



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 495

APPLICANT UH

RESPONDENT KC

The Tribunal orders:

KC is to pay \$914.75 to UH on or before Friday 1 December 2023.

Reasons:

1. UH purchased a [vehicle] from KC after seeing it advertised on Trade Me. The advisement described the [vehicle] as;

“major engine work was done at 194204 km, very extensive work totalling over \$9000 essentially resulting in a new engine, it starts up instantly and enthusiastically and runs like an absolute dream.... cambelt, idlers and water pump replaced at 254007 km. Service completed at 276643 km including engine flush, fresh oil and filter, drain and flush of cooling system/radiator,... the best feature of this vehicle is its incredible engine, with regular maintenance and care this [vehicle] will keep going for years to come.

As expected with a car of this age there is some wear and tear throughout, including dents and scratches, splits in plastics etc, minor things that are easy fixes or parts that are readily available from a wrecker. Heater doesn't run hot, but blows cold really well. In my time owning the vehicle I've cleaned up and fixed a few things here and there, still more to do!”

2. UH said that after she purchased the vehicle she had difficulties starting it and considered its condition was misrepresented to her in the advertisement.
3. The issues to resolve the claim are:
4. Did KC misrepresent the [vehicle] by advertising it as:
 - (i) “Major engine work was done at 194204 km, very expensive work totalling over \$9000 essentially resulting in a new engine”.
 - (ii) “It starts up instantly and enthusiastically and runs like an absolute dream”.
 - (iii) “Cam belt, idlers and water pump replaced at 254007 km”, and
 - (iv) “The best feature of this vehicle is its incredible engine, with regular maintenance and care this [vehicle] will keep going for years to come”.
5. If so, what loss can UH show she has incurred that she is entitled to be compensated for?

Did KC misrepresent the [vehicle]?

6. A misrepresentation occurs when a seller makes a false statement of fact that the buyer relies on and is induced to enter into the contract on the basis that the statement was true.
7. UH said that from the advertisement she concluded that the engine started and ran well. She formed that view as the advertisement stated that "major engine work was done at 194204 km, very expensive work totalling over \$9000 essentially resulting in a new engine" and that "it starts up instantly and enthusiastically and runs like an absolute dream".
8. UH provided the email correspondence she had with KC which showed that on the day after she purchased the vehicle, she emailed him with her concern that the car took up to five seconds of turning the key before it started. KC promptly responded that for a diesel car the [vehicle] manual provided that the key needed to be turned and then wait for the orange glow plug symbol to turn off before starting the engine. HU thanked him for the information and did not raise the starting issue again. However, five months after purchasing the vehicle, UH had to replace the alternator and replace the battery. She considered having to replace an alternator was not consistent with a car that "runs like an absolute dream". UH claimed to be compensated \$1,137.71 for the work on the alternator and for a new battery.
9. KC considered that the work was usual maintenance to be expected on a 25 year old diesel 4WD. Although he wrote in the add that it will keep going for years to come, that was prefaced with "with regular maintenance".
10. I find that the work undertaken on the alternator was not inconsistent with how KC described the vehicle. NT, a mechanic who appeared as a witness for UH, said that the engine may have had some work done on it, although he could not tell if the work done was worth \$9,000 or not as he had not investigated that issue. Although it was advertised as running like an absolute dream, that must be read as at the date on which it was sold. The vehicle is old and it could be expected that parts would wear out. There was nothing in KC' advertainment that indicated the alternator had been replaced or that it would not be near the end of its expected life. To the contrary, KC wrote that he had 'cleaned up and fixed a few things here and there, still more to do!'. I therefore find that KC did not misrepresent the state of the alternator and is not liable for the cost to replace it.
11. On 30 January 2023 UH had the ball joints replaced on the vehicle and claimed to be reimbursed \$1,294.90 for that work.
12. KC noted that the work that was included in that invoice was also to repair the heater control system, which he had expressly stated in the add as not working except on cold.
13. UH did not raise any issue at the time she had that work done that she had not expected to incur that cost. I find that work was also for the expected maintenance of the vehicle for the same reason as the work on the alternator. KC had written in the advert that there was more work to do on the car and the work included in the invoice does not relate to the starting of the engine.
14. UH said the replacement of the cambelt at 254 007 kms was an important issue for her. She referred to it in her emails on the day after she purchased the car. She wrote that she had spoken with the mechanic who performed the work, and that he said the cam belt was changed at 194,204km and not at 254,007kms as KC had written in his advertisement.
15. KC asked to see the receipts that he had left in the car at the time UH took it for a test drive and before she purchased it. In the first hearing of this claim UH agreed she received those documents and agreed to provide them, however, when the hearing continued, she said she was not provided with the receipts and so could not provide them.
16. NT however, said that the cam belt was old and that it had travelled further than the almost 30,000 that KC had represented it have in the advertisement. UH was entitled to rely on the representation in the advertisement that the cam belt was changed almost 30,000km ago, whereas it had travelled closer to 90,000kms (as the car had travelled approximately 281857 when she purchased it) and so was close to being due for replacement.

17. I find that the statement about the mileage at which the cam belt was replaced is a false statement of fact which induced UH to enter into the contract and so was a misrepresentation.

What loss can UH show she has incurred that she is entitled to be compensated for?

18. NT said that a cam belt can usually run for 100,000 to 150,000km's. I have therefore determined that the average mileage of 120,000kms is a realistic figure for the expected life of the cam belt. The cam belt was therefore represented as having travelled about one quarter of its expected life before it needed to be replaced. However, it had travelled 59,803kms and was therefore about halfway through its life expectancy. HU said it snapped in March of 2023, and it appears it did not reach the milage of 120,000kms, however, the figure of 120,000kms is an average based on the evidence of NT. It is a risk that all car owners take that the cam belt needs to be replaced sooner than expected.

19. The invoice to replace the cam belt was for \$3,659.02. KC represented that the vehicle had travelled about one quarter less than what it had. One quarter of that invoice is \$914.75. I find that is the fair loss that UH has suffered as a result of KC' misrepresentation and therefore an order is made for that amount.

Conclusion

20. As I am satisfied that UH has incurred the loss of \$914.75 an order is made for that amount.

Referee: Ms Cowie DTR

Date: 1 November 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>.