



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 297

APPLICANT KA

RESPONDENT L Ltd

The Tribunal orders:

The claim is dismissed.

Reasons

1. On 3 April 2023, KA paid a \$500.00 'holding deposit' on a 2014 BMW 320i GT that was for sale on L Ltd's yard.
2. KA paid a further deposit of \$2,500.00 on 11 April 2023.
3. KA decided to not proceed with the purchase.
4. His claim in this Tribunal seeks a refund of the deposits.
5. The hearing took place by phone on 25 July 2023. Both parties participated in the hearing. PI represented L Ltd.
6. KA submitted that:
 - a. He was at L Ltd on the afternoon of 11 April. He was in discussions with PI about the BMW.
 - b. PI rushed him because he wanted to close the yard.
 - c. PI pressured him into paying the \$2,500.00 deposit.
 - d. His agreement to pay the deposit was subject to several conditions, and there were still matters to negotiate further in respect of the vehicle.
 - e. He did not get an opportunity to read the sale and purchase agreement. PI gave him a copy of the agreement and told him to sign it and return it.
 - f. PI sent him a message attempting to pressure him into signing the agreement, stating "the only way to protect yourself is to sign it. Otherwise you lose the car and the money".
 - g. After reading the contract he was concerned that it did not record all of the terms that he understood were agreed with PI.

- h. He attempted to communicate with PI, but PI's attitude had changed and he refused to negotiate any more.
- i. Because of this, he decided not to proceed with the purchase.
- j. He was never told that he wouldn't get the deposit back if he decided not to proceed.

7. PI submitted that:

- a. He originally sent a copy of the agreement to KA when KA paid the holding deposit on 3 April. The agreement includes a section about the deposit which states:

If you do not complete the purchase of the vehicle or otherwise fulfil your obligations under this Agreement, the deposit may be forfeit and retained without limiting any other rights we may have.

- b. KA had ample opportunity to review the agreement and to ask questions. KA did in fact ask him many questions about the agreement.
 - c. He spoke with KA many times, including responding to queries from KA outside of business hours.
 - d. KA was at the yard for most of the day on 11 April.
 - e. KA made his own decision to pay the deposit. KA had previously stated in writing that he would not pay the deposit until he was completely satisfied with all aspects of the purchase.
 - f. They had reached an agreement about price, KA had received the inspection report, and they had an understanding about some minor cosmetic work that KA asked for. There were no outstanding issues when KA paid the further deposit of \$2,500.00 on 11 April.
 - g. The written agreement that he gave KA to sign on 11 April was the same as the one he had previously sent to KA.
8. The term in the agreement relating to deposits, quoted above, is not unusual or extraordinary. It reflects the general legal principles around deposits, that:
- a. A contract for the sale of goods (particularly the sale of higher value goods) may include a term that requires the purchaser to pay a deposit.
 - b. The purpose of a deposit is to:
 - i. Stage the payments of the purchase price.
 - ii. Confirm the purchaser's intention to complete the purchase.
 - iii. Provide some funds to the seller until the balance of the purchase price falls due.
 - iv. Discourage buyers from committing to a purchase, which causes the seller to remove the goods from the market or turn down other offers, then withdrawing.
 - c. If a buyer pays a deposit then withdraws from the purchase without having legal grounds to cancel the contract, the seller may retain some or all of the deposit depending upon:
 - i. The terms of their agreement about how deposits will be dealt with, if there are any.

- ii. The amount of the deposit in relation to the reasonable costs and losses of opportunity that the seller has incurred.

9. In this instance:

- a. Although KA did not sign the sale and purchase agreement, he had seen the terms of the agreement more than a week before he made the payment of \$2,500 on 11 April.
- b. In any event, the relevant term in the agreement simply reflects the established legal principles about deposits as noted above.
- c. KA's argument that he agreed to pay the deposit subject to "conditions", and that the terms of the conditions were not met is not proven.

KA submitted that the conditions were: agreement about price; receiving a satisfactory inspection report; and reaching agreement about minor cosmetic work.

However, the parties had in fact reached an agreement about price, and KA had already received the report, by the time that he paid the \$2,500.00. PI had agreed to do his best to 'tidy up' the cosmetic issues, but PI had already informed KA that he would not put that commitment in writing because it would not be possible to accurately state what standard L Ltd was obliged to bring the vehicle to.

- d. It is not proven that PI 'pressured' KA into paying the deposit.
- e. KA did not have legal grounds to cancel the agreement to purchase. KA was entitled to change his mind, but in doing so he assumed the risk of losing some or all of the deposit.
- f. L Ltd was entitled to retain part or all of the deposit as compensation for the time and costs incurred in entering into the agreement with KA.
- g. PI spent a significant amount of time with KA. KA made very thorough enquiries, and he had an expectation that PI would be available to respond to all of his questions, even outside of business hours.
- h. L Ltd lost the opportunity to sell the vehicle to other purchasers for a period of approximately 10 days.
- i. The cost to L Ltd, in terms of PI's time and the lost opportunity to sell, is at least \$3,000.00.

10. Therefore I find that L Ltd is entitled to retain all of the deposit, and KA's claim must be dismissed.

Referee: Nicholas Blake
Date: 31 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 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>.