 6 of the CGA means that where goods are supplied to a consumer by a supplier those goods must be of acceptable quality.
12. BD says he purchased the bike from a store in [Town 1] in 2018. The name of the company from whom he purchased the bike appears on the invoice. BD purchased the bike from CP Ltd.
13. BD said that F Ltd took over the shop from CP Ltd and therefore F Ltd is now responsible for the bike he purchased. He said when he contacted the shop, he was told that F Ltd would now be looking after CP Ltd’s customers.
14. I am not satisfied that F Ltd supplied the bike to BD. The bike was purchased from another company and CP Ltd is a separate legal entity to F Ltd.
15. TG of F Ltd explained that F Ltd purchased the assets from CP Ltd but did not purchase the business as a going concern. He referred to the agreement for sale and purchase which stated that the vendor, CP Ltd, remained responsible for any sales prior to the settlement date. That would include the sale to BD.
16. At the time of this hearing CP Ltd remained listed on the New Zealand Companies Register.
17. BD did not purchase the bike from F Ltd. F Ltd does not have any liability under the CGA for the goods being of acceptable quality as it was not the supplier of the goods to BD.

Did F Ltd breach the CGA by either failing to carry out its service with reasonable care and skill and / or if it was the supplier of the bike, by supplying a bike that was not of acceptable quality?

18. As I have found that F Ltd was not the supplier of the bike under the CGA, I do not need to consider whether or not the bike was of acceptable quality when purchased by BD. Even if it was not of acceptable quality, that is a matter for CP Ltd and/ or [the manufacturer].
19. F Ltd did provide services to BD and that is also covered by the CGA.
20. Section 28 of the CGA means that where services are supplied to a consumer there is a guarantee that the service will be carried out with reasonable care and skill. The standard is that of a competent person exercising the trade in question. It is a standard of reasonableness rather than perfection.
21. BD says that while F Ltd was initially helpful to him and tried to resolve matters with the bike and with [the manufacturer], his bike was not fixed. He said he believed there had been a problem with the motor from the start and that F Ltd failed to diagnose this until after the warranty had expired. He said he had left the bike at F Ltd’s shop in [Town 2] since December 2021 to date. He said due to F Ltd not looking after the bike and keeping the battery charged, it is now completely useless. He says that F Ltd have been negligent in looking after his bike.

22. I am not satisfied that F Ltd has breached the CGA.
23. F Ltd produced a timeline which it had created from its service log in relation to BD's bike.
24. F Ltd carried out service work on the bike in September 2019, February 2020 and March 2020. It was not until BD brought the bike to F Ltd in May 2020 that an issue was noted that the pedals were turning but not engaging the motor. This was some 19 months after purchasing the bike.
25. BD said this issue had happened before that, but it had been intermittent and that is why it may not have been noted by F Ltd.
26. In May 2020, F Ltd replaced a rear hub and BD paid for that work. It was noted by F Ltd that the motor was fine.
27. BD next brought the bike to F Ltd in February 2021 noting that the motor was cutting out.
28. F Ltd carried out work on that bike at no charge to BD. At this stage F Ltd contacted [the manufacturer] about a warranty claim and there are some emails to that effect.
29. There were further emails between F Ltd and [the manufacturer] and ultimately BD was provided with a replacement battery at no charge in June 2021.
30. After the battery was replaced, there were further emails between BD and "M" at F Ltd [Town 2]. BD was not satisfied that the battery was running as it should.
31. M advised BD on 3 September 2021 that [the manufacturer] in Australia had come back and advised that *"34kms for 80% of the battery is within specs for an E Bike"*. M further advised BD that *"I have pretty much exhausted all resources with [the manufacturer], and they are no longer willing to help. The next plan of attack would be you raising a complaint with [the manufacturer] yourself. I am really sorry we couldn't help fully and come to a conclusion."*
32. As F Ltd was not the original supplier of the bike, it had no further obligations under the CGA. It had carried out the work as recommended by the manufacturer and as requested by BD. BD was advised he could take the matter up with [the manufacturer] directly, which he told the Tribunal he did but with no success.
33. TG pointed out that at no stage did BD advise F Ltd that he was not satisfied with its service and its attempts to assist BD.
34. BD said he understood that F Ltd was acting as [the manufacturer] in relation to these matters. That is not correct. [The manufacturer] and F Ltd are separate legal entities. F Ltd cannot compel [the manufacturer] to assist in these matters. F Ltd was essentially acting on behalf of BD as its customer to try to resolve matters directly with [the manufacturer].
35. In October and November 2021, BD obtained a silver and a gold service from F Ltd and paid for those. In November he had the bike converted to a single drive chain. There was no indication given at that stage that BD was not satisfied with F Ltd's work. I find it unlikely that BD would have asked F Ltd to do more work on the bike if he believed F Ltd was not doing its work with reasonable care and skill.
36. In December 2021, BD attempted to sell the bike to a third party. The third party came back to BD after purchasing it and advised him that the bike was not working. The bike was taken to F Ltd where SF noticed that there had been some modifications made to the bike. After discussing the matter with [the manufacturer], a conclusion was reached that the motor had been damaged by the bike being charged using an unstable power source.
37. BD denied that an unstable power source was used to charge the bike.

