



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 162

APPLICANT BL

RESPONDENT JN Ltd

The Tribunal orders:

JN Ltd is to pay the sum of \$1,600.00 to BL on or before Wednesday, 28 June 2023.

REASONS

1. In December 2022, JN Ltd placed an advertisement on [online selling platform] for the sale of a 2011 [redacted] caravan ("the Caravan") at an asking price of \$42,000.00. JN Ltd was selling the Caravan on behalf of its customer, IU. IU wanted the Caravan gone, so asked JN Ltd to reduce the asking price. By March 2023, the asking price was \$32,000.00.
2. In March 2023, BL saw the advertisement and, after viewing the Caravan on 9 March 2023, he agreed with KG of JN Ltd to purchase the Caravan from JN Ltd for \$32,000.00. The terms of the sale and purchase were recorded in an agreement dated 9 March 2023 between KG of JN Ltd as the seller, and BL as the purchaser ("the Agreement"). On 9 March 2023, BL paid a deposit of \$3,200.00 ("the Deposit") by bank transfer to IU's bank account.
3. KG and IU decided not to sell the Caravan to BL after BL asked for certain things to be done prior to delivery of the Caravan. IU returned the Deposit to BL.
4. BL brings a claim against JN Ltd seeking an order that JN Ltd supply him with an equivalent caravan in a certified and compliant state at the agreed price in the Agreement, or compensation of \$12,250.00.
5. I held a teleconference hearing of the claim on 23 May 2023. BL attended. KG attended on behalf of JN Ltd and was appointed as its representative.

Issues

6. The issues I need to determine are:
 - (a) Did JN Ltd engage in conduct that was misleading or deceptive or was likely to mislead or deceive regarding the Caravan?
 - (b) Did JN Ltd make a misrepresentation about the Caravan under the law of contract?
 - (c) Was the Agreement a binding contract for the sale and purchase of the Caravan?
 - (d) Did JN Ltd breach the Agreement by refusing to complete the sale of the Caravan to BL?
 - (e) Is BL entitled to a remedy and, if so, is the amount claimed proved and reasonable?

Did JN Ltd engage in conduct that was misleading or deceptive or was likely to mislead or deceive regarding the Caravan?

7. The Fair Trading Act 1986 (“the FTA”) applies because JN Ltd runs a commercial caravan business and therefore operates in trade. Under the FTA, no person shall, in trade, engage in conduct in trade that is misleading or deceptive or is likely to mislead or deceive (s9 of the FTA), or make a false or misleading representation in connection with the supply or possible supply of goods that the goods are of a particular standard or quality (s13(a) of the FTA). If the Tribunal finds that a person has breached s9 of the FTA, it may make various orders including an order directing that person to refund money or return property to any person that the Tribunal finds has suffered, or is likely to suffer, loss or damage by that conduct (s43(3)(e) of the FTA).
8. BL says that JN Ltd misrepresented the Caravan and therefore breached the FTA. He says that the advertisement of the Caravan for sale was incorrect in various respects, and he only found out about these errors when he viewed the Caravan the same day, he saw the advertisement and asked questions about it. That is, KG confirmed to him at the viewing that there was no awning but the price would remain the same (despite the advertisement stating that the Caravan “comes with an awning”), there was no WOF and registration (despite the advertisement stating “on road costs included”, which on [online selling platform] means WOF and registration), and there was no EWOFF sticker or gas certificate available (despite the advertisement referring to such things as gas/mains ALDE hot water and heating system, oven grills and hobs, which suggests that electrical and gas requirements were up to date). BL states in his written submission that “...Since this is the type of caravan I have been seeking for a while, and the asking price was well below comparable offers, I tolerated the missing WOF, REGO, Awning, but did not contract out of these compliance items.”.
9. I am satisfied that the advertisement did not correctly represent some aspects of the Caravan which means that JN Ltd breached s9 and s13(a) of the FTA. However, I am satisfied that all the advertisement did was induce BL to view the Caravan. By the time he agreed to purchase the Caravan, he knew about the issues with the Caravan and decided to go ahead with the purchase anyway. That is, he agreed to purchase the Caravan on 9 March 2023 “as presented today” (see BL’s text message to KG on 9 March 2023) after he had viewed the Caravan and knew that there was no awning, no WOF or registration, and that there were issues to be sorted out regarding the EWOFF and gas certificates.
10. For the above reasons, I am satisfied that BL did not suffer any loss from the breaches by JN Ltd of s9 and s13(a) of the FTA, and I therefore decline to exercise my discretion to make an order under s43 of the FTA.

