



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 444

**APPLICANT** SL

**RESPONDENT** T Ltd

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. In February 2022, SL started [treatment 1] and then [treatment 2] treatment by T Ltd for fat reduction around her abdomen. She was unhappy with the results and found [treatment 2] painful.
2. SL now seeks a refund of the \$4,290.00 cost of the treatments.
3. The issues to be determined are:
  - a) What promises or representations were made regarding the outcome? What was the agreed purpose of the treatment? Was the treatment fit for purpose?
  - b) Did the supplier mislead the consumer regarding the possibility of pain?

**What promises or representations were made regarding the outcome? What was the agreed purpose of the treatment? Was the treatment fit for purpose?**

4. Section 29 of the Consumer Guarantees Act 1993 (CGA) provides that services must be reasonably fit for any purpose the consumer makes known to the supplier before the contract is formed, unless the circumstances show that the consumer does not rely on the supplier's skill or judgment, or it would be unreasonable for the consumer to do so.
5. SL claims that she was guaranteed some sort of weight reduction. However, T Ltd denies this. SL signed consent forms that stated, "It is possible the result will be minimal or not help at all" and also contained an acknowledgement that the possibility the procedure may not work for her had been discussed. The agreed purpose of the treatment was therefore to have a chance at fat reduction, rather than guaranteeing any particular outcome.
6. In any event, T Ltd provided handwritten notes and photographic records that seem to show fat reduction at least in the short term. SL says that the photographs were edited and used different angles in a misleading way, but T Ltd denies this.
7. SL bears the onus of proving her claim and has not proven that there were any misleading promises or representations regarding the outcome, or that the treatment was unfit for the agreed purpose.
8. **Did the supplier mislead the consumer regarding the possibility of pain?**

9. SL gave evidence that she warned T Ltd Limited she had a low pain tolerance, but was told [treatment 2] would be a little uncomfortable, and could feel like ants biting, but not that it would be painful. The medical consent form stated, "Moderate discomfort during treatment is expected", and warned of risks including skin irritation or hypersensitivity, tingling or numbness, bruising, and burns. On balance, I am unable to conclude that she was misled, especially given she knew her own pain threshold and persisted with the treatment.
10. Since SL has been unable to prove either misleading conduct or a failure under the CGA, the claim must be dismissed.

**Referee: E Paton-Simpson**

**Date: 11 September 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 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>.