



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 96

APPLICANT LW

RESPONDENT XE

The Tribunal orders:

The application is dismissed.

Reasons

1. On 5 October 2022, LW purchased a 2006 [redacted] vehicle from XE for \$6,300.00 after seeing it advertised on Trademe and then viewing the vehicle on 1 October 2022. The advertisement included the statement “[e]ngine warning light is on has been scanned comes up with fault at intake manifold however vehicle runs and drives very nice up to new owner to fix that issue” and at the viewing of the vehicle on 1 October, XE gave to LW a copy of the scan report.
2. On 12 October 2022, LW scanned the vehicle using a scan tool he had purchased. The scan results showed faults with the camshaft/crankshaft and the thermostat. XE said he then looked at a bundle of documents that had been left in the vehicle by XE and he noticed two invoices, one dated 14 September 2022 from IB and one dated 27 September 2022 from BQ. LW claims that the findings recorded on these two invoices show that XE knew that the vehicle had two additional faults that were not disclosed in the Trade me advertisement or to him before he agreed to purchase the vehicle, in particular faults relating to the cam shaft, balance shaft and timing chain and faults relating to the thermostat. LW obtained a quote to purchase parts required to remedy the faults with the cam shaft, balance shaft and timing chain totaling \$4,364.92 and he claims this sum from XE.
3. The relevant law is found in the Contract and Commercial Law Act 2017 (CCLA). Section 35(1) of the CCLA provides that if a party to a contract has been induced to enter it by a misrepresentation, whether innocent or fraudulent, made by that party to the other party to the contract, he is entitled to damages from the other party in the same manner and to the same extent as if the representation were a term of the contract.
4. As this is LW’s claim he has the onus of proof. The standard of proof is on the balance of probabilities (or ‘more likely than not’).
5. Thus, the issues to be decided are:
 - (i) Has LW established that XE made a misrepresentation to LW regarding the vehicle?
 - (ii) If yes, was LW induced by that misrepresentation to enter the contract?
 - (iii) If yes, what is the appropriate remedy?

Did XE make a misrepresentation to LW regarding the vehicle?

6. A misrepresentation is a false statement of fact made by one party to the contract to the other party. Silence is generally not a misrepresentation unless there is a duty to speak. There may be a duty to speak when what is said is a half-truth which creates a misleading impression because of what is left unsaid.
7. LW essentially claims that XE made a misrepresentation by silence. He claims that XE knew about the two additional faults and he should have disclosed them to him before he agreed to purchase the vehicle.
8. I find that XE did not make a misrepresentation to LW about the vehicle. LW accepts that XE gave him the scan results on 1 October and those scan results disclose similar faults to those found in the scan conducted by LW on 12 October, that is, faults with the camshaft/crankshaft and the thermostat. XE also said that the bundle of documents containing the two invoices were on the front passenger seat of the vehicle on the day LW viewed it and they remained there until LW collected the vehicle. LW denies that they were in the vehicle on 1 October and said that he found them in the front passenger door pocket after he purchased it.
9. I am not satisfied that LW has provided sufficient evidence to establish that the bundle of documents, which included the IB and BQ invoices, were not in the vehicle before he purchased it and were therefore not available for him to read if he had chosen to do so. Moreover, LW was given the scan report and he was therefore on notice of the issues with the vehicle that he subsequently found with his own scan on 12 October. Thus, while XE did not specifically draw LW's attention to the two additional defects, he did disclose them before LW purchased the vehicle by giving him the scan report and, more likely than not, by also by making available to LW the two invoices which mention the additional faults.
10. Accordingly, the application is dismissed and there is no need for me to address the remaining issues.

Referee: R Merrett

Date: 10 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>.