



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 587

APPLICANT **SD and QD**

RESPONDENT **NU**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. SD and QD purchased a motor vehicle in a private sale for \$6800 from NU for their son. NU advised SD and QD that he was selling the vehicle on behalf of his parents as they had moved overseas indefinitely three months prior to the sale.
2. The vehicle had obtained a warrant of fitness in the month before the sale.
3. SD claims he asked if the vehicle had been in an accident and if NU was aware of any issues. NU responded that he did not know of any issues and that it had not been involved in an accident.
4. Shortly after taking possession of the vehicle, the vehicle was taken to [vehicle air conditioning specialist] as the air conditioning unit was leaking. [Vehicle air conditioning specialist] advised the vehicle had been in an accident and had "extensive frontal damage". The vehicle was then taken to [auto mechanic] where the mechanic said the sills had been poorly repaired with bog and suggested the possibility the vehicle had been in an accident.
5. SD and QD believe NU misrepresented the condition of the vehicle and that it is unsafe. They obtained an estimate to carry out panelbeating on the vehicle at a cost of \$6516.28 and have claimed in the Disputes Tribunal for a refund of the price paid.
 - i. Who was the owner of the vehicle at the point of sale? Was NU selling on behalf of his parents?
 - ii. Did NU misrepresent the condition of the vehicle?
 - iii. Is NU personally liable for any misrepresentation?

Who was the owner of the vehicle at the point of sale? Was NU selling on behalf of his parents?

6. Although NU advised SD and QD he was selling on behalf of his parents, they believe NU was the owner of the vehicle. They base this view on an invoice dated 20 March 2021 that they found in the glovebox, the fact NU arranged the warrant just before the sale, and the fact he had been in possession of the vehicle for three months after his parents went overseas.
7. NU however stated he merely helped his parents out by arranging servicing on the vehicle, getting the latest warrant and selling the car on their behalf when they went overseas. NU provided a copy of the motor registration in his parents name and a copy of a bank statement showing he transferred the purchase price of the vehicle to his parents a few weeks after the sale.
8. In view of the registration information and the bank transfer, I find it likely NU's parents were the owners of the vehicle and that NU was selling on their behalf.
9. As NU was selling on behalf of his parents, any representations made by him were made on behalf of his parents.

Did NU misrepresent the condition of the vehicle?

10. The principle of buyer beware generally applies to private sales, however the vendor must not misrepresent the item being sold. In the event there is a misrepresentation, the Contract and Commercial Law Act 2017 provides remedies.
11. SD and QD have claimed the vehicle has been in an accident and is unsafe. Notes from [vehicle air conditioning specialist] and [auto mechanic] indicate an accident of some form was likely, although the location of possible accident damage seems to differ. It is not known when any accident happened, and NU stated it did not happen while his parents owned the vehicle. However, there is no evidence the vehicle is unsafe in the manner described by SD and QD. Waka Kotahi became involved due to the recent warrant of fitness and found the sills did have poor repairs and needed repair before it can be deemed road worthy. It is not however known what sill repairs would cost as the estimate obtained by SD and QD for panelbeating appears to be for more extensive work than just the sills.
12. Waka Kotahi did not take further action with regard to the warrant, as they could not confirm if the sills were in their current condition when the warrant was obtained. SD and QD have suggested NU may have caused damage and undertaken work after the warrant was obtained, however there is no evidence to support that view.

Is NU personally liable for any misrepresentation?

13. As long as NU was acting on the instructions of his parents as their agent, he is not personally liable for representations made about the vehicle on their behalf.
14. There is no evidence NU extended his authority and misrepresented the condition of the vehicle without the knowledge of his parents, or that he had work done on the vehicle after it obtained the warrant to conceal defects.
15. In view of the above, the claim against NU must be dismissed.

Referee: K. Edwards
Date: 16 October 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>.