



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 320

APPLICANT **EC**

RESPONDENT **SX**

SECOND **HN**
RESPONDENT

The Tribunal orders:

1. HN is to return the [motorcycle 2] to EC on or before 24 August 2023.
2. SX and HN, jointly and severally, are to pay the sum of \$2,345.00 to EC on or before 24 August 2023.

Reasons:

1. For many years, EC stored belongings including a [car], a [motorcycle 1], a [motorcycle 2], and some motorcycle parts in SX's garage. In late September or early October 2020, SX sold the vehicles to HN without EC's permission for a total of \$5,000.00.
2. EC discovered that HN had his vehicles, and after some negotiations EC paid HN \$2,000.00 for return of the [car] and the [motorcycle 1]. EC had these vehicles towed to a mate's work yard at a cost of \$345.00. The [motorcycle 2] is still in HN's possession.
3. Around a month after getting two of his vehicles back, EC went to SX's home to remove his belongings. He claims that he discovered motorcycle parts were missing, and that SX said HN had them.
4. EC now claims from SX and HN \$2,000.00 for the money paid to recover the [car] and [motorcycle 1], \$6,365.00 for the motorcycle parts, and either return of the [motorcycle 2] or the current value of the [motorcycle 2].
5. HN provided written submissions but did not attend the hearing. The absence of a party does not prevent the hearing going ahead.
6. The issues to be determined are:
 - a) Was SX entitled to sell the vehicles without EC's permission?
 - b) Has HN wrongfully interfered with EC's rights over the vehicles?
 - c) Did SX or HN wrongfully take EC's motorcycle parts?
 - d) What remedies, if any, should be given?

Was SX entitled to sell the vehicles without EC's permission?

7. SX admitted selling the vehicles without EC's permission. The tort of conversion (a civil wrong, which differs somewhat from the criminal offence of conversion) applies where someone intentionally asserts rights or dominion over goods which is inconsistent with the owner's rights. SX's actions would amount to the tort of conversion unless a defence is proven.
8. SX said that he had been asking EC to remove his possessions from SX's garage for around a year before SX sold the vehicles. Abandonment can be a valid defence to a claim in conversion, but SX and HN bear the onus of proving that the goods were abandoned. Neglect and inaction can amount to abandonment if it represents "a giving up, a total desertion, and absolute relinquishment" of the goods. There is insufficient evidence for a finding that EC had abandoned his goods.
9. There has been some discussion in the legal cases and texts of the situation where goods might reasonably appear to have been abandoned even though the owner has not in fact abandoned them. In *Robot Arenas Ltd v Waterfield* [2010] EWHC 115 (QB), an English judge took the view that, depending on the circumstances, liability for conversion could depend on whether the defendant knew or ought reasonably to have known that the goods belonged to a third party. However, he observed (at para 22) that if the circumstances ought to put the defendant on notice that the goods might not have been abandoned, appropriate enquiries should be made. He added:

"The more valuable (whether in monetary terms or as a personal item) the property might possibly be, the more the [bailee] might reasonably be required to await a response before treating the property as if it had been abandoned."

10. In this instance, it would have been reasonable for SX to at least warn EC in writing that his goods would be sold if not removed within a certain time. There was no evidence that this was done.
11. The self-help remedy of distress damage feasant allows a landowner or occupier who finds goods unlawfully on the land and doing damage to seize and withhold (distrain) the goods from the owner until compensation is paid for the damage. This remedy has been used to justify towing of vehicles left on private land after permission to be there has expired. However, it does not extend to a right to sell the goods. SX could probably have had the vehicles towed away, but did not have any right to sell them, so he does not have a defence to an action for conversion.

12. Has HN wrongfully interfered with EC's rights over the vehicles?

13. By taking the vehicles away, registering himself as owner, demanding money from SX for their return, and keeping the [motorcycle 2], HN has acted inconsistently with EC's rights over the vehicles.
14. HN submitted that SX told him the vehicles were abandoned. However, it is not enough simply to rely on someone else's advice that goods have been abandoned by the previous owner. The courts have held that there is a heavy onus on the non-owner, who acts at his or her peril. I therefore find that HN is liable to EC in conversion.

15. Did SX or HN wrongfully take EC's motorcycle parts?

16. EC bears the onus of proving what parts were stored in the garage, that SX and/or HN were responsible for their loss, and the value of any missing parts.
17. EC produced evidence of the value of certain [motorbike] parts. However, he was unable to produce any evidence that these particular parts were stored in the garage other than his own memory. SX could not remember what was stored.
18. Given the passage of many years before the parts were apparently found to be missing, EC may have misremembered what was stored, or may have forgotten dealing with them in the interim. It is also possible that an unknown third party stole the parts.
19. HN vehemently denies taking the parts. EC pointed to evidence that HN owns the same model of motorcycle, including rare collectable parts for it. However, especially bearing in mind the lack of evidence to prove what was stored, I am not prepared to draw the inference that HN is likely to have stolen parts belonging to EC.

20. I also consider that SX cannot be held responsible for the loss of the parts, especially when it is not established what parts were stored or how they went missing. In all the circumstances, including SX's age and health, and his requests for EC to retrieve his property from the garage, the standard of care to be reasonably expected from SX cannot be very high.

21. For these reasons, I am unable to find on the balance of probabilities that either SX or HN is responsible for missing parts.

22. What remedies, if any, should be given?

23. Since I have found SX and HN liable for conversion of the vehicles, EC is entitled to their return without cost to him. HN must return the [motorcycle 2], and SX and HN are jointly liable to pay EC \$2,345.00 to cover the redemption cost of the two vehicles already returned and the towing cost, as EC did not have the opportunity to reassemble the [motorcycle 1] before its return.

Referee: E Paton-Simpson

Date: 3 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 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>.