



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 212

APPLICANT NX

RESPONDENT P Ltd

The Tribunal orders:

The claim is dismissed.

Reasons

[1] NX claims compensation of \$375.00 from P Ltd, represented by QD and TD, managers, in its capacity as a manufacturer for what he considers is a breach of a consumer guarantee relating to a [car radio unit]. P Ltd denies liability.

[2] NX said that he had purchased the unit in December 2022 for \$10.00 by way of a private [online] sale. The low price was explained by the fact that he had had to drive some distance to collect the unit from the seller. The unit was only a few months old. He had discovered, after installing the unit, that it had three faults: it did not reliably turn off when the car ignition was off; the radio settings did not store properly; and the volume altered by itself on occasions. He had taken the unit to P Ltd, whose technician had resolved the issue of the unstored radio stations, but the other issues remained.

[3] NX considered that, as he had bought the unit from a consumer and P Ltd was the sole importer of the goods, that it was the “manufacturer” under the Consumer Guarantees Act 1993 (“the CGA”). He claimed the advertised cost of a new unit.

[4] For P Ltd, QD and TD said that the unit was of a kind that P Ltd sold only to traders. P Ltd had sold this unit to YND on 15 September 2022, and P Ltd had installed it in a vehicle that YND was offering for sale. That vehicle had been sold by YND to a customer who had, presumably, subsequently sold the unit to NX.

[5] P Ltd’s view was that the unit had been sold to NX as a “third hand” item, and it was impossible for P Ltd to know, it having been removed from the vehicle in which P Ltd had installed it, removed by the owner of that vehicle and then replaced in NX’s vehicle, what might have happened to it during that process. QD and TD said that they had originally attempted to assist NX, and had fixed one of the problems, because they had been initially under the false impression that he had bought the unit from P Ltd.

The issue

[6] The question for me to decide is whether P Ltd is liable to compensate NX for the defects that became apparent in the unit.

The law

[7] P Ltd is a “manufacturer” under the CGA because it imported the unit and the Chinese manufacturer of it has no ordinary place of business in New Zealand. The CGA gives a consumer a right of redress against a manufacturer if the goods in question are not of acceptable quality. The criteria for what constitutes “acceptable quality”, which are set out in s 7 of the CGA, are broad. A manufacturer is not responsible if the breach of the guarantee is caused by a third party who is beyond the manufacturer’s control.

Is P Ltd liable to compensate NX for the defects in the unit?

[8] I accept that the unit in question has the defects that NX describes. However, I do not think that he has proved that P Ltd is responsible under the CGA. That is because the context and circumstances of NX’s purchase of the unit are such that I consider that he has not established that the unit was not of acceptable quality. In considering “acceptable quality”, I must take into account, among other things, the nature of the goods; the price, and the nature of the supplier and the context of the supply.

[9] In this case, the unit had been supplied to a car dealer, YND, who had sold it to a customer who, in turn, sold it to NX for \$10.00. These circumstances are such that, I am unable to decide with any degree of certainty whether the unit itself was defective, or whether it had been mishandled or damaged after it had been installed by P Ltd for YND. I was given no evidence as the circumstances of its removal from the car that YND’s customer had bought, or who had handled it at that time. I also consider that the price that NX paid for the unit, \$10.00, was such that it might reasonably be supposed, it being only three months old, that some fault or defect might be present, or that it might have suffered some damage. It is not clear why, if the unit had been inherently defective, the person who had purchased it from YND onsold it, rather than returning to YND for a remedy.

[10] Thus, as these doubts remain, I consider that NX has not established on the balance of probabilities that he is entitled to any compensation from P Ltd, and his claim is dismissed.

Referee: C Hawes

Date: 2 May 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>.