



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

**District Court**

**[2023] NZDT 183**

**APPLICANT TD**

**RESPONDENT KH**

**The Tribunal orders:**

KH is to pay \$14,472.75 to TD on or before 9 May 2023.

**Reasons**

1. TD purchased a [ute] for \$22,000 from KH after seeing it advertised on [website]. TD saw KH's advertisement on [website] for the sale of his [ute]. She asked KH about the condition of the ute via a question on [website]. He sent her a video of the underside of the ute which showed and described rust on the underside of the ute. She asked for further information about his use of the ute on the beach.
2. TD purchased the ute for \$22,000.00 from KH in [City]. On her drive home to [Town] the clutch burnt out. When the clutch was being repaired the mechanic, from Q Ltd, put the ute on a hoist and saw extensive corrosion under the ute including the main chassis rails, radiator support, crossmember and other suspension components. TD took the ute to P Ltd who confirmed the chassis was rusty and needed to be replaced at an estimated cost of \$14,472.75.
3. TD originally claimed \$22,000 which included the cost of the clutch as well as the work required to remedy the rust. She reduced her claim to \$20,000 as KH has paid the cost to repair the clutch.
4. The issues to be decided are:
  - a) Did KH misrepresent the condition of the ute to TD?
  - b) If so, did the misrepresentation induce TD to purchase the ute?
  - c) If so, what remedy is TD entitled to?

**Did KH misrepresent the condition of the ute to TD?**

5. TD purchased the ute privately from KH. There are no warranties or guarantees implied in a private sale. The basic rule is "buyer beware", which means the buyer is responsible to carry out their own due diligence and is responsible for their own purchasing decision. A seller in a private sale is not obliged to point out faults or problems but statements made and answers to questions by the seller can be relied on and can amount to a misrepresentation if incorrect.
6. If a seller misrepresents goods in a private sale then the buyer has a remedy under section 35 of the Contract and Commercial Law Act 2017 (CCLA). Section 35 provides that if a party to a contract is induced to enter the contract by a misrepresentation, whether fraudulent or innocent, made by another party to the contract then they are entitled to damages to the same extent as if the representation was a term of the contract that had been broken.

7. A misrepresentation occurs when there is a representation of past or present facts, including “half-truths”, that are false and/or misleading. Statements of opinion, unless combined with a false statement that the opinion is a belief honestly held or that they had no reasonable basis on which to hold that opinion, and statements about the future do not generally amount to misrepresentations.
8. The meaning of the statement is determined by what a reasonable person would have understood from the words used in all the circumstances rather than the meaning intended by the party making the statement or understood by the party receiving it. The context in which the statement is made, including the nature and subject-matter of the transaction and the respective knowledge of the parties, is relevant.
9. Prior to the purchase TD asked on [website] “Anything wrong with it”, and received the response “No been serviced every 120,000kms. Parts have been replaced when needed...”. KH emailed TD a video he had taken of the underneath of the ute which showed there was some rust on the underside of the ute. In the video KH described the rust as “surface rust” which he could “scrape off with my fingernail” and “you could always get that off with a wire brush”. He pointed out rust in several places and said “with an old a car like this you are always going to have a little bit of surface rust”. After viewing the video TD asked KH by text “Has it been on the beach?” to which he replied “Yes it has a couple of times. Always washed it after and sprayed it every 6 months with lanolin oil”.
10. After purchasing the ute she found several documents in the glovebox, including:
  - a) An invoice from CN dated 20 October 2017 that recorded the ute had been towed in from [Suburb]. The invoice states “hosed off excess sand ..... Removed rust from gearbox x-member and treated with rust convertor on x-member and chassis..... Removed all wheels, badly corroded on to axles/hubs, found front disc pads metal to meatal and disc rotors unserviceable (rusty).”
  - b) An invoice from SQ dated 11 May 2022 for a repair to “clean up rust on RF door aperture”.
11. TD claims KH misrepresented the rust in the ute as well as his use of the ute on the beach. She believes KH’s reply that it had been on the beach only a couple of times but never in salt water is incorrect.
12. KH states that he believed the rust on the underside of the ute was surface rust only, and that he physically could not get far enough under the ute to video or see the rust to the same extent as if the vehicle was on a hoist. He confirmed the clutch had failed when he was driving the ute on [Suburb] beach, that it was towed off the beach on the day it broke down and then spent several days in a car park adjacent to the beach until it was towed by CN. KH maintains that he has never driven the ute into the water and has only driven the ute on the beach in the wet sand 4-5 times in the 7 years 8 months he had owned it. He believed the wet sand had flicked up under the ute but stated that he had washed the underneath each time he had taken it on the beach. He said he did walk his dog at least times a week on the beach and parked in a gravel carpark adjacent to the beach each time. KH has no knowledge whether the oner previous to him had driven the ute in the water or on the beach.
13. TD from P Ltd, said the rust in the chassis and suspension is extensive. He said the ute is the rustiest vehicle he has seen in his 25 years as a panel beater, and that when he was inspecting the rust he poked his finger through the chassis. His view is that the rust is occurring from the inside out, rather than the outside in, and that it is very likely to be caused by the ute being in salt water, either being stuck in water for a while or being driven into salt water to a reasonable height. He explained that when rust occurs from inside out, the outer surface may not show the rust until it “pops out” as has occurred here.
14. When TD was told about the comments on the 2017 invoice about rust, his view was that the ute had a rust issue then as a result of something happening, that there was an attempt to fix the rust issue but that it is likely that not all the rust was removed. His evidence is that from the time the metal parts on the underside were exposed to salt water it could take between one and five years

