



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 381

APPLICANT KK

RESPONDENT HL

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In March 2023, HL advertised his [car] for sale on [online platform].
2. On 9 April 2023, KK contacted HL saying she was interested in the car.
3. HL drove to KK so she could look at and test drive the car with the assistance of some friends.
4. The car was not bought that day.
5. On 10 April HL messaged KK asking if she had thought about the car as he had someone else who wanted to take it to a mechanic the following day. KK replied that she wanted to buy the car.
6. On 12th April HL drove the car to KK's. She paid him \$5,800.00 for the car.
7. KK says that on the 19th of April when she was driving her car home, one of her flatmates said the car sounded weird. KK continued to drive the car. On 27th April she noticed a warning light had come on the dashboard.
8. KK made contact with HL, through her flatmate, and asked for a refund and to return the car to him. There were further messages between the parties regarding the matter, but it was unable to be resolved between them.
9. KK is seeking a refund of the \$5,800.00 she paid for the car and for HL to take the car back.
10. The issues the Tribunal has to consider are:
 - a. Did HL misrepresent the car when he sold it to KK?
 - b. If yes, was KK induced to buy the car by that misrepresentation?
 - c. Is KK entitled to a refund of \$5,800.00 or any other amount?

Did HL misrepresent the car when he sold it to KK?

11. This was a private sale. HL was not selling this vehicle in trade and therefore none of the consumer protection legislation, such as the Consumer Guarantees Act 1993 or the Fair Trading Act 1986 apply.
12. Section 35 of the Contract and Commercial Law Act 2017 (“CCLA”) means that if someone is induced to enter a contract by a misrepresentation (which can be innocent or fraudulent) that person is entitled to damages from the other party as if the representation were a term of the contract that had been broken.
13. A misrepresentation is a representation of present or past fact that is false, but an opinion, or belief about the future, is not usually a misrepresentation.
14. KK says that HL stated on his advert on [online platform] “*drives perfectly and never had any issues.*”
15. KK said that was a misrepresentation as the car did have issues at the time it was sold to her. She said there was an invoice from [Auto Repair] in the car which detailed some issues the car had and made recommendations as to what needed to be attended to on the car. She said she believes that HL knew about these issues. She said she was told by someone in [Auto Repair] that they always tell customers about what recommendations they make. KK said HL did not tell her about these issues.
16. HL had taken the car to [Auto Repair] for a warrant of fitness check and service before he put it up for sale. He denied being told by [Auto Repair] about the work it recommended be done. He said when he collected his car from [Auto Repair] he returned the keys he had for a courtesy car, paid his bill and when he got in his car the invoice or service report was on the passenger seat.
17. I accept HL’s account in this regard as it sounded credible and there was no direct evidence produced from anyone from [Auto Repair] supporting KK’s version of events.
18. HL said that he did not read the document from [Auto Repair]. He said he presumed as the car had passed its WOF that there were no issues. He proceeded to list the car for sale.
19. A seller in a private sale is not obliged to point out faults or problems but statements made and answers to questions by the seller can be relied on and can amount to misrepresentation if false.
20. The issue is whether the comment made in the advert “*drives perfectly and never had any issues*” was false in light of the contents of the [Auto Repair’s] report.
21. I am satisfied that the comment “*drives perfectly*” was not a misrepresentation as that was HL’s experience of the car in the approximate five years he had owned it. He said he bought the car in [City 1] and drove it regularly to work there each day. He then drove from [City 1] to [City 2] approximately three years ago and has used it as his everyday car here in [City 2] since. He said the car drove perfectly.
22. I note that the car was test driven by KK and her friends and there were no issues with the driving of the car on that day or within the first week or so of KK owning it. She drove from her home to [Suburb] to work on a few occasions without issue. It was only when her flatmate brought her attention to a noise that she investigated the matter further.
23. The comment “*...and never had any issues*” is more difficult to assess.
24. HL says he made that comment to try to convey his experience with the car. In essence he was saying “*I never had any issues.*” He says that was a true statement as he never had any issues with the car. KK says she read it as meaning the car never had any issues. As she says the car did have issues, she claims that was a misrepresentation.

