



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 152

**FIRST
APPLICANT** **KI**

**SECOND
APPLICANT** **GI**
(new party)

RESPONDENT **Q Ltd**

The Tribunal orders:

1. GI is added to the claim as Second Applicant.
2. Q Ltd is to pay to GI and KI the sum of \$678.13 on or before Monday, 24 July 2023. The balance of the claim is dismissed.

REASONS

1. In or about April 2023, the First Applicant, KI, who purchased two front outer CV joints (“the CV Joints”) from the Respondent, Q Ltd via [auction website] for \$340.00. KI purchased the CV Joints to install into a vehicle owned by his brother, GI.
2. When the CV Joints arrived, KI was concerned that they looked different to the ones he was replacing, so he checked with Q Ltd that he should still fit them to the [Motor Vehicle], and he was told that he could do so. KI fitted the CV Joints into the Motor Vehicle and returned the Motor Vehicle to GI so that he could take it away on holiday the next day.
3. The next day, GI left [City 1] for his holiday and drove the Motor Vehicle to [City 2] to get the ferry to [City 3]. On the way, GI heard strange clunking noises coming from the wheels and the ABS light and the engine light both came on and stayed on. He took the Motor Vehicle to a mechanic in [City 2] who told him that the CV Joints were the wrong ones and the Motor Vehicle was not safe to drive but provided it was kept under 50kph GI could get it on and off the ferry and take it to a mechanic in [City 3] immediately. GI took the Motor Vehicle to Car Mechanics in [City 3] and Car Mechanics confirmed that the CV Joints were incorrect and that the wheel bearings had failed due to being driven with the incorrect front CV joints, so the CV Joints and the bearings required replacement. Car Mechanics replaced the inner and the outer CV Joints the wheel bearings, and invoiced GI \$1,682.23 (incl GST) for that work in invoice 67751-1 dated 16 May 2023 (“Car Mechanic Invoice”). GI has paid the Car Mechanic Invoice. KI says he feels he should reimburse GI for at least half of the Car Mechanic Invoice.

4. Q Ltd has refunded KI the amount he paid for the CV Joints, and KI has returned the CV Joints parts to Q Ltd as requested.
5. KI brings a claim against Q Ltd seeking compensation of \$1,999.00, being the cost of the Car Mechanic Invoice (\$1,682.23) and costs (\$316.77).
6. I held a teleconference hearing of the claim on 29 July 2023. KI attended the hearing. UC attended the hearing on behalf of Q Ltd and was appointed as its representative. At the hearing, I joined GI to the claim as Second Applicant under s25 of the Disputes Tribunal Act 1988 as I was satisfied that this was appropriate despite him not being provided with notice of the claim, because he is the owner of the Motor Vehicle and has paid the Car Mechanic Invoice. GI provided a written statement but did not attend the hearing. I appointed KI as the representative of GI.

Issues

7. The issues I need to determine are:
 - (a) Were the CV Joints not of acceptable quality and/or not reasonably fit of purpose, and/or were the services that Q Ltd provided to KI and/or GI not carried out with reasonable care and skill and/or not reasonably fit for purpose?
 - (b) If so, are KI and/or GI entitled to a remedy and is the amount claimed proved and reasonable?

Were the CV Joints not of acceptable quality and/or not reasonably fit of purpose, and/or were the services that Q Ltd provided to KI and/or GI not carried out with reasonable care and skill and/or not reasonably fit for purpose?

