



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 109

APPLICANT ET

RESPONDENT T Ltd

The Tribunal orders:

T Ltd is to pay ET \$1,945.00 by 20 March 2023.

Background

1. ET purchased two T Ltd flip phones in January 2022, one for himself and one for his wife.
2. ET submitted that after several months he noticed a crackling / crunching sound when he opened and closed the phone, and the clear screen near the hinges began to “bubble and lift”.
3. A black line then showed on the screen of the phone. Soon after that, the screen failed entirely.
4. ET took the phone to W in [City 1] in June 2022. W returned the phone to T Ltd in [City 2].
5. On 8 June 2022, T Ltd (T) sent an email to ET attaching a letter “with our final decision on this matter”. I was not provided with a copy of that letter, but I understand that T Ltd rejected liability on the grounds that, in T Ltd’s view, the damage was caused by the phone being dropped. The body of the email includes this statement “we found a sharp dent on the screen which has caused the reported issue”.
6. ET disputed this finding, but T Ltd did not change its view.
7. ET’s claim in this Tribunal seeks \$1,995.00, representing the purchase price of the phone (\$1,695.00) plus compensation for inconvenience.
8. The phone hearing took place on 28 February 2022 by phone. ET participated in the hearing. The Registrar sent multiple emails to T Ltd in the lead up to, and on the day of, the hearing asking T Ltd to confirm who would represent T Ltd at the hearing and asking for a contact phone number. T Ltd failed to respond to those emails.
9. The hearing proceeded in T Ltd’s absence.

Findings

10. ET submitted that T Ltd’s finding about the cause of the screen failure in his phone was incorrect. ET submitted that:

- a. He has not dropped his phone.
 - b. There is no evidence of impact damage to the outside of his phone. Therefore, the screen could only have been damaged in a drop if the phone was open when it was dropped.
 - c. The impact damage on one side of the screen has directly corresponding impact damage on the opposite side of the screen.
 - d. The probability of the identical spot on opposite sides being damaged in a single drop event, or in multiple drop events, is extremely low.
 - e. The more likely explanation of the damage is some object being trapped in the phone when it was closed. ET submitted that this could be something such as a key, and the damage could have occurred when his phone was in his pocket.
11. The argument is logical and persuasive. I accept that it is more likely than not that the impact damage to ET's screen was caused by an object being trapped in the phone when it was in the closed position and not by the phone being dropped while it was in the open position.
12. ET submitted that the physical damage to the screen was not the cause of the screen failure.
13. ET submitted that the fault he has experienced is a known problem with T Ltd flip phones. ET directed me to information available on the internet about a phenomenon known as the "black line of death". I have read some of that information, about the experience of T Ltd flip phone users in various countries, and the description of the problem that those users experienced closely mirrors ET's experience.
14. ET submitted that his wife's phone also developed the same problem, even though it also had not been dropped.
15. Having regard to this information I am satisfied that it is more likely than not that the screen failure was a consequence of a fault / defect with the phone itself, and not due to any careless handling by ET.
16. ET's claim seeks a refund of the purchase price, and compensation for inconvenience.
17. The relevant law is the Consumer Guarantees Act 1993 (CGA).
18. Section 6 CGA states that where goods are supplied to a consumer, there is a guarantee that the goods must be of acceptable quality.
19. Section 7 CGA defines acceptable quality as follows:
- Goods are of acceptable quality if they are as:
- (a) Fit for all the purposes for which goods of they type in question are commonly supplied; and
 - (b) Acceptable in appearance and finish; and
 - (c) Safe; and
 - (d) Durable;
- as a reasonable consumer would expect having regard to the nature of the goods, the price paid for the goods [and a range of other considerations.]
20. Sections 18-23 CGA set out the consumer's right of redress against the supplier if goods do not meet the guarantee of acceptable quality.

21. In this instance, ET has not brought his claim against the supplier. The supplier is the retailer who ET purchased the phone from. He has brought his claim against T Ltd
22. Part 3 of the CGA gives consumers a right of redress directly against manufacturers in respect of the supply of goods. The definition of “manufacturer” in section 2 CGA includes “where goods are manufactured outside of New Zealand and the foreign manufacturer of the goods does not have an ordinary place of business in New Zealand, a person that imports or distributes those goods”.
23. T Ltd is a New Zealand registered company, wholly owned by T Asia Ltd, a [Country] based company.
24. The identity of the actual manufacturer of ET’s phone is not clear, but I am satisfied that T Ltd is within the CGA definition of manufacturer. The New Zealand company is either a subsidiary of the manufacturer or, if the manufacturer does not have an ordinary place of business in New Zealand, it is the importer / distributor.
25. Section 27 CGA, which sets out the remedies available to consumers against manufacturers, does not mirror sections 18-22 CGA
26. Sections 18-22 allow the consumer to:
- a. Require the supplier to remedy the failure by way of repair, replacement, or refund.
 - b. If the supplier fails to remedy the failure:
 - i. have the failure remedied elsewhere and obtain from the supplier all reasonable costs of having the failure remedied; or
 - ii. reject the goods.
 - c. Reject the goods immediately if the failure is of a “substantial character” or cannot be remedied.
27. Those remedies are not available under the CGA in claims against the manufacturer. The only remedy against manufacturers is set out in section 27.
28. Section 27 states:
- Subject to subsection (3), where a consumer has a right of redress against a manufacturer in accordance with this Part, the consumer, or any person who acquires the goods from or through the consumer, may obtain damages from the manufacturer—
- (a) subject to subsection (2), for any reduction in the value of the goods resulting from the failure—
 - (i) below the price paid or payable by the consumer for the goods; or
 - (ii) below the average retail price of the goods at the time of supply,—
- whichever price is lower:
- (b) for any loss or damage to the consumer or that other person resulting from the failure (other than loss or damage through a reduction in value of the goods) which was reasonably foreseeable as liable to result from the failure.
29. If the manufacturer provided a warranty on the goods, the remedy in section 27 can only be accessed if the consumer has first attempted to require the manufacture to remedy the failure under warranty, and the manufacturer has refused or failed to do so.
30. In this instance:

- a. ET made a claim under T Ltd's warranty, but T Ltd did not accept the warranty claim.
- b. The value of the phone in its current condition is essentially nothing. Returning the phone to a functioning state requires replacement of the screen. Even if this was done, there is a risk that the problem could recur. If ET attempted to sell the phone on the open market and the purchaser was fully appraised of the history of the phone, it would only achieve a nominal price – perhaps \$50.
- c. ET's intangible (consequential) losses include him continuing to pay his monthly phone account together with the inconvenience of not being able to use his phone. His claim for compensation of \$300.00 is a not unreasonable assessment of that loss, which was reasonably foreseeable as likely to result from the failure.
- d. I will award damages for reduction in value of \$1,645.00 and compensation of \$300.00.

Referee: Nicholas Blake

Date: 1 March 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>.