



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

**District Court**

**[2023] NZDT 304**

**APPLICANT**      **BL and DL**

**RESPONDENT**    **L Ltd**

**RESPONDENT**    **V Ltd**

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. BL and DL purchased a [redacted] shade umbrella from L Ltd in November 2021 after they viewed the designs and fabric at L Ltd's showroom. The umbrella was installed In January 2022, and within days L Ltd had to return to replace the galvanised washers (and possibly screws) with stainless steel ones. BL and DL said they continued to have issues with the umbrella, in particular, the spring loaded lever would not work, black marks appeared on the canvas, the umbrella was not taut, and after 10 months BL and DL noticed a few small fray holes had appeared. BL and DL wanted to reject the umbrella and have a full refund of their deposit.
2. The issues to be resolved are:
  - (a) Is the umbrella of acceptable quality and reasonably fit for its intended purpose?
  - (b) If not, then was the failing of a substantial character?
  - (c) If not, are BL and DL entitled to reject the umbrella and be refunded their purchase price?

**Is the umbrella of acceptable quality and reasonably fit for its intended purpose?**

3. BL and DL agreed that L Ltd returned within a few days of having the umbrella installed and changed the screws and washers on the surface plate. Mr E, director of L Ltd, said the rusting washer issue was fully remediated and the surface plate cleaned, and he thought the issue was resolved, so he was surprised it was still the subject of this claim. DL however, said that although the screw was replaced, an incorrect washer was used, so that although it looked correct, it was nickel coated which also rusted.

4. If the issue persisted after L Ltd considered it fixed, the Consumer Guarantees Act 1993 allows the consumer to have the defect remediated and have the supplier pay for the cost. If the incorrect washer was used, then BL and DL were entitled to replace the washer and claim for that cost from L Ltd. BL and DL, have not pursued that as the remedy as they wish to reject the umbrella. However, the replacement of the washer was a minor defect and the resolution of that issue provided by the Act was for BL and DL to have the washer replaced and receive from L Ltd the cost they incurred as a result.
5. BL and DL also said that the umbrella was not of acceptable quality because the canvas was not taut, a few small fray holes had developed along the edge, the canvas had some black marks which they thought was from the powder coated steel frame, and the bag, when turned inside out, showed some fraying threads.
6. Mr C, director of V Ltd, the manufacturer of the umbrella, said all the defects raised were easily resolved. Mr E had seen the marks and said they were marks that appear with normal use which were more visible against the light coloured fabric. He said that the marks needed to be washed off as a general maintenance issue.
7. Mr C said the area where the umbrella is situated is subject to strong winds and that the photo of the umbrella where one of the panels is not taut looks like the wind may be pushing against it. Nevertheless, he said the canvas was easily tightened as it was an adjustable feature.
8. Mr C said the fabric was heavy duty, made in New Zealand, and was the same fabric that V Ltd had used since it began manufacturing the umbrellas. The small, isolated threads where the fabric had worn were where the umbrella had rubbed at that place which caused the threads to break. He said the holes had appeared due to how the umbrella was used over the past 18 months. The fraying of the inside of the cover bag was an easy fix, and the hole shown in that photo was one deliberately left open as part of the design for the pole.
9. Mr C agreed that the material came with a 10 year warranty, but it excluded any issue caused by wear and tear, as he said had occurred in this instance.
10. I find that the marks on the canvas, its tautness, and the small fray areas, were not a manufacturing defect, as the umbrella was not supplied with those issues, but rather they developed over time. A consumer can expect that the umbrella will show some signs of use, such as marks and small fray spots over time. The photos are consistent with use of the umbrella and I find they fall short of being of such a nature or extent that they could be classed as a manufacturing fault or product defect.
11. The spring loaded lever was replaced when BL and DL raised an issue with it. BL and DL however, said the issue still exists. Mr C said that the spring loader was designed to come apart to be adjusted, however, it could be permanently fixed by using 'lock tight'. The remediation he said was minor.
12. The issues are consistent with use of the umbrella. I therefore find, after weighing the evidence of the parties and the photos and emails provided, that BL and DL have not proven on balance of probabilities that the umbrella was not of acceptable quality.

### **Was the failing of a substantial character?**

13. As I have not found that the manufacturer or the supplier of the umbrella breached the Consumer Guarantees Act 1993, I do not need to consider the remaining issue. However, if I had found that the umbrella was not of acceptable quality, then nevertheless, I would have found that the defects were not of a substantial character but rather were consistent with the general use of the umbrella and it being knocked around with strong winds.

14. Section 21 of the Act provides that the failure of a good to comply with a guarantee is of a substantial character if a reasonable consumer would not have purchased that good if they were fully acquainted with nature and extent of the failure, or if the good was substantially unfit for its purpose. I find that a reasonable consumer could expect marks on the canvas, to have to adjust the canvas tension, and small fray spots to develop over time. I accept the evidence of the manufacturer that they relate to issues of maintenance and wear and tear and are not manufacturing defects. Accordingly, I find the failings are not of a substantial character.

**Are BL and DL entitled to reject the umbrella and be refunded their purchase price?**

15. The only remedy BL and DL sought was to reject the umbrella and be refunded their full purchase price. I have found, however, that BL and DL have not shown that the umbrella has a defect so that it is not of acceptable quality and accordingly they are not entitled to return the umbrella and be refunded the purchase price.

**Referee: K Cowie DTR**

**Date: 9 August 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>.