



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 498

APPLICANT NT

RESPONDENT SQ

The Tribunal orders:

SQ is to pay the sum of \$3,366.66 to NT on or before Monday 20 November 2023.

Reasons:

1. SQ (the seller) advertised a [vehicle] for sale on Facebook as having “no issues at all”. NT (the buyer) asked whether this meant “the car has no issues whatsoever”, and the seller confirmed this. On 29 September 2022, the buyer took the car for a test drive with a friend, who noticed something “off” with the gearbox, a warning light on the dashboard, and alarms on the display, as well as a broken glove box and very poor radio. The buyer raised these issues with the seller, who said he would service the gearbox, fix the warning light and alarms (which he said were false and that a diagnostic was not required) and change the lock on the glove box.
2. On 10 October 2022, the buyer purchased the car for \$3,800.00. Within days, the car notified him of a sidelamp bulb fault and then a gearbox fault. In November, he took the car to an auto electrician for a diagnostic test, which found three engine ECU errors, a gearbox error, a BSI error, an under-inflation detection error, and a headlamp error. The buyer minimised his use of the car, and replaced the battery, which died on 15 November 2022.
3. In March 2023, the buyer noticed a mould problem developing due to water soaking the floor of the driver’s seat. A mechanic sealed the windscreen, but the flooding problem continued. In July, the car failed its warrant of fitness check at [mechanics] and had another diagnostic scan. These checks revealed further problems: worn wipers, excessive travel at handbrake lever, front brake rotors below minimum thickness, a problem with control arms and the tyre pressure connectors, and front and rear suspension bushes starting to split. The mechanic told the buyer that the car was uneconomic to fix, and suggested selling it for parts.
4. The buyer has been unsuccessful in trying to get the seller to resolve these issues. He wants to return the car, and seeks \$4,750.36 in damages, comprising a refund of the purchase price, \$65.22 for the first diagnostic, \$195.50 for the windscreen work and another diagnostic, \$451.95 for the new battery, and \$151.44 for [mechanics] excluding the warrant fee.
5. SQ did not attend the hearing or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.
6. The issues to be determined are:
 - a) Did the seller induce the buyer to buy the car by misrepresenting its condition?
 - b) What remedy, if any, should be granted to the buyer?

Did the seller induce the buyer to buy the car by misrepresenting its condition?

7. Since there is no evidence that the seller is in the business of selling cars, the buyer did not gain the benefit of the consumer protection law that applies to sales by traders. Parts of the Contract and Commercial Law Act 2017 (CCLA) apply, but under CCLA s 137, there is no implied warranty or condition as to quality or fitness for any particular purpose where goods are sold privately. Also, the contract cannot be cancelled for misrepresentation because CCLA s 37 does not apply to contracts for the sale of goods. This means the buyer.
8. CCLA s 35 provides for damages where a party to a contract has been induced to enter into it by a misrepresentation, whether innocent or fraudulent, made to that party by or on behalf of another party to the contract. In law, a misrepresentation is a false statement of past or present fact.
9. The buyer said that the seller appeared to have some mechanical knowledge, as he offered to fix the issues initially identified himself. I therefore find that the seller's statement that the car had no issues was understood as a statement of fact rather than opinion. Although the buyer discovered some issues before buying the car, the seller promised to fix those issues, so I accept that the buyer was induced to enter into the contract by a misrepresentation regarding the condition of the car.

What remedy, if any, should be granted?

10. CCLA s 37, which allows for cancellation for misrepresentation, does not apply to the sale of goods, so the buyer cannot return the car and is not entitled to a refund as such. Under CCLA s 35, the seller is liable for damages as if it were a term of the contract that the car had no issues. Since the car is uneconomic to repair, damages are measured by the difference between the actual value of the car and the expected value of the car in the condition as represented. The buyer can also recover any foreseeable consequential losses.
11. The estimated value of the car if sold for parts is \$600 to \$650. The higher figure is applicable since the buyer bears the onus of proving the amount of his claim. Assuming the purchase price represented the value if the car had no issues, the loss in value was \$3,150.00.
12. I have allowed the claim for \$65.22 for the first diagnostic and \$151.44 for [mechanics] report as foreseeable consequential losses. However, the battery is a consumable and worked for a month after purchase; its age is not an "issue" that would be covered by the misrepresentation. The windscreen work is too remote to be considered a foreseeable consequence of the flooding issue that was apparently caused by something else, and it is notable that flooding was not noticed until five months after purchase, despite a lot of heavy rainfall in the interim.
13. I therefore conclude that the buyer is entitled to recover \$3,366.66 in damages from the seller.

Referee: E Paton-Simpson

Date: 31 October 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 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>.