Did JN Ltd make a misrepresentation under the law of contract?

11. The law of misrepresentation is set out in s35(1)(a) of the Contract and Commercial Law Act 2017 (“the CCLA”) and applies to contracts for the sale of goods. For a party to be entitled to a remedy of monetary damages under s35(1)(a) of the CCLA, they must prove that a representation was made to them prior to the contract being formed; the representation induced them to enter into the contract; the representation turned out to be incorrect; and loss was suffered or will be suffered as a result. A representation is a statement of fact, made by one contracting party to another, before or at the time the contract is formed.
12. I am satisfied that s35(1)(a) of the CCLA does not apply to provide BL with a remedy from JN Ltd. This is because, as noted above, by the time BL decided to purchase the Caravan, he knew that some aspects of the advertisement were incorrect, and he agreed to purchase the Caravan “as presented today”. For these reasons, BL has not proved that there was a misrepresentation that induced him to enter into a contract with JN Ltd to purchase the Caravan.

Was the Agreement a binding contract formed for the sale and purchase of the Caravan?

13. The law of contract applies. A contract can be written or oral, informal or formal. An agreement is a legally enforceable contract where certain requirements are met, that is, where an offer has been made on sufficiently certain terms by one party to another party; the other party has accepted those terms; there is consideration (an exchange of values); and the parties intend to create a legal relationship.

14. I am satisfied that BL and KG reached a verbal agreement about the sale and purchase of the Caravan when BL viewed the Caravan on 9 March 2023, subject to KG preparing a written agreement. BL confirms this in his text to KG on 9 March 2023:

"I agree to purchase the 2011 [redacted] Caravan, [redacted], as presented today for NZ\$32,000, subject to a current EWof being issued. Upon receipt of the sale/purchase agreement I will transfer a 10% deposit of NZ\$3,200 into the nominated account. Full settlement of the purchase price will be on the 1st April 2023 or earlier."

15. KG prepared the Agreement (dated 9 March 2023) and emailed it to BL. KG had signed the Agreement electronically on behalf of JN Ltd, but BL did not sign and return the Agreement to KG. BL says he overlooked returning the signed agreement, but says he did sign it. BL presented the Agreement signed by both parties to the Tribunal. Regardless, I am satisfied that the parties acted on the Agreement, and both treated the Agreement as signed and binding.

16. The Agreement forms the contract between BL and JN Ltd. It records that the seller was JN Ltd, and the purchaser was BL; that JN Ltd was selling the Caravan on behalf of IU; the purchase price was \$32,000.00; the deposit of \$3,200.00 which was payable to IU's bank account; and that *"There is no sign of EWOF in the caravan, but one will be put on before pickup"*. There is no mention in the Agreement of JN Ltd obtaining a WOF or registration prior to the settlement of the sale and purchase. The parties agree that the WOF and registration had expired by the time BL agreed to purchase the Caravan (registration expiry was December 2022), there was no EWOF sticker or certificate available (but KG agreed to provide one before settlement, as recorded in the Agreement) and there was no gas certificate available (which KG says he agreed to sort out before settlement, although it is not recorded in the Agreement). I accept KG's explanation that it was agreed between them at the viewing that the WOF and registration would not be done prior to settlement of the transaction.

17. For these reasons, I am satisfied that there was a legally enforceable contract between the parties for the sale and purchase of the Caravan.

Did JN Ltd breach the Agreement by refusing to complete the sale of the Caravan to BL?

18. Once there is a binding contract formed and terms are agreed, the parties to the contract are bound to comply with those terms unless they mutually agree to vary or cancel them. When there is an agreement for sale and purchase of goods between a seller and a buyer, the general rule is that the seller is obliged to deliver the purchased goods to the buyer, and the buyer must accept and pay for them, in accordance with the terms of the contract of sale (s156 of the CCLA). If a seller of goods neglects or refuses to deliver the goods to the buyer, he or she is in breach of contract and the buyer is entitled to claim damages (s193(1) of the CCLA).

