



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 606

APPLICANT **SN**
RESPONDENT **J Ltd**
SECOND **T Ltd**
RESPONDENT
THIRD **IT**
RESPONDENT

The Tribunal orders:

The claim by SN against J Ltd is dismissed.

The claim by SN against T Ltd is dismissed.

The claim by SN against IT is struck out because IT was not served with the claim.

Reasons:

1. In or about August 2022, J Ltd listed its [vehicle] for sale on [the online platform]. On or about 29 August 2022, SN confirmed the purchase of [vehicle] for \$37,000.00, by using [the online platform].
2. Between 29 August 2022 and 5 September 2022 there were some brief messages between SN and IT on behalf of J Ltd. Those brief messages were with respect to the date on which payment would be made and a change of possession would take place.
3. It was a term of the sale and purchase that [vehicle] was to have a new Warrant of Fitness and a new registration. On or about 5 September 2022 SN made payment to J Ltd of the agreed purchase price (\$37,000.00), possession of the vehicle changed to SN, and written ownership of [vehicle] was changed into SN's name. As at 5 September 2022 [vehicle] had a new Warrant of Fitness which had been issued by T Ltd in early September 2022. Shortly after SN had taken possession of [vehicle], he became aware of various faults with the vehicle. SN claims \$4,740.37 from J Ltd and T Ltd.
4. SN appeared at the hearing on 25 October 2023. HC appeared on behalf of J Ltd. ST appeared on behalf of T Ltd. The issues to be determined are as follows:
 - a) Does the Consumer Guarantees Act apply between SN and J Ltd and/or between SN and T Ltd?

- b) Was there a misrepresentation made by J Ltd which induced SN into enter into the contract for the purchase of [vehicle]?
- c) Was there a contract between SN and T Ltd, and if so did T Ltd breach that contract?
- d) Did T Ltd owe SN a duty of care when providing the Warrant of Fitness for [vehicle] and if so, did T Ltd breach that duty of care and cause SN loss?
- e) Is J Ltd and/or T Ltd liable to pay SN all or any part of the amount claimed of \$4,740.37?

Does the Consumer Guarantees Act apply between SN and J Ltd and/or between SN and T Ltd?

- 5. The Consumer Guarantees Act 1993 (“CGA”) makes provision for certain protections for consumers when they obtain goods and/or services from a supplier. Section 2 of the CGA provides that a consumer is a person who acquires from the supplier goods or services of a kind ordinarily acquired for personal, domestic, or household use.
- 6. A supplier is defined in the CGA as a person or entity “in trade” who supplied goods and/or services to the consumer.
- 7. I am satisfied that SN is a consumer, as defined by the CGA. That is because he purchased a motor vehicle which can be described as the type of goods which would ordinarily be acquired for personal use.
- 8. The evidence from HC was that he was not in the business of buying and selling motor vehicles. HC told the Tribunal that he had a liquor store and that he has sold maybe two vehicles over the last three years. He was clear in his evidence when saying that he was not in business buying and selling motor vehicles.
- 9. There was no evidence provided to oppose the position taken by HC that he did not carry on business buying and selling motor vehicles. Accordingly, I find that J Ltd cannot be defined as a supplier pursuant to the CGA, relating to the sale of [vehicle].
- 10. When giving evidence ST confirmed to the Tribunal that T Ltd carried on business in trade providing mechanical services for motor vehicles and issuing Warrants of Fitness. Therefore, I am satisfied that T Ltd can be said to be in trade.
- 11. However, T Ltd did not directly supply goods and/or services to SN. Therefore, although T Ltd can be described as a supplier pursuant to the CGA it was not a supplier directly connected with SN. Therefore, SN cannot rely on the CGA to seek a remedy against T Ltd.
- 12. I find that the provisions of the CGA do not apply as between SN and J Ltd. That is because even though SN can be defined as a consumer and T Ltd can be defined as a supplier, there was no nexus directly between SN and T Ltd.

