



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 357

APPLICANT **QQ**

FIRST **IK**
RESPONDENT

SECOND **YM**
RESPONDENT

The Tribunal orders:

The claim is dismissed.

Reasons:

1. On 1 December 2022, QQ bought a 2013 [car] from IK. He says IK misrepresented the vehicle and he claims compensation of \$4,999.00.
2. On 8 March, the Tribunal added IK's wife YM to the claim and ordered a fresh hearing. The Tribunal directed QQ to file additional evidence by 31 March. No further evidence was filed.
3. All parties attended the hearing.

Background

4. The vehicle was advertised for sale on Marketplace through YM's Facebook account.
5. QQ took the vehicle for a test drive with IK. He says that, in answer to his questions, IK told him there were no issues with the vehicle, he had driven it for 3 to 4 months, and there were no issues with the engine. IK agrees that he said he had no issues with the car or engine.
6. QQ had an [auto mechanic] inspection of the vehicle on 1 December 2022. The report described the vehicle as "*For a used vehicle, fair condition for age and mileage, may require unplanned maintenance or repair*". The report recommended mechanical breakdown insurance.
7. QQ says the next day he drove the vehicle from [City 1] to [City 2] and a fault light appeared. He had the vehicle scanned for faults, which recorded "*NOx sensor 1 (bank 2) has malfunction ... fuel system power supply is too low*". Further diagnostics on 12 December revealed other 'stored' faults (i.e., faults that were not new).

The Law

8. The law of contract and the Contract and Commercial Law Act 2017 (“CCLA”) apply. With private Trade Me or Marketplace sales there is no guarantee of acceptable quality or fitness for purpose. The principle of ‘buyer beware’ applies. The person selling the goods will however be liable for any misrepresentations about the goods (s 35 CCLA) which induce the buyer to enter into the contract. A buyer may claim compensation for foreseeable loss suffered as a result of the misrepresentation, but they cannot cancel the contract.
9. A misrepresentation is a misstatement of past or present fact; and may be either innocent or intentional. Misrepresentations include half-truths. Statements of opinion are not misrepresentations unless they contain implicit representations of fact. It would also be a misrepresentation for a person to say that they held an opinion when in fact they did not.

What representations were made?

10. QQ has not alleged that any representations were made in the advertisement. His claim is based on the oral statements made during the test drive about the car and engine having no issues. He also says IK has made inconsistent statements about the ownership of the car and how long it was in his possession. He says IK told him during the test drive that the vehicle was his and that he’d had it for 3 to 4 months. At the hearing IK said the vehicle belonged to a friend and that he’d been driving it for 1 to 2 months.

Where the representations untrue?

11. The difficulty with an oral representation is that there is no certainty about exactly what was said. QQ says IK told him there were no issues with the car or its engine. IK says he told QQ he had not had any issues with the car or engine. Those two statements are quite different.
12. In the first case, if IK said there were no issues with the car, then if there were defects at the time the statement was made, the statement would be a misrepresentation whether or not he was aware of the defects.
13. In the second case, if IK was only saying he had not experienced any issues, then it would only be a misrepresentation if it was proven that he had.
14. There is no direct evidence that IK was aware of any faults. The case relies on the fact that fault codes occurred the following day, and that the codes were for stored and not new faults. QQ also says IK’s inconsistent evidence about ownership of the vehicle reflects on his reliability.
15. On the other hand, no faults were evident when QQ test-drove the vehicle or during the [auto mechanic] inspection, and it is not clear when or if the faults would have last resulted in a fault light coming on.
16. QQ has the burden of proving the claim on the balance of probabilities. I find that IK’s representations to QQ were only about his experience with vehicle, and there is insufficient evidence to prove his statements were untrue.

Did the representations induce the sale?

17. Even though I have found that IK did not make any misrepresentations, it is helpful to consider whether his statements induced the sale and whether QQ has proved the amount claimed.
18. A misrepresentation need not be the sole inducement, but it must be a significant factor.
19. QQ says he relied on IK’s statements and the [auto mechanic] report when deciding to buy the vehicle. He says he did not rely on the test drive. He says the [auto mechanic] inspection only covered “*all parameters for WOF*”. He says IK told him he had friends who were mechanics and that he had bought and sold many European cars. He took from this that IK had a degree of expertise.
20. This is not correct that an [auto mechanic] inspection only covers WOF issues. The inspection report lists the checked items as including the engine and fuel system and clearly covers matters beyond

those covered by a WOF. QQ says the [auto mechanic] has confirmed that, although it checks the vehicle for mechanical issues, it does not do a diagnostic check.

21. IK says he did not encourage QQ to buy the vehicle, he just provided details about the vehicle and photographs for the advertisement, and he told QQ about his experience with the vehicle. He says that driving a range of European cars does not make him a mechanic.
22. It is likely that the most significant factor in QQ's decision to buy the vehicle was the [auto mechanic] inspection. The purpose of such a report is to have an independent assessment from an organisation with the appropriate expertise and no financial interest in the sale. Therefore, it is likely that QQ's claim he was equally influenced by the [auto mechanic] report and IK's representations is made with a degree of hindsight. I also consider it unlikely that the test drive had no bearing on his decision. Therefore, I am not satisfied that IK's statements about his experiences with the car were a significant inducement.

Is there evidence of the amount claimed?

23. In the last order, QQ was directed to provide proof of the amount claimed. He has not done so, although he says he has had a verbal estimate of \$2,000.00-\$3,000.00 for repairs. Even if QQ had proven that a misrepresentation occurred, his proof of quantum is virtually non-existent, and any order made would have reflected this.

Referee: J P Smith

Date: 22 June 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>.