



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

**District Court**

**[2023] NZDT 135**

**APPLICANT LF**

**APPLICANT SF**

**RESPONDENT EG Ltd**

**The Tribunal orders:**

1. EG Ltd is to pay \$17,145.60 to LF and SF on or before 4pm on 30 May 2023.

**Reasons:**

2. In December 2021 LF and SF had delivered to [City 1], a set of six outdoor chairs purchased from EG Ltd in [City 2], at a cost of \$2,143.70 each. In November 2022 LF and SF advised EG Ltd that the metal frames on the chairs were showing signs of deterioration as the powder coating was chipping away, exposing the metal. At EG Ltd's request, LF and SF returned to the chairs for a physical warranty assessment, after which EG Ltd reported that any warranty claim was declined as the damage was deemed to have occurred as a result of wear and tear, or a result of the chairs being stacked. LF and SF rejected EG Ltd's offer to return the chairs and supply a pen which could be used to cover up the scratches. LF and SF are seeking a refund for the chairs.
3. The issues to be determined are:
  - (a) Are the chairs of acceptable quality?
  - (b) If no, is the failure of a substantial nature?
  - (c) Did LF and SF reject the goods?
  - (d) If yes, are LF and SF entitled to a refund?
4. EG Ltd was unable to be contacted for the hearing despite the Referee being transferred to different personal in the company, including BE, General Manager. Under the Disputes Tribunal Act 1988 I can resolve a dispute in the absence of one of the parties.

**Onus of Proof**

5. An applicant seeking a remedy in the Tribunal has the onus of proving his or her claim on the civil standard of proof which is the balance of probabilities (that is, that it is more likely than not). When assessing whether the onus of proof has been discharged by an applicant, I need to consider and evaluate the evidence presented to me by the parties and decide what is more likely than not. I would like to assure the parties that all the evidence presented at the hearings has been considered,

but this order refers only to essential evidence material to the issues and is not intended to be a full record of the hearings or of the evidence presented.

### **Are the chairs of acceptable quality?**

6. Section 6 of the Consumer Guarantees Act 1993 ('the Act') provides that where goods are supplied to a consumer, there is a guarantee that the goods will be of acceptable quality. Section 7 defines acceptable quality to include durable and fit for common purposes as a reasonable consumer fully acquainted with the state and conditions of the goods. Factors taken into consideration include the nature of the goods, the price, the nature of the supplier and the context in which the supplier supplies the goods including any representation made about the goods, and all other relevant circumstances of the supply of the goods.
7. I find that the chair failed to meet the standards required in the Act for the following reasons.
8. I accept LF and SF's evidence that based on the salesperson's advice at the time of the sale, they invested \$17,145.60 in six outdoor chairs because they believed the chairs would be durable, provide the type of permanent setting they desired for their back yard for themselves and on occasion, for their grown whānau and friends. Further, I accept that they believed the chairs would have a lifetime manufacturer's warranty should there be any arising issues.
9. I am satisfied from the photographs and evidence from EG Ltd's witness' assessment, that this was clearly not the case. In less than 12 months the powder coating on arms and legs was breaking away.
10. Section 7(4) of the CGA provides the supplier with a defence where the consumer is responsible for the failure. The first requirement for this defence is that the goods have been used in an unreasonable manner or to an unreasonable extent. The second requirement is that the goods would have complied with the guaranteed of acceptable quality is they have had not been used in that manner or to that extent.
11. EG Ltd's defence as outlined in emails to LF and SF, argue that the any damage to the chairs was due to normal wear and tear. Furthermore, they added that it appears the chairs had been stacked, and/or scrapped from the underside of a dining room table. However, I prefer LF and SF' evidence that due to the poor summer weather in [City 1], the outdoor setting had only minimal use over the summer months, and they were never stacked away as they were purchased to stay permanently in the back garden. As the Tribunal is required to apply an evidential standard with the onus being on the EG Ltd to prove their defence on the balance of probabilities, I find EG Ltd have not discharged this duty.

### **If no, was the failure of a substantial nature?**

12. Whether or not the chairs have failures of a substantial nature is significant as this determines what right of redress may or may not be available to LF and SF.
13. A failure of substantial character is defined in section 21 of the Act in any case where:
  - (a) *the good would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or*
  - (b) ...
  - (c) *the goods are substantially unfit for a purpose for which goods of the type in question are commonly supplied.*
14. I am satisfied on the balance of probabilities that the failure is of a substantial nature as the chairs are not durable and will not maintain the integrity which they were promised they would. If in less than 12 months the coating is failing and it is more likely than not that the trend would continue. I

find any reasonable consumer would not have acquired them had they been acquainted with the nature and extent of the failures.

**Did LF and SF reject the goods?**

15. Where there are substantial failures in the goods provided, a consumer is entitled to reject the goods, cancel the contract and claim a refund. I am satisfied LF and SF rejected the goods and notified EG Ltd as to the reason why the goods were rejected as required by section 22(1) of the Act.

**If yes, are LF and SF entitled to a refund?**

16. Section 23 of the CGA states that where a consumer exercises the right to reject goods, the consumer may choose to have a refund of any money paid. Section 23(2) defines a refund as 'a refund in cash of the money paid or the value of any other consideration provided, or both, as the case may require'.

17. Accordingly, I find LF and SF are entitled to a refund of \$17,145.60 and an order is made.

**Referee: DTR Goddard**

**Date: 10 May 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>.