



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2019] NZDT 1305**

**APPLICANT**      **OP, EI**

**RESPONDENT**    **GJ Ltd**

**The Tribunal orders:**

1. GJ Ltd (the Company) is to pay to OP and EI (the applicants) the sum of \$15,000.00 on or before 8 November 2019 (the "Debt").
2. Upon payment of the Debt, the Company is entitled to collect the window and door joinery from the applicants. It must do so within 14 days of payment. If the Company fails to collect the joinery within that 14-day period, then the applicants may dispose of the windows as they see fit.
3. If the Company fails to comply with Order 1, then the applicants may sell the joinery and put the proceeds towards payment of the Debt. If this occurs, then the Debt will be reduced by the sale proceeds, but the balance will remain due and payable immediately. Until a sale takes place, the joinery remains available for collection by the Company upon payment of the sum due in Order 1.
4. The counterclaim is struck out for lack of jurisdiction.

**Reasons**

1. In December 2018, the applicants were supplied with double-glazed windows and ranch sliders (the joinery) by the Company at a value of \$24,182.00. The joinery is imported from Europe.
2. The applicants have filed a claim seeking a refund (up to the \$15,000.00 that can be claimed in the Tribunal) on the grounds that they were not advised prior to the supply of the windows that they open inwards. Given this feature, the applicants state that the windows are not suitable for their property.
3. The Company, through its owner and director, Mr C, defends the claim on the grounds that the windows are of excellent quality, and that the applicants were advised on more than one occasion about the windows special features, including the fact that they are inward opening. The Company has filed a counterclaim for damages arising from statements made about the Company and Mr C personally.
4. The issues to be resolved are: (a) Are the windows fit for purpose and has the Company supplied them with reasonable care? (b) If not, is the failure substantial? (c) If it is, are the applicants entitled to a refund? (d) Are the applicants liable under the counterclaim for any sum?

**Are the windows fit for purpose and has the Company supplied them with reasonable care?**

5. Where goods are supplied to a consumer, there is a guarantee that goods are reasonably fit for any particular purpose that the consumer makes known to the supplier as the purpose for which the goods are being acquired (s8, Consumer Guarantees Act 1993). A supplier must also provide any service associated with the supply with reasonable care (s28).
6. I find that the Company has not taken enough care to ensure that the applicants knew that the windows opened inwards. The applicants did not become aware of this until installation. I am satisfied that the windows are not reasonably fit for purpose in their home given this feature, as the property has pelmets installed around the insides of the windows, and the size and configuration of the rooms would make the selection of inward opening windows unwise. The style and features of the window (including the inward opening, "tilt and turn" functions) are common in Europe, but are not common in New Zealand. Consumers need to be made fully aware of these features in a manner that confirms their full understanding of the consequences before purchasing from the Company to avoid buying a product that is not expected or suitable for the properties into which they are being installed.
7. A sample window was produced at the hearing. It is clear that the product is genuine, high quality joinery. I have had regard to the Company's evidence that the website makes the inward opening features obvious. The applicants had limited interaction with the Company's website, and the photo on the website does not show the context of the windows to make it sufficiently obvious on a passing review that they open inwards. I have also had regard to the Company's evidence that Mr C described the operation of the windows to OP at a Home Show in Wellington, and that she saw a sample window. OP disputed that she was advised of the key features that have caused concern, or that she saw or interacted with a sample window, and no findings could be made about what had been discussed. The Company was unable to produce a brochure which showed that OP would have been made adequately aware of the product's features.
8. Mr C attended the applicants' property to measure the windows. He recalls advising the applicants at that time that the windows opened inwards. However, the applicants deny this, and point to the lack of concern raised by Mr C about the obvious difficulty with the pelmets. Whilst the pelmets could be removed, it would have been an opportunity to tell the applicants that this would need to occur, and had this requirement been pointed out, this would have corrected the misunderstanding prior to the windows being made. Mr C stated that it was not obvious that the pelmets would need to be removed or modified, but he had a responsibility to check at that time. The installer, who also attended on one of the visits prior to purchase, also failed to raise this point, but when he came to install the windows some time later, pointed out the flaw. The installer is an independent contractor. He gave evidence in the hearings but was not a respondent in the claim.
9. It is clear from the evidence presented that neither party intended this unhappy result. Mr C is a sincere advocate for his high standard joinery and was unaware that his customer had not understood the way the windows functioned. The applicants were genuine in their surprise when the difficulty was pointed out immediately prior to installation. The key issue to determine was whether the risk of the misunderstanding should be borne by the supplier or the consumer. In these circumstances, I am satisfied it is the supplier who has the responsibility to ensure that unusual features are adequately pointed out, and to do so in a way that rules out error.

#### **Is the failure substantial?**

10. I find that the failure is substantial, both in a lack of fitness for purpose, and in failing to ensure the applicants were fully aware of the nature of the product. The consequences of the inward opening features are such in this property that a reasonable consumer, fully acquainted with the issues that arose, would not have wanted to buy them for this house (s21; s36).
11. The unusual features of the windows render them unsuitable for the applicants' property and as a result, the consequences of not being adequately informed are considerable.

#### **Are the applicants entitled to a refund?**

12. Where goods are supplied that are not fit for purpose, and that failure is substantial, a consumer is entitled to reject the goods and get a refund (s18(3), s20, s22). I am satisfied that the windows were rejected within a reasonable time of purchase, and as soon as the applicants were aware of the misunderstanding.
13. I have given consideration to whether the applicants are in part responsible for the misunderstanding. Whilst I am not able to make that finding on the evidence available, it is noted that they are only able to recover a portion of the purchase price given the limit of jurisdiction at \$15,000.00 and are therefore taking a substantial loss themselves which more than accounts for any part they played in the error.
14. Upon rejection of the goods, the joinery becomes the property of the Company, and a refund is owed. The consumer must return the goods where this is inexpensive, but if transport involves any significant cost, the Company must collect them (s22(2)). In this case, given the weight and size of the joinery, I am satisfied that it would involve significant cost to the applicants to return them. The Company therefore has an obligation to collect them.
15. The Company has also indicated that it is not in a position to make payment and may cease trading. Given that news, and the fact that the applicants are already taking a significant loss that is not recoverable in these proceedings, the order states that upon a breach of the Order, they may sell the windows to partly defray the debt. If the windows are not collected following payment within the timeframe stated in the Order, the applicants may dispose of them as they see fit.

**Are the applicants liable under the counterclaim for any sum?**

16. The Company filed a claim seeking compensation of \$15,000.00 for damaging reviews put online, and correspondence that caused psychological harm. Mr C spoke of the toll this has taken on the Company, which is no longer receiving orders, and on him and his wife personally.
17. Claims for damage to reputation and for stress and psychological harm from statements made to third parties are not within the jurisdiction of the Tribunal.
18. The counter claim is accordingly struck out for lack of jurisdiction.

**Referee:**

**J Robertshawe**

**Date: 14 October 2019**



## 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 or a mistake was made.

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 28 days of the decision having been made. If you are outside of time, 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.

### Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 28 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, and 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>.