



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 25

APPLICANT **LT**

RESPONDENT **NC**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In November 2023, NC had advertised a [motor vehicle] on [online application].
2. LT was interested in the car and arranged to meet NC for a test drive. LT test drove the car on 8 November 2023.
3. On 9th November 2023, LT purchased the car. He initially paid \$1,800.00 on 9th November and a further \$3,200.00 on 10 November 2023. He drove the car away on 9th November 2023.
4. On 18th November, LT was driving to [City 1] when he started to experience some issues with the car. When he arrived in [City 1] the automatic transmission light was on and there was transmission fluid leaking from the car.
5. LT and his partner stayed in [City 1] for a few days before arranging to get the car towed back to [City 2].
6. Repairs were later carried out including a replacement of the transmission.
7. LT contacted NC in relation to the problem. There were some discussions between the parties, but the matter was unable to be resolved between them.
8. LT is seeking \$3,000.00. He says that the cost of repairing the car was \$4,276.85 and the cost of towing the car back from [City 1] was \$435.00. The cost of the repairs exceeded what LT had originally been told they would cost. He said he was not seeking the full cost of the repairs and believed a sum of \$3,000.00 was a fair and reasonable amount for NC to pay.
9. The issues the Tribunal has to consider are:
 - a. Did NC misrepresent the car when she sold it to LT?
 - b. If yes, was LT induced to buy the car by that misrepresentation?

c. Is LT entitled to the amount sought of \$3,000.00 or any other lower amount?

Did NC misrepresent the car when she sold it to LT?

10. This was a private sale. NC was not selling this vehicle in trade and therefore none of the consumer protection legislation, such as the Consumer Guarantees Act 1993 or the Fair Trading Act 1986 apply.
11. Section 35 of the Contract and Commercial Law Act 2017 (“CCLA”) means that if someone is induced to enter a contract by a misrepresentation (which can be innocent or fraudulent) that person is entitled to damages from the other party as if the representation were a term of the contract that had been broken.
12. A misrepresentation is a representation of present or past fact that is false, but an opinion, or belief about the future, is not usually a misrepresentation.
13. LT said that NC said the car was in “*good condition*” in the advertisement on [online application]. He said that was a misrepresentation as the car was not in good condition. He said within 10 days of purchasing the car it suffered a catastrophic failure of the transmission which required a replacement. He said he was told by the mechanic at [B mechanic] that an issue such as this does not happen suddenly. LT said he believed that NC knew there was a problem with the car and was trying to sell it knowing there was an issue.
14. NC denied knowing there was any issue with the car. She said he had never experienced the type of problem LT had. She said she had got a new car and therefore since June 2023 she was not driving the [motor vehicle] every day. She said she is not a mechanic and does not know very much about cars. Over the years she owned the [motor vehicle] she had taken it to the [C mechanic] for services and she provided copies of the service history. A warrant of fitness (“WOF”) check had been done in May 2023 and the last documented service was done in September 2022. No issues with the transmission had been identified by the [C mechanic]. There had been an issue with the brake fluid and NC told LT about that. NC says she has no idea how the car was driven once LT took the car away on 9th November 2023.
15. There was no mechanical evidence called before the Tribunal and the only evidence produced was the invoice for the work done by [B mechanic], the service history invoices from [C mechanic] and LT’s account of what he was told by [B mechanic].
16. It is possible that the issue with the transmission was present in the car at the time of sale. However, it is equally possible it was not. The onus is on LT to prove his claim on the balance of probabilities. As both his version of events and NC’s version of events could both equally be true, LT has not proved that there was a misrepresentation.
17. I am not satisfied on the evidence before me that NC misrepresented the car when she said it was in “*good condition*”.

If yes, was LT induced to buy the car by that misrepresentation?

18. As I have not been satisfied that there was a misrepresentation on the evidence before me, I do not necessarily need to consider this issue. However, for the sake of completeness and as it was discussed at hearing, I will do so.
19. The applicant has to satisfy me that any misrepresentation induced him to enter into the contract. It must have produced a misunderstanding in his mind, he must have relied on it, and it must have been one of the reasons which induced him to make the contract. The misrepresentation does not have to be the sole reason for entering into the contract. I also must be satisfied that the seller intended that their misrepresentation would induce the buyer to enter into the sale.
20. Even if NC had misrepresented the car by stating that it was in “*good condition*” I am not satisfied that induced LT to buy the car. That statement was made on an advert on [online application]. LT

test drove the car and asked NC questions about the car. NC told him about a previous issue with the brake fluid. She also disclosed some dents on the car. From that point I am satisfied that LT was making his decision to purchase the car based on his test drive and his own observations of the car. LT did not buy the car the same day. He had a day to consider his purchase. He had the option of having a pre-purchase check carried out but choose not to do so. As he stated himself at the hearing, he took that risk.

21. NC is not a mechanic and as she stated at the hearing, she knows very little about cars except how to drive them. LT was aware of that. It would therefore not be reasonable for LT to rely on a broad statement that the car was in "*good condition*" as a statement confirming that there were no undetected issues with the car. NC said she never had an issue such as that described by LT, and the service history does not disclose her mechanic as diagnosing any such issue in the past. There is no evidence before me that NC knew there was an issue with the transmission at the time of sale.
22. It is also of significance that LT signed an agreement in relation to this sale. LT said he thought this document was just security for NC to make sure he paid the balance of the purchase price of the car. He said he did not read it in any great detail. While the document does deal with the purchase price and payments required, it also goes on to deal in detail with warranties and the car being sold in "*as is*" condition. While the phrase "*as is*" does not always protect a seller when representations are made, this document specifically states that in relation to Working order, "*any warranty as to the condition of the vehicle is expressly disclaimed by the Seller.*"
23. I am satisfied that this document supports NC' position that she did not intend for LT to rely on her statement that the car was in "*good condition*". For these reasons the elements of inducement would not have been proved.
24. I am not satisfied that there was any misrepresentation by NC in relation to this car. Even if I am wrong on that issue, I am not satisfied that LT was induced to buy the car by any misrepresentation.
25. It is unfortunate that this occurred to LT and his partner who are visitors to New Zealand and I appreciate the inconvenience they went through because of the issues with this car. However, LT has not satisfied me that his claim should succeed.
26. The claim is dismissed.

Referee: P Byrne
Date: 22 February 2024



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>.