



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1429

APPLICANT WQ Limited

**FIRST
RESPONDENT** X Limited

**SECOND
RESPONDENT** CG trading as UQ

The Tribunal orders:

CG and X Limited are jointly and severally liable to pay \$828.00 to WQ Limited by 25 May 2021.

Reason

Was the vehicle of acceptable quality?

1. The claim made by WQ Limited (WQ) is for compensation because a 2016 Mazda CX3 purchased by the company was rusting where the aerial connects with the roof. The rust was hidden by a vinyl covering on the roof at the time of sale.
2. Sections 6 of the Consumer Guarantees Act 1993 (CGA) states that goods supplied to a consumer come with a guarantee of acceptable quality. The meaning of “acceptable quality” is set out in section 7. The guarantee of “acceptable quality” includes “free from minor defects” as a reasonable consumer would regard as acceptable.
3. In considering whether the rust is a “minor defect” have considered the age of the vehicle, (2016), the price of the vehicle, (\$16,500.00), and the 141,000kms travelled. I have considered whether rust is a common problem in vehicles of this age. I am satisfied that a reasonable consumer would consider the rust was a minor defect in a vehicle of this age and that the supplier be liable for the repairs to the rust.
4. Ms X, appearing for XL did not submit that rust on the roof was normal for a vehicle such as the one sold.

Is WQ a consumer under the CGA?

WQ purchased the car for the business. A car is ordinarily acquired for private use and the fact that it is purchased for commercial use does not exclude WQ from being a “consumer”. Therefore, CGA applies to the purchase of the Mazda by WQ for business use.

Who was the “supplier”?

5. The vehicle was owned by X Limited t/a NG [Location] (XL).
6. XL used the services of CG t/a UQ as agent to sell the vehicle. CG did not appear at the hearing. Ms X stated that he did not appear because he was selling on behalf.
7. CG may not be aware that in section 2(1) of the CGA, “supplier” includes an agent. The RTA uses these words in defining a “supplier”.

“a person (other than an auctioneer) who, in trade, is acting as an agent for another, whether or not that other is supplying in trade”

8. Persons who sell on behalf of others attract liability as suppliers under the Act. Therefore, CG, when selling the vehicle on behalf of XL, personally offered the guarantee of acceptable quality set out in sections 6&7 of the Consumer Guarantees Act 1993. Because I have determined that the vehicle was not free from minor defects (because of the rust), CG is liable for the \$828.00 cost of repairs.
9. XL could also be liable. Quoting from “Gault on Commercial Law” regarding the definition of “supplier”:

“There is no requirement that the supplier must be a person who normally deals in goods of the kind in question. The effect of this is that, for example, a food manufacturer which sells a company car to a staff member could be liable under the Consumer Guarantees Act for the quality of the vehicle. In considering whether there is a breach of the guarantee of acceptable quality, the Tribunal is entitled to take into account all other circumstances of the supply. The position of a supplier who does not normally deal in goods of the kind in question has been ameliorated by s [7\(1\)\(ha\)](#).”

10. XL does not deal in cars but does deal in finance for cars. The NG website confirms this. It was NG that covered the car in vinyl, not to hide rust, but because of the appearance. All vinyl except on the roof was left because NG thought it looked good. I agree. However the result was that both CG and the purchaser were in the dark about the rust under the vinyl. The rust was discovered shortly after WQ took delivery of the vehicle. The vinyl was removed because WQ didn't like the appearance.
11. Ms X has submitted that the vehicle was not sold by a RMVT, therefore neither she or CG are liable. The CGA is not limited to RMVTs. It encompasses all “traders”, whether registered dealers or not.
12. CG did offer to repair the vehicle in Auckland after being contacted by WQ. I have considered whether WQ should have returned the vehicle to Auckland to give the respondents opportunity to repair the vehicle. I find that to be an uneconomic option. Before the sale CG knew that the buyer did not live in Auckland. He collected the WQ owner from the airport in Auckland and took him to collect the car. There is case law to support that where a supplier knows a consumer is not local, the supplier, not the consumer, pays the cost of transport back to the supplier for repairs.
13. In considering all claims that come before the Tribunal, the Tribunal must decide the merits and justice of the case, having regard to the law but not being bound by the strict letter of the law, strict legal rights and technicalities.

14. I have considered the law and the merits and justice of the case and find that because both respondents could be held liable under the CGA and that both had a part to play in the sale, both respondents be found liable for the loss.
15. The respondents can sort between themselves before 25 May how they will share the loss. If the amount ordered is not paid the applicants may enforce the order against either or both respondents.

Referee: B M Smallbone
Date: Monday, 3 May 2021



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 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 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 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>.