



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

**District Court**

**[2023] NZDT 375**

**FIRST APPLICANTS**      **DI**

**SECOND APPLICANTS**      **KB**  
(new party)

**RESPONDENT**      **G Ltd**

**The Tribunal orders:**

1. KB is added to the claim as Second Applicant.
2. The claim by DI and KB against G Ltd is dismissed.

**REASONS**

1. DI and KB (together referred to as “the Applicants”) engaged G Ltd trading as W Ltd (“G Ltd”) to build a tiny home for them. The model of tiny home that the Applicants chose was to be a 12.0m x 6.6470m modified [model 1] with a total area of 77.64m (“the Tiny Home”). The [model 1] is part of the standard range of tiny homes that G Ltd builds, but the Applicants requested modifications to the standard model.
2. G Ltd provided the Applicants with a quote dated 1 December 2022 to build the Tiny Home for \$327,595.00 (incl GST) (“the First Quote”). After discussions and modifications, G Ltd provided a second quote dated 14 December 2022 to build the Tiny Home for \$304,680.00 (incl GST) (“the Second Quote”). The Tiny Home is under construction, and there have been variations made, so the price is now around \$259,731.00. The Applicants have decided to purchase a heat pump from another supplier, so there is a variation about that which reduces the price by \$3,985.00.
3. The Applicants bring a claim against G Ltd seeking damages of \$3,985.00, being the value of the heat pump, on the basis that a heat pump should have been included as part of the inclusions for the [model 1]. The Applicants make their claim against G Ltd under the Fair Trading Act 1986 (“the FTA”) on the basis that the advertising information that G Ltd provided to them about what was included as part of a [model 1] tiny home build was misleading, and they believed that they would receive a heat pump as part of the build in the First Quote.
4. The claim was heard by teleconference on 3 August 2023, DI attended as Applicants. TZ attended on behalf of G Ltd and was appointed as its representative. TZ confirmed at the

hearing that he purchased G Ltd earlier this year, so the issues that arise in this claim pre-date his involvement.

## Issues

5. The issues I need to determine are:
  - (a) Did G Ltd engage in conduct that was misleading or deceptive or likely to mislead deceive and/or make a false or misleading representation, with respect to the price of the Tiny Home and/or whether a heat pump was included as a standard inclusion in the [model 1] package of tiny home?
  - (b) Are the Applicants entitled to a refund of the price of a heat pump (\$3,985.00) in addition to having received a credit of \$3,985.00?

### **Did G Ltd engage in conduct that was misleading or deceptive or likely to mislead or deceive and/or make a false or misleading representation, with respect to the price of the Tiny Home and/or whether a heat pump was included as a standard inclusion in the [model 1] package of tiny home?**

6. The Fair Trading Act 1986 (“the FTA”) applies. Under the FTA, no person shall, in trade, engage in conduct in trade that is misleading or deceptive or is likely to mislead or deceive (s9 of the FTA). Further, no person shall, in trade, in connection with the supply, possible supply or promotion, of goods or services, make a false or misleading representation with respect to the price of any goods or services (s13(g) of the FTA). Where the Tribunal finds that a person has breached the FTA, it may make various orders including an order directing that person to refund money or return property to any person that the Tribunal finds has suffered, or is likely to suffer, loss or damage by that conduct (s43(3)(e) of the FTA). Sections 9 and 13(g) of the FTA are designed to ensure that businesses do not mislead or deceive customers about the things they sell in the advertising or other information they provide to their customers or potential customers. When determining whether a supplier has breached the FTA, their conduct is assessed objectively, that is, how a hypothetical reasonable customer would regard the conduct in the circumstances. An applicant claiming a breach of the FTA has the onus of proving the claim on the balance of probabilities (which means more likely than not).
7. The Applicants seek damages of \$3,985.00 from G Ltd on the basis that the price of the Tiny Home set out in the First Quote ought to have included a heat pump as part of the turnkey finish, based on G Ltd’s advertising information. The Applicants say that G Ltd provided misleading information to them about the [model 1] of tiny home before they engaged G Ltd to build the Tiny Home because that information listed a heat pump as part of the turnkey finish for the [model 1], but the first quote provided by G Ltd dated 1 December 2022 did not include a heat pump. After discussions, a heat pump was included in the second quote dated 14 December 2022 but was listed as an “upgrade”. The Applicants say that they believed that a heat pump was included in the [model 1] package, and that it should have been part of the cost set out in the First Quote, and they never agreed to the heat pump being added later as an extra that they would have to pay separately for.
8. Having carefully considered the available evidence and information, and having heard from the parties, I find that the Applicants have not proved on the balance of probabilities that G Ltd engaged in conduct that that was misleading or deceptive or likely to mislead or deceive, nor that they made a false or misleading representation, with respect to the price of the Tiny Home and/or whether a heat pump was included as a standard inclusion in the [model 1] of tiny home. Therefore, G Ltd has not been found to have breached s9 or s13(g) of the FTA. I make these findings for reasons set out below.
9. I am satisfied that the information G Ltd provided to the Applicants in G Ltd’s emails of 17 May 2022 and 9 September 2022 was not misleading. This is because those emails, viewed objectively, do not promise that a heat pump will be included in a set price for the models of tiny home available through G Ltd. I have taken into account that G Ltd’s email of 17 May 2022 gives price ranges for four models of tiny home available through G Ltd (not including the [model 1]). For instance, the [model 2] model is given a RRP of \$195,000 to \$225,000 with

