



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

**District Court**

**[2023] NZDT 321**

**APPLICANT      JB**

**RESPONDENT    IQ**

**The Tribunal orders:**

1. The respondent's name is corrected to IQ.
2. IQ is to pay the sum of \$1,900.00 to JB on or before Monday 31 July 2023.
3. Once payment has been made, IQ is to collect the car from JB at a mutually convenient time within the next two weeks. If the car has not been collected by 14 August 2023, JB may keep or dispose of the car as he sees fit.

**Reasons:**

1. IQ (the seller) advertised a [car] for sale on [sales website]. JB (the buyer) made contact, and asked when the last warrant was done, to which the seller replied February 2023. The buyer went to look at the car on 13 April 2023 and went for a test drive for around ten minutes, with the seller driving since the buyer was not used to driving a manual car. The buyer decided to purchase the car, and paid in cash.
2. The next day, the buyer took the car to his father's workshop to have his father's co-worker carry out a pre-warrant inspection as the car had no warrant. They discovered that the car could not pass a warrant due to suspension mounting points on the underside of the car being badly rusted with a large hole, making the car unsafe to drive. There was also other rust, and cracks in the sidewalls of two tyres.
3. The buyer asked the seller for a refund, but the seller refused. The buyer now claims \$2,150.00 from the seller, comprising a full refund together with \$250 for wasted time and petrol.
4. The issues to be determined are:
  - a) Is the buyer entitled to a remedy due to the warrant of fitness being expired?
  - b) If so, what remedy should the buyer be given?

**Is the buyer entitled to a remedy due to the warrant of fitness being expired?**

5. Under Rule 9.12(1) of the Land Transport Rule: Vehicle Standards Compliance 2002, a person selling a motor vehicle must ensure that it has a current certificate of fitness at the time of sale. Additionally, Rule 9.12(3) provides that the vehicle must have been certified within one month before the date of delivery of the vehicle to the purchaser.
6. Where the vehicle has no current warrant, Rule 9.12(4)(a) provides an exception if the purchaser gives the seller a written undertaking not to drive the car until it gets a warrant, other than for the purpose of obtaining the warrant.

7. Where the vehicle does have a current warrant, Rule 9.12(4)(b) provides an exception to Rule 9.12(3) if the purchaser gives the seller a written undertaking accepting that the vehicle has been certified one month or more previously.
8. The seller conceded that the car did not have a current warrant, its warrant having expired on 28 February 2023. Also, there was no written undertaking from the buyer not to drive the car. The seller said he was unaware of the rules, but it is nevertheless clear that both Rule 9.12(1) and Rule 9.12(3) were breached.
9. It is necessary to decide whether breach of those rules affords the buyer any right to a remedy against the seller. There were conflicting decisions from the courts regarding the effect of an earlier rule on which rule 9.12 was based, namely reg 53 of the Traffic Regulations 1956. In *Berrett v Smith* [1965] NZLR 460, Hutchinson J held that reg 53 was designed to protect the purchaser, and that breach of reg 53 made the seller's performance of the contract illegal, permitting the innocent purchaser to recover any amount paid in respect of the contract. On other hand, in *Fenton v Scotty's Car Sales Ltd* [1968] NZLR 929, Woodhouse J held that reg 53 was designed solely to promote road safety, not to protect the purchaser.
10. However, there is a significant difference between reg 53 and rule 9.12. Reg 53 had an exception akin to Rule 9.12(4)(a), but did not have any exception akin to Rule 9.12(4)(b), where if the warrant is current but more than a month old, the seller only needs to obtain an acknowledgement in writing from the purchaser accepting that fact. This exception, allowing the purchaser to waive the one-month requirement and use the car as normal until the warrant expires, strongly suggests that the one-month requirement is for the purchaser's protection rather than for road safety.
11. I therefore find that the reasoning in *Fenton v Scotty's Car Sales Ltd*, which is reflected in the example used to illustrate s 72 of the Contract and Commercial Law Act 2017 (CCLA), does not apply to rule 9.12(3). I also find that the object of rule 9.12(3) clearly requires that a purchaser who has not provided a written waiver of the one-month requirement be entitled to a remedy. This must be so even (and in fact more strongly) if the warrant was not only more than a month old but had actually expired, as in the current claim.

## **12. What remedy should the buyer be given?**

13. In all the circumstances, including the seller's false representation that the warrant was last done in February 2023, the buyer's evidence that the car would not have passed a warrant at the time of sale due to rust and cracked tyres, and the likelihood that repairs to warrantable standard would cost more than the purchase price of the car, I find that the buyer is entitled to reject the car and recover the purchase price.
14. The seller said the buyer only paid \$1,700.00 in cash for the car, but the buyer produced text messages and a bank withdrawal record to support his claim that he paid \$1,900.00. There is no evidence of the amount of petrol wasted, which is probably minimal, and damages are not usually awarded for wasted time. The sum payable is therefore \$1,900.00.

**Referee: E Paton-Simpson**

**Date: 12 July 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>.