



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

[2023] NZDT 573

**APPLICANT**      **ZC**  
**RESPONDENT**    **N Ltd**  
**SECOND**          **UI**  
**RESPONDENT**

**The Tribunal orders:**

The claim is dismissed.

**Reasons**

1. ZC purchased a used [bus] from N Ltd in February 2023. He bought the bus sight unseen from overseas. Upon arrival in New Zealand, he paid the price and took possession. He then commenced driving the vehicle to the South Is while converting it to a house bus.
2. During the first weeks of use he encountered various defects with the bus and paid some \$7099.53 for repairs to the catalytic temperature sensor, diesel particulate filter and the exhaust brake plus paying \$514 for camping ground expenses while repairs were affected making a total claim of \$7613.54 allowing for \$900 having been paid by N Ltd.
3. ZC now claims for repayment of those expenses pursuant to his rights under the Consumer Guarantees Act 1993, the CGA. N Ltd responds that it is not liable under the CGA as ZC was not a consumer in respect of the purchase and that no warranties apply to the sale other than those in the agreement to sell.
4. The issues to be decided then are whether ZC is entitled to the protection of the CGA and, if not, what warranties might apply to the purchase and whether any warranty has been breached.

**Findings**

**Application of the CGA**

5. I find ZC was not a consumer as defined in the CGA and is not entitled to the protections under that Act.
6. A consumer is defined in s.2 of the CGA as being a person who acquires from a supplier in trade goods that are ordinarily acquired for personal or domestic use or consumption.

7. ZC purchased a bus which is a vehicle that is not ordinarily acquired for personal or domestic use or consumption but rather for use in commerce. This is unlike a Ute which is ordinarily acquired for us in agriculture and industry but in New Zealand, is also, ordinarily acquired for personal or domestic use. While a house bus is ordinarily acquired for personal or domestic use, the vehicle was not sold to ZC as a house bus.
8. Consequently, while the bus was sold to ZC in trade, he did not purchase it as a consumer and is then not entitled to the protection of the guarantees relating to the purchase of goods set out in the CGA.

### **Applicable warranties**

9. I find there are no warranties relating to quality or fitness for purpose implied into the contract of sale.
10. As the CGA does not apply to the contract, it is then subject to the terms of the Contract and Commercial Law Act 2017, the CCLA.
11. For the purposes of s.141 of the CCLA, there are no express warranties set out in the contract such as a clause that warrants the bus as being in good working order.
12. Implied warranties are excluded from the contract by clause 10. This clause makes it clear that no warranties are implied into the contract by operation of law apart from those warranties implied under the CGA and the Motor Vehicle Sales Act 2005. The CGA does not apply and there are no allegations relating to breaches of the Motor Vehicle Sales Act brought by ZC.
13. Section 138 of the CCLA implies a warranty that goods must be fit for any purpose for which goods of this nature are sold or fit for any purpose made known to the seller and s.139 implies a warranty that goods must be of merchantable quality. However, s.139 provides no protection where defects would reasonably be expected to become apparent by inspection and ZC has not provided evidence of having had the bus inspected before buying it. Section 138 does not offer protection either because there was no warranty given that the bus would be suitable for conversion into a house bus.
14. In any event, s.197 of the CCLA provides that the protections of the CCLA may be contracted out of by express agreement. As that is set out in clause 10 and the contract has been signed by ZC, the warranties implied in the CCLA do not apply to the contract between ZC and N Ltd.

**Referee: G R Meyer**

**Date: 28<sup>th</sup> 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.

### Help and Further Information

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