



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 13

APPLICANT UH Ltd

RESPONDENT BI

The Tribunal orders:

BI is to pay directly to UH Ltd the sum of \$915.09 on or before Tuesday, 13 December 2023.

Summary of Reasons:

[1] The hearing was convened by teleconference. Both parties appeared at the hearing.

Background

[2] The parties agree the essential facts. The applicant's representative, NC purchased a [vehicle] from the respondent in September 2022. NC was introduced to the vehicle via the Trade me website but inspected the vehicle in person before purchase. BI was present during this inspection. NC asked BI directly whether any work had been done on the vehicle or if any work needed to be done. BI advised that work had recently been done on the brakes and that whereas she had the vehicle service records to confirm this they were not immediately available.

[3] The parties negotiated the price. The applicant offered \$48,000. After some discussion and an assurance from BI that she was not aware of any further work that needed to be done on the vehicle¹, the applicant agreed to pay \$50,000 for the vehicle. The applicant paid a \$1,000 deposit, and it was agreed she would return to pick up the vehicles in a few days. The seller agreed to have the service records available at that time.

[4] NC returned on Sunday 11 September 2022 to complete the purchase. BI still did not have the service records available, but NC decided to complete the purchase and then approached the [dealership] directly to obtain the service records and purchase a 3-year mechanical warranty.

[5] The dealership confirmed that recent work had indeed been carried out on the vehicle's brakes. However, the dealership also advised that BI had been advised in June 2022 that the vehicle required replacement CV boots². As the dealership did not carry this part, it had agreed to order the parts and advise BI when they were in stock. NC was advised the cost of the replacement was approximately \$900.

[6] As the dealership now carried the required parts, NC asks for the replacement to be completed. The applicant was invoiced \$915.09 for this work. The applicant seeks compensation in this amount claiming it only agreed to increase the purchase price from \$48,000-\$50,000 on BI's assurance that she was not aware of any work required on the vehicle at the time of sale.

[7] BI admits that she was advised by the dealership in mid-2022 that the CV boots required replacement and that she told NC that she was not aware of any further work required on the vehicle. However, BI denies liability

¹ it having just been serviced

² constant velocity boots

claiming it was an innocent mistake and when contacted by NC she asked to either be allowed to carry out the repair herself or to cancel the sale.

Issues

- i) has there been a misrepresentation
- ii) is BI entitled to an opportunity to remedy or cancellation.

Issue 1

[8] There is little disagreement on this point. BI admits both that she had been told by the dealership that the CV boots needed replacement³ and that she was asked by the buyer if she was aware of any further work required on the vehicle. BI simply claims it was an innocent mistake.

[9] As discussed at hearing, private sales of this kind are governed by the law of contract and the Contract and Commercial Law Act 2017 (the Act). Section 35 of the Act allows a purchaser who has been induced to enter into a contract by a misrepresentation, whether innocent or fraudulent, to treat that representation as though it was a term of the contract. The wording is important, and I refer BI to the words *innocent or fraudulent*. There is no allegation here that BI deliberately misrepresented her knowledge to the buyer, but that her mistake in claiming she was not aware of any work required on the vehicle was innocently made, is no defence under the Act.

[10] The courts have outlined clearly what amounts to a misrepresentation. A misrepresentation is to be understood in its established sense of a false or erroneous statement of fact. Induced means that the respondent intended the applicant to act in a particular way or that she wilfully used language calculated, or of a nature, to induce a normal person in the circumstances of the case to act as the applicant did, and the representation must have caused the applicant to enter into the contract. The misrepresentation need not be the sole reason for making the contract; it is enough if it is clearly one inducing cause.

[11] In this case the statement made by BI that the vehicle did not currently require any servicing was plainly false. Not only was the statement false but BI had been told the vehicle required further servicing. Simply forgetting is not a defence under the Act. Further whether BI had arranged for the dealership to carry out the service⁴ is relevant. What is relevant is that BI admits she was aware of the fault.

[12] I am also persuaded NC was induced to enter into the purchase by this misrepresentation. NC asked direct concise questions and past and future servicing. As a direct result of BI's assurances, the applicant increased its offer from \$48,000-\$50,000.

[13] Whereas I may accept that the misrepresentation was not the sole reason for the applicant purchasing the vehicle, it was clearly of enough significance to the purchaser to ask very detailed questions about the vehicle's service history and any known faults. I am persuaded the seller has misrepresented the vehicle to the purchaser, giving the purchaser a right to damages under the contract.

Issue 2

[14] I have considered whether BI is entitled to either an opportunity to remedy the fault herself or cancel the contract. Such remedies are not anticipated by the Act and there is no such right. Further in this case I accept the applicant's evidence that it had been contacted the seller and after not obtaining a satisfactory response, it had no option but to arrange the repair directly with the dealership.

[15] As stated above, a misrepresentation is treated as a breach of the terms of the contract, and the purchaser is entitled to the cost of that breach. There is no provision that allows the seller to cancel the contract to avoid such costs.

[16] The damages the applicant has suffered, is the cost of replacing the CV boots. The applicant has provided evidence of this cost and the respondent has not provided any evidence that this cost has been inflated or is unreasonable in the circumstances. I order the respondent to pay the applicant \$915.09. The applicant is not seeking any further costs.

³ albeit claiming that she had not agreed to this repair

⁴ the parties are in disagreement over this point

Referee: Hannan DTR
Date: 12 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 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>.