



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 325

APPLICANT **O Ltd**

RESPONDENT **MX**

**SECOND
RESPONDENT** **V Ltd**

**THIRD OR
SUBSEQUENT
RESPONDENT** **U Ltd**

The Tribunal orders:

1. U Ltd is removed as a respondent at the applicant's request.
2. O Ltd is entitled to possession of the [car] and is therefore not liable to pay \$4,500.00 to V Ltd pursuant to the agreement recorded in my adjournment order dated 17 April 2023.

Reasons:

1. On 10 February 2020, MX purchased a [car] from [car seller] for \$14,299.10. She took it to a panel beater for repair, but it went missing from the panel beater's yard. On 9 June 2021, an existing term loan agreement between MX and O Ltd was varied to add the [car] as additional security. O Ltd registered its security over the [car] with the Registrar of Personal Property Securities the next day.
2. Meanwhile, a third party named Mr E had sold the [car] to V Ltd for \$4,500.00 on 19 April 2021. On 23 November 2021, V Ltd sent the [car] to U Ltd to be sold at auction as a damaged vehicle. U Ltd contacted O Ltd regarding its security interest, and O Ltd said not to sell the vehicle. U Ltd refused to release the vehicle to either O Ltd or V Ltd until matters were sorted between them, and asserted the right to recover storage and legal costs.
3. In July 2022, MX defaulted on the loan, but U Ltd continued to hold the [car]. O Ltd filed a claim for possession of the vehicle against MX, V Ltd, and U Ltd.
4. In the second hearing, the parties (other than MX, who did not attend the hearings) came to an agreement that U Ltd would release the [car] to O Ltd, whereupon O Ltd would ask for U Ltd to be removed as a respondent. They also agreed that if the Tribunal were to decide that V Ltd was entitled to possession, O Ltd would pay \$4,500.00 to V Ltd in compensation for the vehicle. The [car] is now therefore in the possession of O Ltd. The issue to be determined is whether O Ltd is the party entitled to possession of the [car].

Is ON Ltd the party entitled to possession of the [car]?

5. It appears that Mr E took the vehicle from the panelbeater's yard without any right to do so, and sold it without MX's consent. In other words, MX was the rightful owner of the [car] at the time it was sold to V Ltd.
6. Section 149 of the Contract and Commercial Law Act 2017 (CCLA) provides that where a seller does not own the goods or have the owner's authority or consent to sell the goods, the buyer generally acquires no better title to the goods than the seller had. The exception in CCLA s 154 does not apply because there is no evidence of any contract of sale between MX and Mr E, or that Mr E had possession of the car by MX's consent. V Ltd therefore did not acquire any right to the vehicle from Mr E.
7. MX was able to grant security over the [car] given that she continued to be the rightful owner. I therefore conclude that O Ltd gained a valid security interest in the [car], which it perfected the next day, and that it is now the party entitled to possession of the [car].

Referee: E Paton-Simpson

Date: 20 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 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>.