



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 363

APPLICANT SW

RESPONDENT IA

The Tribunal orders:

The claim is dismissed.

Reasons:

1. On 13 October 2022, SW bought two wireless home security cameras at a total price of \$250.00, being \$125.00 each from IA, who used the Facebook Account name [redacted]. After 3 months the cameras free cloud storage expired, and storage could only be accessed if a subscription of about \$73.00 a year was paid. SW claims he was told the cloud storage would be free for the cameras lifetime.
2. SW claims \$250.00 for the cameras representing a refund of the purchase price.
3. The issues to be determined are:
 - a) Did IA induce SW to buy the cameras by misrepresenting that they had free lifetime cloud storage?
 - b) If so, what is the remedy?

Did IA induce SW to buy the cameras by misrepresenting that they had free lifetime cloud storage?

4. The general law of contract and the Contractual and Commercial Law Act 2017 (CCLA) apply. 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 is "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.
5. The CCLA qualifies the principle of caveat emptor. It sets out the law governing misrepresentation which applies to contracts. A misrepresentation is a false statement of a past or present fact. A vendor has no positive duty to disclose any defects about an item. However, he or she may not make any false or half truthful statement. Section 35 of the CCLA provides that a party to a contract who has been induced to enter it by a misrepresentation, whether innocent or fraudulent, made to it by another party to the contract, is entitled to damages in the same manner and to the same extent as if the representation were a term of the contract.

6. The burden of proof rests on SW as the Applicant to establish that IA misrepresented that the cameras had free lifetime cloud storage, and that this was the reason he bought them. On balance, while I accept that SW may not have understood that he had to pay for cloud storage, I do not accept that he has established that IA represented that the cameras had lifetime free cloud storage. I say this for reasons which include:
- a) SW initially pointed to Facebook communications ahead of or at the time of purchase to support the misrepresentation however he was unable to identify any such representation being recorded ahead of the purchase, and instead acknowledged that the Facebook communications prior to purchase concerned whether data was stored on a memory card or in the cloud, and both parties acknowledged that it was made clear that it was only cloud storage;
 - b) SW then said the representation was made in person with IA, however IA had a competing recollection where he said that there was no such discussion about free lifetime cloud storage and that SW may have misunderstood his comment about the cameras quality being so good that they would last a lifetime;
 - c) I also gave weight to IA's evidence on the price of the cameras, with both parties acknowledging the price was much less than other similar cameras available. Given this, I find it less likely that it would also include free lifetime cloud storage when an annual cloud storage subscription costs about \$78.00 a year;
 - d) I gave some weight to and accept that IA did agree to contact the manufacturer when SW reported after 3 months that cloud storage was no longer free. However, on balance I also find that his explanation that he took this action because at the time he was unsure how long SW's free subscription term lasted, had some credibility.
7. Consequently, having regard to all the circumstances, I am not satisfied that SW has established on the balance of probabilities that IA represented free lifetime cloud storage. Therefore, it is not necessary to determine the second issue and the claim is dismissed.

Referee: **Taylor, Michelle**

Date: 28 June 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>.