



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

District Court

[2023] NZDT 423

**APPLICANT** N Ltd

**RESPONDENT** T Ltd

**The Tribunal orders:**

1. T Ltd is to pay the sum of \$2,499.00 to N Ltd on or before Monday, 4 September 2023.
2. Once T Ltd complies with order 1, the [Satellite Dome] that T Ltd sold to N Ltd (which is already in T Ltd's possession) will immediately return to T Ltd's ownership and it may dispose of the Dome as it sees fit.

**REASONS**

1. On 28 November 2022, N Ltd purchased a [Satellite Dome] for marine use (33cm) ("the Dome") from T Ltd. TN (on behalf of N Ltd) purchased the Dome so that he could access news and weather while on his annual seven-week fishing trip to [Region 1]. Unfortunately, the Dome would not work in [Region 1], so TN was unable to watch television for the entire fishing trip. In March 2023, TN contacted T Ltd about the problems with the Dome. T Ltd asked TN to return the Dome so that it could be checked for faults by a technician. The diagnosis was that the 33cm model of [Satellite Dome] was not designed for use in the South Island below the [Region 2] because there was no reception.
2. N Ltd brings a claim against T Ltd seeking damages of \$2,499.00, being a refund of the price paid for the Dome.
3. I heard the claim by teleconference on 10 August 2023. TN and QG attended on behalf of N Ltd and were appointed as its representatives. TX attended on behalf of T Ltd.

**Issues**

4. The issues I need to determine are:
  - (a) Did T Ltd engage in conduct regarding the Dome that was misleading or deceptive or likely to mislead or deceive and/or was the Dome not fit for purpose?
  - (b) Is N Ltd entitled to a remedy and, if so, is the amount claimed proved and reasonable?

**Did T Ltd engage in conduct regarding the sale of the Dome that was misleading or deceptive or likely to mislead or deceive and/or was the Dome not fit for purpose?**

5. The Fair Trading Act 1986 ("the FTA") applies. Under the FTA, no person shall, in trade, engage in conduct in trade that is misleading or deceptive or is likely to mislead or deceive (s9 of the FTA). The Consumer Guarantees Act 1993 ("the CGA") also applies. The CGA implies certain

guarantees when goods supplied by a supplier to a consumer in trade, including that the goods will be of acceptable quality (s6 of the CGA); and reasonably fit for any particular purpose made known by the consumer (expressly or my implication) to the supplier as the purpose for which the goods are being acquired, and that the goods are reasonably fit for any particular purpose for which the supplier represents that they are or will be fit (s8(1) of the CGA). The s8(1) guarantees will not apply where the circumstances show that the consumer does not rely on the supplier's skill and judgment, or it is unreasonable for the consumer to rely on the supplier's skill and judgment (s8(2) of the CGA). An applicant seeking to prove a breach of the FTA or the CGA has the onus of proving the claim on the balance of probabilities (which means more likely than not).

6. TX says that the Dome works as it should. He says that he spoke to TN before the sale and TN told him that he operated boats in the [Region 2] as part of his [fishing] business, and TN told him that his friend had a [Satellite Dome] that worked well for him. TX says that he did not give TN any specific information about where the Dome would or would not work, and he was not asked by TN to investigate what the coverage of the Dome was, and he did not know whether TN's friend had the 33cm dome or the 45cm dome so he could not say whether the 33cm dome was wrong for TN. He says that he was not told that TN intended to use the Dome while boating elsewhere in the South Island. Further, he says that he was unaware when he spoke to TN before the sale that the smaller 33cm [Satellite Dome] does not work south of [Region 2], and that it is the larger 45cm [Satellite Dome] that is needed for most of the South Island. TX says that both of the [Satellite Dome]s are no longer advertised for sale on T Ltd's website due to the confusion about coverage.
7. Having carefully considered the available evidence and information, and having heard from the parties, I find that T Ltd engaged in conduct regarding the Dome that was misleading or deceptive or likely to mislead or deceive, and that the Dome was not fit for N Ltd's purpose. This means that T Ltd did not comply with s9 of the FTA or with the guarantee set out in s8(1) of the CGA. I make these findings for the following reasons:
  - (a) TN says that he spoke to someone at T Ltd before he bought the Dome (TX confirms that TN spoke to him) and explained that his friend had a [Satellite Dome] on his boat (but he was unsure what size it was), and he asked if the 33cm size dome would be suitable for his boat-trip to [Region 1] and was told that it would be suitable. Although I note that TX does not recall being asked if the Dome was suitable, I consider it more likely than not that TN's recollection is correct in this regard. This means that TN made it known what his purpose was for the Dome and it was reasonable for him to rely on what TX told him about the suitability of the Dome. In any event, it is generally accepted that boats do not usually remain in one geographical location, so it is reasonable to assume that a purchaser might need a satellite dome to work elsewhere in the South Island rather than only in the region where they live, and TX acknowledges that he knew that TN lived and worked in the South Island.
  - (b) While I note TX's comment that he was not aware that TN intended to use the Dome outside the [Region 2], this is immaterial because TX acknowledges that, at the time he sold the Dome to N Ltd, he was not aware that the Dome was not suitable for use in the South Island outside the [Region 2].
  - (c) At the time that N Ltd purchased the Dome, T Ltd's website had both the 33cm model and the 45cm model of the [Satellite Dome] advertised for sale. TN provided me with screenshots of the description of the 33cm model. This description is extensive and includes technical information about how it works, how it is to be installed, and that the dome is "used globally on large yachts and ships as well as smaller leisure vessels and has proven reliability", and a long list of specifications. Nowhere in the description is there any reference to the 33cm dome not working in most of the South Island. This is misleading because the Dome does not operate in the lower South Island, as TN discovered to his detriment.
  - (d) I have taken into account that the manufacturer of the Dome, [manufacturer], states on its webpage about the 33cm size dome that: "As a general rule, if you (sic) boating south of the [Region 2], or out west and east of the North Island then the 45 Dome is what you need". This