additional costs for extras such as a wastewater system. The email states that the price is "...to turnkey finish which includes...heat pump...". I regard this information as an illustration of the type of price to be expected for a [model 2] model with a heat pump included and does not promise that a heat pump is included in every [model 2] model, because that is a matter of negotiation between G Ltd and its customer on each occasion. This is because some customers will want a heat pump, but others will not, and the price will vary depending on whether the heat pump is included or not. Therefore, there is no promise that a turnkey finish for the models discussed in the email will include a heat pump at a set price.

10. I have also taken into account that G Ltd's email of 9 September 2022 gives an "idea of pricing". The email states: "The price below is to turnkey finish which includes...Heatpump...The estimated price below is based on a flat clear site with good access and does not include drapes, curtains, blinds, upgrading of services, water tanks....[model 1] RRP \$260,000 - \$280,000...". I regard this as an illustration of the type of price to be expected for a [model 1] with a heat pump included, and it does not promise that a heat pump is included in every [model 1]. For the same reasons as noted above, it is a matter of negotiation between G Ltd and its customer what is included in the build of the tiny home, and the price will vary depending on whether a heat pump is required or not. Therefore, there is no promise that a turnkey finish for the [model 1] will include a heat pump at a set price.
11. DI refers to the reference to 'turnkey' finish in both emails, and says that this shows that a heat pump ought to be included in every tiny home of the particular model. I do not read it that way, and I am satisfied that inclusions within the turnkey finish will vary depending on the requirements of the customer, so the price ranges set out in the emails which include a heat pump a part of the turnkey finish are indicative only, and a customer will be charged less if they do not require a heat pump. When a builder advertises a home as having a 'turnkey' finish, they generally mean that the price includes everything needed so that the purchaser can immediately move in. The inclusions in the set price will generally be specified, and this gives the purchaser comfort because there will be no cost increases or later add-ons that were not included in the agreed price. However, although G Ltd used the word 'turnkey' in its emails as including a heat pump, it did not specify a set price and it was not a promise to supply a heat pump as part of a set price. Rather, the range of pricing supplied by G Ltd was indicative only and cannot, therefore, be regarded as misleading in the sense intended by the FTA.
12. The First Quote expressly excluded a heat pump. It appears that this occurred because the salesperson for G Ltd mistakenly assumed that the Applicants no longer required a heat pump because they had decided to include a log burner. TZ confirmed at the hearing that the pricing in the First Quote did not include the price of a heat pump, and that had a heat pump been included the price would have been higher, that is, it would have been \$327,595.00 (incl GST) plus the cost of the heat pump (\$3,985.00).
13. The Second Quote expressly included a heat pump. TZ confirmed at the hearing that the pricing in the Second Quote includes the price of a heat pump (\$3,985.00) and he has provided the Applicants with a credit for the value of the heat pump (along with other credits for variations) because the Applicants have decided to buy a heat pump from another supplier rather than from G Ltd.
14. For completeness, I note that my decision would not be any different if I had considered it on other legal grounds such as under the law of contract, misrepresentation under s35(1)(a) of the Contract and Commercial Law Act 2017, or the Consumer Guarantees Act 1988.
15. For these reasons, I find that the claim has not been proved on the balance of probabilities. The claim is therefore dismissed. This means that the Applicants are not entitled to the sum of \$3,985.00 they seek for the heat pump they believe ought to have been included in the First Quote. As I have dismissed the Applicants' claim, it is unnecessary for me to consider the second issue because no remedy is available.

**Referee: D. Brennan**  
**Date: 14 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>.