



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 509

APPLICANT KG

RESPONDENT P Ltd

**SECOND DX
RESPONDENT**

The Tribunal orders:

1. The claim against P Ltd is withdrawn.
2. DX is to pay KG the sum of \$3000.00 on or before Monday 16 October 2023.

Reasons:

1. KG claims that on 18 June 2023, he purchased an electric scooter for \$3000.00 from DX that she had advertised [online]. He subsequently took it to the original seller P Ltd (the company) for repairs. The company seized the scooter as it said it was the lawful owner because the scooter had originally been purchased fraudulently on 3 June 2023, by a buyer using the name SM, and the payment had been charged back by [e-commerce company] on this basis.
2. KG claimed \$3000.00 from both the company and DX, but at the hearing he withdrew his claim against the company.
3. So, the sole issue to determine is whether KG is entitled to the sum claimed from DX?
4. DX did not attend the hearing, but pursuant to section 42 of the Disputes Tribunal Act 1988, the tribunal can rely on the available evidence.

Is KG entitled to the sum claimed from DX?

5. Section 135(1)(a) and (b) of the Contract and Commercial Law Act 2017 (CCLA) provides that in a contract for sale there is an implied condition that the seller has the right to sell the goods, and that the buyer will have and enjoy quiet possession of the goods. Under section 132(1) of the CCLA where there is a breach of a condition, then the buyer is entitled to repudiate the contract. Under s149 of the CCLA, where goods are sold by a person who is not the owner and who does not sell with the authority or consent of the owner, then the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by the owner's conduct precluded from denying the seller's authority to sell.
6. In the absence of evidence to the contrary, I accept the company's position as set out in paragraph 1 and accept that DX was not the lawful owner of the scooter. I also accept that she had no right to sell it to KG, and in making this finding I had regard to not only the charge back

but also the fact that the delivery address for the purported buyer SM was the same as DX's address, and the brief time frame between the two sales. Consequently, I accept that DX breached the s135 implied condition of sale, and in turn KG was unable to enjoy quiet possession of the scooter and acquired no better title to the scooter than she had.

7. Accordingly, in the absence of evidence to the contrary I accept KG's evidence that he paid DX \$3000.00, and so, I find he is entitled to this sum from DX.
8. DX is to pay KG the sum of \$3000.00 on or before Monday 16 October 2023.

Referee: GM Taylor

Date: 25 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 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>.