



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 644

APPLICANT DN

RESPONDENT IL Ltd

The Tribunal orders:

1. The claim is dismissed.
2. This order is to be emailed and posted to the parties.

Reasons:

3. In August 2020 DN purchased a spa pool ('pool') from IL Ltd. IL Ltd supplied DN with a replacement pump in August 2022 after it failed.
4. Several months later, DN said the same failure occurred in the replacement pump and he advised IL Ltd that he was rejecting the pool and expected a \$5,999.00 refund which is the basis of his claim.
5. The issues to be determined are: (a) Was the pool of acceptable quality and reasonably fit for purpose? (b) If not, is DN entitled to a full refund?

Was the pool of acceptable quality and reasonably fit for purpose?

6. The sale of the pool is subject to the statutory guarantees set out in the Consumer Guarantees Act 1993 (the Act). The Act requires the goods to be of acceptable quality and reasonably fit for purpose.
7. The Act defines acceptable quality as a standard that a reasonable consumer would consider acceptable having regard to such factors as the price paid, the nature of the goods, the nature of the supplier and the context in which the goods were supplied, any representations made, and any other relevant matters (ss 6, 7). The test for acceptable quality is an objective one.
8. Goods are considered fit for purpose where they are reasonably fit for any particular purpose that the consumer has advised or is likely to use them for, unless it is unreasonable for the consumer to rely on the skill and judgement of the supplier in determine the suitability of the produced for its proposed use (section 8).
9. As the applicant in the Tribunal, DN has the task of establishing the legal and factual elements of its claim to the required standard. That standard is the balance of probabilities which means what is more likely than not; more certainty than doubt. If there is an affirmative defence, then the IL Ltd as party advancing that defence has the burden of proving it.

10. I would like to reassure the parties that all evidence presented to the Tribunal has been considered, but this order only refers to essential evidence material to the issues and is not intended to be a full record of the hearings or evidence presented.
11. Having carefully considered the evidence from the parties, I find that DN has failed to meet the evidential standard required by the Tribunal that the pool was not of acceptable quality and fit for purpose due to the following reasons.
12. I accept that the pool pump began to show signs of failing after approximately one year of use when DN noticed black bits laying in the bottom of the pool. He said the pump also began making intermittent screeching noises, indicating that it was defective. He said and I concur, the pool should have a life of several years without such failures.
13. IL Ltd replaced the pump without any evidence from DN as to the specifics of the failure. He denied IL Ltd access to the broken bits which could have gone some way towards assessing the cause of the failure and therefore mitigating against any repeat failures due to the same cause. It remains in balance whether IL Ltd requested the return of the pump at this time which would have been the usual trade practice to do so. Regardless, the pump was not returned which is important when contemplating causation.
14. DN said the replacement pump failed after several months when again there were black bits in the bottom of the pool and screeching noises coming from the pump. Furthermore, he claims this was a substantial breach of the Act as IL Ltd failed to rectify the failure in their first attempt.
15. In contrast, I must consider the defence raised by IL Ltd that for the second pump to fail in the same manner as the first pump failed, and after a reasonably short period to usage, it is reasonable to contemplate that the cause could possibly be something other than a manufacturer defect or mechanically linked failures. IL Ltd gave evidence that the failure could be due to a chemical imbalance in the water which effectively broke down components in the pump and/or behind the jets; hence the black bits broke away and the screeching noise developed as the pump malfunctioned. Further, IL Ltd said that DN has a purchase history of ordering larger quantities of pool chemicals than required for this type of pool, from which they deduced DN was using excessive amounts to maintain his pool, which would more likely than not cause the pump failure.
16. Whilst I am cognisant IL Ltd's evidence does not establish a causal link between DN's pool management and the pump failure, in this case there is no independent witness to the cause and no other evidence available to me from which I can make inferences. However, it does create sufficient doubt as to the cause of the pump failure.
17. The evidence from DN alone is a useful starting point, but to take the matter into sufficient likelihood for a court order, this needs to be supported by something else. As this is not available, I find DN has failed to discharge the onus of proving his claim to a standard of more certainty than doubt, and I must dismiss the matter.
18. Both parties expressed frustration at several communications between the parties which occurred throughout the life of this dispute. Whilst I understand these may have taken a toll on the parties, these issues do not relate to this claim, and I cannot consider them when finalising the order. I hope this will bring the matter to a conclusion for the parties.

Referee: P Goddard

Date: 8 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>.