



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 32

APPLICANT E

RESPONDENT G

The Tribunal orders:

The claim is dismissed.

Reasons

1. E purchased a used boat engine from G having seen it advertised on [Online auction site]. He contacted G, inspected the engine, and a purchase price of \$8000 was agreed which he paid on 1 June 2022. E collected the engine on Saturday 4 June 2022.
2. On the following Monday, 6 June 2022, E took the engine a [motor company] for a health check, which revealed all the compressions were low plus other problems. [Motor company] has advised E that the engine needs a complete rebuild, which he says is uneconomic to do and, in any event, no parts are available.
3. E claims \$8500.00, being a refund of the purchase price and \$500.00 for the [motor company] bill.
4. The issues to be determined are:
 - Did G sell the engine as a private sale or 'in trade'?
 - Was the contract conditional on the engine being in running order?
 - Did G misrepresent the engine?

Did G sell the engine as a private sale or 'in trade'?

5. I find that the transaction between the parties was a private sale, because G is not in the business of selling engines or boats or boat parts. His business, [Motor bodies company] is a panelbeating workshop, and while he emailed E from his work email address (with his company details in his email signature) and the boat engine was stored in his

workshop, G says the boat engine belonged to him personally and had nothing to do with his company. Because of the nature of SSMB's business, I accept that it did not own and was not selling the boat engine.

Did G misrepresent the engine?

6. I find that there was no misrepresentation. G says that he had told E that he'd bought the engine three years prior, that it had had problems starting when it came out of the last owner's boat at the time, and that he hadn't done anything with it since he purchased it. E did not dispute that and he also inspected the engine and says he could see it wasn't in the greatest shape.

Was the contract conditional on the engine being in running order?

7. I find that the contract was formed unconditionally because E inspected the engine, a price was agreed and G sent him an email on 31 May stating "Sold as is where is. Comes with wiring kit and gauges and bits. Turbo risers will be here later this week" and provided his bank account number. E replied the next day saying he would be there on Saturday to pick it up and that "Money is in the bank, so I will make the payment when I get home tonight". E paid the purchase price in full before collecting the engine.
8. E also stated in his reply email that "I am taking the engine to my diesel guys on Monday and they will give it a thorough health check. So hopefully no major issues with it." E also said at the hearing that he could see that the engine wasn't in the greatest shape and had said to G that as long as it's got good compression and no other issues, he'd go ahead. However he did 'go ahead' by paying the purchase price in full in response to G's "Sold as is where is" email.
9. E did not take the important step of making the contract conditional, by ensuring that there was an agreement with G that his money would be refundable if the engine did not check out on testing. I note that it would be more common to make a deposit or part-payment for a purchase that was subject to inspection, with the stipulation that the amount paid would be refundable if the item was not in the required condition. G says that he assumed E had satisfied himself as to the engine's condition by inspecting the motor and ringing the previous owner for further information as he advised him to do.
10. G says that the price E paid is at the cheaper end of the range for these engines, and that if fully rebuilt, it would sell for between \$20,000-\$30,000.00. While this is not substantiated, it does not appear that any inference can be drawn about what was said or not said or even implied about the condition of the engine. Given all the above, E has taken the risk of buying the engine without sufficient due diligence prior to entering a binding contract and unfortunately has suffered a loss given the work that needs to be done.

Referee Perfect

Date: 10 February 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>.