



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 431

APPLICANT **FU**

RESPONDENT **KT**

SECOND **G Ltd**
RESPONDENT

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In January 2021 FU purchased a car from or through G Ltd, the purchase was financed with a loan from [finance company]. After about a week, he discovered oil leaking, and took it to KT, who said it was caused by oil that had been spilt during an oil change and would be fine within a few weeks. However, within a few more days FU had more problems with the car. FU tried to get KT to look at the car, but KT did not do so. The car has since been repossessed by [finance company] and sold by that company.
2. FU claims the sum of \$8,900.00 for a refund of the price of the car.
3. The issues to be determined are as follows:
 - a. Does the Consumer Guarantees Act 1993 apply to the sale?
 - b. If so, was the car of acceptable quality?
 - c. If so, what remedy is FU entitled to under the CGA?

Does the Consumer Guarantees Act 1993 apply to the sale?

4. The Consumer Guarantees Act 1993 (CGA) implies guarantees into consumer contracts for the protection of consumers. The CGA applies to consumer contracts where the supplier of the goods or services is in trade, and includes situations where the supplier, "supplies goods to a consumer by— transferring the ownership or the possession of the goods under a contract of sale, exchange, lease, hire, or hire purchase to which that person is a party;" (s2 CGA)
5. The Tribunal is required to apply an evidential standard, the burden is on the applicant to prove their claim on the balance of probabilities.
6. At the first hearing KT argued that G Ltd did not sell FU the car, he explained that it provided a service under which private sellers were able to advertise their vehicles through the company, but that any resulting sales were direct between the private seller and the purchaser. KT said that this car was sold to FU by a private seller in this manner.

7. A photograph of the sale and purchase agreement was presented at the first hearing. The print was difficult to read, and not all of the terms and conditions were legible. However, the name of the seller is recorded as FT, followed by something that is illegible. The seller's emails address is listed as [redacted].
8. As the photo provided was not clear, I suggested to both parties that they may wish to provide a better copy, or other evidence to support their understanding of who the seller was. Neither party provided any further information on this at the second hearing. In the absence of any further evidence, I find that it is most probable that G Ltd is the seller of the vehicle, as its trade name and email address is legible in the area for sellers details, in the contract. G Ltd is in the trade of selling cars, therefore I find that the CGA applies to this sale.

Was the car of acceptable quality?

9. The CGA provides a guarantee that goods are of acceptable quality (s 6). The meaning of acceptable quality includes being reasonably durable, free from minor defects and fit for all purposes the goods are commonly supplied for (s 7).
10. FU described the oil leak and smoke in his written statement. He presented a text message in which he told KT that the Turbo and water pumps need fixing, and his written statement also refers to a garage telling him that a new engine was needed. At the hearing he said that the car could not be driven as it was smoking, and that it was repossessed, deregistered, and sold by [finance company]. FU did not present any other evidence, such as photographs, or a repair estimate or assessment from a mechanic, or a statement from [finance company] as to the condition of the car when it was repossessed, to support his position. He was given the opportunity to provide further evidence after the first hearing but did not do so.
11. It is not possible to know what, if anything, was wrong with the car without some sort of assessment, independent opinion, or other supporting evidence being presented. Due to the absence of such evidence, I find that there is insufficient evidence to prove on the balance of probabilities that the car was not of acceptable quality when it was purchased.
12. For these reasons the final issue need not be determined, and the claim is dismissed.

Referee: K Rendall
Date: 5 September 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>.