



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

**District Court**

**[2023] NZDT 184**

**APPLICANT KB**

**RESPONDENT KP**

**The Tribunal orders:**

1. KP is to pay KB \$7,700.00 on or before 21 July 2023.
2. U are requested to release the [electric mountain bike] to KB on production of a copy of this order.
3. Once KP has paid the \$7,700.00 to KB, KP may arrange to collect the bike from KB.

**Reasons:**

1. KP advertised an electric mountain bike for sale [online]. KB bought the bike from KP. Not long after he bought the bike KB took it back to the apparent original retailer to have some repairs done. The retailer said the bike had been stolen from them in 2020 and so was not covered by a warranty. The retailer gave the bike back to KB. KB then handed the bike in to the police. KB seeks an order that KP is liable to pay KB the purchase price of the bike which was \$8,200.00.
4. The issues to be resolved are:
  - a. Is the bike stolen property?
  - b. If so, is KB entitled to cancel the contract and obtain a refund of the purchase price for the bike from KP?
  - c. If not, does KB have a right to damages from KP?

**Is the bike stolen property?**

5. I find that it is most likely that the bike was stolen from U in 2020, before it was sold to KP.
6. In August 2022 KP sold KB a [electric mountain bike] (the bike) in a private sale for \$8,200.00.
7. KP says that he had earlier bought the bike [online listing] in 2020. At the time of the sale KP was given a copy of a receipt which showed that the bike had been bought from U by BC in [City A] on 23 June 2020.
8. While KP owned the bike, he took it in to U in [City A] for a minor repair under warranty. He has provided a copy of a receipt for this repair.
9. KP then sold the bike to KB in August 2022 for \$8,200.00.

10. KB took the bike to U for a further warranty repair in September 2022. This time U told KB that the bike had been stolen from them in September 2020, and that they therefore could not repair the bike under warranty.
11. KB has provided an email from the manager at U which says that:
  - a. the bike was stolen from them in November 2020;
  - b. that the proof of purchase showing that BC bought the bike from U looks real but is actually a fake (there are details given about why this is the case);
  - c. that when the U mechanic did the warranty work for KB in June 2022 he only needed to run a software update on the bike and did not establish proof of purchase. This may explain why the bike was not identified as stolen then;
  - d. U has explained to the Police that they have no desire to see the bike again and are happy for it to go to whomever it is decided is the rightful owner.
12. [City B] have confirmed in writing to the Tribunal that they have concluded their investigation into the burglary at U in 2020.
13. I note that the Police released the bike to KB in accordance with my order in January 2023 and I understand the bike is now at U in [Suburb].
14. I am satisfied on the balance of probabilities on the basis of all of this evidence that it is most likely that the bike was stolen from U in 2020.

**Is KB entitled to cancel the contract and obtain a refund of the purchase price for the bike from KP?**

15. I find that KB is entitled to cancel the contract and obtain a refund of the purchase price from KP. KB has agreed that it is appropriate to reduce the refund he is entitled to by \$500.00 to take into account some damage that happened to the bike while KB had possession of it. The refund KP is liable to pay KB is therefore \$7,700.00.
16. A seller cannot pass on title to goods that he does not have (s149 Contract and Commercial Law Act 2017 (CCLA)). This means that buyers of stolen goods cannot obtain title, nor pass on title to unsuspecting buyers.
17. A buyer of goods in this situation can cancel the contract and obtain a refund of the purchase price because the CCLA provides that it is an implied condition of sale that the seller has the right to sell the goods (section 35 CCLA).
18. This means that on the face of it KB has the right to cancel the contract for the purchase of the bike and obtain a refund for the purchase price.
19. There is an exception in section 149(2) CCLA to this general rule, which is where the owner of the goods is by the owner's conduct precluded from denying the sellers' authority to sell. In such a case the buyer will receive good title to the goods.
20. In this case U have advised the Tribunal in writing that they do not wish to make a claim to possession of the bike and are happy for it to go to whoever the Tribunal orders.
21. I have had to consider whether, having said they have no interest in the bike any more, U is precluded from denying KP's right to sell the bike to KB (which would mean that the exception in section 149(2) CCLA might apply in this case).
22. However, section 149 CCLA relates to the position of the seller at the time the sale is to be effective. I am satisfied that at the time of the sale to KB, KP did not have title to the bike, and the true owner, U had not at that stage done anything that would have precluded it from denying KP's right to sell. This means that KB had the right to cancel the contract of sale.

23. Since KB started these proceedings U have said they have no interest in the bike. This happened well after KP sold the bike to KB, and does not “cure” the breach of the implied condition because KB did not obtain good title at the time of the sale. However, it may offer KP some comfort in his future dealings with the bike.
24. It is possible that U made an insurance claim for the loss of the bike. If so their insurance company may be able to subrogate to U’s right to possession of the bike. Any such claim cannot be relinquished by U.
25. In these circumstances I consider that the exception in section 149(2) CCLA cannot apply in this case.
26. For the avoidance of doubt, I also consider that this outcome is consistent with the substantial merits and justice of this case (section 18(6) Disputes Tribunal Act 1988). This is because it puts the parties back in substantially the position they would have been in if the sale had not taken place, and leaves KP with a potential remedy against the person he bought the bike from.
27. This means that KB is entitled to cancel the contract of sale and obtain a refund of the purchase price of the bike.
28. There was damage to the bike which happened after KB bought it and before he realised the bike had been stolen. KB has agreed that it is appropriate that the refund he receives from KP should be reduced by \$500.00 for this damage (which is likely to actually cost \$233.00 to fix). For this reason, I find that KP is liable to pay KB \$7,700.00.
29. The bike is currently with U at their shop in [Suburb]. U are to release the bike to KB. Once the \$7,700.00 has been paid to KB by KP he can organise to collect the bike from KB.

**Referee: Lucy Trevelyan**

**Date: 13 June 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>.