



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 752

APPLICANT **QL**

RESPONDENT **E Ltd**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. QL purchased two laminated Gortex motorcycle jackets from E Ltd on 2 February 2022, one for himself and one for a friend.
2. On 4 July 2023, QL was out on a 3 day ride and noticed that a small patch on the front of one of the wrist cuffs had delaminated and the same area on the other cuff was beginning to deteriorate.
3. On 6 July 2023, QL took his jacket back to E Ltd to show the staff what had happened. It was agreed that when QL got home, he would send the jacket back to E Ltd for assessment of a warranty claim.
4. The warranty claim was declined as it was determined that the damage was externally caused and not due to a product defect nor a design or manufacturing defect.
5. QL demanded a replacement jacket under the Consumer Guarantees Act 1993 (CGA), which E Ltd refused but E Ltd did offer QL a replacement jacket at cost, which QL refused.
6. QL brings this claim under the CGA for \$1,350.00.
7. The issues are: Was the jacket defective pursuant to the CGA? Is QL entitled to a replacement jacket pursuant to the CGA?

Was the jacket defective pursuant to the CGA?

8. The CGA requires goods to be of acceptable quality, meaning free from minor defects, of acceptable appearance and finish, safe and durable at the point of sale.
9. Damage to the goods after the sale is not covered by the CGA.
10. QL argues that because damage occurred, the goods must be defective.
11. E Ltd argues that the damage appears to be contact damage, either abrasion or chemical. No such damage occurred to the other jacket QL purchased for his friend or to any of these jackets sold to other customers.

12. The damage occurred more than a year after the purchase, indicating that it is unlikely that the defect existed at the time of purchase.
13. The burden of proof is on QL as the Applicant. QL has not produced any evidence of a defect in the goods at the time of purchase nor any explanation for what defect would cause this small point of damage 16 months later.
14. The timing and nature of the damage makes it more likely than not that the damage is the result of something that has happened to the jacket after 16 months of ownership and use.
15. Accordingly, the Tribunal finds that the goods were not defective at the time of purchase.

Is QL entitled to a replacement jacket pursuant to the CGA?

16. If QL had proven the goods were defective, it would be E Ltd's choice to repair or replace the goods.
17. QL has not met his burden of proof that the goods were defective, therefore E Ltd is not required to remedy the defect.
18. Accordingly, QL is not entitled to a replacement jacket.

Referee: L. Mueller

Date: 1 December 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>.