



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 425

APPLICANT NC

RESPONDENT KU

The Tribunal orders:

The claim is dismissed.

Reasons

Introduction

1. On 1 March 2023, NC purchased a [car] from KU for \$2,500.00. NC says KU misrepresented the car in the process of selling it to him and claims \$1,614.03 made up of \$500.00 to re-register the car, \$371.23 to fix the car for compliance and \$742.80 for unpaid road user charges ('RUCs').
2. The issues to resolve are:
 - a. Did KU make a misrepresentation when selling the car by:
 - i. saying the car will cost \$650.00 to re-register?
 - ii. saying the car works fine?
 - iii. not saying anything about unpaid RUCs?
 - b. If so, can NC claim \$1,614.03?

Did KU make a misrepresentation when selling the car by saying the car will cost \$650.00 to re-register, the car works fine, and by not saying anything about unpaid RUCs?

3. The general principles of the law of contract apply to this dispute. A contract is an agreement whereby the parties intend to be legally bound. An agreement can be in writing, oral or a mixture of both. Section 35 of the Contract and Commercial Law Act 2017 says that if a party is induced to enter an agreement by a misrepresentation, whether that misrepresentation is innocently or fraudulently made, the party induced is entitled to claim compensation. A misrepresentation is a fact, not an opinion, that is untrue.

Did KU make a misrepresentation when selling the car by saying the car will cost \$650.00 to re-register?

4. I find that KU did not make a misrepresentation on the cost to re-register the car because the advertisement said, "*Will cost \$650 to reregister*". KU confirmed it was about \$650.00 to reregister when she met with NC and NC himself stated he only paid \$500.00 to reregister the car. He said

it was supposed to be more, but he negotiated the price down with VINZ. Therefore, with the cost to reregister the car being less than stated and in favour of NC, there has not been any misrepresentation.

Did KU make a misrepresentation when selling the car by saying the car the car works fine?

5. I find that KU did not make a misrepresentation when she meet with NC and clarified that the cars works fine, and that money would need to be spent on the car to get it road legal. I make this finding on the following information:
 - a. KU stated she informed NC that the car worked, and that money would need to be spent to get it road legal. She said NC kept making low offers to buy the car and when doing so he would say that he didn't know if there was anything wrong with the car. This clearly showed that he was aware it might need repairs to make it road legal.
 - b. NC admitted making low offers with the first being \$1800.00, he denied making the comments about not knowing if there was anything wrong with the car. He said the car failed compliance and he spent \$371.23 getting it compliant. He confirmed he never took the car for a test drive or looked closely at the car when inspecting it. However, CB was present on an unrelated matter during the sale of the car; he recalled KU saying that the car needed money spent on it and it was de-registered and that he observed the car started up fine. I am satisfied that CB's evidence is reliable and credible.
 - c. I am satisfied on the evidence of KU and CB, that she made a fair representation about the car working well. NC said that he almost crashed on the way home because the brakes did not work. However, I conclude that the car did work well enough to be driven home. The car was taken to VINZ some 27 days after the date of sale and then a further 20 plus days before the brakes were attended to. In that time the car was driven approximately 150km in NCs possession.

Did KU make a misrepresentation when selling the car by not saying anything about unpaid RUCs?

6. I find that KU did inform NC about the unpaid RUCs as part of the sale of the car based on the following reasons:
 - a. KU says that she informed NC that the purchaser would have to pay the unpaid RUCs which was about \$700.00. She said that part of the conversation arose when NC noticed the RUC license docket was missing.
 - b. NC denied being informed of the unpaid RUCs or that there was any conversation about them. However, in a reply to an email from KU, she confirms that she spoke to NC at the time of sale about the RUCs and was accurate within a few dollars to how much it would cost. Furthermore, NC in the process of getting compliance completed a form to purchase RUCs and he included all the kilometres, not just from when he took ownership. This indicates that NC was aware of the unpaid RUCs and was responsible for them.

If so, can NC claim \$1,614.03?

7. Having found that there has not been any misrepresentation by KU, there are no grounds to award compensation, and therefore the claim is dismissed.

Referee: Nigel Wolland
Date: 4 September 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:

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>.