8. The Consumer Guarantees Act 1993 ("the CGA") applies. The CGA implies certain guarantees when goods and services are supplied by a supplier to a consumer in trade, including that the goods will be of acceptable quality (s6 of the CGA), and reasonably fit for any particular purpose made known by the consumer and for any particular purpose for which the supplier represents that they are or will be fit (s8 of the CGA), the services will be carried out with reasonable care and skill (s28 of the CGA), and the services and any product resulting from the services will be reasonably fit for any particular purpose, and of such a nature and quality that it can reasonably be expected to achieve any particular result, made known to the supplier before or at the time of the supply of the services (s29 of the CGA).
9. I am satisfied that Q Ltd provided goods (the CV Joints) to KI in trade, and also provided services in trade to KI and GI. It is not material that GI did not have a direct contract with Q Ltd (see definition of "supplier" in s2(1)(a)(ii) of the CGA). A consumer has the onus of proving his or her claim against a supplier under the CGA, and the standard of proof required is the balance of probabilities (that is, that it is more likely than not).
10. UC, on behalf of Q Ltd, says that the CV Joints were noted in the online catalogue he uses as being the correct CV joints for the VIN number of the Motor Vehicle, and other mechanics may have other catalogues that give other options, but his catalogue regards them as correct. UC says that KI tightened the nuts too much when he fitted the CV Joints, and this caused play in the bearings and resulted in the bearings collapsing.
11. Having carefully considered the available information and evidence, I find that KI and GI have proved, on the balance of probabilities, that the CV Joints were not reasonably fit for purpose, so the implied guarantee set out in s8 of the CGA was not complied with. I make this finding because I am satisfied that the CV Joints were not the correct CV joints for the Motor Vehicle and this resulted in the collapse of the bearings. While I note that UC says the CV Joints were listed in the online catalogue he uses as being correct for the Motor Vehicle, I am satisfied that they were not correct based on the fact that the bearings failed when the Motor Vehicle was driven with the new CV Joints, and Car Mechanic has confirmed that the CV Joints were incorrect. In this regard, it is stated on the Car Mechanic Invoice that: "Found both front CV

joints incorrect. Removed both front wheel bearing hubs and pressed in new wheel bearings. Renewed both front completed CV shafts and re-assembled vehicle. Set wheel alignment and tested – OK”.

12. There is no evidence to satisfy me that KI did anything when fitting the CV Joints into the Motor Vehicle which caused or contributed to the collapse of the bearings, and the need for the replacement so soon after being fitted. In this regard, there is no evidence to persuade me that KI caused the bearings to collapse because he tightened the nuts to much while fitting the CV Joints, particularly given the evidence from Car Mechanic that the CV Joints were incorrect.
13. I also find that KI and GI have proved, on the balance of probabilities, that the services that Q Ltd provided were not carried out with reasonable care and skill or reasonably fit for purpose, so the implied guarantees set out in s28 and s29 of the CGA were not complied with. The services provided consisted of the selection of the correct CV joints for the Motor Vehicle, and advice about whether they were the correct CV joints for the [car] and whether they could be fitted to the [car]. It is not material that these services were unpaid (see definitions in s2(1) of the CGA, including “acquire”, “consumer” and “supply”). I am satisfied that KI provided sufficient detail in his text to UC of 26 April 2023 about why the CV Joints looked different to the old ones to alert UC to there being issues with the CV Joints which required further investigation, but UC did not ask any questions and replied on 26 April 2023 that “You should be fine mate give it a crack...”. As it turned out, UC’s advice to KI to install the CV Joints despite them looking different was not good advice, meant that the Motor Vehicle was unsafe to drive, and the bearings collapsed.

Are KI and/or GI entitled to a remedy and is the amount claimed proved and reasonable?

