



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 125

APPLICANT **KI**

RESPONDENT **CT**

The Tribunal orders: CT is ordered to pay KI the sum of \$4,473.50. Payment of this sum is ordered no later than 30 June 2023.

Reasons:

- 1) In January this year the applicant bought a caravan from the respondent. This was via '[online selling platform]'. The price paid was \$26,902.00.
- 2) The advertisement placed by the respondent for the caravan included the following: "*It is sold as is with the following comments: Upholstery/cabinetry, carpets are in very good condition- looks mostly new. Van is watertight with all windows and skylights sealing.*"
- 3) The applicant, subsequent to the purchase, had the caravan checked. There was found to be a serious water ingress problem. The right rear floor and lower walls were rotting. The applicant seeks compensation for the cost of the required repairs of this problem.
- 4) The respondent says that the caravan had had, at the time of the sale, very little use. The inside was 'immaculate.' He had not seen any "rot." The applicant chose not to inspect the caravan which was sold "as is." The buyer got a 'fair deal' for the caravan.
- 5) The relevant law is the Contract and Commercial Law Act 2017. The issues to be determined by the Tribunal are:
 - a) Was there a misrepresentation by the respondent?
 - b) If so, what is a fair and reasonable sum for which the applicant should be compensated?
- 6) This was the private sale of a second hand good. The laws that provide for guarantees or warranties with respect to goods sold by businesses do not apply here.
- 7) A 'misrepresentation' is a false, or inaccurate, statement made by one party to a contract with respect to, in this context, the condition of a caravan. Where the party to whom a misrepresentation is made is induced to enter into the contract, they may be entitled to compensation.
- 8) I am satisfied, by a wide margin, that the description of the caravan in the advertisement as being "watertight" was, in the circumstances, a misrepresentation. There was, in this regard, a substantial misdescription of the condition of the van. I refer here to the report of '[DC Company]' dated 23 February 2023 which includes the following: "The floor is rotten from the right- hand wheel all along to the back of the caravan and then along the back of the caravan. We have moisture tested the inside of the caravan in this area and the meter goes off the scale. This rot will need a considerable repair which will include a new floor in this section and also most likely some wall repair." A repair estimate was given of \$6,000.00.
- 9) The respondent has questioned the veracity of the above assessment. I note here that an inspection carried out by [vehicle inspection company] on 8 February 2023, for the limited

purpose of a warrant of fitness inspection includes the following: "Right deck floor deteriorating, requires attention soon."

- 10) The respondent relies on the point that the advertisement includes the words: "as is." I do not consider these words protect the respondent, or exclude a liability on his part where (as is the position) there has been a quite clear, and explicit, statement regarding an aspect of the van's condition, namely, that it is "watertight."
- 11) I accept that the wording of the advertisement as quoted above was an 'inducement' to the applicant entering into the contract in that it is most unlikely he would have done that if he had any idea of its real condition. The applicant is, therefore, entitled to compensation. As it turned out, the required repairs were able to be carried out for less than the initial estimate of \$6,000.00, given by [DC Company]. The applicant has produced an invoice from this firm dated 29 March 2023 for \$4,473.50, which sum was paid by the applicant on 31 March.
- 12) I am satisfied that the amount claimed for repair costs is reasonable, and directly referable to the respondent's misrepresentation. It is allowed in full.

Referee: G.P.Rossiter
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>.