



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 27

APPLICANT **BW**

RESPONDENT **NK**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In July 2023, BW agreed to purchase a [Car], from NK through [Website] for \$4,700.00. In September 2023, BW contacted NK asking for a refund because the car had significant mechanical problems.
2. BW says the condition of the car has been misrepresented to her. She says she relied on NK's advertisement and discussions held with him prior to the purchase. As the vehicle is not up to a reasonable standard, BW wants to cancel their agreement and she claims \$4,966.00. That sum is a refund of the \$4,700.00 paid for the car, and a refund of \$266.00 spent on servicing costs.
3. NK denies the claim saying he sold the car in good faith.
4. The issues to be resolved are:
 - a. Was a misrepresentation made in the sale of the car?
 - b. If so, is BW entitled to \$4,966.00 as claimed, or to any other sum?

Was a misrepresentation made in the sale of the car?

5. Contract law recognises a buyer in a private sale has a responsibility to carry out due diligence before entering a contract – that principle is called *caveat emptor* or, *buyer beware*. While the sale of goods is generally covered by Part 3 of the Contract and Commercial Law Act 2017 ("CCLA"), as this was a private sale between individuals, no relevant warranties or conditions about the quality, or fitness for purpose, apply to the goods.
6. While a seller is not obliged to point out faults or problems, any statements made by the seller and/or any answers given to questions received by the seller can be relied on and can amount to misrepresentation if they are false. This law is found in section 35 CCLA, which says a misrepresentation occurs where a party to a contract is induced to enter the contract by being told a false statement of fact. The law is clear that it does not matter whether that statement is innocently or fraudulently made.

7. I find no misrepresentation was made in the sale of this car.
8. I say that because BW has been unable to show NK made a specific statement which meets the requirements of being an actionable misrepresentation under s35 CCLA. To show a misrepresentation was made, clear and direct evidence of an alleged statement is required, and clear and direct evidence that the statement is false is required.
9. BW says she relied on statements within the advertisement that the car was “in reasonable condition”, and that this was a “genuine sale”. I do not however accept that either of those statements are misrepresentations on these facts. I say that because neither is of a kind that provides information about the mechanical integrity of the vehicle. This is the basis on which BW says the car has been misrepresented to her, so the Tribunal would need to be satisfied a false statement was made specifically about mechanical integrity or mechanical performance, and then show that such a statement induced her to enter into the contract.
10. The description of a car being “in reasonable condition” is, in its usual and ordinary sense, generally attributed to describing how the vehicle looks, i.e., the exterior and interior condition of the vehicle. There is no evidence here to show that any discussion specifically occurred about mechanical performance in that context. BW has suggested that the car was due for servicing and this was the basis on which the price was reduced below the asking price. NK’s evidence however refutes this, saying a service was not due for another 1500 – 2000 kilometres, and he entered into a negotiation about price purely on a financial basis.
11. In relation to this being a “genuine sale”, I accept NK’s evidence about his family circumstances and their earlier purchase of a replacement vehicle. While BW says she believes NK must have known there was something wrong with the car and that was the reason he was selling it, there is no compelling evidence available to me enabling me to reach that conclusion.
12. The Tribunal recognises BW is understandably upset that mechanical problems occurred soon after the car was purchased, and that repair estimates indicate the car is not economic to repair. That is without doubt, a difficult position to be in. However, the Tribunal’s role is to assess the legal rights and obligations of the parties. There is insufficient evidence here to show that a misrepresentation has been made, and as earlier stated, there are no other relevant warranties or protections available to BW on these facts.

If so, is BW entitled to \$4,966.00 as claimed, or to any other sum?

13. The remedy for misrepresentation under s35 CCLA is an entitlement to compensation, as if the representation were a term of the contract that had been broken.
14. As no misrepresentation has however been proven, there is no basis for me to consider an award of compensation.

Conclusion:

15. For all these reasons, BW’s claim has not been proven and therefore must be dismissed.

Referee: Malthus
Date: 19 February 2024



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>.