



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 305

APPLICANT ED

RESPONDENT UQ

The Tribunal orders:

UQ is to pay to ED \$2,060.47 on or before 5:00pm on Friday 14 July 2023.

Reasons

1. In or around July 2022, ED began negotiating the purchase of a horse from UQ. On 6 July 2022, ED texted UQ to enquire about the horse's medical condition and history. UQ responded that the horse had 'never had a vet to him...'. On 11 July 2022, after inspecting the horse, ED purchased it for \$12,000.00. However, on 23 July 2022, ED discovered a large sarcoid on the underside of the horse's stomach. She contacted UQ who told her that she was aware of it and had been told by her vet that it was 'just cosmetic'. ED's vet examined the horse and advised that the sarcoid be removed or treated. ED contacted UQ to cancel the contract and asked for a full refund. UQ refused. The parties were unable to reach a resolution. ED now brings a claim against UQ for \$12,350.00 for a refund of the purchase price for the horse and other costs.
2. The issues to be resolved are as follows:
 - a) Was there a misrepresentation regarding the horse's medical condition or history?
 - b) If so, is ED entitled to claim \$12,350.00?

Was there a misrepresentation regarding the horse's medical condition or history?

3. Under s 35 of the Contract and Commercial Law Act 2017 (CCLA) if a person has been induced to enter into a contract by a misrepresentation, whether innocent or fraudulent, that person is entitled to damages. They may also be entitled to cancel the contract (s 37). A misrepresentation is a misstatement of present or past fact, this may include half-truths and non-disclosure. Mere silence or reticence does not constitute a misrepresentation unless there are circumstances creating a duty to disclose or speak up. Non-disclosure of an unusual aspect of which there was a duty to disclose can amount to a misrepresentation.
4. At the hearing, UQ stated that the horse had never been visited by a vet but her vet had seen the sarcoid when doing body work for him. She stated that her vet advised that it was 'basically just cosmetic' and not a concern. UQ said that based on this she did not feel the need to disclose it. She said the sarcoid was there when ED inspected the horse.
5. However, ED provided evidence that she had texted UQ and told her that it was difficult to get a vet to come up and do a pre-purchase inspection. In the texts she asked for a 'rundown' of the

horse's vet, medical history, injuries and illnesses. She said that UQ never disclosed the sarcoid to her. ED stated that the location of the sarcoid meant it was not easily visible and she only discovered it once she got 'down and underneath' the horse. ED presented evidence from her vet DQ, who also appeared at today's hearing as a witness. DQ gave evidence that the sarcoid had changed and was 'raised and red' and so she referred it to a Professor in the UK who is an expert in this field. She said the Professor recommended treatment using a special imported cream. DQ said she last saw the horse on 21 March 2023, and he 'looked good' and was responding well to the treatment. ED included in her evidence a comprehensive written assessment report from DQ regarding the sarcoid and the treatment.

6. I have had regard to all of the evidence presented by both parties and to the relevant law. Based on all of this, on the balance of probabilities:
 - a. I find the evidence provided from the expert witness DQ compelling.
 - b. I accept DQ's evidence that the sarcoid had to be treated.
 - c. I accept that UQ had prior knowledge of the sarcoid and accept that she did not realise that she should have disclosed the fact that it was there to ED.
 - d. I find that once ED enquired about the horse's medical condition, history, injury and illnesses, UQ had a duty to disclose the sarcoid to ED.
 - e. I accept that non-disclosure can be a misrepresentation.
 - f. I accept that ED may not have entered into the contract had she known the true condition of the horse.
7. Therefore, on the balance of probabilities, I am satisfied that there was a misrepresentation made regarding the condition of the horse and that ED was induced into the contract by this misrepresentation.

Is ED entitled to claim \$12,350.00?

8. Under the Contract and Commercial Law Act 2017 (CCLA), a party may claim damages if a party was induced into the contract by a misrepresentation (s 35). A Tribunal may award any sum it thinks just to put the suffering party back into the position they would have been in had the representation been true.
9. I have already found that there was a misrepresentation, and that ED was induced into the contract by it. Therefore, ED is entitled to a remedy. At the hearing, ED confirmed that she had the horse treated for the sarcoid under the advice of her vet. She confirmed that the final vet bills for the treatments came to a total of \$2,060.47.
10. Based on all of the evidence and the relevant law, on the balance of probabilities, I find that the final vet bills of \$2,060.47 are reasonable. Therefore, I am satisfied that to put ED back into the position she would have been in had the representation regarding the horse's condition been true, she is entitled to claim \$2,060.47 in damages. Accordingly, this amount is awarded.

Referee: DTR Fuli
Date: 19 June 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>.