



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 8

APPLICANT HZ

RESPONDENT JS

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In November 2022, HZ was looking to buy a 7-seater vehicle.
2. JS had advertised a [car] for sale on Facebook.
3. HZ travelled to [City 1] to view the vehicle and after a short test drive he bought the vehicle for \$4,250.00.
4. One week after buying the vehicle, HZ was driving from [City 2] towards [City 3] when he experienced a rumbling sound and then heard a big bang. He got the vehicle to safety and managed to travel back home slowly.
5. HZ later brought the vehicle to a mechanic who advised him that the engine needed to be replaced.
6. HZ contacted JS. The matter was unable to be resolved between the parties.
7. HZ is seeking \$4,000.00 which is slightly less than the costs of the repairs he got done to the vehicle.
8. The issues the Tribunal has to consider are:
 - a. Did JS misrepresent the vehicle when he sold it to HZ?
 - b. If yes, did that misrepresentation induce HZ to buy the vehicle?
 - c. Is HZ entitled to the amount sought of \$4,000.00 or any other amount?

Did JS misrepresent the vehicle when he sold it to HZ?

9. This was a private sale. JS was not selling this vehicle in trade and therefore none of the consumer protection legislation, such as the Consumer Guarantees Act 1993 or the Fair Trading Act 1986 apply.
10. Section 35 of the Contract and Commercial Law Act 2017 ("CCLA") means that if someone is induced to enter a contract by a misrepresentation (which can be innocent or fraudulent) that person is entitled to damages from the other party as if the representation were a term of the contract that had been broken.

11. A misrepresentation is a representation of present or past fact that is false.
12. A seller in a private sale is not obliged to point out faults or problems but statements made and answers to questions by the seller can be relied on and can amount to misrepresentation if false.
13. HZ says JS misrepresented the vehicle when he said that he had had no issues with the vehicle. He said that was a misrepresentation as there was a big issue with the vehicle. His mechanic had told him that there were pieces of metal in the engine oil. The engine had to be replaced.
14. I am not satisfied that JS misrepresented the vehicle at the time of sale.
15. The advert from Facebook does not contain any misrepresentation. It states the make and year of the vehicle, that the kms are low and that it has a warrant of fitness ("WOF") until March 2023. There were some photos attached to the advert.
16. There is no misrepresentation in the advert as all of those statements were true.
17. JS accepted that he did say to HZ that he had no issues with the vehicle. He said he had owned it since around 2018. He produced some documents showing it had a full service in October 2020 and later WOF checks were carried out. He told the Tribunal he drove the vehicle regularly and had no issues with it.
18. JS said he also stated to HZ that he did not know anything about cars. He said he told HZ that he could take the vehicle to a mechanic to have it checked out if he wanted to.
19. HZ accepted that JS said those things. He accepted that he did not bring the vehicle to a mechanic to get it checked. He said he thought JS was genuine and trusted him.
20. JS did not make any statement about the past or present condition of the vehicle that was false. He told the Tribunal that he did not have any issues with the vehicle. There was no evidence produced to me that contradicted that. JS made it clear at the time of sale that he did not know anything about cars.
21. A failure to point out any issues with a vehicle is not a misrepresentation. There is no evidence which satisfies me that JS was aware there was any issue with the vehicle. His comment that he had no issues with it is more likely than not to be true. That is a comment about his experience with the vehicle. It is not a statement about the general condition of the vehicle.
22. HZ drove the vehicle from [City 1] back to [City 2] on the day of purchase and did not experience any issues with it. It was a week later when the issue happened.
23. Regardless of whether the issue with the engine was present either before or after sale, JS did not make any statements as to the condition of the vehicle other than his own experience with it. He also qualified that by stating that he did not know anything about vehicles and HZ could get it checked over by a mechanic if he wanted to.
24. While I appreciate the situation HZ found himself in, I am not satisfied that there was any misrepresentation by JS.
25. As there was no misrepresentation, I do not need to go on to consider the remaining issues.
26. The claim is dismissed.

Referee: P Byrne
Date: 6 March 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>.