



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 452

APPLICANT H Ltd

RESPONDENT TB

The Tribunal orders:

TB is to pay the sum of \$3,000.00 to H Ltd on or before Tuesday 3 October 2023.

Reasons:

1. On 13 April 2023, car dealer H Ltd (the buyer) paid \$2,000.00 to TB (the seller) for a [car] with mileage of around 173,000 km. The seller agreed to deliver the car in the next few days, but instead the car was sold to someone else. The seller refunded half of the purchase price on 30 May 2023, but has not refunded the other half.
2. The buyer now claims \$4,900.00, representing the average market value of the car according to a Trade Me valuation less the \$1,000.00 refunded.
3. The issues to be determined are:
 - a) Was there a binding contract of sale?
 - b) Did the parties form a binding agreement to settle for a full refund?
 - c) If not, what sum is payable?

Was there a binding contract of sale?

4. The seller admitted having “a deal” with the buyer to sell the car for \$2,000.00, but submitted that there was no binding contract because there was no formal agreement. However, a contract need not be recorded in a formal document or even in writing; an agreement can be formed verbally or inferred from the parties’ conduct. I find that there was a binding contract of sale formed by text messages and verbal agreement.
- 5. Did the parties form a binding agreement to settle for a full refund?**
6. Whatever the actual legal rights of the parties to a contract, where there is a genuine dispute they are free to reach their own agreement to settle the dispute between them.
7. The buyer provided copies of communications with the seller. On 26 May, after exchanges about possibly selling other cars, the seller said, “Ok if I don’t get you cars by the weekend I will pay you \$2k by Monday deal”. However, the seller’s reply “It’s your last chance no more talk” was not a clear agreement that it would accept a promise to pay \$2,000.00 in full settlement.
8. On 6 June, the seller said he would pay the remainder of the refund by Friday, and the buyer responded, “If I don’t get paid till the end of the day I won’t accept your money” and “I’m going to take actions against you”. I understand this as a conditional agreement that the dispute

would be settled if the seller paid the refund by Friday, but the buyer never compromised its right to seek damages if the balance of the refund was not received by that deadline. Since the condition of payment by Friday was not fulfilled, I find that there is no binding settlement agreement.

9. What sum is payable?

10. Section 193 of the Contract and Commercial Law Act 2017 provides for damages for non-delivery if the seller wrongfully neglects or refuses to deliver the goods to the buyer. The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract. If there is an available market for the goods, the usual measure of damages is (unless the circumstances otherwise require) the difference between the contract price and the market price at the time of the delivery failure.
11. It is questionable whether there is an "available market" in this instance, since it requires a fungible product, whereas the courts have taken the view that each second-hand car is unique. Also, the courts have clarified that the applicable market price is the price the buyer would have had to pay to replace the goods. In this instance, there was no evidence that the buyer had a resale arranged for the car or had a particular need for [car make], so there would be some flexibility for the buyer to find a comparable resaleable car priced at the lower end of the market. The buyer provided a TradeMe valuation showing that the lower end of the market for that particular car was around \$4,500.00. Given the flexibility I have mentioned, I would expect the buyer could source something comparably saleable for around \$4,000.00.
12. This means that the buyer's loss due to non-delivery was \$2,000.00. Adding \$2,000.00 to the \$1,000.00 unpaid balance of the refund, I find that the sum payable by the seller to the buyer for non-delivery is \$3,000.00.

Referee: E Paton-Simpson

Date: 15 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 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>.