



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2022] NZDT 209

APPLICANT QN

RESPONDENT C Ltd

The Tribunal orders:

C Ltd is to pay directly to QN the sum of \$729.00 on or before 23 November 2021.

Summary of Reasons:

- [1] The hearing was convened by teleconference. As a result of the COVID-19 restrictions, the Tribunal was unable to convene a hearing in person. Both parties appeared at the hearing.
- [2] This matter has had a long history in the Tribunal. The applicant filed a claim against the respondent in the amount of \$2,826.42 on 20 September 2019.
- [3] The applicant claimed paint and panel work carried out by the respondent on his vehicle in early 2014 failed within 4 years and he sought the cost of remedying this work, \$2,826.42.
- [4] This matter was first called in the Tribunal on 2 December 2019. The applicant appeared, the respondent did not. In the absence of any evidence from the respondent, Referee Jaduram heard and determined the claim in the applicant's favour in the amount of \$2,764.00.
- [5] On 20 December 2019 the respondent filed an application for rehearing claiming that its representative was on his way to the Tribunal when his car broke down, meaning he missed the Tribunal hearing.
- [6] On 27 August 2020 Referee Jaduram granted the rehearing.
- [7] The application was then called and heard afresh before Referee Armstrong on 9 October 2020. Both parties appeared. Referee Armstrong adjourned the hearing part heard to allow the parties an opportunity to provide further evidence to the Tribunal.
- [8] On 20 January 2021 Referee Armstrong finished hearing the application and issued her decision. The applicant was again successful in his claim but limited in damages to \$1,125.00.
- [9] On 8 February 2021 the applicant filed an application for rehearing on the basis that he disagreed with the Tribunal order and sought an opportunity to further question the respondent's evidence.
- [10] On 23 April 2021 Referee Armstrong granted the rehearing.
- [11] This matter has now been set down before me and will be heard afresh. Given the history of this claim I am satisfied the parties have had sufficient time and notice to put all relevant evidence before me. I will determine the issue on the oral evidence of the parties today and the written evidence held on the Tribunal file.

- [12] As stated above, paint and panel work was carried out on applicant's vehicle by the respondent in April 2014. By November 2017, the applicant noticed the paintwork deteriorating and contacted the respondent, requested a remedy. After some discussion the respondent refused to respray the paintwork.
- [13] In early 2018, the respondent took his vehicle to B Ltd for a respray. The applicant was charged \$2,496.65 for this work under invoice [number redacted]. He claims this amount from the respondent plus \$265.35 for parts he purchased himself and a \$62.42 credit card surcharge fee charged by B Ltd.
- [14] The respondent admits undertaking the original work and that the paint has since failed in places but denies it should be held liable for this failure.
- [15] Further the respondent claims the applicant is being unreasonable in the amount he is claiming for the repaint. The respondent accepts it may have some liability to return the amount paid for the work in 2014, \$729.00, given the subsequent failure, but denies it can be liable for the nearly 3,000.00 claimed. The respondent has provided 3 quotes from other paint and panel shops which it claims reflect the real value of the contracted work, and the likely cost of a reasonably priced respray; [Shop 1] \$747.50, [Shop 2] \$776.25, and [Shop 3] \$575.00, far below the approximately \$3,000.00 claimed.

Did the respondent breach the contract?

- [16] The parties agree that the applicant purchased a *grab one voucher* for paint and panel repairs on 3 panels of his station wagon. Given the size of the applicant's vehicle, the parties negotiated a price for this work of \$729.00. The work was completed and accepted by the applicant in early 2014.
- [17] By late 2017 the applicant became concerned about the quality of the work. He noted the clearcoat was starting to break down and turn yellow, the paint was beginning to peel from the gutters, around the rear washer nozzle, and around the sunroof.
- [18] The parties also agree the respondent refused to carry out any repairs after this failure was brought to its attention. However, at hearing the respondent admits that the paint was appearing to break down, most likely due to UV damage. Whether this occurred within a reasonable period or not the respondent defers to the Tribunal.
- [19] The applicant claims that given this failure he is entitled to his actual cost of repair. The respondent does not deny the applicant may be entitled to some remedy but claims the work supplied had a value of approximately \$700 and it is unreasonable for the applicant to claim repairs of approximately \$3,000.00. The respondent claims this repair cost is not commensurate with the value of the work contracted for.
- [20] The applicant relies upon the Consumer Guarantees Act.
- [21] The transaction is governed by the law of contract and the Consumer Guarantees Act 1993 (the Act) because the goods and services supplied by the respondent to the applicant were of the kind ordinarily required for personal use.
- [22] A consumer has a right of redress against a supplier of goods and services if they fail to comply with the warranties contained in the Act. A consumer has a number of remedies available to him or her including requiring the supplier to remedy. If the supplier does not, the consumer may have the failure remedied elsewhere at the supplier's expense.
- [23] In this case I am persuaded that a reasonable consumer would expect a vehicle repaint to last longer than 3 to 4 years. The photographs provided show the clearcoat is lifting and exposing damaged paint. Ultimately the respondent admits that the paint has not lasted as long as expected and, on that basis alone, I am persuaded that the applicant is entitled to a remedy under the CGA.

