



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 161

APPLICANT LC

RESPONDENT DB

The Tribunal orders:

DB is to pay LC \$2,000.00 on or before 4 July 2023.

Reasons

1. LC purchased a [vehicle] registration [redacted] from DB on TradeMe. The purchase price was paid in full on 21 November 2022 and the vehicle was delivered to him in [City 1] from [City 2] by transporter on 6 December 2022. The vehicle broke down on 16 December 2022 and had to be towed to LC's home. It started running again there but very roughly. LC took the vehicle to a mechanic who discovered major issues and advised an engine rebuild was required, quoted to be at a cost of \$6,000.00 - \$8,000.00. LC contacted DB seeking a contribution to the repairs. LC says DB agreed to pay \$3,000.00 towards the cost of the repairs, and he paid \$1,000.00 but has refused to pay the balance of \$2,000.00. LC claims payment by DB of \$2,000.00.
2. DB did not attend the hearing as there was no response to the phone number attributed to him, and no defence to the claim was provided to the Tribunal. The absence of the respondent does not prevent the hearing going ahead.
3. The issues I need to decide are:
 - a) Did LC and DB have an enforceable contract under which DB agreed to pay LC \$3,000.00 towards the costs of repairs of the [vehicle]?
 - b) If so, is DB in breach of contract by not paying the remaining \$2,000.00? If so, what is LC entitled to be paid?

Did LC and DB have an enforceable contract under which DB agreed to pay LC \$3,000.00 towards the costs of repairs of the [vehicle]?

4. Parties to a contract must perform their respective obligations. If they do not, they will be in breach and need to account for any loss to the other party to the contract. For an agreement to be a legally binding contract certain elements are required. These include:
 - the parties intended to create a legally binding agreement when they entered into the agreement.
 - one party to the contract made an offer and the other party accepted that offer.
 - the promises exchanged were for something of value - such as the promise of a party to provide goods or services, a promise to pay for goods or services, or the foregoing of a benefit (eg the forbearance to sue).

- the terms of the contract must be certain – it needs to be clear what the parties' respective obligations are.
5. LC messaged DB on 21 December 2022 and advised him that a mechanic at [Car repair shop], [city 1] specialists for [vehicle] vehicles, had diagnosed that the engine required a full rebuild due to the issues discovered, and that the problems had arisen within the first 3 weeks of purchase of the vehicle. He advised the quote for repairs was \$6,000.00 - \$8,000.00 and requested DB contribute towards the cost of repairs by paying half of the quoted cost.
 6. On 24 December 2022 LC messaged DB "... Just trying to find a fair middle ground as I can't be bothered with the whole small claims court process etc, would rather just sort it out mutually.". DB responded the same day "... I'm willing to send 3k to help with the cost mate....". He went on to say he would send \$1,000.00 on 12 January 2023, \$1,000.00 on 9 February 2023 and a last payment of \$1,000.00 on 9 March 2023. He requested LC's bank account details and the first payment of \$1,000.00 was paid on 12 January 2023.
 7. LC instructed [Car repair shop] to proceed with the repairs which were completed on 24 January 2023 at a cost of \$7,604.88, and further work to complete the rebuild was carried out on 4 April 2023 at a cost of \$204.53.
 8. On 16 February 2023 DB messaged LC that he had decided after taking legal advice not to pay any further amount and denied responsibility for the problems with the [vehicle].
 9. I have regard to the offer by LC for them to find a fair middle ground and to "sort it out mutually" rather than going through the "small claims court process" and to the offer by DB to pay \$3,000.00 and following that up by making the first \$1,000.00 payment.
 10. I am satisfied on the evidence that it is more likely than not that the elements required for a contract to be legally binding and enforceable are met. The promises to exchange something of value were for DB to pay LC \$3,000.00 and for LC to forgo his right to bring a claim in the Dispute Tribunal for the full amount of the repair costs.
 11. I find the parties have an enforceable contract under which DB agreed to pay LC \$3,000.00 towards the costs of repairs of the [vehicle].

If so, is DB in breach of contract by not paying the remaining \$2,000.00? If so, what is LC entitled to be paid?

12. I find DB is in breach of contract and LC is entitled to be paid by DB the outstanding \$2,000.00.

Referee: B Curtis
Date: 2 June 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>.