



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 677

APPLICANT SL

RESPONDENT QU

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In February 2022, SL purchased a used imported [vehicle] advertised as having 57,100 km, for \$20,600.00.
2. SL claims \$23,269.74, being a refund of the purchase price and the balance in costs he says are associated with the maintenance and diagnosis of the vehicle.
3. The issues to be determined are:
 - a. Was the seller in trade?
 - b. Did QU misrepresent the car?
 - c. If so, what is the remedy?

Was the seller in trade?

4. SL's position is that the seller was in trade. In support he says that at the time he was considering the purchase he checked QU's details online to gauge his reliability and identified that he had been operating a car sales business and was a motor vehicle trader from 2016 to December 2021, and that at the time of searching in February 2022 he was showing as current in the motor vehicle trade.
5. However, while it was not disputed that previously he had been in trade, on balance I do not accept that at the time of the sale QU was in trade, and in turn this means that neither the Fair Trading Act 1986 nor those provisions in part 3 of the CCLA relating to sale of goods in trade apply. I say this for reasons which include:
 - a. I gave greater weight to the seller's evidence that at the time of the sale, he was not a motor vehicle trader;
 - b. I saw no supporting evidence to show that at the time of the sale he was in selling vehicles in trade, as the motor vehicle trader searches related to preceding years; and
 - c. I gave greater weight to the seller's evidence that he was selling in a personal capacity and that the car was imported for personal use, first registered in his name in February 2021 and that it was used for personal use, as this was supported by:
 - i. the [vehicle] report which stated it was owned by an individual owner; and
 - ii. the written agreement for sale, recorded it was a "private sale" and this was supported by the personal signature by QU, without any reference to any company.

Did QU misrepresent the car?

6. The common law of contract and the Contractual and Commercial Law Act 2017 (CCLA). A contract is a binding commitment formed by an offer made by one party and a subsequent acceptance by the other party. There is a well-known principle of contract law, which applies to private sales of “caveat emptor” or “let the buyer beware.” This implies that the buyer must be cautious, as the risk is his and not that of the seller. Section 35 of the CCLA qualifies this principle. It sets out the law governing misrepresentation which applies to contracts. A misrepresentation is a false statement of fact which is made before or at the time the contract is made and which induces a person to enter into that contract. A vendor has no positive duty to disclose any defects about an item. However, if asked, he may not make any false or half truthful statement. A person who enters into a contract based on a misrepresentation may be entitled to claim compensation depending upon how significance of the misrepresentation.
7. There was no dispute that the vehicle was listed with mileage of 57,100 km, or that the vehicle sales advertisement and agreement recorded the condition of the vehicle being sold “*As Is Where Is,*” nor that the buyer had his own pre-inspection performed at [vehicle repair shop 1].
8. Despite being sold “*As Is Where Is*” SL’s position is that there have subsequently been issues with the car. This included some slight pulling that he noticed on delivery, which eased when he had the tyres replaced in June. Then he says the car developed further issues, including the front suspension developing a creaking noise in September with the car starting to pull to the left again, in November he obtained a quote for replacement suspension arm, and in January 2023 the car broke down. Then he says in February 2023, the car was inspected by [vehicle repair shop 2] who repaired two faulty relays resolving the power loss issue but he says also found multiple other problems which he said required immediate attention and which he says are indicative of a vehicle that has travelled more kms than those displayed on the dash odometer. In support SL relies on the invoice for work performed, which also at the end states: “*Further investigation into control units both engine and transmission have the distance the vehicle has travelled as 167441K’s the dash has 74738 K’s a difference of 92703K’s.*”
9. On balance, while I accept that the notation in the [vehicle repair shop 2] invoice raises a potential anomaly about the mileage, on balance, I am not satisfied that SL has established that QU misrepresented the car. I say this for reasons which include:
 - a. I accept that the car was clearly bought on a ‘As is Where Is’ basis, as recorded in writing, and this was reiterated by SL relying upon his own examination by a mechanic before deciding to purchase, so this was a case of buyer beware;
 - b. A year and a half has passed since the purchase;
 - c. I gave greater weight to the seller’s evidence which was supported by SL’s own [vehicle] report, that at the border on November 2020 the mileage was recorded as 50,122 km, and that it then underwent the New Zealand Compliance process through [inspection company] where it passed its Warrant of Inspection with mileage of 50,123, and one year later had travelled a further 6,000 km with mileage recorded at the February WOF inspection of 56,997 km which is consistent with the mileage of 57,100 km that it was listed for sale; and
 - d. No evidence was provided to establish that QU had tampered with the odometer.
10. As I do not accept that it has been established that there was a misrepresentation, it is not necessary to determine the final issue.
11. The claim is dismissed.

Referee: GM Taylor

Date: 16 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>.