for the rust to show depending on a number of factors including how thoroughly the vehicle was washed; how thorough any rust prevention remediation was and whether bare steel was exposed to salt water or whether there was paint on the metal.

15. In considering the evidence presented I find that KH has represented that there is nothing wrong with the vehicle and that it has surface rust only, when in fact the chassis and parts of the suspension are significantly rusted to the extent that it will not get a warrant of fitness, as stated by DQ, Service manager at Q Ltd, and need replacing
16. I am satisfied that KH did not qualify his statements about the rust, in terms such as “as far as I know”, nor was such a qualification reasonably implied. I am also satisfied that any reasonable person would have understood the statements made by KH to mean that the rust on the underside of the ute was merely surface rust. As the rust on the underside of the ute was significant, KH has misrepresented the condition and severity of the rust.

#### **Did the misrepresentation induce TD to purchase the ute?**

17. Under s 35 a party seeking compensation for misrepresentation must have been induced to enter the into the contract as a result of the representation. A misrepresentation does not need to be the sole reason for entering into the contract, but it needs to have had a material effect on the decision.
18. TD lives in [Town] and understands the effect salt water can have on vehicles, which is the reason she asked KH about where the ute had been on the beach. I am satisfied that KH’s reply that it had been a “couple of times” together with the video and KH’s description of the rust being surface rust and assurances that it can be scraped off with a fingernail or wire brush induced TD to purchase the ute.
19. Had KH provided the invoices that were in the glovebox to TD before the sale TD’s reliance on what was said may have differed. KH knew the ute had rust repairs in the chassis and cross-member which he did not bring to TD’s attention. This information was significant as it seems likely that the remedial work done in 2017 did not prevent the chassis and suspension rusting. I find it was reasonable for TD to have relied on KH’s representations, even though her brother looked under the ute when she viewed it prior to purchase, as KH had not told her of those previous repairs. I am satisfied from TD’s evidence that her brother’s inspection was superficial compared to the inspection she would have undertaken had she known about the previous rust repairs, or more likely she would not have bought the ute.

#### **What remedy is TD entitled to?**

20. TD has established that a misrepresentation has occurred which she reasonably relied on and induced her to buy the ute. Under section 35 she is entitled to compensation which puts her in the position she would have been in had the representation been true. That is, that the rust was surface rust.
21. TD has not had the chassis and suspension parts replaced. She has an estimate of \$14,472.75 for the work. The estimate notes that there is likely to be “a lot of problems” in doing the work as “everything is rusty or starting to go rusty”.
22. I find it is likely that the repairs may cost more than the estimate, however TD will receive some betterment from the repairs, as she will have a ute that has no rust in its chassis and suspension. Therefore, in balancing these factors I find it is reasonable to award the amount of the estimated cost of repair.

**Referee: W Lang**  
**Date: 18 April 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>.