



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 337

APPLICANT **BG**

RESPONDENT **NU**

The Tribunal orders:

NU is to return the [car] to BG on or before Monday 31 July 2023; and

The vehicle is to be returned c/- [address] at a time to be mutually agreed with BG via text or messenger; and

NU is to pay \$120.00 to BG for a fine incurred by him in February 2023 (and paid by her).

AND

If the vehicle is not returned by 31 July 2023, NU is to pay a further \$6000.00 to BG immediately after that date, that being the current market value of the car.

NOTE – After 31 July 2023, if the car has not been returned, BG may opt to enforce EITHER return of the vehicle OR full payment of the alternative money sum and she may enforce return of the vehicle even if part of the alternative money sum has been paid (if the vehicle is recovered in reasonable condition she will need to repay to NU any part of the above alternative money sum he paid to her).

Reasons

1. NU did not attend the teleconference hearing today because he did not provide a phone number on which he could be contacted to participate in the hearing – BG noted that she had provided him with the notice of hearing details via Messenger and he had read them. The hearing was able to proceed in NU's absence as per section 42 of the Disputes Tribunal Act 1988.
2. In January 2021 BG and NU were in a relationship. From the details BG has given I am satisfied that the nature and duration of the relationship does not take this claim into the area of relationship property, and the claim can therefore be heard in contract in the Disputes Tribunal.
3. At that time BG agreed to purchase and finance a vehicle in her name that NU could use so long as he made the finance payments on time and in full. The intention was that NU would get his restricted licence and once the car was paid off in full, ownership would be transferred to him. The car is owned and always has been owned by BG alone.
4. The parties' relationship ended around July 2022 and a further written agreement was entered into in September 2022 which recorded new increased repayments to be made by NU of \$120

per week in an effort to get the finance paid off faster. The parties also agreed that NU would pay any fines incurred by him while the vehicle was in his possession and would return the vehicle to BG in good warrantable condition if any payments were missed (and in that event the contract would no longer be valid).

5. Unfortunately, NU has not kept up with repayments - over the course of the finance term, he and BG have paid roughly equal amounts (around \$5000-\$5500 each). BG made payments when he was in default because the finance and vehicle was in her name. There is still \$3342.59 outstanding under the finance agreement and BG has taken over payments entirely for some time now.
6. BG has requested NU return the vehicle, but he has not done so and BG does not know where the vehicle is.
7. I find, based on all the above, that NU is in breach of the agreement, and because ceasing repayments means that he was to return the vehicle to BG's possession, he has also now converted the vehicle by not returning it to her.
8. NU was only to be entitled to ownership of the vehicle once it was paid in full and he has breached the agreement before that could occur. I consider that the payments he has already made (a little over \$5000.00 according to BG's records) are now effectively hire payments for the period that he had full and unrestricted use of the vehicle, from January 2021 to date, almost 2.5 years.
9. If he does not return the car by 31 July 2023 (in reasonable and warrantable condition), he is to pay BG the current market value of the car, the amount of which is set at \$6000.00.
10. BG has also provided evidence to show that, while NU has repaid her for fines, he incurred in 2022, there is one fine from February 2023 which she paid and that he is liable to reimburse her for.

Referee Perfect
Date: 12 July 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>.