



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 631

APPLICANT EX

RESPONDENT HC

The Tribunal orders:

HC must pay EX \$1,000.00 by 4pm on 20 December 2023.

Reasons:

1. EX wanted to purchase a car from HC that was being sold via [online] platform. As that car was about to be sold, HC offered EX another car which was the same make and model which he had decided to sell but not yet listed on [online platform]. After conversations between the parties, EX paid a deposit of \$1,000.00 with the full purchase price being payable on conditions being met, including the completion of a satisfactory service of the car by a third party [car model] dealer. EX was not happy with the result of the service. EX initially made a counter-offer for the car on the basis of the issues found during the service then told HC she no longer wanted to complete the purchase of the car and asked for her deposit to be returned. EX claims \$1,000.00 from HC.
2. After the first hearing HC filed a statement that he wanted to claim \$1,080.00 from EX, less the amount paid by way of deposit. HC did not file a counterclaim so I was not able to consider this, although I was able to consider the evidence HC filed as this was relevant to his defence of the claim against him.
3. The issues to be determined by the Tribunal are:
 - a. What agreement did the parties reach regarding the sale and purchase of the car?
 - b. Is EX entitled to have the \$1,000.00 she paid as a deposit for the car refunded to her?

What agreement did the parties reach regarding the sale and purchase of the car?

4. The relevant law is the law of contract. The law of contract recognises and enforces contracts, where the essential elements of a contract are present. These elements are a clear offer, unequivocal acceptance, adequate consideration, an intention for all parties to enter into legal relations and certain terms.
5. In this case on the evidence provided to the Tribunal, I find that it is more likely than not that the parties came to the following agreement regarding the sale and purchase of the car:
 - a. The parties initially agreed to a purchase price of \$37,000.00. The evidence shows that this was conditional on EX being satisfied with the outcome of the service and

inspection by [third party car model dealer]. This means that if this condition was not met, EX could withdraw from the agreement.

- b. The evidence shows that EX asked for confirmation regarding there being no scratches or marks on the vehicle before she paid the deposit as she told HC his was not clear from the [social media app] call or video he sent her. HC did not specifically respond on this point. HC told the Tribunal that EX was aware of the scratches before she paid the deposit. However, there was no evidence that this was the case. EX's text asking for confirmation regarding scratches and marks which she could not deduce from the video HC sent her confirms this. Therefore, this condition was not met.
 - c. EX paid the deposit and HC agreed that this could be refunded if the [third party dealer] service found any issues. HC said in the first hearing that this was limited to mechanical issues but there is no evidence to suggest this was the case in any of the dealings between the parties.
 - d. After EX was advised by [third party car model dealer] that there were scratches on the back of the car, the evidence shows that EX offered to purchase the car at a reduced price of \$36,600.00. In a call between the parties on Friday 16 June 2023, HC further offered to sell the car for \$36,800.00 but there was no evidence that this was accepted by EX.
 - e. There is no evidence that HC accepted EX's offer of \$36,600.00 before it was withdrawn by EX. I say this because when EX asked for a refund of her deposit after the call between the parties in a text message, the reasoning HC refused was that EX was aware of the scratches, not because he had accepted her offer of \$36,600.00. It was not until EX chased HC for a refund of the deposit again on Sunday 18 June 2023, that HC said he had accepted this offer and was expecting her to collect the car the next Saturday.
6. In summary I find that the first agreement to for EX to purchase the car for \$37,000.00 was conditional and the conditions were not met. I also find that it is more likely than not that EX's second offer of \$36,400.00 was not unequivocally accepted by HC before EX withdrew it.

Is EX entitled to have the \$1,000.00 she paid as a deposit for the car refunded to her?

7. In this case, I find that HC should refund EX the \$1,000.00 deposit she paid for the car. I say this because the evidence shows that the deposit was paid by EX on a conditional basis and HC agreed that it would be "*fully refundable in the highly unlikely event [third party car model dealer] highlights a issue.*"
 8. As an issue was highlighted which meant that EX's condition to the agreement was not met, HC should refund the deposit as he agreed to do.
 9. HC told the Tribunal that EX had agreed to pay for the cost of the service, but she had only paid \$200.00 whereas the evidence shows that the service cost \$280.00. However, the text messages between the parties show that HC, who booked the service, told EX that the service would be "*..capped at \$200.00..*". Therefore, I do not find that EX is liable to pay an additional \$80.00 for the service.
10. In summary, I find that HC should refund EX \$1,000.00.

Referee: K. Armstrong
Date: 29 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>.