



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 221

APPLICANT BZ

RESPONDENT OJ

The Tribunal orders:

1. The claim is dismissed.
2. For the avoidance of doubt, I record that the van remains the property of BZ, and she may deal with it as she sees fit.

Reasons:

1. BZ purchased a [van] for \$2,400.00 from OJ.
2. She inspected the vehicle before purchasing it. She decided to purchase the vehicle based on this inspection and comments made by OJ to her at the time of inspection. The van was purchased without a WOF, which BZ was aware of.
3. Four days after purchasing the van BZ took it to a mechanic, who assessed it as having extensive rust, being unsafe to drive and uneconomic to repair.
4. BZ now wishes to return the van and claim a refund of the \$2,400.00 she paid for it. She also claims the \$90.00 Disputes Tribunal filing fee.
5. OJ denies liability.
6. The issues I have to consider are:
 - a. Was there a misrepresentation that induced BZ into the purchase?
 - b. If so, what remedy is appropriate?
 - c. Can BZ claim the filing fee?

Was there a misrepresentation that induced BZ into the purchase?

7. As this was a private sale, there are no implied warranties or conditions concerning the quality of the car. Contract law in New Zealand recognises that a buyer in a private sale has a responsibility to carry out due diligence before entering a contract – that principle is called “buyer beware”.
8. However, s 35 of the Contract and Commercial Law Act 2017 states that where a party is induced to enter into a contract by a misrepresentation, they are entitled to damages as if the representation was a term of the contract that had been breached. A misrepresentation is a false statement of fact. A statement of opinion does not amount to a misrepresentation.

9. BZ said that when she came to inspect the van before purchasing it, she discussed the van, and what she intended to do with the van with OJ. She said as she and OJ had a mutual friend she assumed she could trust him, and that she was induced into purchasing the van partly as a result of those conversations.
10. BZ said that OJ repeatedly said that the van would be perfect for travelling around New Zealand on the road, which was what BZ wanted it for, and that it would breeze through a WOF without any problems. BZ said that both these statements were misrepresentations.
11. As the applicant, BZ must prove her case on the balance of probabilities. In this case, that means that she is required to show that more likely than not, OJ made the statements outlined above, and that those statements were false.
12. I find that BZ has been unable to prove her case. That is because OJ denied making the statements outlined above. OJ said that when BZ said she would be using the van to travel around New Zealand he responded that she should not have any problems as far as he knew. He said he told her it had been sitting for over a year and had not been used for a while and that he had advertised the van as "as is where is".
13. BZ said OJ did not tell her the van had not been used for over a year but did acknowledge that she knew OJ had not got the WOF redone as he was not using the van much.
14. Even if OJ said to BZ that the van would be perfect for travelling around New Zealand, I do not think that could be construed as a misrepresentation. That is primarily a statement of opinion and could just have easily have been in relation to the model and kind of van. I do not think it implies, as BZ suggested, that it means the van was road worthy. After all, it had been advertised as "as is where is", did not have a current WOF and had not been used much recently.
15. OJ said he told BZ that the van was a good runner, but that it had not been used for a while. In my view, those statements did not amount to a misrepresentation, but rather a statement of opinion about OJ's experience of the vehicle. I accept the evidence from BZ that there was extensive rust in the van, to the extent that it was not safe to drive the vehicle. However, the statement that the van was a "good runner" is not a general statement about the overall condition of the van, but rather a more specific comment. In any event, OJ said he qualified this statement but telling BZ that the van had not been used recently. In essence he was signalling that he did not have up to date information about the van.
16. OJ said he did not say that the van would "breeze through a WOF". He accepted he might have said that she should not have any problems taking it for a WOF as far as he knew. He said that he would not have made an absolute statement or guaranteed it would get a WOF as he was not a mechanic, and it was only his opinion that it would get a WOF.
17. In essence, the only available evidence about the alleged misrepresentations is the oral recollections of the parties, which differs about what, exactly, was said. In this situation, I am unable to find that BZ has proven that it is more likely than not that OJ made any misrepresentations about the condition of the van.
18. In light of this conclusion, the van remains the property of BZ and no remedy or award of costs needs to be discussed.

Referee: Souness - DTR

Date: 24 April 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>.