



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 37

APPLICANT WS

RESPONDENT KF

The Tribunal orders:

The claim is dismissed.

Reasons

1. In November 2022, WS purchased a car from KF on [the Internet]. When WS took delivery of the car, he discovered there were dents and scratches on it and a taillight that needed to be replaced. He fixed some of these items and then asked KF to pay for them. KF offered him a refund and to take the car back but WS declined the offer. He filed a claim in the Disputes Tribunal.
2. This is claim for damages for repairs required to a vehicle purchased in a private sale, in the sum of \$4,903.00.
3. The issues to be determined today were as follows
 - a. Did KF make a misrepresentation about the car which induced WS to purchase it?
 - b. If so what damages/compensation is payable?

Did KF make a misrepresentation about the car which induced WS to purchase it?

4. When the seller of goods is not in trade, consumer protection laws such as the Consumer Guarantees Act 1993 and the Fair Trading Act 1986 do not apply to the sale. The buyer must protect their own interests by asking questions, or in other words carry out an adequate “due diligence” before purchasing. The seller is not obliged to say anything about the goods but anything they do say must be true. Any untrue statements may be the subject of a claim by the purchaser for compensation, provided the misrepresentation induced the sale, or in other words, was a material factor in the purchaser’s decision to buy the goods.
5. WS said that KF had not told him about the dents and scratches nor shown them in the photographs on [the Internet]. WS said this meant KF had misrepresented the car to him.
6. I am unable to agree. The law is clear that a misrepresentation claim must be an actual statement, and an omission is usually insufficient. WS was unable to point to any untrue statement. If any of the omissions were in the nature of half truths, they may have counted as a misrepresentation. However in this case, KF’ photos that had been on the [the Internet] advertisement clearly displayed at least one and probably two actual dents and damage. There was nothing untrue or even misleading about the photographs, and it was not necessary for KF to have done more in the circumstances.

7. The cause of WS's loss was his own failure to inspect the vehicle prior to purchase. KF had said nothing untrue about the vehicle. If WS had not bought the car sight unseen, he would have either chosen not to purchase it or he could have tried to renegotiate the price with KF. This all could likely have been a different result if WS had bought the car from a dealer.
8. I am unable to find in the evidence anything supporting WS's claim that there has been an actionable misrepresentation. As a result, the claim is dismissed.

Referee: M Wilson
Date: 13 February 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>.