



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 347

APPLICANT CJ & KJ

RESPONDENT DW

The Tribunal orders:

DW is liable to pay \$2018.67 to CJ and KJ on or before 30 August 2023.

Reasons

1. CJ and KJ purchased a boat from DW for \$23,000.00 in December 2022 in a private sale. The written advertisement for the boat on [auction website] stated that the outboard motor had done 420 hours.
2. CJ and KJ took the boat for a sea trial, but did not have it inspected, relying on the statement given at the time by NI (DW's friend who was involved in the sale process and represented him at the hearing today) that it had last been serviced in April 2022.
3. CJ and KJ kitted out the boat ready for their family to spend two weeks on it over Christmas, but as they set off, a knocking noise was heard from the engine which lost all power. CJ and KJ had the motor inspected. An engine repair was quoted at \$13,109.71 but the actual repair needed was less, costing \$8556.88.
4. It transpires, and this is accepted by NI, that the motor hours were actually higher when sold (in the vicinity of 530-560 hours), and that the last service had been in August 2021 (and was not a full service).
5. CJ and KJ claim damages of \$8556.88, saying that the boat was misrepresented to them. They say if they had known the last service had been in August 2021, they would have taken it for a service directly after purchasing it, because it would have been due for one, and the engine damage that occurred at Christmas would not have occurred because proper servicing would have prevented it.

6. The issues to be determined are:

- Did the inaccurate statement about engine hours induce CJ and KJ to enter into the contract?
- Did the incorrect servicing date provided induce CJ and KJ to enter into the contract? Was there a misrepresentation with respect to servicing?
- What are the reasonable damages payable by DW?

Did the inaccurate statement about engine hours induce CJ and KJ to enter into the contract?

7. I find that while the engine hours advertised did amount to a 'false statement' and the relatively low engine hours would have contributed to CJ and KJ entering the contract, I find that there are no losses attributable to this misrepresentation because the actual hours (in the vicinity of 530-560 when sold) were still very low for the age of the boat. CJ and KJ emphasised the percentage difference between the actual hours and the advertised hours (which is quite high) but NI for DW submitted that this type of outboard motor lasts 3000-5000 hours.
8. The engine hours do not directly relate to the condition of the engine and were not a 'cause' or contributor to the problems that were found after purchase, and there would have been little to no difference in value of the boat (purchase price payable) whether the engine hours were 420 or 560, because the expected life of such outboard motors is so much higher.

Did the incorrect servicing date provided induce CJ and KJ to enter into the contract? Was there a misrepresentation with respect to servicing?

9. I find that the representation made by NI that the boat had last been serviced in April 2022 would have been part of what induced CJ and KJ to enter into the contract, given that they were looking for a boat in December that they could live on for a couple of weeks over the Christmas holidays. There has therefore been a misrepresentation with respect to servicing, but I note that it is limited to the date only.
10. I do not accept CJ and KJ' contention that a representation about servicing extends to a warranty about quality or professionalism of the servicing or even necessarily that a 'full' service was carried out, unless these things were specifically mentioned or asked about, which they were not in this case. There was also no discussion prior to the contract being formed about the service history of the boat beyond the latest service.

What are the reasonable damages payable by DW?

11. CJ and KJ say that if they had known that the last service had been in August 2021 (and that that was not a full service), upon purchase they would have immediately taken the boat for a service because it would have been 4 months overdue for one. They say that the problems would then have been discovered before they attempted to take the boat out, and the engine would not have seized as it did on that trip. They and their witness, QU from [boat shop], estimate the costs of resolving the problems at that point (before the engine damage) would have been in the vicinity of \$1500-\$2500.00. CJ and KJ accept that that cost is payable by them.

12. When there has been a misrepresentation, the damages are measured as if the representation were a term of the contract that had been breached. In this case, this means that instead of 8 months having passed since the last service as represented, 16 months had passed since the last service making a service 4 months overdue, as CJ and KJ say. However I consider it relevant that making a representation that a service has been done does not include vouching for the quality of that service and CJ and KJ were not told about and did not ask for any other servicing information such as a full servicing history. Actually very little information about servicing was represented, only a date was given, and as established that date was out by 8 months.
13. Given all this, CJ and KJ took on a considerable amount of risk, even if the last service had been 8 months prior to purchasing the boat, in planning to take the boat out without inspection or checks without knowing either the quality of the service done, the full service history or the current condition of the boat/engine. A lot can happen in 8 months, though it is not known for how long the problems found in the engine had been present.
14. The repair costs to the engine were \$8556.00. The amount that CJ and KJ would be paying in any case is the amount it would have cost to fix the problems with the engine prior to it seizing on their trip – their mechanic puts this cost at between \$1500-\$2500.00 and I set that figure at the higher amount in that range. This leaves costs of \$6056.00. Weighing the factors involved in the misrepresentation, including the absence of a representation about the engine's condition, and the fact that 8 months had passed since CJ and KJ thought the boat had been serviced, and the fact that they did not have the boat inspected before taking it out, I consider that DW is liable to pay damages of one-third of \$6056.00, being \$2018.67.

Referee Perfect
Date: 2 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>.