



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 643

APPLICANT DE

RESPONDENT B Ltd

The Tribunal orders: The claim is dismissed.

Reasons:

- 1) In September 2021 the applicant bought a vehicle from the respondent-trader. The price paid was \$23,380.00. This included a 2 year mechanical warranty at a cost of \$1,480.00.
- 2) The applicant says that since he bought the vehicle it “has been unreliable and in need of major work that involves replacing engine components.” The applicant further says that in the time he has owned the car, it has broken down 3 times. He seeks to reject the car, and obtain a refund, as well as compensation for the “stress and inconvenience this has caused.”
- 3) The respondent refers to a previous Tribunal settlement with the applicant dated 14 June 2022. This provided for the respondent to pay 2 repair invoices charged to the applicant (by NC Ltd) in the amounts of \$4,957.88 and \$1,046.35. The respondent further contends [I here paraphrase] that whatever issues or problems the applicant has had with the vehicle since the 2022 settlement are a result of the applicant not having the car properly, and adequately, serviced.
- 4) The relevant law is the Consumer Guarantees Act (‘the Act’); in particular, the guarantee [section 6] that a good supplied to a consumer will be of ‘acceptable quality.’ The issues to be determined by the Tribunal are:
 - a) With respect to the issues which are the subject of this claim, is the car sold to the applicant by the respondent of acceptable quality?
 - b) If not, what remedy is the applicant entitled to? In this regard, is the applicant entitled to reject the vehicle?
- 5) Dealing with the issues identified above (partly) in the reverse order, and setting aside (but coming back to later) the question of whether the vehicle can be regarded as not being of ‘acceptable quality,’ I consider the applicant has lost, at this point, a right to reject the car. I say this because of the time that the applicant has owned the vehicle, and in this regard, the period that has elapsed since the applicant was aware of the issues which are referred to in his claim. A right to reject a good is, pursuant to section 20 of the Act, lost if it is not exercised within a reasonable time. A ‘reasonable time’ is defined as meaning a period from the time of supply of a good in which it would be reasonable to expect a defect, of which complaint has been made, to become apparent.
- 6) In addition, the applicant must be taken to have agreed to, and accepted, what was offered by the respondent in terms of the settlement of 14 June 2022. The respondent agreed to pay to

the applicant the mechanic's invoices referred to in the settlement. Provided the respondent paid those invoices, there has been a settlement of the subject-matter of those invoices, and I do not consider it is open to the applicant to pursue further, or afresh, what lead to the specific invoices in the amounts of \$4,957.88 and \$1,046.35.

- 7) The respondent makes the point that the last 'breakdown' of the vehicle, referred to in the applicant's evidence, (February this year) occurred 21 months after the purchase, at which point it had travelled (since its sale to the applicant) 74,000 kilometres. As stated above, the respondent questions, and challenges, whether, with respect to the 'problems' raised by the applicant, the vehicle has been properly serviced. In this regard, the applicant says the car has been serviced, since its purchase, 7 times by a mechanic known to the applicant, called "[redacted]." There are no records of the servicing. The applicant does not know '[redacted]'s' last name, and he was not called to give evidence.
- 8) The respondent's case, in short, is that the issues and problems that have occurred with the vehicle since the 2022 settlement could probably have been prevented, or avoided, if it had been properly serviced. On the basis of the totality of the evidence before me, I consider this argument has substance. I take into account the evidence, in this regard, of KD of NC Ltd. In February this year, KD attempted to assist the applicant with a claim on his vehicle mechanical warranty insurance. That could not be successfully pursued because the applicant was not able to produce a service record. The applicant had told KD that he, the applicant, had done the servicing himself.
- 9) With respect to the issues arising with the applicant's vehicle post the 2022 settlement, I am not persuaded, as regards the cause, or source, of those problems that they can be said to be attributable to the car not being of 'acceptable quality,' as opposed to inadequate servicing. I believe the respondent's explanation for what has happened here is tenable, and plausible. The applicant has had a reasonable opportunity to produce evidence of the vehicle's servicing. He has not done so.

Referee: G.P.Rossiter

Date: 6 November 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>.