



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 410

APPLICANT NN

RESPONDENT C Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In March 2023, NN purchased a [electric bike] from C Ltd in [City]. NN says the assurance from sales staff that the bike was also able to charge his phone was a critical factor in his purchase. NN quickly discovered however that phone charging could not occur.
2. NN claims \$13,484.00 being, a refund of his purchase price of \$11,484.00, and \$2,000.00 for legal costs and his own time and inconvenience in dealing with this matter.
3. C Ltd denies the claim saying no such assurance was given. It says NN had completed his purchase by the time any information about potential phone charging capabilities, or otherwise, could be provided to him.
4. The issues to be resolved are:
 - a. Is the bike of acceptable quality and/or fit for any purpose made known by NN?
 - b. If not, is NN entitled to reject the bike?
 - c. Is NN entitled to a refund of \$11,484.00 paid for the bike and accessories, and costs of \$2,000.00?

Is the bike of acceptable quality and/or fit for any purpose made known by NN?

5. The Consumer Guarantees Act 1993 ("CGA") implies into contracts a set of minimum standards (guarantees) for goods and services supplied in trade to consumers. Section 6 CGA says goods, such as the bike supplied here, must be of an acceptable quality. That phrase is further defined in s7 CGA. Section 8 CGA says goods must be reasonably fit for any particular purpose the consumer makes known.
6. I find the bike was of acceptable quality and fit for purpose.
7. I am satisfied on the evidence it is more likely than not that:

- a. no assurance about the bike being able to charge a phone was made prior to purchase; and
- b. no specific requirement for this capability was made by NN prior to purchase.

The bike has therefore performed as described, and there is no breach of the required standard of acceptable quality, nor fitness for purpose.

8. When an applicant brings a claim in the Tribunal, the applicant has the onus of proving their claim on the balance of probabilities. This is the civil law standard of proof, requiring them to show the events or circumstances they claim, are “more likely than not” to have occurred. When I assess whether that standard is met, I consider and evaluate the evidence presented to me by the parties. It is important to understand that while all evidence presented to the Tribunal has been considered, this order refers only to essential evidence which is material to the issues and is not intended to be a full record of the hearings or of the evidence presented.
9. The summary of events offered by each party differs. NN says a sales assistant named KF specifically assured him on the day he first inspected the bike that it was possible for the bike to charge his phone.
10. NE, who appeared as the representative for C Ltd, provided statements from several staff members who had interactions with NN. I note:
 - a. KF’s statement recalls NN did not ask about this feature until his second visit, which was the same day NN bought the bike;
 - b. in his statement KF is clear that his colleague, TU, was asked about charging capability, and TU told NN he was unsure and would have to investigate further;
 - c. the accompanying statement from TU confirms this version of events and both workers confirm the bike purchase went ahead without an answer being able to be provided;
 - d. a further statement by staff member OB records NN came back to the shop the day after his purchase to further ask about phone charging capability. OB says she expressed doubt this was possible but said she would follow up and let NN know;
 - e. NE’s own statement records that as a result of his discussion with OB the next day, he completed research and rang NN to advise this was not possible.
11. NN remains adamant however that an assurance was given before purchase. He adds that when he returned to the C Ltd the day after purchase, it was because he believed the necessary phone charging cable had been omitted from his bike’s equipment. He said there was no reason for him to go back and ask for the cable, unless this feature had been promised to him.
12. NN’s trip back to the C Ltd, the day after purchase, is however potentially consistent with either version of events offered by the parties. NN acknowledged he had earlier travelled across town to the Warehouse that morning, to see if he could obtain an over-the-counter cable that would work. He says he then went into the C Ltd to obtain the cable he thought was meant to come with the bike.
13. While NN’s version of events raises the possibility a discussion did occur and an assurance given, I am required to make my decision on the balance of probabilities. Having carefully considered evidence provided by each of the parties, I am not persuaded there is sufficient evidence to make a finding a statement about phone-charging capability was made, either as an assurance of capability by the C Ltd, or as a stated requirement of NN’s purchase.
14. Having reached that conclusion, there is no basis for me to find the bike is not of acceptable quality nor that it is not fit for a stated purpose.
15. For the avoidance of doubt, I acknowledge there were heated conversations between the parties at times about behavioural concerns. As discussed with the parties at the hearing however, those conversations do not directly impact on my findings regarding CGA rights.

If not, is NN entitled to reject the bike?

16. The CGA provides a scheme of remedies when guarantees are breached. In some circumstances these remedies may include the right to reject goods.
17. As a breach of s6 CGA or s8 CGA has not been established however, I find there are no grounds for NN to reject the bike.
18. Without the substantive breach of a CGA guarantee, NN is not able to access the remedies available under the CGA. There is also no evidence to suggest there is any other breach of contract giving rise to a right to cancel the contract. No right to reject the bike therefore arises and the contract remains binding on the parties.

Is NN entitled to a refund of \$11,484.00 paid for the bike and accessories, and costs of \$2,000.00?

19. As there is no right to reject the bike, I decline to award the claimed refund for the bike and accessories. As there is therefore no substantive basis to the claim, the claim for costs must also be declined.

Conclusion:

20. With no legal basis for me to award the compensation sought, the claim must be dismissed.

Referee: Malthus
Date: 6 July 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>.