Was there a misrepresentation made by J Ltd which induced SN into entering into the contract for the purchase of [vehicle] motor vehicle?

- 13. Section 35 of the Contract and Commercial Law Act 2017 (“the CCLA”) provides that if a party is induced to enter into a contract by a misrepresentation, even if the misrepresentation is made innocently, then that party is entitled to treat the misrepresentation as a breach of contract.
- 14. Therefore, to be successful in a claim of misrepresentation against J Ltd, SN must prove that it is more likely than not that:
 - a) A representation was made by J Ltd prior to him entering into the contract to purchase [vehicle], that was incorrect; and

b) That the incorrect representation induced him to enter into the contract for the purchase of [vehicle].

15. SN and J Ltd agreed as follows:

a) [vehicle] was advertised for sale by J Ltd on [the online platform].

b) SN purchased [vehicle], directly through [the online platform].

16. I am satisfied that at the time that SN confirmed the purchase of [vehicle] via [the online platform], the terms of the agreement between the parties were as follows:

(i) The purchase price would be \$37,000.00;

(ii) The vehicle would have a new Warrant of Fitness and registration.

(iii) Possession of the motor vehicle would be taken upon payment of the purchase price.

17. Based on the above agreed factors I find that there was a contract between SN and J Ltd for the sale and purchase of [vehicle]. SN expected to get the benefit of owning [vehicle] for which he was prepared to pay J Ltd \$37,000.00. There is no evidence to suggest that the parties did not intend to be legally bound by the transaction.

18. I listened carefully to the evidence that was given by all parties, and I closely read the written evidence that was filed. SN referred the Tribunal to a copy of the [the online platform] advertisement for the vehicle. SN said:

“On the strength of the advert I pushed click now to purchase”.

19. SN told the Tribunal that he believed that the advertisement said that [vehicle] would have a new registration and warrant of fitness. HC confirmed that that was the case.

20. On the written evidence provided by SN it can be seen that some messages were exchanged after he had pushed the “click now” function on [the online platform]. Those messages were very short and were between IT and SN. The messages appeared to solely relate to the date on which the vehicle would be ready to be picked up. The messages confirmed that it was agreed that the vehicle could be picked up on Monday 5 September 2022.

21. SN’s evidence was that on 5 September 2022 he met IT at an agreed location. When meeting with IT he went into a nearby bank and made a transfer of money for the purchase of [vehicle]. SN said that it was very “bad weather” and so the “deal was done quite quickly”.

22. SN said that on 5 September 2022, when he paid the money and was about to take possession of the vehicle he asked IT whether the van was “100% alright”. SN said that IT said “yeah all good apart from one moulding on the side”. IT did not recall any such conversation taking place.

23. I have looked at the [the online platform] advertisement, as it was presented to the Tribunal by SN in his evidence. I very carefully checked the advertisement to see what representations it made with respect to the condition of [vehicle]. Under the heading of “description” the [the online platform] advertisement recorded as follows:

“REDUCED PRICE NEED TO GO

This vehicle was purchased from [redacted] and they were first owner. Nice and clean, used by same driver till now and regularly serviced from [redacted].

Have internal fittings to secure goods”.

24. Apart from the above, the copy of the [the online platform] advertisement that was provided to the Tribunal by SN does not make any other representations about the condition of [vehicle].
25. I am satisfied that at the moment that SN clicked the button on the [the online platform] advertisement he was accepting J Ltd's offer to sell [vehicle], and he agreed to pay the purchase price. At that immediate point the contract had been entered into. The ultimate payment of the money on 5 September 2022 was SN's obligation under the contract that had been formed via [the online platform]. The payment of the money itself and the taking of the possession on 5 September 2022 was not the date on when the contract was formed.
26. I am satisfied that:
- (a) The contract for the sale and purchase was formed when SN clicked the purchase function on the [the online platform] advertisement.
 - (b) SN did not provide any evidence to establish that there had been any representations made as to the condition of the vehicle prior to him pushing the purchase function on [the online platform].
 - (c) I can only therefore rely on the [the online platform] advertisement itself as recording the representations made by J Ltd prior to the contract being entered into.
 - (d) I have set out above the portion of the [the online platform] advertisement that describes the vehicle. The advertisement does not make any representations regarding the mechanical condition of [vehicle].
27. I find therefore that a misrepresentation was not made by J Ltd before the purchase of [vehicle], that could be said to have induced SN to enter into the contract.

