



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 158

APPLICANT BU

RESPONDENT B Ltd

The Tribunal orders:

1. The claim is dismissed.

Reasons:

2. BU purchased a [car] from B Ltd for \$5,250.00. He understood the car was registered as a seven seater car. BU has a large family and was in the market to buy a car that could fit his family. After he purchased the car, he discovered the car only had capacity as a five seater and could not be converted to a seven seater. BU claims there has been a misrepresentation about the car seating. B Ltd disputes it made a misrepresentation about the seating capacity for the car.
3. BU claims \$1,500 for compensation and the cost to cover the car being converted into a seven seater.
4. The issues to determine are:
 - a) Was there a misrepresentation made about the car seating?
 - b) If so, was it a significant factor that induced BU to purchase the car?
 - c) Is BU entitled to all or any of the \$1,500 claimed?

Was there a misrepresentation made about the car seating?

5. Under the Contract and Commercial Law Act 2017, it provides that where a party to a contract has been induced to enter into it by a misrepresentation, whether innocent or fraudulent, made by another party to that contract they are entitled to damages in the same manner and to the same extent as if the representation was a term of the contract that had been broken.
6. Under the law, a representation is a statement of fact made during the course of negotiations before a contract is made. A misrepresentation arises where a false representation has been made. For a false representation to give rise to an action in misrepresentation it must be a statement of an existing or past fact. It cannot be a mere statement of puffery, or a statement of opinion or a statement of intention as to the future.
7. BU claims that when he first asked about the car, he did advise that he had a large family, including five kids and needed a big family car. He recalls asking if the car was a seven seater.
8. BU presented the LTSA information that came with the car, which stated interior was a 7 seater.

9. Mr Q said that at no point during the presale did BU ask about the car's seating capacity, that is whether it is a five seater or seven seater. He believes it is likely the car came from the factory as a five seater option, though it does come as a seven seater option, just not in this particular car.
10. Mr Q said that BU did have a third party inspection done on the car. After which he then came and viewed the car and did a test drive. The car was in good condition and without any defects and he then purchased the car. During these occasions, BU had the chance to inspect the interior and car seating. However, he did not ask about the seating capacity.
11. Mr Q acknowledged that the LTSA information says a 7 seater for the car, but sometimes there are errors in the data that is recorded on the information. The car was not advertised as a 7 seater. It is their general practice that all advertisements are checked prior to a car being put out for sale to ensure the information is accurate.
12. On all the evidence presented, I am not satisfied there has been a misrepresentation by B Ltd during the presale of the car. I note the LTSA information does refer to a 7 seater. However, I find on the evidence that this is likely to be an error. The respondent did not advertise the car as a seven seater.
13. Further, I find that there was an onus on BU to clearly state he wished to purchase a seven seater car specifically. I find on the evidence he had reasonable opportunity to make enquires about the seating capacity, given it was to cater for his family and this was a primary reason to buy a big car, but he failed to do so.
14. I therefore find that BU has not provided sufficient evidence to prove his claim. Therefore, the claim is dismissed.

Referee: D Alofivae
Date: 20 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>.