



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

[2023] NZDT 689

**APPLICANT**      **G Transport Ltd**

**RESPONDENT**    **D Autos Ltd**

**The Tribunal orders:**

D Autos is to pay directly to G Transport the sum of \$10,275.76 on or before 31 January 2024.

**Summary of Reasons:**

- [1] The hearing was convened by teleconference. Both parties appeared at the hearing.
- [2] The applicant seeks a refund of a \$10,275.76 deposit paid to the respondent on signing a truck sale and purchase agreement in mid-2023. The applicant cancelled the purchase four days after signing the agreement. Under the written sale and purchase agreement the deposit is non-refundable.
- [3] The parties have both provided a history and timeline behind the sale and purchase of the truck in question and the resulting dispute and agree on the essential facts. The only dispute between them is the effect of Mr L's undertaking that the respondent would refund the deposit in full if the applicant pull out of the sale. The applicant acted in reliance of this representation and cancelled the purchase. Mr L confirmed in a tape-recorded conversation that he had agreed to refund the deposit in full if the applicant wanted to cancel the sale.
- [4] The applicant agrees the written contract allows the respondent to retain the deposit but claims this term was varied by Mr L's representation that the deposit would be refunded. The respondent admits Mr L gave the applicant an undertaken that the full deposit would be refunded but claims the written contract overrides Mr L's later variation. The respondent admits Mr L was acting as its agent both at the time of the sale and when he agreed to refund the deposit in full. Mr L is employed as a salesperson by the respondent.
- [5] I have carefully considered this claim and all the evidence put before me. As discussed at hearing the only issue is whether the applicant is entitled to rely on Mr L's undertaken or the respondent is entitled to rely on the written contract without variation.
- [6] Given the respondent admits Mr L was entitled to represent it, the only question is one of timing. The written contract was first and at that time the respondent was not obliged to return the deposit if the contract was cancelled. As its circumstances changed, the applicant approached the respondent's authorised agent and sought a variation of the contract, namely a refundable deposit. Mr L agreed, and the contract term was varied. This new term supersedes the old term. The deposit from that date is refundable.
- [7] It is not open to the respondent to unilaterally alter this term back to that originally agreed, particularly given the applicant relied on this undertaken and cancelled the contract expecting a full refund. To allow the respondent to unilaterally alter Mr L's undertaking is tantamount to sanctioning fraud

with the respondent making a quick \$10,275.76<sup>1</sup> by misleading the applicant into cancelling the sale. Had Mr L not agreed to repay the deposit, it is likely the contract would not have been cancelled and the applicant could have mitigated any loss by on selling the vehicle. The applicant was denied this opportunity by the respondent first agreeing and then renegeing on its commitment to return the deposit.

**Referee: Hannan DTR**

**Date: 7 December 2023**

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<sup>1</sup> In 4 days



## 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 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>.