



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

**District Court**

**[2023] NZDT 103**

**APPLICANT      MC**

**RESPONDENT    N Ltd**

**The Tribunal orders:**

1. N Ltd is to pay MC \$3,690.00 by 28 March 2023
2. Once that payment in order 1 is made then N Ltd is to within two weeks or by the 11 April 2023, pick up the goods.
3. If the goods have not been picked up within the prescribed time, then MC may deliver the goods to N Ltd or can dispose of the Scooter as he sees fit, including selling the goods and put any sum received towards the amount ordered.

**Reasons:**

1. On the 18 December 2021 the Applicant purchased a [scooter] (the Scooter) from the Respondent for \$3,690.00.
2. The Scooter has broken down during a round a golf three times between January 2022 and October 2022. On these occasions the Applicant has not been able to start the Scooter and has had to have it towed/pushed back to his car. On the first occasion the Respondent diagnosed a problem with the battery charger and replaced the battery, on the second occasion the Respondent could not find the cause of the breakdown but once the battery had been removed and reconnected the scooter started again. The third occasion occurred only a few days after the second occasion when the Applicant played his next round of golf. After the third break down the Applicant sought to return the Scooter for a full refund from the Respondent.
3. The Applicant claims that the Scooter is not of acceptable quality or fit for the particular purpose which he purchased the Scooter and seeks to return the Scooter to the Respondent and seek a full refund of the purchase price.
4. The Respondent does not dispute that the Scooter is faulty, but rather wishes to be given the opportunity to repair the Scooter. The Respondent believes that it is likely that the Scooter needs a new lithium battery and/ or charger.
5. The sole issue for determination is whether the Respondent is entitled to cancel the contract and seek a refund of the purchase price?
6. The Scooter is a consumer good and therefore the Consumer Guarantees Act 1993 (CGA) applies. All goods sold must be of an acceptable quality and be fit for the purpose to which they

are designed and sold and any purpose that is made known to the seller at the time of the sale. (see sections 6,7 and 8 CGA)

7. Having heard from the parties and reviewed the evidence I am satisfied that the Respondent has breached s 7 and s8 of the CGA because the scooter is not free from minor defects; and is not fit for the purpose of which the Applicant made known to the Respondent, I say this for reasons that include:
- The Scooter had a number of minor defects- loose bolts and nuts, seat alignment, handlebar alignment.
  - The Scooter stopped working on three occasions in the middle of a round of golf. The Scooter is supposed to have a range of 35 km which would be approximately two rounds of golf. It should not stop working in the middle of a round of golf.
  - The purpose of the Scooter is to allow golfers with mobility issues to have a round of golf without having to walk between holes or over the course. If the Scooter cannot be reliably used to allow the applicant to complete a round of golf without having to walk distances, then it is unfit for the purpose.
  - The Applicant told the Respondent of his medical conditions and the reason he needed the scooter before he purchased the Scooter. The Respondent advised him that the Scooter would suit the purpose of allowing him to play golf without the need to walk long distances.
  - The Respondent specialises in providing mobility scooters for people with different medical conditions that allows them to participate in recreational activities such as golf.

*Is the Respondent entitled to return the scooter and receive a refund?*

8. Usually when a good is faulty and is capable or repair the customer must give the seller an opportunity to repair the item. However, if the fault is of a substantial character, then the customer can reject the goods and seek a refund (see s18(3) CGA).
9. The test for whether the fault is a substantial failure is- would a reasonable person fully acquainted with the nature and extent of the fault have purchased the goods, or the goods are unfit for the purpose, or the goods are unsafe? (see s21 CGA).
10. The courts have demined that the fault does not need to be one fault, it can be numerous smaller faults and it that the fact that the fault can be remedied does not mean that it is not a fault of substantial character.
11. I am satisfied after hearing the evidence, that the faults with this Scooter are a substantial character and therefore the Applicant is entitled to reject the goods and receive a refund of the purchase price. I say this for reasons that include:
- a. The main function of the Scooter is to allow person with mobility issues to drive around the golf course. It is an important function that the scooter is reliable and does not stop halfway through as the Applicant cannot walk the course or back to his car.
  - b. I consider that a reasonable person with the mobility conditions of the Applicant, who was purchasing this scooter would not purchase a scooter that would break down on 3 occasions within 8 months of being purchased, which left the customer stranded on the golf course.
  - c. I also consider that the unreliability of the scooter makes it unsafe for the Applicant to use.
12. Having found that the defect is of a substantial character, the Applicant is entitled to reject the goods and is entitled to a full refund of the purchase price.

**Referee: T Prowse**  
**Date: 2 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>.