



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 74

APPLICANT KQ

RESPONDENT M Ltd

The Tribunal orders:

The claim by KQ against M Ltd is dismissed.

Reasons:

1. KQ purchased a 2018 Range Rover Sport car from M Ltd in January 2022 for \$129,800.00.
2. Several months following the purchase KQ noticed that the car's service light was on, indicating the car was due to be serviced (or at least checked by a workshop). In September 2022 he raised the matter with a Land Rover dealer, BT, and on 25 November 2022 he received a quote from BT outlining three different service options. KQ claims that M Ltd ought to pay for the first of these options (full service) at a cost of \$2,700.28.
3. The parties accepted that the car had not had a full service immediately prior to the sale in January 2022. The vehicle had last been serviced in the United Kingdom, some time prior to its importation to New Zealand.
4. The issues to be determined are:
 - (a) Did the contract for sale and purchase contain a term obliging the seller to carry out a full service prior to sale?
 - (b) Did M Ltd make any representation that the vehicle had recently had a full service or would be fully serviced prior to delivery to KQ?
 - (c) Is it an aspect of acceptable quality under the Consumer Guarantees Act 1993 that a car is sold to a consumer with a recent full service?

Did the contract for sale and purchase contain a term obliging the seller to carry out a full service prior to sale?

5. KQ accepted that the contract did not require M Ltd to carry out a full service or to confirm a recent full service.

Did M Ltd make any representation that the vehicle had recently had a full service or would be fully serviced prior to delivery to KQ?

6. KQ accepted that M Ltd made no representations that it would carry out a full service or that a recent full service had been carried out.

Is it an aspect of acceptable quality under the Consumer Guarantees Act 1993 that a car is sold to a consumer with a recent full service?

7. The Consumer Guarantees Act 1993 (CGA) in section 6 provides for a guarantee that goods supplied to a consumer are of acceptable quality. Section 7 of the CGA defines 'acceptable quality' as including fitness for purpose, being acceptable in appearance and finish, absence of minor defects, durability and safety.
8. As the applicant, KQ must show that more likely than not the car was not of acceptable quality because it had not received a recent full service at the time of sale in January 2022.
9. KQ considered it unreasonable that an expensive car would not have had a recent full service at the time of sale. He stated that a car of this nature should not require a full service within several months from purchase from a car dealership.
10. I find that KQ has not been able to show that more likely than not the car was not of acceptable quality when it was sold to him because it did not have a recent full service.
11. I say this because a recent service at the time of sale is not an aspect of fitness for purpose of a car, does not relate to its appearance and finish, nor is the lack of a recent service a minor defect. The absence of a recent full service at the time of sale does not negate the car's durability or safety.
12. Further, I accept M Ltd's point that the question as to when the new car owner needs to obtain a full service of their car is rather a matter of car maintenance. It is quite unlike a repair.
13. In this instance there has been no breach of a guarantee under the CGA, and therefore this claim must be dismissed.

Referee: P Moses
Date: 24 February 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>.