



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

District Court

[2023] NZDT 218

**APPLICANT**      **ES**

**RESPONDENT**    **M Ltd**

**The Tribunal orders:**

**M Ltd is to pay ES \$16,500.00 within 28 days; and**

**ownership of the [car], the subject of this dispute, is vested immediately in M Ltd, which may take possession of the car and deal with it as it wishes.**

Reasons

[1] The essential facts were not in dispute. On 14 January 2022 ES bought a [car] from M Ltd, represented by sales manager Mr K. Approximately six months later, the engine light came on, and ES took the car back to M Ltd. A problem with oil consumption was identified; the turbo had blown and new bearings were needed. The cost of repair, which was covered partly by M Ltd and partly by ES's extended warranty provider, was approximately \$5,000.00. Some two weeks later, further problems were identified and repaired at M Ltd's cost, which was about \$2,000.00. The engine light came on again after this, and further checks were carried out. ES said that the car had been out of his possession for checking by [mechanic company] for some weeks during this period.

[2] ES said that he had, after problems had first become apparent and he had returned to M Ltd some six or seven times to try to resolve them, asked for a refund of the purchase price. This had not been given, and M Ltd had continued in its attempts to diagnose the problems. Eventually, M Ltd had offered to replace the engine, although conditions had been attached to that offer which he had not found acceptable. ES wanted a refund of the price he had paid for the car.

[3] Mr K did not dispute that there had been repeated problems, some identified and others not, with the car, and that M Ltd had eventually concluded that the best course of action was to replace the engine. He observed that the model of [car] in question had been subject to a recall in other parts of the world because of a manufacturing fault. He maintained his offer for a replacement engine, but did not think that a full refund was justified.

**The issue**

[4] The question for me to decide is whether, on the essentially undisputed facts, ES is entitled to a refund of the price he paid for the car, or whether he must accept a replacement engine.

## **The law**

[5] The sale of the car by M Ltd to ES is covered by the Consumer Guarantees Act 1993 (“the CGA”). The CGA sets out guarantees that apply where a trader supplies goods to a consumer, as in this case. The trader is taken to guarantee that the goods will be of acceptable quality and fit for their purpose. Section 18 of the CGA provides for the remedies that are available when a failure of a guarantee occurs. A consumer is entitled to reject the goods and obtain a refund where the failure can be remedied but the trader does not remedy it within a reasonable time; or where the failure is of a substantial character, as defined in s 21. A collection, or succession, of minor failures may amount to a failure of a substantial character. A consumer who does not exercise his or her right to reject goods within a reasonable time will lose any right to reject the goods.

### **Are there failures of consumer guarantees in this case?**

[6] In my view, the evidence clearly establishes that the car that ES bought was not of acceptable quality nor fit for its purpose. A reasonable consumer must of course expect that, in the case of a secondhand car, defects will appear sooner or later. However, the same reasonable consumer would not expect that, after paying \$16,500.00 for a car with an odometer reading of 92,000kms, repeated problems would arise within six months of the purchase, such as to make the car effectively unusable unless the engine were replaced.

### **What remedy should be provided to ES?**

[7] I consider that ES is entitled to reject the car, and receive a refund of its price from M Ltd. That is because (a) M Ltd have not, despite what I accept were its genuine efforts to do so, succeeded in diagnosing and repairing the defects within a reasonable time; and (b) the repeated appearance of defects were such as to make the failures of the relevant consumer guarantees substantial. I do not think that a reasonable consumer, knowing of the nature and extent of the defects that would become apparent, would have bought this car for \$16,500.00.

[8] I do not think that ES had lost his right to reject the car because of the passage of time. His evidence was that he had asked for a refund in August 2022 after having returned a number of times with complaints to M Ltd, but a refund was not provided. M Ltd continued, as ES brought the car back, to attempt to find the cause of the faults but did not in the end succeed, which is why it now suggests that the only solution is the provision of a new engine. In my view, ES has reasonably lost confidence in the car because of the repeated problems, and is entitled to reject it and obtain a refund of the purchase price.

[9] The car is currently not in ES’ possession, but remains at the premises of [mechanic company]. As this order now vests ownership of the car in M Ltd, M Ltd may collect it and deal with it as it wishes.

**Referee: C Hawes**

**Date: 3 May 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>.