



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 515

APPLICANT XY

RESPONDENT OL

The Tribunal orders:

The claim by XY against OL is dismissed.

Reasons:

1. On 29 July 2023 XY saw an advertisement from OL [online] for a [motor vehicle]. On 30 July 2023 XY met with OL to view the [motor vehicle] for the first time. Approximately 1 hour after viewing the [motor vehicle], and taking it for a test drive, XY then paid OL \$3,500.00 by way of electronic bank transfer. XY then took ownership and possession of the [motor vehicle]. Approximately 20 minutes later XY contact OL, and advised him that she wanted to return the vehicle because it appeared to have significant faults.
2. XY claims \$1,500.00 from OL. The hearing on 11 October 2023 went ahead by way of teleconference. The Tribunal was unable to reach OL by telephone on 11 October. The absence of a respondent does not prevent a hearing from proceeding.
3. The issues to be determined are as follows:
 - a) What were the terms of the contract between the parties for the sale and purchase of the [motor vehicle]?
 - b) Did OL make a misrepresentation about the [motor vehicle] to XY that induced her to enter into the contract to purchase the vehicle?
 - c) If so, is OL liable to pay XY all or any part of the \$1,500.00 claimed?

What were the terms of the contract between the parties for the sale and purchase of the [motor vehicle]?

4. A contract is formed when there is an offer and acceptance, when consideration is paid, when the parties intended to be legally bound, and when both parties are competent to enter into a contract.
5. XY's evidence can be summarised as follows:
 - a) On 29 July 2023 she saw an advertisement for the [motor vehicle] [online].

- b) On 29 July 2023 she made contact with OL and arranged a time, the following day, to view the motor vehicle.
- c) On 30 July 2023 XY caught a bus to the agreed point and met with OL and viewed the motor vehicle.
- d) XY did a test drive in the motor vehicle.
- e) Also on 30 July 2023, approximately an hour after viewing the motor vehicle, XY paid OL \$3,500.00 by way of bank transfer.
- f) After paying OL, XY then took ownership and possession of the motor vehicle.

6. Based on XY's evidence I find as follows:

- a) The offer for the sale of the motor vehicle was made via a [online] advertisement.
- b) The acceptance for the purchase of the motor vehicle was made by XY when she transferred \$3,500.00 to OL on 30 July 2023.
- c) The consideration (or price) that was paid was that XY paid \$3,500.00, and OL then no longer had ownership and possession of the motor vehicle.
- d) I am satisfied that the parties intended to be legally bound because money was exchanged, and XY was given possession of the motor vehicle.
- e) There is no evidence to suggest that either party did not have the mental capacity to enter into the contract.

7. I find therefore that the terms of the contract were as follows:

- a) The purchase price to be paid by XY was \$3,500.00.
- b) The settlement date of the purchase was 30 July 2023.

Did OL make a misrepresentation about the [motor vehicle] to XY that induced her to enter into the contract to purchase the vehicle?

- 8. Section 35 of the Contract and Commercial Law Act 2017 ("the CCLA") provides that a representation made by one party before entering into a contract can be a misrepresentation even if the misrepresentation is made innocently and without any intention to mislead the other party to the contract.
- 9. Section 35 of the CCLA also provides that if one party is induced to enter into the contract by a misrepresentation, even if the misrepresentation is made innocently, then that party is entitled to treat the misrepresentation as a breach of contract.
- 10. During her evidence, XY read out the [online] advertisement for the [motor vehicle]. XY said that she had taken a "screenshot" of the advertisement which she read to the Tribunal. XY said that the screenshot of the [online]advertisement said:

"[motor vehicle] model

[sound system]

6 CD Stacker

2 Remotes

Alarm

New WOF and Rego

Comes with owners manual

Plus MMI Manual in PDF File Version

Swap considered – 4 Cylinder – [motor vehicles]

11. XY said that the [online] advertisement listed the vehicle for sale for \$4,000.00 and provided the phone number that she used to contact OL.
12. XY said that when doing the test drive with the vehicle she noticed two things appear on the cars dashboard being:
 - a) A “X”; and
 - b) An image of the vehicle showing a light in the area of the rear lights of the vehicle.
13. XY’s evidence was that when the X appeared on the screen, she asked OL what it was. XY said that OL’s reply was that he “did not know”. XY said that there was no further conversation about the X that appeared on the dashboard.
14. XY’s evidence was that when the image of the car showing a light in the area of the back lights appeared on the dashboard, she asked OL what that was. XY said that OL’s reply was to say that the dashboard has “always shown that” since he had owned the vehicle. XY said that she did not ask any further questions of OL and accepted what he said.
15. XY’s evidence was that approximately 20 minutes after paying for the vehicle and driving it away, she became aware of other warning light faults that appeared. XY said that it was then that she found out that the vehicle could not be driven and that it was faulty. XY asked OL if she could return the vehicle for a refund. However, XY said that OL stopped communicating with her.
16. I am satisfied that XY provided the Tribunal with honest evidence. However, I must conclude that XY failed to provide sufficient evidence to establish that OL made a misrepresentation relating to the vehicle which induced her to enter into the purchase of \$3,500.00.
17. The [online] advertisement did not provide any information as to the condition of the vehicle. Therefore OL did not make a representation regarding the condition of the vehicle in the advertisement.
18. When XY noticed the two issues that appeared on the dashboard, prior to making the purchase, she chose not to make further enquiries or to have the vehicle checked by someone qualified to diagnose the potential faults that were showing on the dashboard. In the absence of any evidence to say that OL told XY that there were no problems with the vehicle, I am unable to find that he made a misrepresentation upon which XY relied when entering into the contract.
19. As the Applicant XY must prove her case against OL. I find that in all the circumstances XY has not proven her case against OL. I accept XY’s evidence that, approximately 20 minutes after the purchase, the vehicle showed significant faults. However, XY has failed to prove that OL made misrepresentations about the condition of the vehicle prior to the purchase being completed. Therefore, XY has been able to establish that OL made a misrepresentation which induced her to enter into the contract.
20. The claim by XY against OL must therefore dismissed.

Referee: K L Hoult

Date: 16 October 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>.