



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

District Court

[2023] NZDT 289

**APPLICANT** C Ltd

**RESPONDENT** Q Ltd

**SECOND  
RESPONDENT** D Ltd

**The Tribunal orders:**

The claim is dismissed.

**Background**

1. The claim relates to a trailer that C Ltd purchased from Q Ltd in October 2021.
2. At that time the business Q Ltd was owned and operated by Q (2017) Ltd. The business was subsequently sold to Q (2021) Ltd.
3. The company Q (2017) Ltd changed its name to D Ltd.
4. FM (C Ltd) alleges that the design of the trailer is defective and that as a result of the faulty design the trailer is sustaining damage when being towed, even without a load.
5. FM began sending emails to Q Ltd about this issue in February 2022.
6. Q Ltd agreed to investigate the problem. They collected the trailer from FM and carried out work on the trailer in late February / early March 2022. The work included changing the wheels so as to lower the trailer.
7. FM exchanged emails with ND (Q (2021) Ltd) about the possible cause(s) of the problem. In one of those emails, ND commented:

Getting the tow point higher is definitely going to help as the current set up is always going to run angled down [and] all the weight will be on the front axle.

8. ND suggested that FM purchase a "high rise towball", which FM did.
9. FM submitted that the problems continued after the remedial work, and even when he used the high rise towball. He sought a refund from Q Ltd.
10. ND agreed to a refund, and he made arrangements for one of his staff members to collect the trailer when he was in [Region] for other work. Unfortunately, that trip got cancelled. ND

suggested that FM return the trailer to [City], but FM did not want to do this without compensation. The parties reached an impasse.

11. In October 2022, FM filed a claim in this Tribunal seeking refund of the purchase price.
12. The second hearing took place on 27 June 2023 at the [redacted] Court. FM attended the hearing in person. ND and LB (representing D Ltd) attended by phone.

### Findings

13. FM seeks a refund on the grounds that the trailer is not “fit for purpose”.
14. Implicit in this is an assumption that D Ltd and / or Q (2021) Ltd had a legal responsibility to provide a trailer that meets that standard.
15. Q (2021) Ltd did not supply the trailer to C Ltd. Q (2021) Ltd agreed to take over all existing warranties when it purchased the business from Q (2017) Ltd.
16. Q Ltd (2017) (now D Ltd) supplied the trailer to C Ltd. D Ltd has legal duties in addition to the warranty. Where a person in trade supplies goods, there is legislation that imposes obligations on the seller.
17. The legislation that is potentially relevant to this claim is the Consumer Guarantees Act 1993 and the Contract and Commercial Law Act 2017.
18. Determination of whether C Ltd is entitled to reject the trailer and receive a refund from Q (2021) Ltd and/or D Ltd requires consideration of what legal obligations each has in respect of the trailer.

### Warranty

19. The warranty covers faulty workmanship, and certain components in the trailer.
20. FM’s argument is that the problem with the trailer is a design issue.
21. FM did not allege any specific construction fault, and there is no evidence to suggest that the problem that FM is experiencing is due to a construction fault.
22. There is no evidence to suggest that the problem is due to the failure of any particular component.
23. The warranty does not cover the type of defect that FM alleges.

### Consumer Guarantees Act 1993 (“CGA”)

24. The CGA applies when goods are supplied to a consumer.
25. A consumer is defined as a person who:<sup>1</sup>

Acquires from a supplier goods or services that are ordinarily acquired for personal, domestic, or household use or consumption

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<sup>1</sup> Section 2, CGA

26. In *Nesbit v Porter*,<sup>2</sup> the Court of Appeal was required to decide whether a Nissan Navara ute met the definition of goods that are ordinarily acquired for domestic or household use. The Court heard evidence that approximately 20% of purchasers used the vehicle exclusively for personal use.

27. The Court held that that the goods are ordinarily acquired for domestic or household use. The Court stated that:<sup>3</sup>

We consider that “ordinarily” is used in the Act’s definition of “consumer” in the sense of “as a matter of regular practice or occurrence” or “in the ordinary or usual course of events or things”. [...] Mr and Mrs Nesbit’s purchase was not an unusual or uncommon event. The evidence of Mr Farmer shows that they did not make an idiosyncratic choice, buying for private use a vehicle like a Mack truck, which it would presumably be unusual to devote to that purpose.

