



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

**District Court**

**[2023] NZDT 175**

**APPLICANT      EQ**

**RESPONDENT    F Ltd**

**The Tribunal orders:**

1. The claim for \$3,025.00 is dismissed.
2. EQ is to pay F Ltd \$427.50 on or before 18 July 2023.

**Reasons**

1. EQ purchased a treadmill from F Ltd on 17 April 2021. In June 2022, the belt would not turn. F Ltd fixed the treadmill and charged EQ \$577.50 for the repair due to concerns about a lack of proper maintenance. A dispute arose about the repair invoice. F Ltd agreed to waive the \$150.00 call out fee but have placed the balance of \$427.50 with debt collectors.
2. EQ wants to cancel the contract and get a full refund of the \$3,025.00 paid and requests an order that he not liable to pay the repair invoice of \$427.50.
3. The issues to be resolved are:
  - (a) Is EQ entitled to cancel the contract and get a refund of \$3,025.00?
    - (i) Was the treadmill of acceptable quality?
    - (ii) If not, was F Ltd given an opportunity to remedy the fault?
    - (iii) Did F Ltd fail to fix the fault or is the fault substantial?
  - (b) Is EQ entitled to an order that he is not liable to pay the repair account of \$427.50?  
Was the F Ltd obliged to fix the fault under the warranty or under the CGA?

**Is EQ entitled to cancel the contract and get a refund of \$3,025.00? Was the treadmill of acceptable quality? If not, was F Ltd given an opportunity to remedy the fault? Did F Ltd fail to fix the fault or is the fault substantial?**

4. The Consumer Guarantees Act 1993 (CGA) provides implied guarantees for consumers that goods purchased must be of acceptable quality.<sup>1</sup> If there is a breach of this guarantee a consumer may be entitled to a remedy. Where a fault can be fixed and is not substantial, a supplier must be given an opportunity to remedy. If a supplier refuses or fails to remedy a fault within a

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<sup>1</sup> Section 6 CGA.

reasonable period of time, or if the fault is substantial, a consumer will be entitled to cancel the contract and get a full refund.<sup>2</sup>

5. EQ says that the treadmill is not of acceptable quality because he has had two problems with it in the first 18 months. The belt stopped going around in June 2022 and F Ltd did fix the problem. About one month later it would not go up and down properly. EQ says that he filled out an online service request form, but has not had a response, so F Ltd has not carried out a repair. EQ said the repair technician for the first fault told him the repair would not be covered under warranty because regular maintenance was not followed, therefore voiding all warranties. EQ wants to cancel the contract because he has had too many problems and doesn't want to keep a treadmill that has no warranty.
6. CM, Service Manager for F Ltd, says that when he spoke to EQ about the first problem, he asked him what the symptoms were. EQ said that the belt wouldn't go around when he pushed the start button, however the speed, distance and time was showing on the screen. CM said that this indicated that the output voltage was not working. The repair technician found that the R40 resistor had over heated and burnt out. Therefore, he had to replace the motor control board (MCB). CM says that this is consistent with a lack of lubrication, which causes extra friction because the motor has to work harder. The motor then draws more current and eventually the R40 resistor burnt out. The motor was tested, and it did not have a fault. CM asked EQ if he had done any lubrication and he replied, no. However, he later indicated he did use lubricant on the online repair request form, and subsequently said he used CRC.
7. CM says the treadmill was of acceptable quality. The treadmill is made by one of the largest manufacturers of treadmills in the world and they are very reliable good quality machines. CM says F Ltd has not received any communication about the second problem, however there will likely be a simple fix in the user manual.
8. EQ says that a repair guy did ask if he had tried lubricating it, and he replied no, because he thought he meant, on that day. However, his family sprayed CRC under the belt every time they used it. The CRC bottle said it was suitable for doors, locks, hinges, plastic parts and moulding. He thought it was suitable because the treadmill had plastic parts. The sales guy only told him it was important to lubricate, he didn't recommend any products.
9. However, CM states that CRC is not recommended for treadmills as it only has 30% silicon. The invoice clearly states; "failure to follow maintenance advice, neglect cleaning or use incorrect lubricant can void warranties". It also recommends going to [F Ltd's website] for full details before using the treadmill. CM provided evidence from the website which states:  
  
*We only recommend our premium treadmill lubricant which is our own brand ... or the [redacted] branded lubricant sachets. Do not use anything which does not state for use in treadmill lubrication ... the silicon lubricant needs to be the correct viscosity and have no additives. Our silicon oil is a pharmaceutical grade silicon oil ... Do not under any circumstances use silicon products designed as multipurpose products ...*
10. EQ raised a concern about a lack of evidence from F Ltd to prove the cause of the fault. In particular, the service technician was not provided as a witness, therefore no direct evidence was given about the exact fault and its likely cause.
11. However, I find the evidence given by CM to be reliable. While CM did not carry out the actual repair, he did discuss the problem with EQ and has considerable qualifications and experience in this field. He was also able to identify the part that was replaced, because he had to order the new part.
12. I find that the treadmill is of acceptable quality. I accept the submissions and evidence of CM, that EQ did not maintain the treadmill properly. The general purpose CRC that he used was not

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<sup>2</sup> Section 18 CGA.

recommended for treadmills and did not have a high enough percentage of silicon. The correct lubricant was clearly described on the website, and this was referenced on the invoice. Given that EQ's family applied an incorrect lubricant every time they used it for over one year, I accept CM's evidence that it is likely that this error contributed to the fault with the belt not turning. I accept that the failure of the R40 resistor was most probably caused by incorrect maintenance with an incorrect lubricant.

13. In addition, I find that there is insufficient evidence to prove that the second problem (with the treadmill not going up and down properly) is a breach of the implied guarantee of acceptable quality. EQ was not able to present any evidence about this problem. F Ltd has not received an online service request or an email or a phone call about it and is therefore unable to assess or fix the problem.

14. In conclusion, I find that F Ltd did not breach the implied guarantee of acceptable quality, therefore EQ is not entitled to cancel the contract. In any event, F Ltd was given an opportunity to remedy and did fix the fault. Therefore, even if the fault was a breach of the guarantee of acceptable quality, EQ is not entitled to cancel the contract, because the fault was fixed. There are no grounds to cancel the contract, therefore the claim for \$3,025.00 is dismissed.

**Is EQ entitled to an order that he is not liable to pay the repair account of \$427.50? Was the F Ltd obliged to fix the fault under the warranty or under the CGA?**

15. As stated above, F Ltd did not breach the implied guarantee of acceptable quality, therefore it was not obliged to fix the fault free of charge under the CGA. In addition, I find that the use of an incorrect lubricant invalidated the warranty, as clearly stated on the invoice at the time of sale. Therefore, F Ltd was not obliged to fix the fault under the warranty.

16. F Ltd agreed to waive the \$150.00 service fee, however, I find that EQ is liable to pay the balance of \$427.50 for the repair of the first fault. This was clearly signalled to EQ before the technician arrived to complete the repair.

**Referee: Sara Grayson**  
**Date: 27 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>.