



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 361

APPLICANT LG

RESPONDENT DG

The Tribunal orders:

DG is to pay LG the sum of \$5,200.00 on or before Wednesday 9 August 2023.

Background:

1. On 21 March 2023 LG sold her [car] to DG for \$5,700, to paid in three payments, the last of which was to be paid on 31 March 2023.
2. The terms of the sale agreement were recorded in a handwritten contract which both parties signed.
3. DG made only one payment of \$500 to LG on 13 April 2023.
4. On 3 May 2023, at LG's insistence, the car and key were returned to her by DG.
5. LG then listed the car for sale on Facebook around 6 May 2023.
6. A third party responded immediately to the listing and advised LG that he had purchased the car "some weeks ago" from DG and that he was now the registered owner of the car. After discussion with the Police 105 call centre, the third party left with the car.
7. DG was served with the claim, as well as being provided details of the hearing by way of e-mail. On the day of the hearing, three attempts to contact DG by telephone were made and messages left. DG was also called in the Court building. The hearing proceeded in DG's absence.
8. DG emailed the Tribunal on 11 July 2023 stating that the car had been returned so he could not see why the hearing would be proceeding.
9. The issues to resolve this dispute are:
 - a. What were the terms of the sale agreement between the parties?
 - b. Did DG make payment in accordance with that agreement?

- c. What is the implication of the return of the car and the subsequent claim by a third party purchaser on DG's liability to LG?

What were the terms of the sale agreement between the parties?

10. The handwritten contract of sale dated 21 March 2023, which both parties signed, stated that DG would pay \$5,700 to LG for the car.
11. This was to be paid in three parts:
 - a. DG said he had paid an invoice owed for work done on LG's car by [auto mechanic]. The agreement said the invoice was for \$1,200 but in fact it was for \$1,600.
 - b. \$2,000 on 24 March 2023
 - c. \$2,500 on 31 March 2023

Did DG make payment in accordance with that agreement?

12. DG failed to make any of the payments under the agreement.
13. LG paid the invoice herself after DG neither paid it nor carried out the work he promised [auto mechanic] in lieu of cash payment.
14. DG paid \$500 to LG on 13 April 2023.

What is the implication of the return of the car and the subsequent claim by a third party purchaser on DG's liability to LG?

15. DG returned the car and key to LG on 3 May 2023. Had that been the end of the matter, it would have ended any liability DG has to LG.
16. However, a third party came forward stating that the car belonged to him, having purchased it from DG. The third party was the registered person on the Motor Vehicle Register.
17. The third party stated that the only reason DG had possession of the car on 3 May 2023 when DG returned it to LG was because DG was supposed to be carrying out some repairs on the car for him.
18. At the direction of the Police 105 line, the car was released by LG to the third party.
19. LG has neither the money nor the car and therefore DG remains liable to her under the terms of the original agreement. Although he notionally returned the car to her, it appears he had no rights to the car at the time he did this. The return of the car accordingly does not offer satisfaction of the debt owed by DG.

Conclusion

20. DG was obliged to pay LG \$5,700 for the car. He has only paid \$500 and so owes LG the balance of \$5,200.00

Referee: S Simmonds
Date: 31 July 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>.