19. KG says that BL was very difficult to deal with and that BL breached the Agreement when he asked for the WOF and registration to be completed prior to delivery of the Caravan. KG says that he and IU decided together that they no longer wished to deal with BL and the Agreement was cancelled. He says that they were justified in cancelling the Agreement and returning the Deposit because of BL's behaviour. KG says that he had told BL that everything would be in order on settlement regarding the EWOF and gas certificates, and they had agreed that the Caravan would have no WOF and registration. KG's view is that the Agreement was void because BL tried to have a WOF and registration included in the sale when they had agreed otherwise, and BL had purchased the Caravan "as presented today".

20. BL says that he was prepared to pay the cost of obtaining the WOF and registration, but he became concerned that there could be repairs required before the Caravan passed its WOF, and he wanted JN Ltd to pay those costs rather than him. He says that he was concerned about all the issues that had arisen during the purchase and he became suspicious of JN Ltd. He says that he challenged the 'misrepresentations' made in the advertisement that the sale price "included on-road costs", and he wanted the WOF and registration to be sorted out before settlement because a caravan is a "vehicle" and is therefore required to have a current WOF and registration when sold through a dealer. He says that he did not contract out of these compliance items. He says that the Agreement does not state anywhere that JN Ltd was contracting out of its legal obligations to provide a current WOF and registration when selling the Caravan, and all he was asking for was what was standard. He says that he did not see his requests as additional or unreasonable. As BL doubted KG's promises so he also asked for evidence of the EWOFF and gas certificate being current. He also contacted IU directly about these matters. He says that KG refused to arrange the WOF and registration prior to settlement and decided instead to end the Agreement, despite BL emphasising that the Agreement was binding, that he intended to honour it and was not interested in ending it. BL says that JN Ltd breached the Agreement when it refused to complete the sale. He says that he never exited the Agreement and reluctantly gave KG his bank account details for the return of the deposit after repeated requests.
21. Taking into account all the available information, I am satisfied, on balance, that JN Ltd was not legally required to obtain an WOF and registration for the Caravan prior to settlement. Therefore, JN Ltd did not fail to meet its legal obligations when KG told BL that no WOF or registration would be supplied. The information provided by BL about the legal obligation of a dealer to provide a current WOF and registration is not conclusive, and KG says that the Caravan was a "light trailer" (under 3,500kg) that is not required to be continuously warranted and registered when not being used on the road, and he often does not provide them with caravans he sells. In any event, I accept that the parties agreed that there would be no WOF and registration when BL agreed to purchase the Caravan, and the fact that this was not recorded in the Agreement is not material in the circumstances. I also note in this regard that JN Ltd is not a registered motor vehicle trader (see the Motor Vehicle Traders Register online), and KG confirms that JN Ltd is not required to be registered as a motor vehicle trader to sell caravans.
22. I am satisfied that BL did not breach the terms of the Agreement or indicate to KG that he wished to cancel the Agreement or renege on the deal. I acknowledge that KG and IU found BL very difficult to deal with, and that they felt that he was trying to vary the Agreement by asking questions and wanting the WOF and registration completed prior to settlement. However, I am satisfied that this was not a valid reason for cancelling the Agreement. It was open to KG to say no to BL's extra requests and to go ahead and complete the deal as agreed. However, KG decided instead to cancel the deal rather than seeing it through. In this way, JN Ltd breached the Agreement.
23. I have taken into account BL's view that KG deliberately broke the deal so that he could purchase the Caravan himself and profit from a substantial market value margin. However, I accept KG's explanation that he did not originally purchase the Caravan from IU, despite it being offered at a very good price, because he already had sufficient stock. I have taken into account KG's explanation that he wanted to help IU because IU had purchased the Caravan from JN Ltd in 2021 for \$42,000.00 and was now ill and could not use it. KG therefore advertised the Caravan for sale through JN Ltd on IU's behalf with the intention of claiming commission of \$1,000.00, but decided not to take any commission when the purchase price set out in the Agreement was only \$32,000.00. He says that he later decided he would purchase the Caravan from IU for \$32,000.00, and he obtained an awning and the WOF and registration, before selling it to a third party for \$40,000.00.
24. For the above reasons, and having carefully considered the available evidence and information, and having heard from the parties, I am satisfied that JN Ltd breached the Agreement when it cancelled the Agreement and returned the Deposit to BL.

