



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1432

APPLICANT SM

RESPONDENT CT

The Tribunal orders:

CT is to pay SMSM \$3,400.00 by Friday 28 August 2020.

Reasons

1. SM purchased a vehicle from CT for \$3,400.00. According to text messages from CT to SM, CT said he had purchased the vehicle from a friend who left the country. A finance company has a security interest registered over the vehicle. The finance company repossessed the vehicle because money was still owing to that company. CT said to SM (in a text message) that he did not know money was owing when he (CT) bought the vehicle from his friend.
2. SM is claiming \$4,000.00 from CT.
3. CT did not attend today's hearing. Hearings can proceed and be determined in the absence of a party.
4. The issues to be determined are:
 - a. Did CT breach the contract of sale with SM?
 - b. What remedy is SM entitled to?

Did CT breach the contract of sale with SM?

5. There is a contract between the parties for the sale and purchase of the vehicle even though the contract might not be formally in writing.
6. The Contract and Commercial Law Act 2017 (CCL) implies into all contracts for the sale of goods certain conditions and warranties as to title and quiet possession. Section 135 says:

(1) In a contract of sale there is—

(a) an implied condition on the part of the seller that,—

- (i) in the case of a sale, the seller has a right to sell the goods; and
- (ii) in the case of an agreement to sell, the seller will have a right to sell the goods at the time when the property is to pass:

(b) an implied warranty that the buyer will have and enjoy quiet possession of the goods:

(c) an implied warranty that the goods are free from any charge or encumbrance in favour of any third party that is not declared or known to the buyer before or at the time when the contract is made.

7. In terms of s135 of the CCL:

- a. CT did not have the right to sell the vehicle to SM whether he knew there was a security interest registered over the vehicle or not.
- b. SM did not enjoy quiet possession of the vehicle because the finance company has repossessed the vehicle.
- c. The vehicle was not free from any charge (security interest).

8. Therefore, the implied condition and warranties have been breached as detailed above in paragraph 7. All three elements were breached. Under s135 only one element needed to be breached.

What remedy is SM entitled to?

- 9. SM is entitled to damages for the breach of a warranty and the measure of damages for such breach is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach (s195 CCL).
- 10. That damage is the price he paid CT for the vehicle, being \$3,400.00. He cannot claim the \$400.00 for an accessory he put on the vehicle as that is not a loss “naturally resulting, in the course of events”.

Conclusion

11. For the above reasons CT must pay SM \$3,400.00

Referee: Ms G Jaduram
Date: 4 August 2020



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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.