



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 749

APPLICANT **KX**

RESPONDENT **T Ltd**

The Tribunal orders:

1. KX' claim is dismissed.

Reasons

2. KX's son plays in-line hockey, at inter-regional level. In line hockey is a sport similar to ice hockey, but is played using in-line skates, on a surface of plastic in line hockey tiles.
3. On 30 April 2023, KX purchased a composite hockey stick from T Ltd . The stick is a composite product made from a foam sandwich core overlaid with carbon fibre and fibreglass, bonded with epoxy resin. As is the usual practice the stick was covered with a specialist fabric tape designed to prevent wear.
4. In June KX noticed that the composite layers were beginning to delaminate, and contacted T Ltd . T Ltd's response was that there was only a 30 day warranty for damaged hockey sticks and the damage was outside of that timeframe. Correspondence followed which failed to resolve the issue. As a result, KX has brought a claim against T Ltd for breaches of the Consumer Guarantees Act 1993, in particular that the stick was not fit for purpose. She seeks a refund of the purchase price of the hockey stick; \$199.

Issues

5. to resolve this application, I must consider;
 - a. hat guarantees apply to sporting equipment such as the hockey stick?
 - b. Was the stick fit for purpose?

Guarantees

6. The Consumer Guarantee Act 1993 (CGA) implies guarantees into consumer contracts that goods are reasonably fit for purpose. Section 8(1)(b) requires that goods are reasonably fit for any purpose a consumer makes known expressly or by implication to the supplier. If goods fail to meet the guarantee of acceptable quality, and the failure is substantial, sections 21 and 22 CGA enabled a consumer to reject the goods and seek a refund. A hockey stick is a single integral unit which must be able to withstand the rigours of sporting use. The delamination, if shown to be caused by normal use, would be a substantial failure.
7. T Ltd has argued that its duties are constrained by contractual warranty that defective goods would only be dealt with under a 30 day guarantee. This is legally incorrect, the requirement for fitness of purpose cannot be contracted out of, and there is no specific timeframe in the CGA

during which claims for a breach must be brought. In effect, the requirements of the CGA override any contractual timeframes.

Was the stick fit for purpose

8. KX says that the stick was only be used on the appropriate surface. T Ltd says that the appearance of the damage is consistent with the stick having been used on an abrasive surface such as configuration felt which has resulted in the wearing of the protective coating, protective tape, and leading to the delamination.
9. During the hearing I explained the concept of the standard of proof, and the requirement that KX as the applicant must prove her case. In this situation considering the photos of the damage to the stick I note that;
 - a. the protective tape has worn on both sides where it folds over the edges of the blade of the hockey stick;
 - b. the tape itself has worn with fibres coming loose of the exposed edges; and
 - c. the epoxy substrate is broken and cracked and also appears to have suffered abrasion.
10. KX is adamant that the stick has only been used on appropriate surfaces, the photos appear to show that the stick has suffered some level of abrasion which has caused the damage.
11. The onus is on KX to prove her case. I consider that it is equally as possible that the stick has been used on abrasive surface, as it is that the stick is defective. This being so, and without evidence to allow me to reconcile the difference in the two possibilities, KX' case is not proven. Therefore, I must dismiss her application.

Referee: C. D. Boys

Date: 8 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>.