



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 393

APPLICANT **NM**

RESPONDENT **T Ltd**

The Tribunal orders:

The claim is dismissed.

Reason

1. The dispute is about a [luxury brand] cashmere jumper NM purchased and whether pilling after 5 or 6 wears is sufficient to show it is not of acceptable quality. NM is seeking a refund of the \$699.00 purchase price.
2. As the applicant NM has the burden to prove her claim. It is not an onerous burden, she need only prove it is more likely than not that the cashmere jumper should not be pilling, which she describes as significant pilling, after 5 or 6 wears. NM's evidence is that the jumper has pilled so soon and therefore is not of acceptable quality given its price point. NM has purchased cashmere clothing before but says the price and quality of this item should mean pilling would not have happened so quickly.
3. Q of T Ltd disputes this and has provided a screen shot of a commentary by [cashmere clothing brand] that cashmere is prone to pilling and is not to do with the quality but more to do with wearing it, and says pilling is a natural process when the yarn rubs against each other.
4. The Tribunal is not entitled to guess at an answer, it must decide the dispute on the evidence provided by the parties at the hearing. The evidence suggests that pilling is a natural process and not a reflection on quality and there is no evidence that pilling after 5 or 6 wears is a failure of the product. There is no evidence that the price point of a cashmere product would mean pilling would not be expected as soon as a less expensive item.
5. For this reason, I am not satisfied NM has proven the cashmere jumper is not of acceptable quality and therefore the claim must be dismissed.

Referee: **P McKinstry**
Date: **29 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>.