What remedy is the applicant entitled to?

- [24] Under the Act a consumer is entitled to the reasonable cost of remedy and any reasonably foreseeable loss if a supplier breaches a warranty under the Act. The essential dispute between the parties in this case is, what is the reasonable cost of remedy.
- [25] As the parties are unable to reach agreement on this point, the Tribunal is required to consider the reasonableness of the amount claimed. To determine reasonableness, the Tribunal may consider what other trades persons or professionals may charge for similar work. The Tribunal must also consider what goods and services were contracted for and the intention of the parties at the time the contract was entered into.
- [26] The terms reasonable and acceptable under the Act are deliberately open ended. It depends on what a reasonable consumer would think was acceptable based on the nature of the goods and services supplied, the price, any statements that have been made, and the nature of the supplier in the context in which the goods and services were supplied. For example, a concert violin is required to meet a higher standard than a child's cheap instrument. Parties can contract for a lower or higher specified job, and the expectation of quality and longevity must take this into account when assessing the reasonableness of any damages claimed.
- [27] Ultimately the Tribunal must decide what is reasonable or acceptable in the circumstances.
- [28] In this case the parties agree the work was commissioned using a *grab one voucher*. This is not to say that a consumer can expect a lower quality job simply because he used this method of obtaining the desired work. However, it is relevant when considering the agreed standard of work, just as in the example above.
- [29] Further the respondent has provided evidence from 3 other suppliers of what it considers the cost of remedy is likely to be, between \$575.00 and \$776.25. I have no doubt there are paint and panel suppliers that would undertake the work at this cost, just as I am equally sure there are paint and panel suppliers that would supply the same work at a considerably greater cost, for example \$3,000.00 as in this case.
- [30] I have considered the applicant's claim that he is entitled to the cost of repair at the higher end of the market. The applicant relies heavily on the quality of repair that he believes he can obtain by using a supplier from insurers' *approved repair network*. The applicant claims that this is the only way he can have a guarantee of quality work. I note the applicant did not consider this necessary when initially entering into the contract with the respondent. The applicant admits that he did not seek an *approved repairer* when contracting for the original work and was satisfied to engage the respondent based solely on price and his independent assessment of the quality of the respondent's work.
- [31] I'm not persuaded that simply because of the unfortunate experience the applicant has had with the repaint of his vehicle that he is now entitled to what he sees as a higher guarantee of quality by using a considerably more expensive repairer to remedy the respondent's work.
- [32] I have also considered the applicant's claim that the Tribunal cannot rely upon the quotes provided by the respondent. Whereas I accept some of these suppliers may no longer be in business or have suffered their own commercial misfortune, I am not persuaded that this is grounds on which to dismiss the quotes out of hand. I'm satisfied on the respondent's evidence that these are independent quotes provided by reputable paint and panel shops in operation at the time and I will not disregard these quotes simply on the basis that they are not on vehicle insurance companies' *approved repairer* list. The Tribunal has some experience of insurers' repairers, and it is evident from this experience that insurers enter into contracts with paint and panel repairers and vice versa for many reasons. These reasons are not limited to quality.
- [33] Given this evidence I am persuaded that the applicant's reasonable loss is around \$700. Given the applicant's evidence that the work undertaken by the respondent had no value to him, notwithstanding the 3 years of use, I order the amount paid returned, \$729.00. The applicant has not provided the Tribunal with any evidence that the cost of removing the applicant's work

added to the later respray costs. Therefore, there was no basis on which to add any consequential loss to the applicant's claim.

- [34] The applicant contracted for work to the value of \$729.00. He has not received value for this work for the expected time and therefore is entitled to a refund. I am not persuaded the applicant is entitled to the considerably enhanced job that he has obtained from B Ltd at the respondent's cost.
- [35] Given the evidence of the parties, I have not deducted the value of the 3 years of use the applicant did get out of the respondent's work before the paint began to fail as it is not possible to quantify this amount on the evidence put before me.

Referee: Hannan DTR

Date: 22 May 2022



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 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>.