

BETWEEN

CN
APPLICANT

AND

XN
RESPONDENT

Date of Order:

22 September 2015

Referee:

Referee Ashcroft

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Reasons

[1] In 2014 XN of Levin listed her 8-year-old show horse, BB, for sale on Trade Me. He was represented as having no vices, being easy to ride and great with other horses. CN was looking for a horse for her 21-year-old granddaughter, AA, who studies at DD University in Z City. AA inspected BB and rode him on three occasions over the course of one and a half to two months before her grandmother agreed to purchase him. CN paid XN \$6,000 for BB and he was delivered to her property in November 2014. CN is very unhappy with BB. She believes that she was not informed of all of BB's complications, that he has behavioural problems, is unsafe and was misrepresented by XN.

[2] In July 2015 CN filed a claim in the Tribunal for \$6,000 from XN.

Issue

[3] The issue is whether BB was misrepresented.

[4] This is a contractual dispute. The Contractual Remedies Act 1979 applies. The Consumer Guarantees Act 1993 and the protection it affords such as fitness for purpose do not apply as this was an agreement between private individuals.

[5] Section 6 of the Contractual Remedies Act 1979 entitles a party to damages for any loss suffered where a party to a contract is induced to enter into it by a misrepresentation, whether innocent or fraudulent, made to them by another party to the contract.

[6] The onus is on CN as the applicant to establish that BB was misrepresented, that she was induced to enter the contract on the basis of that misrepresentation and that she has suffered damage as a result.

[7] I have had regard to CN's arguments that:

- a. While initially calm BB showed serious issues within a few days of arriving at CN's property. He will not tie up, bucks, rears, and kicks out, is not easy to ride or great with other horses or any animals in the distance. He is described by her as being spooked by ghosts in his head and by AA as being schizophrenic and not suitable for his intended purpose;

- b. BB was described by CC who was measuring on 21 November 2014 as displaying no manners and being the worst he had encountered in 30 years, kicking and rearing;
- c. BB cannot be settled without valarium calm, which if administered means that he cannot be shown, compete or attend pony club. CN suspects that BB must have been sedated when her granddaughter rode him at XN's home;
- d. Because he is unsafe she would not allow her granddaughter to take him back to DD University with her and so he has not been ridden for many months;
- e. BB needs to be permanently medicated or put down.

[8] XN owned BB for two years as a personal show horse and when she decided not to carry on with that discipline she listed him for sale. She was clear that he never exhibited any of the behaviours described while in her care and was adamant that she would not have sold him if he demonstrated any of the traits now described. BB was vet-checked and sound prior to sale. She says that he was not medicated by her except for one occasion when she trialed him jumping with a view to eventing, which he got anxious about and did not settle to. She said that AA rode him several times and spent a long time deciding that he was the right horse for her and that both CN and her granddaughter had every opportunity to ride him and have any other inspections or tests done over a lengthy period of time. Videos of the rides were sent to CN prior to the sale going through. XN had told CN and AA that once BB left her property he was entirely their responsibility and she would not be held accountable for him because of the difficulty some horses experience in transitioning to a new home and bonding with a new rider. XN's view is that BB was beyond AA's ability, has not settled into his new home and that as a result he has developed problems.

[9] Very different horses are described by XN before the sale and by CN after the sale. To succeed in her cause of action CN has to prove that BB had vices, was not easy to ride or good with other horses when in XN's care such that she misrepresented him. There was no persuasive evidence of that. Indeed AA described him as being quiet and calm when she rode him and not playing up when horses in an adjacent paddock were bucking and rearing up.

[10] On the evidence I am not satisfied that BB was misrepresented in 2014.

[11] Absent any evidence of a misrepresentation CN is not entitled the damages she seeks.

[12] The claim is dismissed.