



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2021] NZDT 1344

**APPLICANT** LQ

**APPLICANT** SC Ltd

**RESPONDENT** DD

**The Tribunal orders:**

1. SC Ltd has been joined as an applicant to these proceedings with the consent of the Director, LQ.
2. DD is to pay \$3,874.07 to SC Ltd on or before 20 April 2021.

**REASONS**

**Brief Details of Claim**

3. SC Ltd was joined as an applicant to these proceedings with the consent of the Director, LQ, because the purchase was made by that company, as agent for LQ's brother in law on Waiheke Island.
4. On 10 August 2020, LQ (as Director, SC Ltd) purchased a steam boiler for \$2,500 via Trademe from DD. The purchase was on behalf of LQ's brother in law on Waiheke Island. LQ arranged for the boiler to be transported to Waiheke Island at a cost of \$3,310.50.
5. Johann Aucamp of Boiler and Heating Services Ltd was engaged to commission the steam boiler. Mr Aucamp discovered the boiler was a water heater, not a steam boiler.
6. SC Ltd claims a total of \$6,133.10, being a refund of the \$2,500 paid for the boiler, \$3,311.10 to transport the boiler from Hawkes Bay to Waiheke Island and \$322.00 for an administration fee that SC Ltd charged to LQ's brother in law, on the basis that the boiler was not a steam boiler as advertised.

**Issues**

7. The issues for the Tribunal to determine are:
  - (a) Whether DD misrepresented the boiler as being a steam boiler when it was not;
  - (b) Whether there has been a mistake of a kind covered by the law of mistake;
  - (c) If there has been a misrepresentation or mistake, whether SC Ltd is entitled to a refund and compensation and if so, how much.

### **Has there been a misrepresentation?**

8. A misrepresentation is a statement of fact, made by one contracting party to another, before or at the time the contract was formed, upon which the purchaser relies, that proves to be wrong. If there has been a misrepresentation, the purchaser is entitled to a remedy, even if the misrepresentation was made innocently and not deliberately.
9. The onus lies with an applicant to prove there has been a misrepresentation.
10. I find there has not been a misrepresentation for the following reasons:
  - (a) The advertisement was headed up "Steam Boiler". The description was "spare boiler surplus to our requirements. Clean up space see photo for information".
  - (b) There were eight photographs of the boiler attached to the advertisement.
  - (c) Johann Aucamp, who gave evidence by telephone during the hearing, said that it is obvious from the photographs that the boiler is not a steam boiler.
  - (d) Therefore, although the advertisement was headed up "Steam Boiler" there was sufficient information in the advertisement for a prospective purchaser to rely on in deciding to make the purchase.
  - (e) The advertisement may have been confusing to a prospective purchaser because it had been wrongly described in the heading as a "Steam Boiler". However, there was sufficient information from the photographs for a prospective purchaser to realise that the boiler had been wrongly listed as a "Steam Boiler".
  - (f) For the above reasons, I find that DD did not misrepresent the boiler being sold.

### **Has there been a mistake of a kind covered by the law of mistake?**

11. The law of mistake applies only to three types of mistake:
  - (i) Where one party was influenced to enter into the contract by a mistake and the other party to the contract knew of the mistaken belief (this is often a case of deceit).
  - (ii) Where both parties were influenced in their respective decisions to enter into the contract by the same mistake
  - (iii) Where each party was influenced in their decisions to enter into the contract by a different mistake about the same matter of fact.

For the law of mistake to apply, the mistake must have occurred before the contract was formed and there must have been a substantially unequal exchange of value as a result of the mistake (S.24(1) Contract and Commercial Law Act).

12. I find that each party was influenced in their respective decisions to enter into the contract by the same mistake for the following reasons:
  - (a) Both parties had little knowledge about boilers and therefore were not able to know from the appearance of the boiler that it was not a steam boiler;
  - (b) Mr Parker thought the boiler being advertised for sale was a steam boiler because it was advertised under the heading "Steam Boiler" and the photographs did not indicate to him that it was not a steam boiler.
  - (c) DD thought the boiler he was selling was a steam boiler. As it turns out, DD did not know there was a difference between a steam boiler and a boiler that would heat water to boiling point.
  - (d) Therefore, both parties entered into the contract in the mistaken belief that the boiler was a steam boiler.
  - (e) Mr Aucamp gave oral evidence that an old water heating boiler such as this has little value compared with a steam boiler. I am satisfied that there has been a substantially unequal exchange of values.

### **Is SC Ltd entitled to compensation and if so, how much?**

13. If there has been a mistake, the Tribunal is able to declare the contract valid in whole or in part, cancel the contract, vary the contract, grant restitution or compensation (S.28 CCLA). As well the Tribunal must consider whether the applicant caused the mistake (S.27 CCLA).
14. I have decided to vary the contract by reducing the purchase price to one third of the price paid. That reduces the purchase price to \$833.33 to reflect the value of the item purchased. This means that DD is to refund \$1,666.67. In making this decision, I have considered Mr Aucamp's oral evidence as to the relative values between second-hand steam boilers and second-hand water

heating boilers. Mr Aucamp said that there is little value in a second-hand water heating boiler. However, I am satisfied that it will have some value to someone, and I have decided a value of one-third of the price paid is not unreasonable.

15. The cost to transport the boiler to Waiheke Island amounted to a total of \$3,311.10. I have decided that DD is to pay two-thirds of that amount to SC Ltd in compensation, being \$2,207.40. I have decided not to grant the full compensation claimed by SC Ltd to reflect LQ's contribution to the mistake. LQ had no knowledge of steam boilers and did not have anyone who did have that knowledge look at the photographs before making the purchase or before transporting it to Waiheke Island. I have decided that DD should bear the larger portion of the cost of transportation for two reasons. Firstly, the mistake started with DD, who had no knowledge of boilers and failed to sufficiently ensure he described the item correctly. Secondly, the burden to resell the boiler lies with the purchaser. There may be no real market for the boiler on Waiheke Island. SC Ltd may well incur costs to transport it off the island to sell or scrap it.
16. I have decided not to allow SC Ltd's claim for \$322.00 for administration. This is a claim for LQ's time arranging for the transportation to Waiheke. There is no real loss to SC Ltd.
17. I decided not to cancel the contract and order a full refund and full compensation for transportation costs because of LQ/SC Ltd's contribution to the situation that both parties find themselves in.
18. DD referred to the length of time between purchase (10/8/20) and notification to DD of the problem (17/12/20). However, the passage of this period of time before the mistake was discovered does not preclude SC Ltd from seeking a remedy.
19. I find that SC Ltd is entitled to compensation of \$3,874.07, being \$1,666.67 for two-thirds of the purchase price and \$2,207.40 for two-thirds of the transportation cost.

**Referee: J.F. Tunnicliffe**  
**Date: 31 March 2021**



## 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 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 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 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>.