



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 599

APPLICANT **UM**

RESPONDENT **F Ltd**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. UM, the applicant, and MI, representing the respondent, F Ltd("F LTD") both attended the hearing by teleconference.
2. UM built a new house and had a double-sided gas fire from F LTD installed in it around July 2022. About a month later, the fire's remote control had an error code appear, which was cleared by changing the batteries. The error codes appeared again around July 2023, at which time UM contacted the fire's supplier/retailer and asked what could be done. He said the supplier told him to contact a plumber/gas fitter to get it repaired and that no mention was made by the supplier of any warranty claim. He arranged for a gas fitter to come to his property to repair the fire and said the gas fitter phoned F LTD's technical advisor team during the repairs. The fire was repaired, and UM was charged \$477.25 for this repair, which he claimed from F LTD.

Law

3. The Consumer Guarantees Act 1993 ("CGA") applies here. Sections 25-27 CGA deal with claims against manufacturers.
4. Section 25 CGA provides recourse for a consumer where a manufacturer fails to comply with a guarantee of acceptable quality or where the goods fail to comply with any express guarantee binding on a manufacturer during the currency of any express guarantee.
5. Section 26 CGA provides there is no right of redress against a manufacturer where goods fail to comply with the guarantee of acceptable quality because of an act, default or omission of somebody other than the manufacturer or their agent, or where any failure is due to a cause independent of human control, occurring after the goods have left the control of the manufacturer.
6. Section 27 CGA provides for a consumer to claim for any loss or damage to the consumer resulting from any failure which was reasonably foreseeable as liable to result from the failure. However, such a claim cannot be made where the consumer is entitled by an express guarantee given by the manufacturer to require the manufacturer to remedy the failure by repairing or replacing the goods, where the consumer has not required the manufacturer to

remedy the failure and they have either refused or neglected to remedy the failure or have not remedied the failure within a reasonable time.

What was wrong with the fire?

7. MI said F LTD assembles, produces and processes fires and so are a manufacturer. UM did not dispute this and so I find that F LTD is a manufacturer.
8. UM had no idea what caused the issues with the fire.
9. MI said the E1 error code that appeared on the fire's remote could indicate a number of issues, not all of which were related to a manufacturer fault or issue covered by the manufacturer's warranty. F LTD's Principal Technical Advisor, DO, gave evidence that, if the issue with the fire was rectified without new parts being put in, the cause was likely due to an installation issue. He believed the gas fitter here could have rectified the issue by putting it back together correctly or adjusting the gas pressures for example. He said that generally the E1 error code was only a manufacturer fault if it required replacement of a fan or the PCB (computer board) or the valve itself, which he said was rare. He pointed out none of these occurred in this situation.
10. UM said that the fire is 'brilliant' when working but problematic when not working. He confirmed the only issues with the fire have been the two sets of error codes a year apart and that, since the fire was repaired in July 2023, it has been working well. MI did not accept that the error code indicated any issue on the manufacturer's part in relation to acceptable quality, pointing out this error code could have arisen from several possible factors outside the manufacturer's control. She said the gas fitter installing a fire could cause issues with the fire by not putting in the trim correctly or putting in incorrect gas pressures and other factors. She explained that a new gas fire must be commissioned by a registered gas fitter who needs to follow the appropriate Codes and regulations but does not need to be signed off by the local Council. UM said he was not aware of any other potential cause of the fire's issues.
11. F LTD provided a copy of the company's warranties relating to such fires. UM said his fire has a 5-year warranty from the time it was purchased around July 2022. He could not understand why his fire, which cost around \$15,000.00, would not be covered by this warranty for repairs. F LTD said the first time the issue came to their attention was when UM sent them his gas fitter's bill and asked them to pay it. MI said the warranty process sets out a procedure where F LTD must be contacted about the issue and given an opportunity to remedy it according to their own processes. F LTD said UM has voided the warranty by having the fire's repair undertaken by a person not authorised or approved by them.
12. The definition in section 2 Consumer Guarantees Act 1993 ("CGA") includes undertakings, assertions or representations relating to the quality, performance or characteristics of the goods or the provision of services that are or may at any time be required in respect of the goods or the supply of parts that are or may at any time be required for the goods.
13. MI acknowledged that F LTD's warranties include the provision of repair services and the supply of parts, as needed and according to their warranty process. UM believed the warranties sounded similar to the definition in the CGA of express guarantees. Based on this evidence, I find that F LTD's warranties provided by them can be considered express guarantees as defined in the CGA.
14. UM acknowledged that he did not ask F LTD to remedy the fire's issues, as he did not realise this was the process at the time. MI said that, as a result, F LTD were not provided with an opportunity to assess or repair the fire's issues at the time, as they were not aware of the issues until after the fire had been repaired by the gas fitter engaged by UM, without their authorisation. MI said F LTD were not required to remedy the fire's issues or pay for the repair,

as there was not sufficient evidence that the issues were caused by a manufacturer's fault. She said further that, as no parts had to be replaced to rectify the fire's issues, it was highly likely not to involve a manufacturer's fault but rather is likely to have been an installation issue.

15. Section 27 CGA prohibits a claim being made against a manufacturer in a situation where the manufacturer has made express guarantees and the customer has not provided an opportunity for the manufacturer to remedy any such failure during the currency of any such express guarantees. UM did not require such a remedy of failure by F LTD. Further, I find there is insufficient evidence to prove that the issue with the fire was due to a manufacturer's fault, given the evidence by DO that, unless a part needed to be replaced, it was more likely an installation issue, with which F LTD had not been involved. Therefore, the claim is dismissed.

Referee: C Price

Date: 22 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.

HF Ltd and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.