



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 403

APPLICANT **KT**

RESPONDENT **HI**

SECOND **KX**
RESPONDENT

The Tribunal orders:

1. HI is to pay \$5,474.85 to KT on or before 4pm on 15 September 2023.

Reasons:

2. On 27 May 2023, KT purchased a [vehicle] from HI for \$6,400.00 for his daughter. The vehicle had been advertised on [the Internet]. KT is not able to drive due to a disability, and his daughter LT, and his carer, MP, took the vehicle for a test drive when they noticed a 'slight jumpiness' when the driver accelerated. When queried by the two drivers, HI explained the 'jumpiness' as being caused by the vehicle switching from gas to battery.
3. KT said that within a few days of making the purchase and after being driven 30 kilometres, the 'jumpiness' worsened. The vehicle was taken to a garage for a diagnostic where it was found that the transmission had a mechanical hard fault which was causing the shuddering, and a new transmission was required.
4. KT is seeking the cost to have the repairs undertaken and the cost of the diagnostic assessment which is a total of \$5,474.85.
5. The issues to be determine are:
 - (a) Did HI misrepresent the condition of the vehicle, inducing KT into purchasing it?
 - (b) If so, what compensation is KT entitled to?
6. HI did not attend the teleconference hearing as he did not answer his phone when the Referee called on several occasions. A voice message was left for him. The Disputes Tribunals Act 1988 provides that the absence of a party does not prevent the hearing going ahead. The claim will be determined on the evidence before the Tribunal today.
7. As the applicant in the Tribunal, KT has the task of establishing the legal and factual elements of its claim to the required standard. That standard is the balance of probabilities which means what is more likely than not; more certainty than doubt.

Did HI misrepresent the condition of the vehicle inducing KT into purchasing it?

8. The starting point is the principle of caveat emptor, or 'buyer beware'. The general position is that the buyer must be responsible for his or her own purchasing decision. It is also the sale of a good, made in the context of a private sale. HI is not in trade and sold the vehicle privately.
9. Where goods are sold by a seller in trade, there are implied conditions, such as those relating to the goods being reasonably fit for purpose. However, there are otherwise no implied warranties or conditions as to the quality or fitness of goods sold (s 137, Contract and Commercial Law Act 2017 (CCL Act)). These provisions then reinforce the position of buyer beware in private sales, except in limited circumstances.
10. However, there is relief available for a buyer of a good in a private sale when a misrepresentation is made in the process of the contract being formed. Under section 35 of the CCLA when someone has been induced to enter a contract by a misrepresentation, whether innocent or fraudulent, that person is entitled to damages as if the representation were a term of the contract that has been breached.
11. A misrepresentation must be untrue and a statement of past or present fact. It may be made by a party to the contract, or by someone else on behalf of a party to the contract.
12. Therefore, KT must show that it is more likely than not that an untrue statement induced him to make the purchase.
13. Having carefully considered the evidence, I am satisfied that HI has misrepresented the vehicle when he said the shuddering in the transmission was a normal mechanical reaction as the vehicle switched between energy sources; moving from petrol to electric power. This was clearly not the case because after being driven another 30 kilometres, the transmission completely failed.
14. The mechanic from [Repair shop] who carried out the diagnostic on the vehicle, was called from the hearing. He gave evidence that there was no causal link between the shuddering and the switch between power sources, and the problem was within the transmission unit.
15. I find that KT was persuaded to purchase the vehicle on the basis of HI's statement that the shuddering was nothing to be concerned about.

If so, what compensation is KT entitled to?

16. The provisions in the CCL Act and common law relating to sale of goods apply when a misrepresentation is made in the sale (ss 59(1)(e) and 201 CCL Act)
17. Under the sale of goods provisions, there is no right to reject the goods after they have been accepted (ss 133(2) and 195(2) CCL Act. Likewise, the remedy for a misrepresentation is damages (i.e. compensation/compensatory restitution). This means that this is not a situation where the buyer can cancel the contract or return the goods for a refund. The only remedy or avenue available to the victim of a misrepresentation is to seek damages for the loss he or she has suffered.
18. Section 35 of the CCL Act confers an entitlement to damages to be paid by the other party to the contract as if the representation were a term of the contract that had been broken. That is ordinarily the sum required to put the buyer back into the position he or she would have been in had the representation been true.
19. Before awarding damages to a successful applicant, the Tribunal must be satisfied that the amount claimed is proved and reasonable. I accept the \$4,500 plus GST quote from [Repair shop] to repair/replace the transmission is reasonable.

20. Further, KT is also entitled to be compensated for all reasonably foreseeable expenses they incurred as a result of the breach of the CCL Act. In this case, I find they are entitled to \$299.58 being the cost to have the vehicle diagnosed.
21. In conclusion, the HI is to pay \$5,474.85 by the date in the order.
22. For the sake of completeness, I note after the sale HI stated in a text message to KT, that he sold the vehicle on behalf of another person, and that person had only owned the vehicle for a week. However, where an agent enters into a contract on behalf of an undisclosed principal, both the agent and the principal can be liable.

Referee: P Goddard
Date: 23 August 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>.