



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 86

APPLICANT ST

RESPONDENT SC

The Tribunal orders:

The claim is dismissed.

Reasons

1. Vehicles driven by ST and SC on a race-track at the [Race] in [Town] in November 2022 were involved in a collision.
2. ST alleges that SC was driving negligently and claims \$5,230.00 from him made up as follows:

a. Cost of repairs to ST's vehicle	\$ 5,048.50
b. Reimbursement of Tribunal filing fee	\$ 180.00
c. Rounding	<u>\$ 1.50</u>
	\$ 5,230.00

3. The issues to be resolved are:
 - a. Does clause 1 in the [Race] entry form preclude ST from pursuing a negligence claim against SC?
 - b. If not, did SC fail in his duty to take reasonable care while racing?
 - c. Is ST entitled to \$5,230.00?

Does clause 1 in the [Race] entry form preclude ST from pursuing a negligence claim against SC?

4. The relevant law is the law of contract. When parties make promises to each other they must keep those promises. If they do not do so, they may have to compensate the other party to restore them to the position they would have been in had the promise been kept.
5. I find that clause 1 in the [Race] entry form precludes ST from pursuing a negligence claim against SC. This is because ST accepts that he signed this form prior to the race, and the wording of it is very clear as follows:

'I agree not to pursue claims against fellow competitors ... in relation to all losses, claims and demands in respect of ... damage to property of myself ... notwithstanding that such ... damage may have been contributed to or caused by ... the negligence of Indemnified Parties'. Indemnified Parties is defined to include fellow competitors.

6. I have considered ST's view that this entry form indemnity was not an agreement between himself and SC. However I find that it was as clause 1 provides that *'this provision .. is intended to be enforceable by each of the Indemnified Parties'*. SC was an Indemnified Party as he was a fellow competitor.
7. I have also considered ST's view that the indemnity he signed is generic and that it therefore should not be applied to all situations, particularly the one here which he considers was the result of cascading series of events. His view is that SC made several mistakes and so therefore the indemnity should not apply. However, there is nothing in the wording of the indemnity to exclude certain or any situations, and a party cannot unilaterally change the terms of it.
8. I have had regard to the evidence provided by ST that on occasion race drivers make private agreements in respect of damage occurring on a race-track. However, no such private agreement was entered into between SC and himself.
9. I have also had regard to ST's view that the indemnity should not apply as he believes that SC breached clause 3 of the entry form having unsafe 'spongy' brakes. However, the entry form provides for penalties for such an occurrence, but it does not provide that the indemnity is nullified. To the contrary, as per paragraph 5 above, it makes clear that the indemnity applies whether or not the other party was negligent.
10. Finally, I have considered ST's view that it is not a fair and reasonable position to be in racing on a track with inexperienced drivers with perhaps mechanical issues if the indemnity applies, as this results in increased risk to him without being able to mitigate any losses. However, I find that it is a fair and reasonable position for ST to be in because it is his choice as to whether or not he signs the indemnity and races.

Conclusion

11. As I have found that ST is precluded from pursuing a negligence claim against SC, I do not need to consider the final two questions.
12. For the above reasons the claim is dismissed.

Referee: L Thompson

Date: 7 March 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>.