



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 7

APPLICANT LB

APPLICANT SH

RESPONDENT BB

**SECOND
RESPONDENT** TB

**THIRD
RESPONDENT** LB

The Tribunal orders:

1. LB is added as a third respondent. LB accepted notice.
2. LB is to pay SH the sum of \$16,000.00 by no later than 31 March 2023.
3. BB and TB are jointly and severally liable to pay LB the sum of \$16,000.00 by no later than 31 March 2023.

Reasons:

4. LB saw a jetski advertised for sale in June 2021 on Facebook Marketplace and made contact with TB through messenger. After negotiating with TB, LB purchased the jetski by swapping it with his 2013 [car] and giving TB an additional \$5000 in cash.
5. In August 2022, LB decided to sell the jetski. After placing an advertisement on Trade Me, an agreement was reached with SH to sell the jetski for \$22,000.
6. In October 2022, SH received a call from [Finance company]. UH from [Finance company] advised SH the jetski had finance registered against it by Mr BB, and that BB was in default.
7. Neither SH nor LB had checked the Personal Property Security Register which showed finance had been registered correctly by [Finance Company] against the jetski prior to the sale to LB.
8. [Finance Company] did not repossess the jetski but have allowed SH to find a solution. In February 2022, SH reached an agreement with [Finance Company] under which he paid them the sum of \$16,000 in order to retain the jetski. The balance of the [Finance Company] debt would be recovered by [Finance Company] from BB. BB agreed to this arrangement.
9. Although finance was in his name, BB has disputed he was the owner of the jetski. BB stated in evidence that his former partner, TB, wanted the jetski, however as he had a better credit rating, it was put in his name. BB and TB separated in April 2021 and therefore decided to sell the jetski.
10. TB stated in evidence that the jetski belonged to both her and BB. The jetski had been purchased for both during their relationship, but used mainly by BB for fishing. To purchase the jetski, TB paid a \$5000 deposit, with the balance of the purchase price being with finance in BB's name.

11. SH has claimed in the Disputes Tribunal to recover his losses from BB and TB, filing the claim jointly with LB.

12. The issues for the Disputes Tribunal to determine are as follows:

- i. Was the jetski owed by TB or jointly by BB and TB?
- ii. Who is liable to compensate SH for his losses?
- iii. Who is liable to compensate LB for any losses?

Was the jetski owed by TB or jointly by BB and TB?

13. Although BB has disputed ownership of the jetski, I find it likely, on the balance of probabilities, that BB and TB were joint owners and that it was purchased for the benefit and use of both. I make this finding as the jetski was purchased during their relationship with the purchase price being met with finance from both, being a cash deposit from TB and [Finance company] being arranged by BB. As the jetski was a joint asset, and as the relationship had ended, I find TB sold the jetski on behalf of herself and BB.

Who is liable to compensate SH for his losses?

14. In accordance with section 135 of the Contract and Commercial Law Act 2017, there is an implied condition in any contract for the sale of goods that the seller has the right to sell the goods, and implied warranties that the buyer will have an enjoy quiet possession of the goods, and that the goods are free from any charge or encumbrance in favour of a third party that is not declared or known to the buyer either before or at the time the contract was made.

15. I find TB and BB were in breach of section 135 as they sold the jetski to LB while it was encumbered with finance owing to [Finance Company], without declaring the existence of that finance.

16. Although the finance was not in his name, I find LB also in breach of section 135 as he sold the jetski to SH while it was still encumbered with finance owing to [Finance Company].

17. Section 195 of the Contract and Commercial Law Act provides that, when a seller is in breach of a warranty, the buyer may claim damages for losses directly and naturally resulting from the breach of warranty.

18. As SH's contract for the purchase of the jetski was with LB, I find LB is liable to compensate SH for any losses he may have suffered. SH has provided evidence he has now paid [Finance Company] the sum of \$16,000. I find this amount to be the appropriate measure of damages as it is the loss directly resulting from the breach of warranty. I therefore find LB liable to pay SH the sum of \$16,000.00.

Who is liable to compensate LB for any losses?

19. LB dealt only with TB when purchasing the jetski, however as TB was selling on behalf of herself and acting as agent for BB, I find any liability for breach of conditions and warranties falls on both TB and BB. Therefore, as LBs contract for the purchase of the jetski was with BB and TB, and as BB and TB acted in breach of section 135, I find them both jointly and severally liable to compensate LB for his losses.

20. LB's loss naturally and directly resulting from the breach is the amount for which he is liable to compensate SH. I therefore find BB and TB jointly and severally liable to pay LB the sum of \$16,000.00.

Referee: K Edwards
Date: 2 March 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>.