



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 474

APPLICANT **O Ltd**

P Ltd

RESPONDENT **UU**

The Tribunal orders:

The claim and counterclaim are dismissed.

Reasons:

1. On 30 January 2022, UU (the buyer) purchased a [vehicle] for \$9,500.00 from P Ltd (the seller). About a week later, the buyer returned the car to have some minor defects repaired. The seller rectified most of the issues, but referred the buyer to a nearby panel beater for minor damage to the boot. The buyer arranged the repair with the panel beater directly, but each party believed the other should pay the panel beater's bill for \$250.00, and it remained unpaid.
2. Meanwhile, the seller still had possession of the car. On 14 March 2022, the seller notified the buyer that the car would be moved that day into paid storage at the buyer's cost, which would "accumulate daily if you do not uplift and pay the \$250 owing to [the panel beater]". A couple of weeks later, the buyer purported to reject the car and demanded a refund. The seller declined a refund and added, "you also have a storage bill to pay to release the vehicle".
3. The buyer filed a claim in the Motor Vehicle Disputes Tribunal (MVDT) seeking to reject the car due to the seller's refusal to pay the panel beater for the boot damage. However, the MVDT found that there was no agreement for the seller to pay the bill, and there was no obligation for the seller to remedy the boot damage under the Consumer Guarantees Act 1993 (CGA). The MVDT decision issued on 7 July 2022 concluded that the buyer was not entitled to reject the car. The MVDT did not discuss the storage issues, which may not have been raised, but would in any case fall outside the MVDT's limited jurisdiction.
4. Following the MVDT decision, the seller refused to release the car unless the buyer paid for storage as well as paying the panel beater's bill, for which the buyer continued to disavow any responsibility. The buyer relented and paid the panel beater on 31 August 2022, but the seller continued to insist on payment of storage costs before it would release the car.
5. On 5 October 2022, O Ltd (the storer), a company with the same director and shareholders as the seller, filed a claim against the buyer for \$2,488.34 in storage fees. The buyer filed a (counter)claim against the seller for \$20,000.00, and the two claims were heard together.
6. On 24 December 2022, following the first hearing, the seller returned the car to the buyer's workplace.
7. The issues to be determined are:

- a) Is the seller or storer entitled to storage costs? Was the seller or storer entitled to refuse to release the car until the buyer paid the panel beater?
- b) Is the buyer entitled to damages?

Is the seller or storer entitled to storage costs? Was the seller or storer entitled to refuse to release the car until the buyer paid the panel beater?

- 8. Whether with the seller or (as claimed) the storer, I can find no contractual agreement for the payment of storage fees. The buyer's failure to pay the panel beater and uplift the car did not amount to acceptance of an offer to store the car, especially given the seller was wrongfully claiming a right to hold the vehicle: the storage costs were largely self-inflicted.
- 9. The seller/storer submitted that it was "not able" to release the vehicle without the buyer first paying the panel beater. The worker's lien at common law allows someone who has improved goods to hold the goods pending payment for that work. However, the buyer had arranged the panel beating work directly with the panel beater, so the seller did not have any lien over the car. There is no legal right to hold goods until the owner of the goods pays a third party.
- 10. Neither is there any worker's lien for mere storage of goods: a worker's lien only applies where someone has improved goods by performing work on those goods, not where goods have only been maintained.

Is the buyer entitled to damages?

- 11. The tort of detinue applies where a person entitled to possession of the goods requests the return of goods, and the other party without lawful excuse refuses or fails after a reasonable time to return the goods.
- 12. The buyer was entitled to possession, but did not initially request the return of the car, as he wished to reject it. It was not until late July 2022, after the MVDT decision was issued that the buyer, through his lawyer, inquired as to whether the seller would release the car if he paid the panel beater's bill.
- 13. As I have explained, the seller should have released the car immediately on request, regardless of whether the panel beater had been paid. The seller's insistence on payment of storage costs exacerbated the stand-off. However, the buyer contributed to the situation by his stubborn refusal to pay the panel beater's bill and his persistent attempts to reject the car even after the MVDT decision. I also note that costs such as legal costs and time taken off work to attend the Tribunal cannot be awarded under s 43 of the Disputes Tribunal Act 1988. In all the circumstances, given that the car was returned to the buyer in December 2022, I find that no damages are warranted.
- 14. Both the claim and the counterclaim are therefore dismissed.

Referee: E Paton-Simpson
Date: 4 September 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>.