



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 51

APPLICANT SC

RESPONDENT CX

The Tribunal orders:

CX is to pay SC the sum of \$650.00 within 28 days of the date of this order.

Reasons

1. On Monday 17 April 2023, SC purchased from CX a [car] for \$11,000.00 after seeing it advertised [online], and after viewing it and taking it for a test drive.
2. Two days after SC purchased the vehicle warning lights displayed on the dashboard and SC said the vehicle went into "limp mode". SC took the car to DT Ltd for a diagnostics run, full service, warrant of fitness and post purchase check. The total cost for the work was \$3,768.16. The invoice for the work records that the diagnostics run found "secondary air valve closed seized fault code".
3. SC claims that CX knew that the vehicle had the fault found by DT Ltd when he sold it and he concealed it by wiping the error codes so that the vehicle would not fault when he took it for a test drive. SC subsequently discovered that CX works for BI Ltd as an apprentice mechanic (he apparently told SC that he worked for a tyre company) and when he phoned BI Ltd there was no record of any work having been done on the vehicle. He therefore claims that CX "committed fraud" by placing BI Ltd service stickers on the engine bay to "falsely convey" that the work noted on the stickers had been done when it had not been done. SC also claims that CX made other misrepresentations about the vehicle in the advertisement and in conversations (in person and/or through [messaging app]) before he agreed to purchase it.
4. SC claims the sum of \$14,199.52 being the cost of the work completed by DT Ltd (\$3,768.16), the cost of [transportation] rides to and from work on the day the vehicle was at DT Ltd (\$34.98), the Disputes Tribunal fee and costs to attend the hearing (\$216.37), and general damages of \$10,000.00 for "emotional stress and financial strain".
5. The relevant law is found in general contract law and in the Contract and Commercial Law Act 2017 (the Act). Section 35(1) of the Act provides that if a party to a contract has been induced to enter it by a misrepresentation, whether innocent or fraudulent, made by him or her by or on behalf of another party to the contract, he or she is entitled to damages from the other party in the same manner and to the same extent as if the representation were a term of the contract.
6. Thus, the issues to be decided are:
 - (i) Did CX make a misrepresentation to SC regarding the vehicle that induced him to enter the contract?
 - (ii) If so, what is the appropriate remedy?
 - (iii) Is SC entitled to general damages?

- (iv) Is SC entitled to the Tribunal application fee and costs to attend the hearing?

Did CX make a misrepresentation to SC regarding the vehicle that induced him to enter the contract?

7. A misrepresentation is a false statement of past or present fact (not opinion) made by one party to the contract to the other party. Silence is generally not a misrepresentation unless there is a duty to speak. There may be a duty to speak when what is said is a half-truth which creates a misleading impression because of what is left unsaid. However, generally it requires the representor (here CX) to be aware of the facts left unsaid and that it has misled or will mislead the representee (here SC).
8. SC claims that the following misrepresentations were made by CX:
- (i) That the vehicle had been serviced and checked by BI Ltd shortly before the purchase;
 - (ii) That the vehicle had been regularly serviced by BI Ltd and had a new cambelt and spark plugs;
 - (iii) That the vehicle had an oil leak which was known by CX but not disclosed to him; and
 - (iv) That the vehicle had an existing fault with the secondary air valve that CX deliberately concealed from him (by wiping the error codes).

BI Ltd Service and check

9. The advertisement for the vehicle includes the statement that “will sell with fresh service and check through [BI Ltd]”. When SC asked CX about the service CX told him that it had been done that day (17 April) and the registration light bulb had been replaced. CX told SC that he did not yet have the paperwork for the service and check but he agreed to send it to SC when he got it.
10. CX said that a “10 point” BI Ltd check was completed on the vehicle shortly before SC purchased the vehicle, but he accepts that the service was not done and the bulb was not replaced as claimed.
11. It is clear that CX made a misrepresentation to SC regarding the BI Ltd service before SC agreed to purchase the vehicle and this misrepresentation induced SC to agree to the purchase.
12. However, even if CX did make a misrepresentation regarding the BI Ltd check of the vehicle SC’s claim cannot succeed unless it can be shown that the representation induced him to enter into the contract (agree to the purchase).
13. There is no evidence that SC asked CX the results of the check and he agreed to purchase it without seeing the promised paperwork. I therefore find that he did not rely on the statement that it had been checked by BI Ltd when he agreed to the purchase.

BI Ltd servicing of the vehicle

14. The advertisement states that the car has been regularly served and the spark plugs and cam belt were replaced at 240,000kms. There were two BI Ltd stickers on the engine bay of the vehicle which records that the vehicle was serviced at BI Ltd. However, SC believes that this work (including the replacement of the spark plugs and cam belt) was not completed. He claims that CX fraudulently obtained the stickers from his work and placed them there to mislead prospective purchasers that it had been regularly serviced. He supports his belief by his conversation with a staff member at BI Ltd who said that there is no record of the work being done.
15. CX denies SC’s claim and said that the services and replacement parts had been done at his work and he is entitled to use the BI Ltd stickers when the work has been done. His evidence is supported by the audio recording provided by SC of a phone conversation he and his partner had with CX’s boss at BI Ltd (IJ). IJ said that employees are allowed to complete work on their own vehicles and attach the BI Ltd stickers if the work is done. He said that there would be no record of the work on the system because the only costs incurred by BI Ltd (parts) are billed directly to the employee.
16. I find that CX did not fraudulently place the BI Ltd stickers on the vehicle to mislead prospective purchasers. I also find that SC has not provided sufficient evidence to support his belief that the services or the replacement of the spark plugs and cam belt were not done at BI Ltd as claimed.

