



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 9

APPLICANT **DH**
APPLICANT **XH**
RESPONDENT **G Ltd**

The Tribunal orders:

1. G Ltd is to pay DH and XH \$4,596 on or by 15 February 2024.

Reasons

2. A teleconference hearing was held before me today. DH and XH appeared. I made several attempts to contact G Ltd on the number given and managed only to leave message when attempting to contact the nominated representative. As the notice of Hearing was sent to both G Ltd's physical address and address for service, but no attempt has been made to supply an alternative contact, I decided to proceed with the hearing.
3. DH and XH purchased 4 sun loungers and two outdoor tables (the Furniture) from G Ltd in 2019. The loungers and table have hardwood frames. The cost of the Furniture was \$899 for each lounger and \$500 for each table, a total of \$4,596.
4. XH purchased an outdoor wood treatment and occasionally applied it occasionally. In 2022, it was noticed that the frames of the loungers and tables were deteriorating and were losing strength. The photos provided show the slats on which the lounger cushions sit have broken, split, or were beginning to do so. XH approached G Ltd as the loungers were unusable. They were told that the furniture was outside of G Ltd's 2-year warranty and were offered a credit of 50% of the purchase price.

Issues

5. To resolve this application, I need to consider:
 - a. Was the Furniture fit for purpose? And
 - b. What is a reasonable remedy?

Fit for purpose

6. The Consumer Guarantees Act 1993 (CGA) requires that consumer goods must be fit for the purpose they are purchased for, and that purpose is the one for which the type of goods is commonly supplied¹. In this case the furniture is high end outdoor furniture. It was used as pool furniture by DH and XH at their home. The home is in a seaside suburb, but is approximately 250 metres from the coast, and is sheltered by native bush.
7. It is a reasonable assumption that outdoor furniture will be sufficiently robust to survive outdoor conditions. In this case the furniture began to deteriorate and was unusable approximately three years after purchase. I note that the photos supplied show that the fabric covered cushions have survived the outdoor use well and look in good condition. However, the timber framing has

¹ Section 8 CGA

not. The Furniture is not in a situation where it is exposed to extremes of weather. The deterioration of the timber means the Furniture is now unusable.

8. XH suggested that a 10-year life span was reasonable for outdoor furniture, and I agree. I consider that the Furniture was not suitable for the outdoor use it was intended for.
9. While G Ltd has a 2-year warranty period, such a limitation is not consistent with DH and XH's rights under the CGA, which are not subject to any such a time period.
10. I find that the Furniture was not reasonably fit for purpose and, therefore, G Ltd is liable.

Remedy

11. Under the CGA if a failure is substantial, the consumer has the right to a full refund or replacement.² A failure is substantial under s21(c) CGA where they substantially unfit for purpose, and the defect cannot easily be remedied.
12. In this case the failure – the inability of the wooden framing to last under outdoor conditions, is substantial. To remedy the failure would require the entire frame to be replaced which is impractical, as the model has been discontinued. Therefore, as G Ltd did not appear and I have no evidence of the current equivalent models, I order that G Ltd is to refund the cost of the Furniture; \$4,596, on or by 16 February 2024.

Referee: C D Boys

Date: 24 January 2024

² Section 21 CGA



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>.