



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 429

APPLICANT UJ

RESPONDENT TV

The Tribunal orders:

The claim is dismissed

Reasons:

1. UJ purchased a used car from TV. The car was advertised on [the Internet], and UJ messaged TV about it. They arranged a time to view the car, and UJ's wife went, and test drove the car. UJ then purchased the car. Shortly afterwards UJ became concerned about the brakes and took the car to a mechanic. He learnt that the brakes required repair, and that the body had rust issues and had likely been flood damaged.
2. UJ claims the sum of \$1,500.00 for the cost of repairs.
3. The issues to be determined are as follows:
 - a. Did TV misrepresent the car?
 - b. If so, did the misrepresentation induce UJ to enter into the contract?
 - c. If so, what amount, if any, is UJ entitled to?

Did TV misrepresent the car?

1. The Contract and Commercial Law Act 2017 (CCLA) provides remedies for people who are induced to enter into a contract by a misrepresentation. A misrepresentation is a false statement of fact. A misrepresentation may be made innocently or fraudulently. As UJ is not in the trade of selling motor vehicles, consumer protection law such as the Consumer Guarantees Act 1993 does not apply to this sale.
2. UJ argued that he had asked TV if the car had "no issues", and TV misrepresented the car by stating that it had "no issues". He presented messages exchanged between the parties in support of this. They read as follows:

UJ: If we viewed it today, and no issues, can you do 6800

TV: Sorry lowest 7000

UJ: I will view it first and if there is no issues, ok 7K

TV: Ok no issues if you want to make sure take to [inspection company].

3. I do not consider that it is clear that UJ is asking a direct question about whether there are any issues with the car. He could be indicating that if he views it and finds no issues, he would pay the price asked. TV's reply could be read as simply acknowledging what UJ has said, and inviting him to inspect and get the car checked for issues as he feels is necessary. It could possibly also be an indication that he has no issues or problems with an inspection being arranged. Even if it were read as saying that TV's opinion is that there are no issues with the car, this falls short of a statement of fact, as it is qualified by the indication that a professional assessment is available if the buyer wants to be sure of the condition of the car.
4. Given the ambiguity of the wording and the invitation to have the car inspected, I find that TV's reply is not proven to be a false statement of fact. The parties agree that no further statements were made when UJ's wife test drove the car. For these reasons I find that it is not proven that there is a misrepresentation.
5. For these reasons the remaining issues need not be determined, and the claim is dismissed.

Referee: K Rendall

Date: 31 August 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>.