Was there a contract between SN and T Ltd, and if so did T Ltd breach that contract?

28. The parties agreed that prior to SN taking possession of [vehicle] there were no direct dealings between SN and T Ltd. The evidence from ST was that J Ltd brought [vehicle] into the T Ltd workshop in late August 2022 for the purposes of obtaining a Warrant of Fitness. However, T Ltd failed the vehicle due to a problem with the vehicles brakes. ST accepts that subsequently T Ltd issued a Warrant of Fitness for the vehicle after it was brought back to them with the issues that had prevented the warrant being issued, fixed.
29. ST was adamant that T Ltd had not directly worked on [vehicle] so as to bring it up to warrant standard. There was however evidence given to the extent that it appears that an employee from T Ltd may have worked directly with IT and personally facilitated repairs to [vehicle]. IT confirmed that he had deal with a T Ltd employee, that [vehicle] was picked up from a location away from the T Ltd premises. However, he said that he believed that the employee was working on behalf of T Ltd.
30. The invoice for the repairs to [vehicle] was not produced in evidence. ST was adamant that T Ltd had never invoiced for, or been paid for the repair work to [vehicle].
31. The position for J Ltd was that given the warrant was issued by T Ltd they were of the belief that T Ltd had also done the work on the brakes to bring the vehicle up to warrant standard. However J Ltd accepted ST's evidence that T Ltd had never been paid to do repairs on [vehicle] and had not directly issued an invoice to J Ltd for the work.
32. I find that there was never a contract between SN and T Ltd. Having found that there was never a contract between SN and T Ltd, I now find that T Ltd could not have breached a contract that did not exist.

33. The dealings between J Ltd and T Ltd do not need to be decided in this this order because J Ltd have not made a claim against T Ltd.

Did T Ltd owe SN a duty of care when providing the warrant of fitness for [vehicle] motor vehicle and if so, did T Ltd breach that duty of care and cause SN loss?

34. SN gave detailed evidence about the mechanical failures that occurred with [vehicle]. That evidence included photographic evidence and invoice evidence for repairs to the clutch and rear differential. SN also provided a tax invoice from [Towing Company] who he had engaged to Tow [vehicle] when it broke down on the [road].

35. ST carefully looked at all of the photographs and the invoices provided by SN. ST's position can be summarised as follows:

- a) The condition of the clutch and the rear differential, in terms of how long each of these things on the vehicle would continue to operate, were not factors that needed to be taken into account when providing a Warrant of Fitness for [vehicle].
- b) He agreed with SN and said that the photographs showed failures with [vehicle].
- c) He agreed with SN in terms of the reasonableness of the invoices [vehicle repair companies] as being reasonable for the work that they recorded as being done.
- d) He took no issue with the [Towing Company] invoice.

36. I am satisfied that, unfortunately for SN, he has experienced failures with [vehicle]. I accept SN's evidence of the repairs that were required for the vehicle. I accept that SN has done his best to keep the costs paid for the repairs to a minimum.

37. Despite accepting the above I am unable to provide a remedy for SN against J Ltd or T Ltd. That is because I have found above that:

- a) The CGA does not apply as between SN and J Ltd.
- b) The CGA does not apply as between SN and T Ltd.
- c) SN has failed to prove that it is more likely than not that J Ltd made a misrepresentation at the time that the contract was entered into.
- d) There was no contract between SN and T Ltd for the provision of the warrant on [vehicle].

38. Accordingly, SN's claim against J Ltd is dismissed and SN's claim against T Ltd is dismissed.

Referee: K L Hoult
Date: 15 November 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>.