28. Q Ltd manufactures a wide range of trailers.

29. The trailer that C Ltd purchased is a dual axle, braked trailer. It has a GVM<sup>4</sup> of approximately 2500kg.

30. Q Ltd also manufactures an unbraked dual axle trailer, which is available in the same physical dimensions as the braked version. The GVM of the unbraked dual axle trailer is 1750kg. The price differential between the braked and unbraked versions is approximately \$1,500 - \$2,000.

31. The only reason for purchasing the braked version is the higher load capacity.

32. I do not have evidence as to the percentage of purchasers who acquire Q Ltd’s braked dual axle trailers purely for domestic or household use. However, it is difficult to imagine in what circumstances an ‘ordinary’ consumer would require a trailer of that type.

33. A consumer could conceivably require a large trailer, but that need can be met by the unbraked dual axle trailer.

34. The braked dual axle trailer is designed for the commercial market, principally for builders and tradespeople, who regularly need to carry heavy loads. FM, who acquired the trailer for use in his building business, is the typical purchaser.

35. My finding is that this type of trailer would not be purchased for household use “as a matter of regular practice or occurrence”.

36. Therefore, I find that the CGA does not apply.

### Contract and Commercial Law Act 2017 (“CCLA”)

37. Part 3 of the CCLA incorporates what used to be known as the Sale of Goods Act 1908.

38. Section 137 CCLA states:

There is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale except as set out in sections 138 - 141

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<sup>2</sup> CA165/99 20 April 2000

<sup>3</sup> Paragraph 29

<sup>4</sup> Gross vehicle mass, the total of the tare weight of the trailer (approximately 400kg) and the maximum load capacity (approximately 2100kg)

39. Section 138 states that if the buyer makes known to the seller the particular purpose for which they are acquiring the goods, so as to show that the buyer relies on the seller's skill or judgment, then the goods must be reasonably fit for that purpose.

40. Section 139 states that:

There is an implied condition in a contract of sale that the goods are of merchantable quality if the goods are bought by description from a seller who deals in goods of that description

41. Sections 140 and 141 are not relevant to this claim.

42. In this instance, FM did not make known a 'particular purpose' for which he acquired the trailer so as to show that he relied on Q Ltd's skill or judgment. He chose the trailer that he wanted.

43. FM purchased the trailer by description, and Q Ltd deal in goods of that description. Per section 139, there is an implied condition that the goods must be of "merchantable quality".

44. Goods are of merchantable quality if they are:

Of such a quality and in such a state and condition as to be saleable in the market, as being goods of that description, to buyers that are fully aware of their quality, state, and condition, and who are buying them for the ordinary purposes for which goods so described are bought in that market<sup>5</sup>

45. FM argued that the trailer cannot be used because it sustains damage when being used for an "ordinary purpose".

46. However, LB and ND submitted that:

- a. Q Ltd have been manufacturing trailers for approximately 40 years.
- b. The trailer that C Ltd purchased was constructed to a standard design, and Q Ltd have sold many hundreds of the same trailer.
- c. LB was aware of only one previous instance of a similar problem occurring with this trailer. On that occasion the purchaser, who was a tradesman, was towing the trailer with a van.
- d. The trailer is perfectly saleable as a trailer. The problem that FM is experiencing is something to do with the configuration of the trailer with his vehicle, most likely that the towball height is too low.

47. My finding is that this trailer was in a state and condition that it could be sold in the market as a new trailer, to buyers fully acquainted with the quality and condition of the trailer. I make this finding on the basis that Q Ltd have in fact sold many examples of the same trailer over the course of several decades. The 'design fault' that FM alleges appears to affect only a very small percentage of purchasers. There is no evidence that this trailer had any unique or particular defect that would make it unsaleable in the usual market for this type of trailer.

48. Therefore I find that there is no proven breach of the condition that the goods must be of merchantable quality.

### Outcome

49. The type of defect alleged by FM is not covered by the warranty.

50. The Consumer Guarantees Act 1993 does not apply.

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<sup>5</sup> *Taylor v Combined Buyers Ltd* [1924] NZLR 627

51. There is no proven breach of the condition that goods must be of merchantable quality.
52. There is no legal basis to require Q (2021) Ltd or D Ltd to refund C Ltd the purchase price of the trailer.
53. Therefore, the claim must be dismissed.

**Referee: Nicholas Blake**  
**Date: 27 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>.