



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 766

APPLICANT XC

RESPONDENT UD

The Tribunal orders:

UD shall pay XC \$7,000.00 by 22 December 2023.

Reasons:

1. XC purchased a [Vehicle] from UD via Facebook Marketplace on 29 August 2023 for \$8,750.00.
2. On 31 August 2023, XC took the vehicle to [mechanics] for an inspection and service. [Mechanic] advised XC of numerous defects, including many leaks, defective steering rack, defective transmission and that the motor was unserviceable and would require replacement or rebuild. [Mechanics] provided an estimate for repairs \$6,967.18 and charged \$69.00 for the inspection.
3. XC immediately texted UD who denied knowledge of any leaks or any issues with the vehicle and advised XC that the service records were in the glovebox as previously advised.
4. On 2 September 2023, XC discovered that there was still finance due on the vehicle and contacted UD again. UD denied any knowledge of the finance but did subsequently settle the amount with the finance company.
5. UD failed to appear for the teleconference hearing and failed to make any submissions in defence of the claim.
6. The issues are: Did UD misrepresent the condition of the vehicle? Did UD sell the vehicle with clear title? Is XC entitled to reject the vehicle and obtain a refund? Is XC entitled to damages?

Did UD misrepresent the condition of the vehicle?

7. The Contract and Commercial Law Act 2017 (CCLA) applies to private sales of second-hand goods. It is very important for a purchaser to do due diligence before the purchase as the only recourse a purchaser has afterwards is if there was misrepresentation by the seller and the only damages available are based on a diminution in value of the goods.
8. A misrepresentation is a statement of fact that is untrue. This does not include a failure to disclose.

9. UD advertised the vehicle as being very tidy, drives well and regularly serviced. When asked by XC, UD said there were no mechanical issues or money owing on the vehicle. These last 2 statements were untrue, therefore they were misrepresentations.
10. Accordingly, the Tribunal finds that UD misrepresented the vehicle.

Did UD sell the vehicle with clear title?

11. The CCLA requires that you cannot sell goods without clear title. If there is finance owing on a vehicle, then it is likely that there is a security interest registered against the vehicle and therefore not clear title. It is recommended that purchasers check the Personal Property Securities Register before purchasing a vehicle or other goods that might have financing or other security claim on them.
12. Fortunately, the amount was apparently not substantial and the finance company did not repossess the vehicle. UD satisfied the debt after the fact.
13. UD sold the vehicle with finance still owing, therefore UD did not have clear title to sell.

Is XC entitled to reject the vehicle and obtain a refund?

14. XC inspected and test drove the vehicle before purchasing it, therefore he has inspected and accepted the goods, pursuant to the requirements of the CCLA.
15. XC did not have the vehicle independently inspected by a mechanic until after he had completed the purchase. Once a buyer has inspected and accepted the goods, he loses the right to reject the goods and obtain a refund.

Is XC entitled to damages?

16. XC's only remedy is damages and damages are determined on the basis of a diminution in value, which is the difference in value of the goods you thought you were buying and the goods you did buy.
17. XC has presented evidence that it will take an estimated \$7,000.00 to bring the vehicle into the condition represented by UD, thus being the difference in value.

Referee: L. Mueller

Date: 8 December 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>.