



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

[2023] NZDT 776

**APPLICANT** KP

**RESPONDENT** MN

**The Tribunal orders:**

MN is to pay to KP \$5,100.00 on or before 5:00pm on Friday 23 February 2024.

**Reasons**

1. In or around May 2023, KP was looking for a car to purchase for her son. KP saw an ad via Marketplace for a [motor vehicle] by MN. The car was advertised as coming with a 'mechanical warranty' and in 'mint condition', it had done 154,400km. On 29 May 2023, KP and her husband purchased the [motor vehicle] for \$7,500.00. MN was away so her brother handled the sale. The car registration was changed online after the purchase and Mr and Mrs KP drove 40km home. On 31 May 2023, MN contacted KP to advise that she had tried to transfer the mechanical warranty to her as the new owner, but was unable to do so according to [the insurer]. The parties reached an agreement that MN would compensate KP \$100.00 for the loss of the warranty. At this time, KP asked MN if any major repairs had been carried out on the car. MN then informed KP that there had been an engine coolant issue that was repaired 10 days before the sale. On 2 June 2023, when KP was driving the car to the post shop, the engine coolant lights went on and started to 'beep'. The car was towed to [mechanic]. On 9 June 2023, [mechanic] identified many issues. Over the following weeks, the parties communicated back and forth to try to resolve the issues. However, the parties were unable to reach a resolution. KP now brings a claim against MN for \$7,500.00 for a refund of the purchase price for the vehicle and other costs.
2. The issues to be resolved are as follows:
  - a) Was there a misrepresentation regarding the vehicle's condition and/or mechanical warranty and repair history?
  - b) If so, is KP entitled to claim \$7,500.00?

**Was there a misrepresentation regarding the vehicle's condition and/or mechanical warranty and repair history?**

3. Under s 35 of the Contract and Commercial Law Act 2017 (CCLA) if a person has been induced to enter into a contract by a misrepresentation, whether innocent or fraudulent, that person is entitled to damages. A misrepresentation is a misstatement of present or past fact, this may include half-truths and non-disclosure. Mere silence or reticence does not constitute a misrepresentation unless there are circumstances creating a duty to disclose or speak up. Non-disclosure of an unusual aspect of which there was a duty to disclose can amount to a

misrepresentation.

4. At the hearings, the parties made submissions and presented evidence including the original ad, emails/texts, witness statements, emails/reports from [the insurer] and [mechanic] regarding the repairs and condition of the vehicle.
5. I have had regard to all of the competing evidence and the relevant law. Based on all of this, on the balance of probabilities:
  - a. I accept that the original ad stated that the ‘...car is in mint condition... remainder of mechanical warranty... well looked after...’.
  - b. I accept that KP had the opportunity to have the car checked by a mechanic before the sale, but she declined to do so.
  - c. I accept KP’s evidence that she declined to get the car checked because she believed it came with a mechanical warranty and the ad stated that it was in ‘mint condition’.
  - d. I accept the evidence that the mechanical warranty was not able to be transferred and the parties reached an agreement regarding this for \$100.00, after the sale had been completed.
  - e. I accept that the paperwork including the information about the recent repairs was ‘in the car’ at the time of sale.
  - f. I find that, in the circumstances of the major repairs taking place only 10 days before the sale, MN had a duty to disclose this to KP.
  - g. I find that there is not enough evidence to prove that the repair papers were ‘handed’ to the applicants or that the applicants were made aware of the repairs by MN’s brother on the day of the sale.
  - h. I accept the evidence that the first time the repairs were expressly mentioned or brought to KP’s attention was on 31 May 2023 – after the sale had been completed.
  - i. I find the evidence from [mechanic] regarding the repairs, potential repair costs, the issues, and the condition of the car to be compelling. I accept the [mechanic]’s evidence that most of the repairs required are for pre-existing issues. I accept the [mechanic]’s evidence that these issues were not previously identified because they were not asked to investigate these issues when they carried out the previous repairs.
  - j. I find that the evidence proves that the car was not in ‘mint condition’. I accept that MN’s statement regarding the condition of the car was innocently made. However, I find that a misstatement made innocently is still a misrepresentation under the CCLA.
6. Therefore, I am satisfied on the balance of probabilities that there was a misrepresentation made by MN regarding the car’s condition and the recent repairs that induced KP into the contract.

**Is KP entitled to claim \$7,500.00?**

7. Under the Contract and Commercial Law Act 2017 (CCLA), a party may claim damages if a party was induced into the contract by a misrepresentation (s 35). A Tribunal may award any sum it thinks just to put the suffering party back into the position they would have been in had the representation been true.
8. I have already found that there were misrepresentations made by MN regarding the condition of the car and repairs that induced KP into the contract to purchase the car. Therefore, KP is entitled to a remedy.
9. At the hearings, KP provided evidence of the costs incurred to remedy the issues and faults with the car. She paid a total of \$2,431.88 to have the [mechanic] investigate the issues including disassembling the engine. After the investigation, the [mechanic] provided an estimate that the repairs would cost more than \$9,000.00. KP also provided evidence of insurance and towing fees she paid for the car.
10. After the hearing, the parties were given some time to provide further evidence to prove the value of the car in its current condition. MN submitted evidence from [the insurer] in November 2023 stating that ‘if’ they could assist, the maximum contribution towards any repair would be

\$3,802.26.

11. I have had regard for all of the competing evidence, the relevant law and the circumstances, including the fact that the car is a 2009 model that has done over 154,000kms. Based on all of this, I find, on the balance of probabilities, that KP is entitled to damages for a reduction in value of the car and for losses incurred as follows:
- a. Purchase price of car \$7,400.00
  - b. Contribution for costs incurred \$1,700.00
  - c. Value of the car \$4,000.00
  - d. Total:  $\$7,400.00 + \$1,700.00 - \$4,000.00 = \$5,100.00$ .
12. Therefore, I am satisfied, on the balance of probabilities that KP is entitled to claim \$5,100.00 from MN. Accordingly, this amount is awarded.

**Referee: DTR Fuli**

**Date: 20 December 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>.