



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 710

APPLICANT **DQ**

RESPONDENT **IC**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In December 2022 DQ purchased an eight-week old purebred [puppy] from IC for \$5,000.00. DQ and IC agreed on terms which are contained in the TC Purchase Agreement ("the Agreement"), a copy of which IC provided in evidence.
2. The puppy is named [the puppy]. In June 2023 DQ noted [the puppy] was displaying some abnormal movements, and clicking could be heard in her hind legs. Shortly afterwards, [the puppy] was diagnosed by a veterinarian as having severe dysplasia. DQ is concerned about the ongoing impact of this on [the puppy] and the financial impact of surgical costs going forward. IC wishes to retain [the puppy] due to the strong family bond now formed, but she seeks a full refund of the \$5,000.00 purchase price paid.
3. IC says the Agreement includes clear and specific terms including such circumstances, and she denies she is obliged to provide a refund.
4. The issues to be resolved are:
 - a. What warranty and/or limitation statements were made about [the puppy]'s condition in the Agreement?
 - b. Is [the puppy] of acceptable quality?
 - c. If not, is DQ entitled to keep [the puppy] and obtain a refund of the purchase price of \$5,000.00 as claimed?

What warranty and/or limitation statements were made about [the puppy]'s condition in the Agreement?

5. Under contract law, a legally binding contract is formed when both parties intend to contract on agreed terms and intend for those terms to be legally binding. The terms of a contract are formed at the beginning, not at the end, and what was agreed is looked at objectively, i.e., by looking at what was said and done.
6. I find the contract contains several statements relevant to this dispute including:
 - a. IC as the seller agrees [the puppy] has undergone a final vet check and was found to be in good health, with no subsequent issues found before sale;
 - b. DQ acknowledges as a buyer that she is familiar with the breed, and its related

- health conditions and care requirements;
- c. [The puppy] was sold as a pet; to be neutered/spayed by 8 months of age;
 - d. IC guarantees the puppy for 12 months from date of birth against any life threatening congenital defect, but common conditions are excluded. A variety of common conditions are described in the Agreement, which are acknowledged by the buyer.
7. The application of these statements and the Agreement generally are of assistance in resolving this dispute, as further discussed below.

Is [the puppy] of acceptable quality?

8. Contract law recognises that contracts have terms expressly agreed between the parties and may also have terms which can be implied by law. An example of this type of law is the Consumer Guarantees Act 1993 (“CGA”). The CGA implies into contracts a set of minimum standards (guarantees) for goods and services supplied in trade to consumers. Section 6 CGA says goods, which includes an animal, must be of an acceptable quality. Further explanations of that phrase are offered in s7 CGA.
9. Having carefully considered the evidence, I find [the puppy] is of acceptable quality.
10. Time has been taken to review the submissions of the parties and the vet reports provided by DQ. X-ray images taken by [the vet] in late June 2023 led to their diagnosis of severe dysplasia with instability occurring in both of [the puppy]’s hips. [The vet] referred [the puppy] for a surgical consultation. DQ took [the puppy] to [vet surgery] in early August 2023, where severe bilateral hip laxity was confirmed. Their comments include a recommendation for low impact exercise and diet restrictions, but they also observe good muscle tone in [the puppy]’s hind limbs and a relative absence of pain, leading to a recommendation that surgical intervention was not warranted at that time, nor guaranteed as a future plan. I acknowledge an estimate was provided by [vet surgery] for hip replacement surgery, but on the evidence I cannot be satisfied such surgery is foreseeable.
11. Reviewing this information about [the puppy] in the context of statements contained within the Agreement and the provisions of the CGA, I am satisfied there is insufficient evidence to show [the puppy] is not of acceptable quality. While I acknowledge the clear concern DQ and her family have expressed for [the puppy]’s ongoing health and comfort, I am not satisfied the information available to me establishes a breach of the CGA or the Agreement.
12. Both parties acknowledge that within the Agreement:
- a. “loose hips” is included within the description of common conditions for which a health guarantee is not provided; and
 - b. there is a buyer acknowledgement of familiarity with health conditions associated with [dog breed].
13. DQ says the description of loose hips is significantly different than the veterinarian’s description of severe dysplasia. However, given:
- a. hip dysplasia is a well-known issue with this breed;
 - b. the Agreement specifically provides an exclusion from the health guarantee for issues relating to loose hips, and the buyer acknowledgement; and
 - c. the nature of the comments offered by [vet surgery];
- I am not satisfied [the puppy]’s condition is of a type or severity where a breach of acceptable quality can be said to be established. Section 7 CGA says goods are of acceptable quality if they are fit for all purposes goods of the type are commonly supplied and are free from minor defects. However s7 also requires consideration of the nature of the goods and any statements made about the goods. While I acknowledge recommendations have been made for [the puppy]’s future care, I accept IC has made a reasonable submission in saying that dietary restrictions, low impact exercise, and management of some medical issues, are of a type very often applied to dogs of this breed in the ordinary course of their care. Within the context of both the Agreement and CGA, there is insufficient evidence to establish a breach.

14. During the hearing reference was also made to breathing issues which were commented on by [vet surgery]. Given however the same reference to this concern is present within the common conditions referred to in the Agreement and in light of the comments offered by [vet surgery], I see no basis to review my decision about acceptable quality if the dispute were widened to include this matter.

If not, is DQ entitled to keep [the puppy] and obtain a refund of the purchase price of \$5,000.00 as claimed?

15. The CGA also provides a scheme of remedies when guarantees about goods and services are breached.

16. As I have however found no breach of the CGA nor the Agreement, I find no refund is payable.

17. I say that for reasons earlier set out, and because in the absence of a breach there is no basis on which I am able to award compensation.

Conclusion:

18. For all these reasons the claim must be dismissed.

Referee: Malthus

Date: 17 December 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>.