



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 775

APPLICANT QU

RESPONDENT LG

The Tribunal orders:

The claim is dismissed.

Reasons

1. QU purchased a horse, [The horse], from LG in December 2021. The parties agree that LG represented that [The horse] was suitable for show jumping. QU believes that this was a misrepresentation and claims:
 - a. A refund of the \$12,000.00 purchase price.
 - b. An order that [The horse] be returned to LG.
2. The issues to be resolved are:
 - a. Did LG make any representation regarding [The horse]?
 - b. If so, was that representation false?
 - c. If so, did it induce QU to enter into the contract?
 - d. If so, is QU entitled to a full refund of \$12,000.00 and to return the horse to LG?

Did LG make any representation regarding [The horse]?

3. Generally there is little protection for a purchaser in a private sale. The legal maxim is 'caveat emptor' which means 'let the buyer beware.' However there may be some protection available to a purchaser if the seller has made a misrepresentation, as provided by section 35 of the Contract and Commercial Law Act 2017 (CCLA). Section 35 of the CCLA provides that if a party to a contract has been induced to enter into it by a misrepresentation, whether innocent or fraudulent, by another party, then they may be entitled to compensation.
4. A misrepresentation is a representation of present or past fact that is false. A fact needs to be reasonably within the capacity of the person making it to have knowledge of. An opinion, or belief about the future is not usually a misrepresentation. A half-truth may be a misrepresentation, but silence is not usually a misrepresentation unless there is a duty to warn.
5. The parties agree that LG represented that [The horse] was 'suitable for show jumping'. This was at the date of sale which was on or around 6 January 2022.

If so, was that representation false?

6. I find, on the balance of probabilities, that the representation was not false. This is because LG produced evidence that [The horse] was entered into show jumping competitions on 25 October 2021 and 20 November 2021. These were only a short time period before the sale on 6 January 2022 and there is no evidence of anything untoward having happened in the interim.
7. I have considered the email from KC which stated that she sold [The horse] (all parties agree in July 2021) for \$4,000.00 to \$5,000.00 as he was '*mechanically lame*'. QU believes this is evidence that [The horse] was not suitable for show jumping on 6 January 2022. LG's view is that mechanical lameness does not prevent a horse from show jumping, rather that is a description of a gait that does not conform to the usual but is not associated with any pain. I prefer LG's view for the following reasons:
 - a. It is supported by the description of mechanical lameness in the online MSD Veterinary Manual.
 - b. It is consistent with the [Veterinary] report dated on 23 June 2021 note that [The horse] was '*subtly asymmetric in his trot and his front feet are not a visible pair*' and that he was '*low-moderate risk as a show-jumping and hunting prospect*'.
8. I have also considered QU's view that by 6 January 2022 [The horse] had reached a turning point in his age/career that meant that while he had been suitable for show jumping up until then, he was no longer fit for it, perhaps in part due to his inherent characteristic gait. I allow that this is possible, however as the Applicant in the claim QU has the onus of persuading me that this is more likely than not. He has not been successful in doing this as there is little contemporary evidence to support his assertion other than the written evidence of his daughter MJ. MJ writes that [The horse] refused jumps with both her and another rider at camp in December 2021. However there are many reasons that a horse will refuse a jump, and it is an impossible task nearly two years later to say that it was due to any one reason.
9. I have had regard to the assessment on [The horse] by [Equestrian]. However, [The horse] did not arrive with her until 4 February 2023. This is more than a year after QU had purchased the horse and so cannot be taken as a report of his state on 6 January 2022.
10. I have also had regard to QU saying that the issue does not manifest until [The horse] is worked hard, and so he never reported any lameness until [Equestrian] had the horse as MJ did was unable to work him hard enough to have noticed the issue. However I find this offers little support to QU's argument as it is at most supposition that an issue would have shown if the horse had been worked hard while MJ had him, but this did not happen. It is therefore insufficient to meet the standard of proof required, which is 'on the balance of probabilities' to be successful with a claim.

Conclusion

11. As I have not found there was a representation that was false, I do not need to consider the final two questions.
12. For the above reasons, the claim is dismissed.

Referee: L Thompson
Date: 18 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>.