Is BL entitled to a remedy and, if so, is the amount claimed proved and reasonable?

25. Once a party has proved their claim, they are entitled to a remedy. The usual remedy for a breach of contract is monetary damages, which are designed to compensate the wronged party for losses suffered or that will be suffered. If a seller of goods neglects or refuses to deliver the goods to the buyer, he or she is in breach of contract and the buyer is entitled to claim damages (s193(1) of the CCLA). The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract (s193(2)). If there is an available market for the goods, the usual measure of damages is (unless the circumstances otherwise require) the difference between the contract price and the market or current price at the time when the goods ought to have been delivered or if no time is fixed for delivery, at the time of the refusal to deliver them (s193(3) of the CCLA). Before the Tribunal awards any amount to an applicant, it must be satisfied that the amount claimed is proved and reasonable.
26. BL brings a claim against JN Ltd seeking an order that JN Ltd supply him with a caravan in a certified and compliant state at the agreed price in the Agreement, or compensation of \$12,250.00. BL has calculated the \$12,250.00 for lost opportunity, being the value of the difference between the purchase price in the Agreement (\$32,000.00) and the average of three comparable other caravans which vary between \$40,000.00 (being JN Ltd's later advertisement for the Caravan) and \$48,000.00 (the other two examples being in [City]), with the average price being \$44,250.00. The compensation claimed of \$12,250.00 is the difference between the agreed price in the Agreement and the average comparable price of similar caravans.
27. As BL has proved that JN Ltd breached the Agreement, he is entitled to a remedy under s193 of the CCLA. However, I am satisfied that the circumstances of this dispute mean that a fair compensation is substantially less than the amount claimed.
28. There is no evidence that BL has suffered any loss apart from a lost opportunity to purchase the Caravan at a low price (and both parties acknowledge that the purchase price of \$32,000.00 was a good low price). There is no evidence that BL has purchased another caravan and, if he had done so, the price of that caravan could only be taken into account if it was a like-for-like caravan of a similar type and age without a WOF or registration. BL has already been given the Deposit back, so has not lost that.
29. I do not regard \$12,250.00 as a reasonable difference between the market value of the Caravan and the price of similar caravans at the time of the Agreement. In this regard, I note that the Caravan was advertised (prior to BL agreeing to buy it) at a purchase price of \$42,000.00 and it did not sell. It was later advertised for sale at \$40,000.00 and \$38,000.00 and it still did not sell. It was only when the price dropped to \$32,000.00 that BL became interested in it. Therefore, I am satisfied that a fair estimate of the market value at the time BL agreed to purchase the Caravan was less than \$38,000.00. I note that the three examples of other caravans that BL used to calculate the damages claimed was the Caravan when sold later to a third party, and two caravans in [City]. It is unclear whether the two [City] caravans are equivalent caravans without a WOF or registration. Further, the advertised prices can only be regarded as indicative (apart from the Caravan which KG later sold to a third party for \$40,000.00).
30. Further, I am satisfied that BL contributed to this dispute by trying to get more from JN Ltd than what he had agreed. While he is disappointed to have missed out on buying the Caravan at a low price, he was partly the cause of that disappointment. I also note that BL cannot prove any actual loss at this time, rather, he has lost an opportunity to purchase the Caravan at a low price. I also note JN Ltd carried out work on the Caravan before selling it later for \$40,000.00, and after obtaining a WOF and registration for it, so JN Ltd incurred further effort before achieving a profit of \$10,000.00.
31. Taking into account the substantial merits and justice, and given the lack of certainty about the loss suffered, I consider a fair compensation for BL for the loss of the Caravan is half the Deposit, which is \$1,600.00. This takes into account that BL lost the Caravan because JN Ltd breached

the Agreement and acknowledges that he is likely to need to pay more for a caravan if and when he purchases one. It also takes into account that BL has not suffered any actual loss to date and that he was partly to blame for the unfortunate outcome. I am satisfied that this is a fair and reasonable outcome in the circumstances.

32. For these reasons, BL is awarded damages of \$1,600.00 which JN Ltd is to pay by the date set out in the order.

Referee: D Brennan DTR
Date: 7 June 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>.