



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

District Court

[2023] NZDT 59

**APPLICANT**      **QC**

**FIRST  
RESPONDENT**      **OC**

**EC**

**APPLICANT  
TO COUNTER-  
CLAIM**

**The Tribunal orders:**

The claim and counter-claim are dismissed.

Reasons

1. From early 2019 OC and EC had tried to find a female [breed] puppy after the death of one of their female dogs. They tried various registered breeders, including QC' TL, but all available puppies had already been sold.
2. On the evening of 19 March 2019, QC sent an email to interested parties advising that a buyer for his latest litter had pulled out and that he had a female puppy available. OC replied within the hour that she wished to take her and would pay a deposit straight away to confirm. Following some further correspondence, the deposit was paid the next day, the full purchase price being \$2000.00.
3. On 22 March 2019, following the puppy's vet clearance, QC emailed OC a copy of the Sale and Purchase contract which included a "Not to be Bred from" endorsement. He also sent a video of B, the puppy. OC signed and returned the contract the same day and collected B on 4 April 2019.
4. In March 2020 OC requested QC' permission to breed B and U (their intact male [breed]) as she was finding it very difficult to keep them apart during B's second heat. QC declined permission, consistent with the contract endorsement, and OC sought advice from QC and another breeder they had previously contacted, MS, about how best to keep the dogs apart. QC advised that both dogs should be crated during the season while MS recommended crating either the boy or the girl.

5. OC and EC successfully managed several seasons, but B did become pregnant, giving birth to 8 puppies in May 2022. The puppies were advertised for sale via Trade Me in July 2022. On 11 July 2022, QC wrote to OC and EC, having found out about B's litter for sale, pointing out the breach of contract and proposing two solutions including sums in compensation for the breach.
6. QC' original claim was for damages of \$16,000.00 for breach of contract, that amount being the sum of the advertised price for OC and ECs' 8 puppies. Following evidence produced by OC and ECs at the first hearing, as to the actual proceeds from the sale of the puppies as well as their total expenses, QC's reduced his claim to \$3800.00.
7. OC and EC counter-claim \$30,000.00 (under the contractual remedies provisions of the Contract and Commercial Law Act 2017, the Consumer Guarantees Act 1993 and the Fair Trading Act 1986), on the basis that QC misrepresented B as 'show quality', and that they have incurred losses, being \$1000.00 difference in value between the purchase price paid and the average market price for non-show quality [breed], \$9000.00 for the lost chance to show B, and \$20,000.00 for the lost chance to breed show quality dogs.
8. The issues to be determined are:
  - Was the fact of B producing puppies a breach of contract on the part of OC and EC?
  - If so, what damages has QC suffered as a result?
  - Did QC misrepresent B in terms of her having 'a fine [feature]' and/or of being 'show quality'?
  - If so, what remedy is available to OC and EC?

*Was the fact of B producing puppies a breach of contract on the part of OC and EC?*

9. The contract contains the following endorsement, under the heading 'Special condition or Undertakings' – "Endorsement 1 – Not to be bred from". OC and EC contend that an 'accidental mating' is different to 'being bred from', because, they argue, 'breeding' is a deliberate process managed by the owners.
10. However in the context of this contract, I regard OC and ECs' argument as too narrow an interpretation – the intent of the contractual endorsement was clearly that B should not produce puppies. The evidence in this matter shows that OC and ECs were acting in accordance with that clear meaning because they have described the lengths they went to, to prevent B falling pregnant. Based on that evidence, I accept that OC and EC did not intentionally breach the contract, nevertheless the very fact of B producing puppies was a breach of the contractual endorsement.

*What damages has QC suffered as a result?*

11. I find that QC has suffered no actual and/or proven monetary loss as a result of the breach of contract so no contractual damages are available to him. While I understand QC' explanation about the long-term commitment he has made to ensuring quality bloodlines for TL, he has suffered no quantifiable financial loss as a result of B's puppies being sold. Based on the evidence provided, it also appears that OC and ECs' actual costs incurred in providing for the puppies and finding them homes, exceeded the income obtained from the sale of the puppies so they have made no profit as a result of the breach.
12. If there was to be a financial or other consequence of the contractual endorsement being breached in the absence of actual losses, that would have to have been specified and agreed in the contract itself.

*Did QC misrepresent B in terms of her having 'a [feature]' and/or of being 'show quality'?*

13. I have not addressed all of the considerable arguments pertaining to misrepresentation, such as whether Mrs Bott conveyed, prior to the contract being formed, that she required a 'show-quality' puppy and therefore whether there is any inducement, because the counter-claim fails at the first hurdle, which is OC and ECs establishing as a fact that B's [feature] is not suitable for showing. However I would note that the representation actually made by QC in March 2019 was that B "has a [feature]" (as of several weeks old, at that time) and "She'd be worth trying in the show ring if you were so inclined". His representation does not give any guarantee of success in the show ring and it would be impossible to make any such guarantee for a puppy so young, given the variables involved.
14. I find that OC and EC have not established that the author of the email opinion they have provided has any more standing or expertise than QC himself and/or his witnesses, who all state that B's [feature] does not exclude her from being shown/does not mean she is not 'show quality'. OC and EC's witness, Z, the Club Secretary for the [Dog Association] was sent a photo of B's [feature] by OC and ECs and, when asked if the dog with a [feature] like that would be considered show quality, emailed back - "No. Ordinarily no breeder, that I know of, would sell a dog with a [feature] like your girls as a show potential pup".
15. QC's witness, MS, a fellow [breed] breeder, stated by telephone at the hearing when asked for her opinion of the photo of B's [feature] and whether she could be shown - "Yes, I would give it a go. There's nothing to say a minimally off-set [feature] is unacceptable".
16. Given the nature of the issue, I do not consider it unusual for different breeders/breed enthusiasts to have different opinions as to what qualities of a breed are show-worthy. While OC and EC have also provided internet-sourced information about the breed's ideal [feature] qualities for show purposes, there was no unequivocal evidence presented to the effect that B's [feature] would bar her from even being entered into a show. Symmetry is mentioned as an ideal quality, but only [feature] is a disqualification from being shown, according to the written material provided. QC points out that B has never been entered in a show by OC and ECs (and that by the time she had puppies was really too old to start being shown) and I accept his contention, particularly in the absence of any unequivocal evidence about her show-worthiness, that this would be the truest test of whether or not she was show quality.

*If so, what remedy is available to OC and EC?*

17. The remedies claimed under the contractual remedies provisions of the Contract and Commercial Law Act 2017, the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 all rely on QC having made a false statement or representation about B's [feature] and/or whether she was 'show quality', or, in the case of the CGA her 'fitness for a purpose made known to him' (because there would only have been a failure of the guarantee of acceptable quality if it were established that being show quality was a requirement Mrs Bott had communicated to QC). As per the findings above, there is insufficient evidence to support a finding of fact that B's [feature] is not of 'show quality'.
18. I note that QC is of the firm view that he did not sell B 'in trade' and that the Consumer Guarantees Act 1993 therefore does not apply. The definition of 'in trade' under the CGA is very broad and does not need to be 'commercial' in nature - it includes 'any undertaking relating to the supply of goods...'. I therefore find that the CGA does apply, but as per the above findings, there has been no failure of guarantee by QC.
19. For all the above reasons, no remedy is available to OC and EC. I would note that, even if there had been a misrepresentation, the claimed amounts of \$9000.00 and \$20,000.00 for lost chances would not have been considered actual losses, in the case of the latter sum, there not even having been any chance as of right to breed from B.

**Referee Perfect**  
**Date: 21 February 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>.