



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1384

APPLICANT EK

RESPONDENT 2E Limited

The Tribunal orders:

1. 2E Limited is to pay EK \$503.28 on or before 16 December 2020.
2. Payment is to be by way of direct credit to redacted account number.

Reasons:

1. EK purchased a refurbished iPhone 7plus for \$699.99 on 18 August 2019 from 2E Limited "2E". The phone was for her 14 year old daughter to use. On 23 June 2020 her daughter dropped the phone, allegedly momentarily, into a swimming pool. Afterwards there were problems with the phone and it was returned to 2E for repairs. 2E refused to repair the phone without charging. EK alleges the phone is marketed as being waterproof/resistant and it is not. She claims \$699.00 being the original cost of the phone.
2. Both parties provided written submissions, photos, copies of emails and a range of website printouts. EK had the phone at the Tribunal.
3. The issues I must decide are:
 - a. Has 2E engaged in misleading and deceptive conduct?
 - b. If yes, is the amount claimed reasonable?

Has 2E engaged in misleading and deceptive conduct?

4. Section 9 of the Fair Trading Act states that no person, shall in trade, engage in conduct that is misleading or deceptive.
5. EK states the iPhone 7plus is marketed as being waterproof/water resistant. Further she states 2E provide a warranty that does not exclude water damage. She also states one of 2E's employees made a concession in an email to her that the 2E website should be updated to reflect water damage is not covered.
6. NN, for 2E, told the Tribunal, the phone was secondhand, it is likely the ingress protection ("IP") had deteriorated because of age. He also states the phone had clearly suffered impact damage since purchase which would also have contributed to the IP wearing down. NN states the

information provided by 2E does not cover the matter of IP in secondhand (albeit refurbished) phones. He also states the warranty does not cover water damage.

7. Purchasers do not have any information available on the 2E website, or provided by 2E prior to purchase, that makes consumers aware that when they buy a refurbished phone the IP is likely to have worn down and functionality of the IP is reduced. Nor is the consumer given any information with the warranty about the same matter. In sum, the consumer is not made aware that the phone will most likely not be as durable because of the reduced effectiveness of the IP and the warranty does not cover water damage. For these reasons I find 2E has engaged in misleading and deceptive conduct.

Is the amount claimed reasonable?

8. EK claims \$699.00 being the amount paid for the phone. She states she believes a new phone could last up to five years and she expected this phone would last a similar time.
9. NN agreed a new phone could last up to five years but thought two years was more realistic for a refurbished phone.
10. At the time of the dropping of the phone EK's daughter had 10 months use of the phone. The test is how long would a reasonable person in the street expect a refurbished phone to last. I consider that time frame to be three years/36 months. On that basis at 10 months this phone could have been expected to last another 26 months; or it had 72% of its life left. 72% of \$699.00 is \$503.28 and this is the amount I find is reasonable.

Referee: C Murphy
Date: 2 December 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>.