



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

**[2023] NZDT 648**

**APPLICANT      EX**

**APPLICANT      OI**

**RESPONDENT    D Ltd**

**SECOND          BD  
RESPONDENT**

**The Tribunal orders:**

The claim by EX and OI against D Ltd and BD is dismissed.

**Reasons**

1. In January 2023 EX purchased a [redacted] racing engine. EX now brings a claim against D Ltd and BD for \$30,000.00.
2. EX purchased a racing engine for \$25,000.00 and later discovered that it has serious technical issues, and he wants a refund of the purchase price and claims for costs associated with taking the faulty engine apart and testing it.
3. The issues to be resolved are:
  - (a) Was the engine sold in 'trade'?
  - (b) If not, did BD misrepresent the condition of the engine?
  - (c) If so, was EX 'induced' into purchasing the engine because of the representation?
  - (d) If so, what is the remedy?

**Was the engine sold in 'trade'?**

4. The Consumer Guarantees Act 1993 (CGA) provides statutory guarantees to consumers for purchases made by a seller in "trade".
5. If the CGA applies in relation to the sale of the engine, there is an implied statutory guarantee that the goods (the engine) will be of 'acceptable quality'. If the CGA applies in this claim and the engine is not of an acceptable quality, there are remedies available to the purchaser EX including a refund of the purchase price.
6. EX explained that as far as he understands the engine was sold by D Ltd which means that because D Ltd is involved in the motor industry, it was sold "in trade".

7. I am not satisfied that EX has proved that it is “more likely than not” that the engine was sold in “trade”. I make my finding for the following reasons:
8. EX said that he visited BD at the D Ltd shop and discussed the engine with BD. He said that when he tried to get BD’s personal number, BD would not provide it. Further, D Ltd Racing supplies are branded on BD’s cars.
9. BD on the other hand, adamantly denied ever meeting, talking or directly dealing with EX prior to the purchase of the engine. BD said that he had dealings with a Mr J who he believed wanted to purchase the engine.
10. When two parties make compelling yet conflicting statements about what was said or done on an earlier occasion it is sometimes not possible to make a finding one way or the other without some “objective” evidence.
11. It was not disputed that the engine was picked up by “T” from BD’s personal address.
12. There was no advertising of the engine and EX heard about it through word of mouth.
13. The engine was paid for in cash not through the company.
14. It was not disputed that BD had used the engine himself and it was not brand new.
15. I also accept BD’s submission that his company does not sell engines.
16. When I consider the combination of factors above, I am satisfied that they do not support EX’s claim that the engine was sold by the Company and therefore sold in “trade”.
17. For these reasons I find that EX has not proved that the engine was sold through the business and in “trade”.
18. For these reasons I am satisfied that the engine was sold in a private sale and the Consumer Guarantees Act 1993 does not apply.

**If not, did EX misrepresent the condition of the engine?**

19. The law relevant to this claim is the general law of contract and the Contractual and Commercial Law Act 2017 (CCLA). A contract is a binding commitment formed by an offer made by one party and a subsequent acceptance by the other party. There is a well-known principle of contract law which is “caveat emptor” or “let the buyer beware”. This implies that the buyer must be cautious, as the risk is his and not that of the seller.
20. The CCLA qualifies the principle of caveat emptor. It sets out the law governing misrepresentation which applies to contracts.
21. A misrepresentation is a false statement of fact which is made before or at the time the contract is made and which “induces” a person to enter into that contract. A vendor has no positive duty to disclose any defects about an item. However, if asked, he may not make any false or half truthful statement. A person who enters into a contract based on a misrepresentation may be entitled to claim compensation depending upon how significance the misrepresentation is.
22. In order to determine if there was one or more misrepresentations made by BD prior to the agreement to purchase which “induced” EX into purchasing the engine, it is necessary to consider what was said or done prior to the agreement to purchase.
23. EX said that when T collected the engine, BD told him that it was “mint, and barely run in”.

24. Further, EX said that when he talked to BD about the engine in December 2022, he was told that it was a “good engine”. Because I have made a finding that it has not been proved that EX met with BD in December 2022, I cannot now consider that aspect in relation to whether or not there was a misrepresentation.
25. EX said that when “T” from SQ Ltd collected the engine from BD and paid for it on behalf of EX, EX had already decided and agreed to purchase the engine.
26. If BD made those representations they were made after EX had agreed to buy the engine or in other words, after the contract had been entered into.
27. If that is so, then BD was not “induced” into entering into the contract for the purchase of the engine because of those representations.
28. Further, BD adamantly denies saying those words and there is no other evidence to prove that he made those representations before EX agreed to purchase the engine.
29. For these reasons I am satisfied that EX has not proved that BD misrepresented the condition of the engine, and which “induced” EX into agreeing to purchase it.
30. Because I have made a finding that the CGA does not apply and it has not been proved that BD misrepresented the condition of the engine which induced EX into agreeing to purchase the engine, I find that the claim is not proved.
31. For these reasons I do not need to consider the remaining issues.
32. For these reasons I find the claim by EX against D Ltd and BD personally, is dismissed.

**Referee: K Johnson**  
**Date: 09 November 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>.