



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 655

APPLICANT **O Ltd**
RESPONDENT **U Ltd**
SECOND **Z Ltd**
RESPONDENT

The Tribunal orders:

Z Ltd is to pay O Ltd \$3,865.90 by 22 December 2023.

Background

1. The claim relates to a [truck] and [trailer] that O Ltd purchased from U Ltd in March 2022.
2. One of the terms of the sale was that U Ltd would obtain a new COF. U Ltd obtained a COF from Z Ltd [Town] on 11 March 2022.
3. O Ltd alleges that the vehicle is faulty in many respects.
4. In response to O Ltd's complaint, X carried out an investigation of the COF issued by Z Ltd [Town]. X concluded that there are two proven faults in the [truck] that would have been present when X [Town] inspected the vehicle, and that should have been identified as 'fail' issues. X also identified one fault in the [trailer]. The faults were:
 - a. Air recovery time (front stage).
 - b. Front left dipped beam alignment adjustment.
 - c. Crack on the side of the trailer.
5. O Ltd's claim seeks \$29,000.00. O Ltd provided copies of invoices for various repairs, totalling \$29,164.18.
6. The hearing took place by phone on 21 November 2023. All parties attended the hearing. Mr C and Ms S represented O Ltd. Mr & Mrs N represented U Ltd. Mr V represented Z Ltd.

Law

7. U Ltd are not motor vehicle dealers. This was a private sale of a commercial vehicle.

8. The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and the Motor Vehicle Sales Act 2003 do not apply.
9. The relevant law is the Contract and Commercial Law Act 2017 (“CCLA”).
10. According to the CCLA, in contracts for the sale of goods there are no implied warranties as to the quality of the goods or fitness for purpose¹.
11. However, where the parties entered into a contract on the basis of a mistake, a court (or tribunal) may grant “relief” to a party who has been disadvantaged by that mistake.²

Findings

12. O Ltd’s claim appears to include two types of costs / losses:
 - a. Issues that should have been picked up and failed by Z Ltd [Town]; and
 - b. Other types of defects that may not have been Z Ltd ‘fail’ issues, but which mean that the vehicle is not fit for purpose or of acceptable quality.
13. O Ltd’s evidence, and the quantification of its claim, does not make a distinction between these two types of costs.
14. However, from a legal perspective, the distinction is critical.
15. In a private sale there are no implied warranties about quality or fitness for purpose.
16. There is no legal basis to hold U Ltd or Z Ltd liable for the quality / fitness for purpose issues, even if they were proven.
17. There is an arguable legal basis for a claim in respect of the defects that Z Ltd should have identified and ‘failed’. The legal basis is mistake. Both U Ltd and O Ltd entered into the agreement on the understanding that the vehicle was to a COF standard in all respects. That was the purpose of the requirement that U Ltd obtain a new COF before the sale.
18. At the hearing, Mr C placed a strong emphasis on the [assessment record] that Z Ltd prepared in December 2021. Mr C noted that he obtained [an assessment record] from Z Ltd [Town 2] after purchase, and that [assessment record] showed most (if not all) of the same issues were still present. Mr C submitted that U Ltd was aware of the problems / issues with the vehicle, and took no steps to address them.
19. At some points, Mr C almost went as far as suggesting that U Ltd intentionally hid or disguised issues from the Z Ltd inspectors. Mr N denied this allegation.
20. On behalf of Z Ltd, Mr V clarified that [an assessment record] is not the same thing as a COF inspection. [An assessment record] is intended to identify broader issues and “guidance on what items will require maintenance outside of the normal COF cycle”.
21. I agree that the relevant assessment is the COF. U Ltd was not obliged to remedy all of the issues identified in the [assessment record]. It was not obliged to provide the truck to O Ltd in any particular condition. It was only obliged to provide a vehicle with a current COF.

¹ Section 137(1) CCLA

² Section 24 CCLA

22. Therefore, the issues that form the basis for O Ltd's claim for compensation on the grounds of mistake, are the issues that were present when Z Ltd [Town] carried out its COF inspection and that were issues that Z Ltd [Town] should have failed.
23. At the hearing Mr C argued that in his experience Z Ltd [Town] would have failed many of the issues listed in the [assessment record].
24. I acknowledge that Mr C has the experience to make such observations.
25. However, that anecdotal evidence does not outweigh the detailed and comprehensive audit and report prepared by X.
26. X identified three issues that it was satisfied:
- a. Would have been present when Z Ltd [Town] carried out its COF inspection in March 2022; and
 - b. That, according to Z Ltd specific inspection parameters, should have been failed.
27. Therefore, I find that O Ltd's claim is proven in respect of those three issues only.
28. The CCLA gives courts and tribunals a broad discretion to grant "relief" if the court / tribunal is satisfied that the parties entered into a contract on the basis of a qualifying mistake.
29. In a letter to O Ltd's lawyers dated 16 August 2022, and again at the hearing on 21 November 2023, Mr V accepted that Z Ltd has a liability in respect of these three issues. Mr V's (reasonable) objection to Z Ltd's claim was that it was not well quantified, and that it included wide ranging repairs that are clearly beyond remedying the three issues.
30. Z Ltd previously offered to settle at an amount of \$1,000.00 for all three issues.
31. At the hearing, Mr C clarified that the compression ("air recovery time") issue necessitated a new compressor. The cost of this item was \$3,210.90 including GST. The cost of fitting the new compressor is part of an invoice from [Mechanic] for \$866.47.
32. The repair invoices from O Ltd do not include repairing the crack on the side of the trailer. Mr V suggested that the repair should cost no more than \$200-\$300, and there is nothing from O Ltd to contradict this.
33. Mr V submitted that the alignment of the light would be no more than a half hour job.
34. My finding is that it is appropriate to make an award of compensation³. Z Ltd is to pay O Ltd \$3,865.90 calculated as follows:
- Cost of the compressor: \$3,210.90
- Fitting of compressor: \$360.00
- Repairs to trailer: \$250.00
- Adjust headlight: \$45.00

Referee: Nicholas Blake
Date: 5 December 2023

³ Section 28(2)(d) CCLA



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/finances/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>.