14. Where goods or services fail to comply with a guarantee set out in the CGA, the consumer is entitled to a remedy against the supplier provided that the consumer has complied with the requirements of the CGA which include that, where a failure can be remedied (unless the failure is of substantial character), the consumer has given the supplier an opportunity to remedy it. If the supplier refuses or neglects to do so or does not succeed in doing so within a reasonable time, the consumer may have the failure remedied elsewhere and obtain damages for the cost of remedying the failure or reject the goods/cancel the contract of services and seek a refund (s18(2)(b) and s32 of the CGA). In addition, the customer is entitled to claim damages for any reasonably foreseeable loss or damage resulting from the failure (s18(4) and s32(c)). A supplier’s failure is of a ‘substantial character’ where the goods or services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure (s21 and s36 of the CGA).
15. Where a consumer has rejected goods, he or she has the right to obtain a full refund from the supplier or a replacement of the goods, at the consumer’s option (s23(1) of the CGA) and must return the rejected goods to the supplier at the consumer’s cost, unless because of the nature of the failure to comply with the guarantee or because of the size or height or method of attachment, the goods cannot be returned, removed or transported without significant cost to the consumer, in which case the supplier will collect the goods at his or her cost (s22(2)).
16. KI seeks compensation of \$1,999.00 from Q Ltd, being the cost of the Car Mechanic (\$1,682.23), and costs (\$316.77) being unquantified costs of petrol, photocopying, and time, and \$28.60 for postage to return the CV Joints to Q Ltd. This is a claim for reasonably foreseeable losses under s18(4) and s32(c) of the CGA. As KI and GI have their claim under the CGA, they are entitled to a remedy. I am satisfied that the failure to comply with the CGA guarantees was of substantial character because I have found the CV Joints were incorrect for the Motor Vehicle and resulted in serious damage to the Motor Vehicle, so KI was not required to give an opportunity to remedy to Q Ltd. In any event, providing an opportunity to remedy would have been difficult given that GI was on holiday at the time and needed the repair completed quickly, and he was not in [City 4] where Q Ltd is based.
17. I award damages of \$649.53 to KI and GI as a partial refund of the Car Mechanic Invoice. From the total amount of the Car Mechanic Invoice (\$1,682.23) I have deducted the cost of the CV

shafts (inner and outer that were replaced by Car Mechanic), which is \$860.20 (incl GST) and I have also deducted a reasonable labour of 1.5 hours, which is \$172.50 (incl GST). This is because Q Ltd have already refunded KI for the cost of the two outer CV Joints it supplied to him (\$340.00), so Q Ltd should not be required to also pay for the replacement CV joints fitted by Car Mechanic, and I note these were substantially more expensive than what Q Ltd supplied. Further, I accept UC's explanation that some mechanics replace both the inner and outer CV joints when others only replace the outer CV joints, and he would not do so without the customer's consent because it doubles the cost and involves about 1.5 to 2 hours extra work. For these reasons, I am satisfied that it is fair that Q Ltd does not pay for any of the CV Joints replaced by Car Mechanic] (inner or outer), or the reasonable labour cost to fit the inner CV joints which I estimate at 1.5 hours. It is fair that Q Ltd pays the labour cost to fit the replacement outer CV Joints.

18. Award a further \$28.60 for postage costs (see two NZ Post receipts dated 19 May 2023 and 23 May 2023). A consumer who rejects goods is generally required to return the goods at their cost, but there is no time limit placed on the return. Q Ltd placed a 7-day limit on the return of the CV Joints which I am satisfied was not reasonable or permitted by the CGA, particularly given that the CV Joints could not be re-used. I am satisfied that the time limit of 7-days put unnecessary pressure on KI to obtain replacement nuts and get the CV Joints back to Q Ltd quickly. Taking into account the merits and justice, I therefore award the postage costs of \$28.60.
19. I dismiss the balance of the claim as it relates to unquantified costs. The Tribunal is precluded under s 43(1) of the Disputes Tribunals Act 1988 ("the DTA") to award costs of the proceedings to any party, except in the limited circumstances set out in s43(2) of the DTA I am satisfied do not apply. This means that the Tribunal cannot award damages for costs for such things as the Tribunal's fee, photocopying, petrol, and time spent by the applicant preparing the claim and/or attending the Tribunal's hearing.
20. For these reasons, I award to KI and GI total damages of \$678.13 (being \$649.53 of the [Car Mechanic Invoice] and \$28.60 for postage) which Q Ltd is to pay by the date set out in the order. The balance of the claim is dismissed.

Referee: D. Brennan DTR

Date: 3 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: [5v](#) May

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>.