



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

**District Court**

**[2023] NZDT 417**

**APPLICANT MI**

**RESPONDENT JN**

**The Tribunal orders:**

JN is to pay MI \$850.00 on or before Thursday 14 September 2023.

**Reasons:**

1. Lindsay Harbour claims that on 21 November 2022 she purchased a second hand kitchen advertised for \$850.00 from JN. This comprised the bench and associated componentry including 2 marble benchtops, sink and insinkerator, taps, gas oven and hob, extractor, and soft touch drawers, but excluded the dishwasher . She says she paid a \$100.00 deposit and the arrangement was that she would collect the kitchen the following day when the balance would be paid. But instead on 22 November JN told her he had accepted another offer and refunded the deposit.
2. MI now claims \$850.00 for the cost of the kitchen, the \$45.00 Disputes Tribunal fee, and \$250.00 for half day of her lost income and \$550.00 for her husband's lost income for a day.
3. JN did not attend the hearing, but pursuant to section 42 of the Disputes Tribunal Act 1988, the hearing proceeded in his absence.
4. The issues to be determined are:
  - a. Was there a contract for the sale of the kitchen?
  - b. If so, did the seller breach the contract by selling it to another?
  - c. If so, what is the remedy?

**Was there a contract for the sale of the kitchen?**

5. The common law of contract and Part 3 of the Contract and Commercial Law Act 2017 (CCLA) apply.
6. A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in the goods to the buyer for a money consideration (the price).
7. In the absence of evidence to the contrary, I accept that there was a binding contract of sale when JN accepted the offer for the second hand kitchen and componentry described in paragraph 1 for the agreed price, and paid the deposit of \$100.00 on 21 November 2022, as consideration. I say this having regard to the [online] advertisement and communications between MI and JN, and the bank record showing payment of the deposit.

**If so, did the seller breach the contract by selling it to another?**

8. Section 156 of the CCLA provides that the seller must deliver the goods and the buyer must accept and pay for the goods in accordance with the terms of the contract of sale. In the absence of evidence to the contrary, I accept that before the goods could be uplifted at 2.30 pm the following afternoon, as arranged, and fully paid for, JN communicated on 22 November that he had sold the goods to someone else, and despite MI's objection, refused to proceed with the sale. In doing so, I find that he breached his obligations and repudiated the contract by making it clear that he was not going to perform.

**If so, what is the remedy?**

9. The remedy for breach of contract is to place the affected party into the position that it would have been in had the contract been performed. This is called expectation damages. Also, section 193 of the CCLA provides that a buyer has against a seller a right to claim damages for non-delivery if the seller wrongfully neglects or refuses to deliver the goods to the buyer. Delivery in this context as set out in s119(1) means the transfer of possession. The measure of damages is the estimated loss directly and naturally resulting from the seller's breach. If there is an available market for the goods, the usual measure of damages is the difference between the contract price and the market or current price at the time when the goods ought to have been delivered.
10. In the absence of evidence to the contrary, I accept MI's evidence that the kitchen was likely worth much more at the time than the \$850.00 sale price, and that the reduced sale price reflected the urgency with which the seller wanted to be rid of the old kitchen. I say this, as I gave weight to the evidence that it needed to be uplifted the following day, and her evidence that the reason the seller repudiated the contract was likely because another buyer offered a higher price and also that before she saw this kitchen advertised, she had recently purchased another second hand kitchen which only had 2 benchtops and no appliances for \$1600.00.
11. So, on balance, in these circumstances, I find that MI's estimated loss was at least the \$850.00 she claims. As this is the maximum amount of her claim, it is not necessary to determine whether or not she suffered any other reasonably foreseeable losses for lost income or mileage being the 166 km related to her husband travelling to/from [city] to uplift their trailer. But, for completeness, the Disputes Tribunal fee is not recoverable under section 43 of the Disputes Tribunal Act 1988.
12. So, I order JN to pay MI \$850.00 on or before Thursday 14 September 2023.

**Referee: G.M. Taylor**  
**Date: 24 August 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>.