



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2020] NZDT 1330

**APPLICANT** EJ

**RESPONDENT** HL and BL

**The Tribunal orders:**

1. HL and BL are to pay to EJ the sum of \$4,139.89 on or before 1 July 2020.

**Reasons**

1. In December 2017, Ms J purchased a horsefloat from Dr and Mrs L for \$5,300.00 that has subsequently been discovered to have safety and maintenance issues.
2. Ms J has filed a claim seeking compensation of \$4,999.00.
3. The matter was heard over two hearings. Dr L attended both hearings by telephone and defended the claim on the basis that an engineer advised the floor and structure was sound before the sale, and another mechanic warranted it. The Ls' therefore had no knowledge of any safety issues.
4. The issues to be resolved are:
  - (a) Is the float as it was described in in the TradeMe Ad correct (i.e., "safe and reliable", "good", "structure underneath and the floor in very good condition")?
  - (b) If not, were the defects present at the time of sale or have they developed since?
  - (c) If, on the balance of probabilities, the defects were present at the time of sale, what is the sum required to put Ms J in the position she would have been in had the float been as described?

**Is the float as it was described in in the TradeMe Ad correct (i.e., "safe and reliable", "good", "structure underneath and the floor in very good condition")?**

5. The Contract and Commercial Law Act 2017 applies. Section 35 of that Act provides that a purchaser is entitled to damages if they have been induced to make a purchase based on representations that turn out to be incorrect. This is so regardless of the whether any misrepresentation is not known by the seller to be incorrect.
6. The TradeMe ad stated that the float was safe and reliable, good, and had a structure underneath and floor in very good condition. It also noted that the float had been checked and serviced by an engineer. These statements are of importance to a purchaser of an older float,

and they would have encouraged Ms J to buy it. The Ls' also offered to provide the engineer's report, but in the end were unable to obtain this, as the firm had since gone out of business.

7. In May 2019, Ms J subsequently discovered that the axles were bent and modified in such a way that they could not pass a warrant. The mechanic who inspected the float for a warrant (Mr G of ABC [Redacted]) found (among other things) that the axles were unwarrantable, and the braking system was out of fluid. The hydraulic brakes would therefore not work. The mudguards were rusted and insecure, and there was rust around the rear hinges.
8. In February 2020, Ms J had the float inspected by an engineer (U Engineering Limited). That report confirmed that the float has been modified by welding work on the axles that does not comply with WOF standards, and that there is serious rust in the rear section of the floor that holds the rear door.
9. The ABC and U Engineering reports establish that the float was misrepresented in the ad.
10. I have had regard to Dr L's evidence that the float had a warrant and had been worked on by an engineer. However, in the absence of better evidence that the float was warrantable, it can only be assumed from Ms J's reports that the mechanic who warranted it made an error about the regulations for welded axles and missed the extent of the rust in the rear section of the floor.

#### **Were the defects present at the time of sale or have they developed since?**

11. I find on the balance of probabilities that the defects discovered by Ms J were present at the time of sale.
12. Ms J states that she had done less than 1,000kms of travel at the time she became aware of the defects, and that the float has spent most of its time in her ownership parked at her property. Whilst this information is not able to be subject to independent verification, the defects upon which the claim are based are not in the nature of fair wear and tear but are fundamental to the structure. Minor matters, such as a wheel bearing, safety chain or rust in the mudflaps, could have developed since purchase, and do not impact on the representations made. However, I am satisfied that the axle welding was done prior to the sale, and the rust in the rear section of the floor would not have had time to develop to the extent that it had, particularly given the usage and location of the float since the purchase.

#### **How much compensation is due?**

13. Ms J has sought a refund. However, as the float is classed as "goods", her right is only to damages, rather than a refund, unless the float is not economic to repair.
14. Ms J established that the repair costs for the major items (rust and underfloor repairs) is \$4,025.00. I am satisfied that this sum represents the amount to be spent to put her in the position she would have been in had the float been as advertised. Ms J also spent \$45.89 on a failed warrant, which represents an additional loss caused by the error. Ms J also paid \$86.25 for the U Report, and a \$90.00 filing fee, but the Tribunal is unable to award costs related to the proceedings except in limited circumstances which do not apply in this case (s43 Disputes Tribunal Act 1988). Ms J also sought her insurance costs and registration, but as she used the float for a period before putting these on hold, these would not be considered a recoverable loss related to the misrepresentation. Ms J claimed \$69.00 for a TradeMe ad that had to be withdrawn. This is a cost she could well have received a return from had the ad not needed to be withdrawn and is therefore recoverable. Ms J notes that she spent \$200.00 on new wiring, but did not seek to claim this, and there was insufficient evidence about the cause of this to make findings about whether this was an additional breach.
15. Consequently, the compensation awarded is \$4,025.00 (repairs), plus \$45.89 (failed warrant inspection), plus \$69.00 (TradeMe fee), totalling \$4,139.89.

16. I have given consideration to whether the repairs would result in any betterment, but as the float was advertised as being solid and safe, and the floor and axles would be expected to last a long time, I am unable to make a finding of betterment.
17. I have given consideration to whether the float is economic to repair. The parties were given an opportunity in a second hearing to present valuation evidence. Ms J considers the float would be worth \$3,000.00 if repaired. This is based on an opinion provided by ABC [Redacted]. Ms J also notes that she listed the float on TradeMe in November 2018 to resell it before she was aware of the defects and was unable to get any bids for it. On the other hand, Dr L considers that his sale to Ms J is the best indicator of market price (\$5,300.00), given that the sale occurred at that price on an open market. Ms J notes that this was not an auction, but a “buy now”, and therefore not a price achieved with competitive bidding.
18. Given this conflicting evidence, the age of the float, and the variability of the market for items such as this, it is not possible to make a finding based on the opinions presented that the value of the float, once repaired, will be less than the cost of repair. Consequently, the repair cost, plus consequential losses, represent the direct and foreseeable losses arising naturally from the representations made in the advertisement.

### **Conclusion**

19. For these reasons, an order has been made for Dr and Mrs L to pay to Ms J the sum of \$4,139.89.

**Referee:**

**J Robertshawe**

**Date: 10 June 2020**



## 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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.