



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 544

APPLICANT NC

RESPONDENT NO

The Tribunal orders:

NO also known as [redacted] is to pay NC the sum of **\$4,249.50** immediately.

Reasons

The telephone hearing for this application was held 11 September 2023 at 9.15am. The respondent NO had been notified of the hearing but failed to attend, although his phone number seemed to be connected. On 16 June 2023, NO had emailed the tribunal. He acknowledged the existence of this proceeding and informed the tribunal that he was living overseas. As his phone number may have been different, he was requested to provide his overseas phone number, to facilitate a telephone hearing, but he failed to do that.

Background

On 4 January 2021, NC purchased a [vehicle] from NO for \$9,750.00.

Arising from the sale, NC is now claiming the sum of \$4,249.50 (being \$3,622.50 cost of module and \$507.00 installation and \$120.00 tow bar).

As this file has a lengthy history, there is extensive documentation on file including lengthy statements and exhibited cost quotations. To adjust for cost price increases since this application was originally filed over 2 years ago on 12 April 2021, the applicant has been granted permission to increase the amount claimed.

Misrepresentations

NC submitted that he was induced to purchase the vehicle after NO made certain misrepresentations to him about the vehicle.

When NC and his partner UI took the vehicle for a pre-purchase test drive, they noticed that the radio and electronics which operated the rear camera etc, did not work.

NO then informed NC that he had ordered a module [redacted], which operates the electronic systems, including the reversing camera, radio, blue tooth etc.

NO indicated that when that module arrived its installation would fix the electronic defects, but its arrival had been delayed due to Covid. NO estimated the installation of this module would cost \$250.00 and that when it arrived he would give it to NC and that his mechanic would install it for NC. In reliance on NO's representation that he had ordered the module, and what the installation would cost, NC stated he would pay for the installation.

NC and UI also noticed that the tow bar was missing. As the Trade Me advertisement stated "*This car has everythingevery possible extra*" they enquired about the tow bar and NO stated he had the tow bar in the garage but if he couldn't find it he would supply another one at no charge.

In reliance on NO's representations NC paid NO \$9,750.00 for the vehicle and NO contemporaneously transferred the vehicle into NC's name.

Now the owner of the vehicle, it subsequently transpired that despite NC's best effort in enquiring of NO about the arrival of the module and the tow bar, NO either avoided responding or deflected with excuses and neither the module nor the tow bar were provided to NC.

As NC has made limited use of the vehicle and has not been able to replace the module due to a lack of funds, he is claiming the current replacement cost for the module being \$3,622.50. Further I accept NC was misled by NO's estimation that installation would cost \$250.00. The current quote for installation is \$507.00 and consequentially I order that amount for installation, plus \$120.00 for the tow bar.

Finally, I note there is some belated comment on the file by NO that the vehicle belonged to his partner. That was news to NC. The ownership documentation does not appear to disclose that, but if it did, NO clearly took it upon himself not to disclose that fact during the purchase process, and in any event selling on behalf of an undisclosed principal does not relieve NO of his personal liability.

Accordingly my orders are as above.

Referee: John Hogan

Date: 20 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: <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>.