



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

District Court

[2020] NZDT 1321

**APPLICANT**     TN  
                         WL

**RESPONDENT**   JH and GG

**The Tribunal orders:**

1. JH and GG are to pay to TN and WL the sum of \$1,450.00 on or before 30 September 2020.

**Reasons**

1. In July 2020, TN and WL (the purchasers) bought a Mazda Demio from Mr H and Ms G (the sellers) for \$1,800.00.
2. The car has turned out to be too rusty to get a warrant and is uneconomic to repair. It has a wreck value of \$350.00. The purchasers seek a refund. The sellers defend the claim on the basis that the car was as described in the advertisement and was sold "as is where is".
3. The issues to be resolved are:
  - (a) Who sold the car?
  - (b) Did the sellers misrepresent the car?
  - (c) If so, what is the loss?

**Who sold the car?**

4. The purchasers initially named Ms G as the seller. However, her partner JH attended the hearing, and advised he was in fact the seller. He was therefore joined as a party.
5. The evidence established that both Mr H and Ms G were joint sellers. The sellers are partners. Ms G advertised it on her Facebook page, and messages between the parties were sent to and received by "GG". The receipt signed by Mr H stated the money was paid to Ms G.
6. Mr H states he was the sole legal owner. Given the circumstances of the sale, and given the family relationship between the sellers, both would be viewed as having an interest in the car, and the proceeds, and thus equally involved in the transaction.
7. The respondents are therefore Mr H and Ms G jointly.

**Did the sellers misrepresent the car?**

8. The Contract and Commercial Law Act 2017 provides some protection for purchasers of goods in private sales. Section 35 provides that if a purchaser is induced to buy goods by a misrepresentation, whether innocent or fraudulent, the purchaser is entitled to damages (i.e., the difference between the price paid for car and its actual value.)
9. I find that the sellers misrepresented the car. This finding is made for the following reasons:
- (a) The sellers bought the car approximately a week to 10 days before the sale for \$650.00. The advertisement under which they bought the car stated that the car could not get a WOF without rust repairs in the undercarriage;
  - (b) The purchasers then cleaned up the inside, and put on two second hand tyres, and relisted it for \$2,200.00 without mentioning that it could not get a WOF due to rust.
  - (c) The Facebook ad made the following statements (among other statements): *“DRIVE AWAY!!”, “wof is just out”, Regularly serviced”, “runs and drives very good”, “used every day around lower hutt and wellington”, “everything works as it should”, “very responsive car to drive”, “perfect family or daily/first car”. (! AS IS WHERE IS !)*
  - (d) The picture generated by this wording is misleading. The purchaser cannot “drive away”, as the car has no WOF, and cannot get one. The ad suggests the WOF is only missing because it has run out, not because the car is uneconomic to repair. The ad suggests the sellers had used the car every day, but they had not. They had only purchased it the week before on the basis it was rusty. The ad states it is a perfect family car. It is not. It is essentially a wreck.
  - (e) I have had regard to the fact that most of the statements are true. The car runs perfectly. It was used by the past owners daily around Lower Hutt and Wellington. Everything in the car does work as it should. However, it is not a perfect family car, or first car, as a perfect family car would be economic to warrant. This is therefore misleading. Also, all the other statements are only half true. Where statements are made that of themselves are true, but there is key information missing that the sellers know that relates to the information given, there is a duty to disclose the missing piece. The missing piece was that the sellers had owned the car for not much more than a week, the ad they bought it from explained about the rust, and they had paid \$650.00. The car was not therefore the perfect family runabout that was represented.
  - (f) I have had regard to the fact that the ad clearly stated *“AS IS WHERE IS”*. Those words would have been a complete defence had the advertisement not provided such a glowing description of the car, and its usefulness. As the advertisement was relied upon, section 35 provides a remedy, regardless of the attempt to avoid this.
  - (g) I have had regard to the fact that the sellers claim not to have known about the rust, and only sold it on so fast because their son did not like the pink colour. However, the ad from the previous sale was produced. This clearly disclosed the rust issue. The price the sellers had paid (\$650.00) also reflected knowledge of the problems. I was unable to displace the inference that they had knowledge at least that the car needed substantial work to warrant. The sellers cannot therefore seek to profit from the purchasers by failing to disclose what they knew when this rendered other representations made about the car’s usefulness a practical impossibility.
  - (h) I have had regard to the fact that the sellers state that the purchasers saw the rust. This was not the case. Noticing any rust on the surface is not knowledge of the extent of the rust underneath. I have also had regard to the fact that the purchasers did not get an AA report, or similar inspection done. This is correct, and they have therefore taken the risk of a bad car, and incurred the cost of these proceedings, and a delay in receiving justice. However, the sellers have also taken the risk of the words in their ad, which create consequences for them. Had they said nothing other than a bare description, the claim would have been dismissed.

### **What is the loss?**

10. The estimated wreck value of the car at \$350.00 is a reasonable assessment of the car's worth. Mr H stated he had buyers interested at \$800.00 but he turned down a suggestion he take it back and onsell it, and I had insufficient information of any market price above the wreck value. A VTNZ report showed the extent of the structural repairs required.
11. Accordingly, the purchasers have suffered a loss of \$1,450.00.
12. The purchasers can now dispose of the car as they see fit and seek return of the net loss from the respondents.

**Referee:**

**J Robertshawe**

**Date: 14 September 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>.