



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 340

APPLICANT NP

RESPONDENT KM

The Tribunal orders:

1. The claim for refund of the purchase price of the saddle is dismissed.
2. KM will arrange for the return of the saddle to NP by no later than 10 July 2023. KM and NP will share equally in the (reasonable) costs of returning the saddle (as set out in paragraph 19 below).

Background

1. The adjournment order dated 8 March 2023 sets out the background to the dispute.
2. Pursuant to that order, NP returned the saddle to KM, and KM had it assessed by BN.
3. KM informed the Tribunal that, on the basis of BN's findings, she did not agree to refund the purchase price to NP. A second hearing took place by phone on 2 June 2023.

Findings

4. It is not disputed that KM's Facebook Marketplace listing described the saddle as being in perfect working condition.
5. The issue in dispute is whether NP has proven, to the standard of "more likely than not", that the saddle has defects.
6. NP provided an assessment report from BQ (Q). BQ's report states that:
 - a. Q refitted the saddle in 2020. The saddle was in sound condition at that time.
 - b. The saddle now shows "obvious asymmetry".
 - c. BQ put the saddle on a horse and compared it to a new saddle of the same specifications. The report states "with no rider weight added to the saddle, [this saddle] sat significantly over to the right side (see image) whilst the new saddle stayed straight".
 - d. Either:

- i. The saddle has been recently reflocked, and possibly when this work was carried out the panel was not correctly laced in; or
 - ii. The tree in the saddle has been twisted or damaged.
7. BN provided an initial report in February 2023, which responded to BQ's report and photographs. BN noted that:
 - i. He had carried out "packing" work on the saddle for KM. When KM first brought the saddle to him it was apparent that the packing on one side was flatter than the other. BN carried out a "basic safety check" and packed out the flatter side of the saddle with wool. BN packed it so that the side with new wool was "slightly higher than the other side". He did this because "new wool will flatten after a couple of rides and they will become even". BN did not need to remove the panel to do this work. The saddle has "packing slots" which allow the addition or removal of packing material without the need to remove the panel.
 - ii. The photographs in BQ's report do not establish the asymmetry that she alleges in her report.
8. BN's second report states:
 - i. He dismantled the saddle and checked the 'tree' (frame) for damage. No damage was visible.
 - ii. The saddle showed no damage generally – "it is level, square etc where it needs to be".
 - iii. The saddle is in "excellent, near new condition".
9. The reports provide vastly different assessments of the condition of the saddle.
10. As I stated to the parties, I have not sighted the saddle myself, and even if I was to sight it, I do not have any specialist knowledge that I could bring to bear.
11. Where disputes involve a "battle of experts" there are sometimes reasons for preferring the evidence of one expert over another, such as:
 - a. The qualifications and experience of the expert; or
 - b. Limitations on the information provided to one of the experts that may make their view incomplete or unreliable; or
 - c. Inconsistencies, vagueness, or lack of persuasiveness, in their evidence.
12. In this instance none of those elements are present:
 - a. BQ is a member of the [Saddlers Society] and a qualified saddle fitter. I acknowledge the standing of that Society and the thorough training that BQ received to gain her qualification. BQ owns and operates a specialist saddle business in [Area].

BN has nearly fifty years' experience in saddle making, repairs, and assessment. BN provided a copy of his Certificate of Completion of Apprenticeship (leather saddlery and canvas goods) which is dated 11 July 1975.

Both BQ and BN are amply qualified and experienced to provide expert opinion about this saddle.

- b. Both experts were able to view the saddle and had complete information to enable them to form their respective views.
 - c. Both reports are clear, comprehensive, and logical.
13. NP is the Applicant in these proceedings, and she has the burden of proof.
14. My finding is that the evidence provided to me does not establish to the standard of “more likely than not” that the saddle is faulty.
15. Therefore, I find that there are no grounds for NP to cancel the contract and reject the saddle. The claim must be dismissed.
16. The saddle is currently in KM’s possession. NP paid the courier costs of sending it to KM.
17. Although I have made a finding that the claim is not proven, the saddle was sent to KM at her insistence, and there was an aspect of mutual interest in that happening. In my view it would be unjust to require NP to bear the full cost of returning the saddle to her.
18. Both parties must contribute equally to the reasonable cost of returning the saddle to NP.
19. KM will:
- a. Arrange and pay for a courier (or some other reasonable arrangement, at her own initial cost) to return the saddle to NP by 10 July 2023.
 - b. Send NP an email with a proof of cost (such as a receipt).
 - c. NP will then pay 50% of the cost to KM within three days of receipt of the email.

Referee: Nicholas Blake
Date: 20 June 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>.