information was not set out in T Ltd's website, so this was misleading or deceptive or likely to mislead or deceive. It is immaterial that T Ltd did not mean to mislead, because it is the effect on the customer that is relevant rather than any intention on the part of the supplier.

- (e) The parties agree that the Dome did not work in [Region 1], which was the purpose for which N Ltd purchased the Dome. This means that, unfortunately, the Dome was not of the nature and quality required to achieve the result that TN had made known and desired to achieve under s8 of the CGA.

**Is N Ltd entitled to a remedy and, if so, is the amount claimed proved and reasonable?**

8. Where the Tribunal finds that a person has breached the FTA, it may make various orders including an order directing that person to refund money or return property to any person that the Tribunal finds has suffered, or is likely to suffer, loss or damage by that conduct (s43(3)(e) of the FTA). Where goods fail to comply with a guarantee set out in the CGA, the consumer is entitled to a remedy against the supplier provided that the consumer has complied with the requirements of the CGA which include that, where a failure can be remedied (unless the failure is of substantial character), the consumer has given the supplier an opportunity to remedy it. If the supplier refuses or neglects to remedy, or does not succeed in doing so within a reasonable time, the consumer may have the failure remedied elsewhere and obtain damages for the cost of remedying the failure or reject the goods and seek a refund (s18(2)(b) of the CGA). In addition, the customer is entitled to claim damages for any reasonably foreseeable loss or damage resulting from the failure (s18(4) and s32(c)). A consumer may reject goods by notifying the supplier of their decision to reject them and the grounds for that decision (s22(1) of the CGA). Once a consumer has rejected goods, they have the right to obtain a full refund from the supplier or a replacement of the goods, at the consumer's option (s23(1) of the CGA). Once a consumer has rejected goods, they must return the rejected goods to the supplier at the consumer's cost, unless this would be unreasonable (s22(2) of the CGA).
9. N Ltd brings a claim against T Ltd seeking damages of \$2,499.00, being a refund of the price paid for the Dome. The Dome is already in the possession of T Ltd, and returned at N Ltd's cost. Therefore, by bringing this claim, N Ltd has rejected the Dome and seeks a refund of the purchase price. N Ltd has provided an opportunity to remedy to T Ltd. As I have found that T Ltd breached the FTA and the CGA regarding the Dome, N Ltd is entitled to a remedy. N Ltd's contract for the purchase of the Dome was with T Ltd, so N Ltd is entitled to a remedy from T Ltd, and need not look to the manufacturer. The remedy remains the same under both the FTA and the CGA. I am satisfied that the appropriate remedy is that N Ltd receives cash refund of the purchase price of the Dome, and T Ltd keeps the Dome.
10. For these reasons, I award damages of \$2,499.00 to N Ltd which T Ltd is to pay by the date set out in the order. Once T Ltd pays N Ltd, the Dome (which is already in T Ltd's possession) will immediately return to T Ltd's ownership and it may dispose of the Dome as it sees fit.

**Referee: D. Brennan DTR**  
**Date: 14 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>.