



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 757

APPLICANT ML

RESPONDENT KD

The Tribunal orders:

1. KD is to pay ML \$6,149.50 on or before Wednesday 17 January 2024.
2. Within the period which ends 30 working days after the due date for payment of that sum, or such other date as the parties may agree, KD is entitled to make arrangements, at a time and date which is agreed in advance, to uplift the Car from ML's nominated property. If KD does so, legal ownership will revert to him. If KD fails to do so, then ML may dispose of the Car as she sees fit.

Reasons:

1. In late September 2023 ML purchased a [vehicle] ("the Car") from KD after seeing his advertisement on Facebook Marketplace. Immediately after purchase, ML had problems starting the Car, and was concerned several fault warning lights appeared. After further enquiries ML was advised the Car required substantial mechanical work to be roadworthy, which is estimated to be more than the \$6,000.00 purchase price she paid.
2. ML asked for a refund, which KD declined. ML now claims \$6,149.50 being a refund of the purchase price of \$6,000.00, and a refund of a diagnostic inspection fee paid to DI of \$149.50.
3. This matter was set down for hearing on Tuesday 28 November 2023 at 9.15am. KD did not attend the scheduled hearing nor offer any defence to the claim, despite the Tribunal waiting until 9.25am.
4. The issues to be resolved are:
 - a. Was a misrepresentation made in the sale of the Car?
 - c. If so, is ML entitled to return the Car and receive compensation of \$6,149.50?

Was a misrepresentation made in the sale of the Car?

5. When discussions occur between parties prior to a contract being made, statements made by a seller can be relied on and can amount to a misrepresentation, if they are false. This law is found in section 35 of the Contract and Commercial Law Act 2017 ("CCLA"). This section says

a misrepresentation occurs where a party to a contract is induced to enter that contract by being told a false statement of fact by the other party. The law is clear that it does not matter whether that statement is innocently or fraudulently made, but it must be false, i.e., untrue, and be a statement of past or present fact.

6. I find a misrepresentation was made about the Car.
7. I say that based on the following factors:
 - a. the Car was advertised by KD including a statement ... "*only downside is passenger's back window*", which KD separately disclosed did not operate;
 - b. I accept ML's evidence that she discovered at the time of purchase and shortly afterwards that there were in fact many other downsides to the Car;
 - c. while KD has not made a direct statement about the reliability or mechanical integrity of the Car, the words used do represent, by use of the word "only", that there is a singular downside to the Car. I note the Cambridge Dictionary defines a "downside" as a disadvantage; a problem; or a negative part;
 - d. I accept there is a reasonable interpretation open to ML to take that statement at face value, i.e., that there was only one downside. The evidence clearly shows that is not the case. As I am satisfied KD's statement was therefore false, and this statement induced ML into buying the Car, I am satisfied a misrepresentation has been made;
 - e. that conclusion is clear to me because, although I acknowledge the Car was used, and was 16 years old, the evidence shows the disadvantages, problems, or negative parts affecting the Car are substantial, to the extent ML was told the Car should not be driven until current matters are fixed.
8. KD did not simply say, "the passenger back window does not work". By his choice of words, he went further than this. Perhaps if other words had been used, the same finding in this claim may not have resulted.
9. ML took the Car for a very brief test drive before purchase which did not disclose any concerns. Immediately after her purchase however she encountered difficulties starting the Car; with battery reliability; and with dashboard warning lights appearing. I accept ML's evidence she obtained an initial diagnostic check some 5 days after purchase, which indicated a range of faults. This information was passed onto KD, however after some initial assistance, KD stopped responding to messages. ML sought legal advice and obtained a more detailed diagnostic report from DI. This noted cylinders misfiring and the need for alternator replacement and coolant housing replacement, among other things.
10. ML says KD told her it had been a genuinely good car, and he had not encountered any of the problems she reported. Without hearing directly from KD, I am unsure whether that is the case, but as earlier noted in paragraph 5, contract law does not distinguish whether a misrepresentation is innocently or fraudulently made. It can be an actionable misrepresentation regardless.

Is ML entitled to return the car and receive compensation of \$6,149.50?

11. The remedy for misrepresentation under s35 CCLA is an entitlement to compensation, as if the representation were a term of the contract that had been broken. A breach of a material term of a contract entitles a party to cancel the contract and claim compensation to put them back into the position they would have been in, had the contract not been breached.
12. I find ML is entitled to return the Car and receive compensation of \$6,149.50.
13. The sum awarded is made up of the two components. These are as set out in paragraph 2 of the reasons for this order. I am satisfied of this finding because:
 - a. the roadworthiness of a car is a material term of a contract of this type, and the issues identified with the Car suggest it is not currently roadworthy;
 - b. the estimate of repairs, including the timing chain repair, is more than the price paid for the Car raising concerns about whether it is economic to repair;

- c. as the misrepresentation amounts to a breach of a material term, permitting the cancellation of the contract and awarding a refund, is the best option to put ML back into the position she would have been in, if the contract had not been breached;
- d. I am satisfied the diagnostic report ML obtained was necessary in the circumstances to enable ML to receive an independent qualified assessment of the car's condition, and that doing so was a reasonable and foreseeable consequence of the breach of contract.

Conclusion:

14. For all these reasons:

- a. KD is obliged to pay ML \$6,149.50; and
- b. I make the order regarding access for return of the Car; in accordance with the terms of this order.

Referee: Malthus

Date: 13 December 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>.