25. However, I do not need to determine that issue because HL said at the time of sale, the invoice from [Auto Repair] (which sets out the potential issues and recommendations) was made available to KK and her friends at the time the car was test driven and prior to purchase.
26. HL described meeting KK with two people who were introduced as an aunt and uncle. KK said these people were church elders who were helping her with the car purchase. HL said there was also a neighbour who was a New Zealander who spoke English as a first language. He said they were all talking together in a group outside a house where he had brought the car. He says he told them that the service documents were available in the car. He recalled the person who was referred to as an uncle and the New Zealand man taking out the service report from [Auto Repair] and looking at it on the bonnet of the car.
27. KK says she did not buy the car that day as she was advised by her friends who were there to get it checked over by a mechanic. HL says that was never mentioned to him, although he would have had no problem with that. He said KK asked for him to wait until Wednesday as that was when she got paid. KK agreed she had asked about waiting until Wednesday as that was when she got paid.
28. KK says HL misrepresented the car as he said it never had any issues, but the [Auto Repair] service invoice set out three potential issues. They were a hairline crack in the radiator, an oil leak in the rocker cover gasket and a trans sump oil leak. The details of these issues were available prior to KK buying the car.
29. I accept the evidence given by HL that at least two of the people who were helping with the car purchase looked at this document at the time of the test drive and inspection. One of those people spoke English as a first language. The document was also available to KK to look at if she wished to.
30. At that stage KK and her friends would have been aware that the statement “*never had any issues*” was potentially false in light of the contents of the [Auto Repair] service report.
31. If knowledge of the truth is obtained at any time before the contract is made, the buyer cannot rely on the statement as a misrepresentation.
32. Neither KK nor HL are mechanics. HL said any comments he may have made were made on the basis of his own knowledge of the car. He said he had not read the service report from [Auto Repair], but it was made available to KK and her friends prior to the sale. He said he was not trying to conceal anything about the car.
33. I am satisfied that the people helping KK looked at the [Auto Repair] report and should have been aware of the issues referred to in that report. That information was made available to KK at the time of test drive and sale and HL was not asked any question specifically about that report.
34. KK said her uncle asked specifically about the brakes and if there were any oil leaks. She said HL said there were no leaks. HL denied that and said he was not asked anything specific about oil leaks. He said he was asked if there were any issues with the car and he said not to his knowledge.
35. HL’s account of the meeting with KK and her friends was clear and he gave his account in a credible way. KK was at times unable to recall the specifics of what had been discussed. While I appreciate that KK may not have understood all that was being discussed in English at that meeting, she was asked by the Tribunal if she saw her friend and neighbour look at the [Auto Repair] report on the bonnet of the car. She said she was unable to recall if that happened or not. I therefore prefer the evidence of HL in this regard.
36. I am not satisfied that HL misrepresented the car when he sold it to KK.

If yes, was KK induced to buy the car by that misrepresentation?

37. I do not have to consider this issue as I have not been satisfied that there was a misrepresentation by HL. However, for the sake of completeness, I find that even if HL had misrepresented the car, I am not satisfied that induced KK to buy it.
38. To prove inducement, KK would have to prove that not only did she decide to buy the car based on HL's misrepresentation, but she would also have to prove that HL intended that result.
39. HL did not intend that any of his comments would induce KK to buy the car. The independent service document from [Auto Repair] was available and disclosed to KK.
40. The information KK said was not disclosed to her, was at all times available to her on the service document from [Auto Repair]. Unfortunately, she either chose not to look at it or possibly did not fully understand it. She had the opportunity to ask HL questions about it or request that her helpers ask those questions. She also had the option of having the car inspected prior to purchase. The onus is on a buyer in a private sale to carry out checks prior to purchase to make sure they are getting what they believe they have bargained for.
41. KK said she was put under pressure by HL to make a fast decision on whether to buy the car. I do not accept that is correct. The car was not purchased on the day of the test drive. HL did text KK two days later asking if she had thought about the car as he had another person wanting to take it to a mechanic for inspection. HL explained to the Tribunal that he did not want to waste that other person's time and money getting the car checked, if KK was going to buy it anyway.
42. I see nothing in that exchange that could be described as pressure. KK responded simply saying she wanted to buy the car and asked HL to sell it to her today or tomorrow. There was no undue pressure placed on KK to make that decision or to buy the car.
43. As I have not been satisfied that there was any misrepresentation or inducement, KK's claim cannot succeed.
44. The claim is dismissed.

Referee: P Byrne
Date: 20 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>.