38. Regardless of how the motor was damaged, there is no evidence which satisfies me that it was damaged by anything done by F Ltd. It is possible there was an unstable power source as the bike was in the possession of a third party for a period of time, long enough to allow modifications to be carried out. It is equally possible that the motor was damaged in some other way. But there is no evidence that the motor was damaged by anything done by F Ltd.
39. From the timeline produced and all that was discussed at the hearing, I am not satisfied that F Ltd breached the CGA. It appeared that F Ltd attempted to assist BD and tried to get the matter diagnosed and resolved and referred the matter to [the manufacturer] when required.
40. The fact that the bike was not fixed does not determine the matter. F Ltd offered a solution to fix the bike which was to install a new motor. F Ltd offered to supply and install a new motor for \$1,300.00. BD did not want to pay for that. There was no obligation on F Ltd to do this work for free.
41. While I appreciate the frustration that BD has endured over the bike since he bought it, I am not satisfied that F Ltd are at fault and BD has not produced any evidence which satisfies me that F Ltd is in breach of the CGA.

If yes, what remedy is BD entitled to?

42. As I have not been satisfied that F Ltd breached the CGA, BD is not entitled to any remedy under the CGA.

Is F Ltd, as bailee of the bike, liable to BD in the amount sought of \$5,000.00 or any other amount?

43. Bailment can be considered to be the placing of goods in the possession of another temporarily without ownership being transferred. A bailee (the person with possession of the goods) has a duty to take reasonable care of the goods.
44. BD left his bike with F Ltd in December 2021. He said after trying to claim for the issue on insurance, he sought legal advice and was advised that he did not have to pick up the bike.
45. F Ltd attempted to assist BD by providing a letter for him to provide to his insurance company. The letter stated that the motor had had an unstable electric source of power which had damaged the motor beyond repair.
46. From February 2022 onwards, F Ltd made several requests of BD to collect the bike. Despite assurances from BD, the bike was never picked up and remains at F Ltd's store to date.
47. There was an initial hearing before the Disputes Tribunal on 16 August 2023 which was adjourned for BD to clarify the position regarding his insurance. At that hearing again TG asked BD to collect his bike and BD did not do so.
48. After February 2022, F Ltd became an involuntary bailee of BD bike. While it originally agreed to take possession of the bike, it no longer consented to that from approximately February 2022 onwards.
49. BD said he was told by SF that the battery on the bike no longer worked, and BD claims that F Ltd had been negligent by not keeping it charged.
50. SF says the battery on the bike still works and denied telling BD that it no longer worked. He said the bike has been stored carefully since December 2021. He said he removed the pedals and placed them in a box so there was no damage. He said he last tested the battery some time shortly after the hearing in August 2023 and it worked.
51. There is no evidence before me that the bike has suffered any further damage since it has been in F Ltd's possession since December 2021.

52. I am not satisfied that F Ltd has failed in its duty to take reasonable care of the bike while it was in its possession. Nor am I satisfied that F Ltd undertook to keep BD's bike charged when it had asked him repeatedly to collect his bike since February 2022.
53. While I appreciate that BD received some advice in relation to this matter, it is likely the advice was given on the basis of the claim that F Ltd was the original supplier of the bike. However, as stated above, that was not the case.
54. In all of these circumstances, BD's claim against F Ltd cannot succeed.
55. The E bike remains at F Ltd's store in [Town 2], and F Ltd has requested that the bike be collected several times. BD is to collect the E bike currently in the possession of F Ltd on or before 8 January 2024. If the E bike is not collected by BD by that date, or such later date as agreed between the parties, F Ltd can dispose of the bike as it sees fit.
56. The claim is dismissed.

Referee: P Byrne
Date: 12 December 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>.