



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 178

APPLICANT DT

RESPONDENT N Ltd

The Tribunal orders:

Claim Dismissed.

REASONS

1. In September 2020, DT purchased a [redacted] umbrella from N Ltd for \$199.00. Two years and four months later (when the umbrella was four months out of warranty) the components of the internal rib mechanism failed. DT initially requested a repair or replacement under the provisions of the Consumer Guarantees Act. However, before the umbrella had been repaired, DT requested a replacement.
2. MD repaired the umbrella and returned it to DT.
3. DT now seeks a refund of the \$199 he paid for the umbrella, on the basis that there is now an upgraded version of the umbrella, which DT believes indicates N Ltd has realised there is a design issue with the umbrella he has purchased.

Issues

4. The issues for the Tribunal to consider are:
 - (a) Whether the umbrella was not of acceptable quality;
 - (b) If so, whether DT is entitled to reject the umbrella and receive a refund.

Was the umbrella not of acceptable quality?

5. The Consumer Guarantees Act (CGA) applies. There is a guarantee in the CGA that goods supplied to a consumer are of acceptable quality. To be of acceptable quality the goods must be durable and fit for purpose. The consideration of whether the goods are of acceptable quality is taken from the standpoint of what a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable, taking into account the nature of the goods, the price, statements or representations made about the goods, and any other relevant circumstances. (S's 6 & 7 CGA).
6. Goods will not fail to comply with the guarantee if they have been used in a manner, or to an extent, which is inconsistent with the manner or extent of use that a reasonable consumer would expect to obtain from the goods (S. 7 CGA).

7. I find that the umbrella was not of acceptable quality for the following reasons:

- (a) There is no evidence to prove that the umbrella failed due to the manner or extent it was used by DT.
- (b) I am satisfied that a reasonable consumer would expect to get more than 2 years 4 months use from the umbrella with normal use, given the statements made about the capability of the umbrella on N Ltd's website. In addition, N Ltd gives a 2 year warranty, which indicate it too expects the umbrella to be durable for at least that time.
- (c) I find the umbrella purchased by DT has failed prematurely.
- (d) Therefore it was not durable and not of acceptable quality.

Is DT entitled to a refund?

8. If there has been a failure to comply with the guarantee of acceptable quality, and the failure is one that can be remedied within a reasonable time, the supplier is entitled to an opportunity to remedy (S.18 2) CGA). It is the supplier's choice to repair, replace or refund.

9. However, if the failure to comply with the guarantee is of a substantial character, the consumer may reject the goods (S.18(3) CGA).

10. A failure is of substantial character if (a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; (b) the goods depart in 1 or more significant respects from the description by which they were supplied; (c) the goods are substantially unfit for a purpose for which goods of the type in question are commonly supplied; (d) the goods are not of acceptable quality because they are unsafe (S.21 CGA).

11. I find that the failure was not of a substantial character for the following reasons:

- (a) The failure was able to easily be repaired by replacing the mechanism.
- (b) The replacement mechanism puts the umbrella back into the condition it was at purchase, if not a better condition (because a mechanism of upgraded design has been used).
- (c) I am satisfied that the failure is not such that the umbrella would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure. Consumers understand that from time to time a part in a consumer good may fail. In this case, there was a failure of one part, that resulted in damage to other parts that were easily replaced.
- (d) I have taken into account DT's evidence that he considers there is a design fault and that the umbrella may fail again in similar circumstances. I accept that DT has considerable training in mechanical engineering and aeronautics. However, I also have to take into account the evidence of N Ltd's MC, who has been involved in the design and testing of the umbrellas. I am unable to prefer DT's evidence over that of MC. Therefore, DT has not been able to convince me there is a design fault with this umbrella that makes it vulnerable in the circumstances described by DT.
- (e) I am not satisfied the goods depart from description, or are substantially unfit for purpose, or are unsafe.

12. Because I have found the failure was not of a substantial character, DT is not entitled to reject the goods and not entitled to a refund. Therefore I have dismissed DT's claim.

Referee: JF Tunnicliffe

Date: 3 May 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>.