17. SC has therefore not established that CX made a misrepresentation regarding the servicing and replacement of the spark plugs and cam belt. This claim is therefore dismissed.

Oil leak

18. SC said that DT Ltd found an oil leak and replaced the rocker cover gaskets. He claims that CX knew it had an oil leak and he withheld that information from him. He relies on the phone conversation he had with IJ in which IJ mentions an oil leak from the sump which he thought was caused by the purchaser hitting something. SC claims that this meant that CX must have known that the vehicle had an oil leak somewhere.
19. CX denies knowing the vehicle had any oil leaks before he sold it. He says that IJ was caught off guard by the phone call from SC and his partner, and he did not know that CX had sold the [car] to SC. He said that IJ could have been confused with another [car] that CX had earlier sold which did have an oil leak from the sump.
20. I accept CX's explanation. It is clear from the recording of the phone conversation that IJ was not clear who SC was or the situation regarding this particular vehicle. Thus, it is entirely reasonable that he thought that SC was referring to another vehicle that CX had owned. I therefore find that the evidence does not establish that CX knew that the vehicle had an oil leak and deliberately withheld that information from SC.

The secondary air valve fault

21. CX denies having any knowledge of the secondary air valve fault which caused the dashboard lights to come on and the vehicle to go into "limp mode", and he denies wiping any error codes before SC came to test drive the vehicle. He said the error lights never came on when he owned the vehicle and there was nothing to indicate to him that the vehicle had the fault while he owned it. He provided an email dated 24 October 2023 from KN from DT Ltd in support. KN states that a secondary air valve seized closed fault would not be apparent until the check light comes on.
22. SC claims, supporting his evidence with an email dated 24 October 2023 from CG from TB Ltd, that the fault can be intermittent and may not show up all the time.
23. As this is SC's claim he has the onus of proof. The standard of proof is on the balance of probabilities (or 'more likely than not'). Thus, to be successful he needs to provide sufficient evidence to establish that the secondary air valve fault was in existence before he purchased the vehicle and, if it was, CX knew about it and either deliberately concealed the issue (wiped the error codes) or had a duty to tell SC about it, and I am not satisfied that he has done so here.
24. There is no evidence to support SC's belief that CX wiped or otherwise tampered with the vehicle to conceal any engine light warnings before SC test drove the vehicle. SC has also not provided sufficient evidence to establish that the fault was in existence at the time he purchased it. I accept CX's evidence that the engine warning lights never came on when he owned the vehicle. I also accept KN's evidence that the fault would not be apparent until the check light came on. I put less weight on CG's evidence because his statement was in response to specific question posed by SC: is it "plausible the fault intermittently shows up and sometimes won't show up upon immediate restart of the car or running of the car *after the fault has been wiped?* (my emphasis). As mentioned, there is no evidence to support SC's belief that CX wiped the fault before SC purchased the car.
25. I therefore find that CX did not make a misrepresentation or otherwise mislead SC regarding the secondary air valve fault. I find that it is more likely than not that the fault arose after SC purchased the vehicle, not before.

What is the appropriate remedy?

26. I have found that CX did make a misrepresentation, that induced SC to enter the contract, regarding the fresh service of the vehicle and the replacement of the registration plate bulb.

27. I therefore consider it appropriate that CX pay for the cost to have the vehicle serviced by DT Ltd and to have the bulb replaced. I also consider it reasonable that CX pay for the [transportation] costs incurred by SC while the vehicle was at DT Ltd.
28. As mentioned, the DT Ltd invoice includes work regarding the secondary air valve issue, a warrant of fitness check (CX did not make any misrepresentation regarding the vehicle's warrant of fitness), replacement of parts such as control arm bushes, right side inner guard liner, rear diff outrigger bush, rocker cover gaskets. It also includes a wheel alignment and replacement of all tyres. While the cost of parts has been itemised in the invoice, the labour costs have not.
29. Thus, doing the best I can on the evidence before me I consider the sum of \$650.00 reasonable to compensate SC for the service costs, the cost to replace the bulb, and the [transportation] costs.

Is SC entitled to general damages?

30. There is a line of cases which have held that general damages (for stress, inconvenience and the like) are not available for breach of contract unless the contract is one intended to provide pleasure or enjoyment or the relief of suffering.
31. The contract here is for the sale and purchase of a vehicle. It is not a contract to provide pleasure or enjoyment (such as, for example, a family holiday), and is not one that is intended to provide relief from suffering. I therefore find that the threshold for an award of general damages has not been met and the claim is dismissed.

Is SC entitled to costs?

32. Section 43 of the Disputes Tribunals Act 1988 does not allow the Tribunal to award any party the filing fee or costs to prepare for or attend a hearing, unless it is provided for by contract and in certain specific circumstances described in s 43. None of the circumstances apply here.
33. SC's application for costs is therefore dismissed.

Referee: R Merrett

Date: 21 February 2024



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>.