(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court **[2023] NZDT 62**

APPLICANT **XN**

RESPONDENT **LD**

SECOND RESPONDENT **S Ltd**

The Tribunal orders:

1. LD must pay XN by $25,000.00 by 14 February 2023.

2. XN's claim against S Ltd is dismissed.

Reasons:

1. The applicant owned a [car]. The applicant had owned the car for a number of years and spent time and money restoring the car. When the applicant was incarcerated, he asked his friends KG and TQ to look after the car for him. KG and TQ were unable to pay for the storage for the car so decided to sell it to pay for debt that was owing to the storage company. The ownership of the car was transferred into the name of KG and it was sold to the first respondent for $25,000.00. Since purchasing the car, the first respondent has since spent considerable time and money restoring the car. The applicant claims that the car was converted when it was sold to the first respondent and wants the car to be returned to him.

2. The issues to be determined by the Tribunal were:

    a. Was the car converted?
    b. Did the respondent get good title to the car when he purchased it?
    c. Can the applicant have the car returned to him?
    d. If not, what remedy is available to the applicant?

Was the car converted?

3. The relevant law is the tort of conversion. A conversion is a civil wrong that occurs when there has been the unjustified taking of or dealing with someone's property contrary to their ownership rights.

4. I am satisfied that the car was converted when KG transferred the title to his name without the consent of the applicant and then sold it to the first respondent.

Did the respondent get good title to the car when he purchased it?

5. A seller cannot pass on title to goods that she or he does not have (section 149 of the Contract and Commercial Law Act 2017 (CCLA)). Buyers of stolen goods cannot obtain title, nor pass on title to innocent buyers.

6. There are exceptions to this rule, for example the original owner has done something to create the appearance that the seller has a right to sell the goods. There is no evidence of any such actions by the applicant in this case and the fact a third party gave possession of the car to the first respondent is not enough to transfer title to the car.

7. The first respondent argued that he had checked publicly available information about the car and saw that it was not reported as stolen and there was no money owing on the car, and therefore was of the view that KG had a right to sell the car. However, at the point that the car was sold to the first respondent, the applicant had no actual knowledge that the car was about to be sold as he was incarcerated and had little contact with the outside world. Therefore, the applicant could not have reported the car as having been stolen.

8. The respondent had argued that the principle of voidable title applied (section 151 of the CCLA) to give the respondent good title. However, voidable title would apply in the situation where the original owner sold the car to a buyer in circumstances which would render the contract voidable, then the buyer sells the goods to a third party acting in good faith before the original owner avoids title, thereby giving the third party good title. These were not the circumstances in this case – the applicant never sold the car to KG and the applicant had no knowledge of the sale to the respondent.

9. Therefore, the respondent did not obtain good title to the car when he bought it from KG.

Can the applicant have the car returned to him?

10. The applicant told the Tribunal he wanted the car returned to him as it had considerable sentimental value and he wanted to continue his work of restoring the car with a view to eventually selling it and hopefully creating enough for a nest egg.

11. The Tribunal is able to order the return of the car pursuant to section 19(1)(c) of the Disputes Tribunal Act 1988. This order should be accompanied by an alternative order to pay a sum of money should the order not be complied with. The first hearing was adjourned to provide the parties with an opportunity to provide evidence as to the value of the car.

12. However, it is also important for the Tribunal to consider the state of the car when it was purchased by the first respondent and that state of the car as it is now. The reason for this is that if the car has been improved by the work done and the money spent on it by the first respondent who was an innocent buyer, it may be unjust for the Tribunal to order the return of the car to the applicant. The reason for this is that the applicant cannot make a profit out of the injury to him. This is established in New Zealand case law in *Nash v Barnes [1922] NZLR 303*, the facts of which are very similar to those in this matter.

If not, what remedy is available to the applicant?

13. This is a difficult fact scenario as whatever the outcome, both parties will suffer loss due to the fact that both have worked on the car and spent money on it, and both have an interest in seeing it restored and then sold to recover the money spent.

14. Both parties acknowledged that work done on this type of car was seldom done to obtain a profit when sold but was done due to their interest in classic cars and a desire to see them restored.

15. The first respondent told the Tribunal that he had spent a considerable amount of time and money restoring the car with the work done by himself, third parties and staff from the second respondent. The first respondent estimated that he had spent about $63,500.00 on the car to date, which did not include his personal time, or the cost of the engine rebuild. Therefore, the

first respondent claimed that the car had been significantly improved by him and it would be unjust for him to have to hand the car back without being compensated in some way for his work and costs incurred.

16. The applicant told the Tribunal that he was not in a position to compensate the first respondent for his costs and should not have to do so given he was the one who has been wronged. The applicant also said the improvements were of no value to him and actually undid all the good he had done in the years he had spent restoring the car. He told the Tribunal that he was unhappy with the paint colour and would need to restore it back to what it was before it was sold to the respondent and re-strip the engine to ensure the engine worked as he wanted it to.

17. I considered the evidence provided by both parties as to the state of the car at the time it was converted, and the work done and money spent on the car by both parties. Given the amount of money spent by the first respondent in restoring the car and considering the state of the car when it was sold to him compared to the state of the car now, I find that it would be unjust for the car to be returned to the applicant.

18. However, this does not leave the applicant without a remedy. The law provides that if it would be unjust for the car to be returned to the applicant, the applicant can still claim damages equal to the value of the car. The question then becomes what value is given to the car which as it stands, is still not finished and not something that is commonly traded, given its rare and unique status.

19. As set out above, the parties were provided with an opportunity to provide evidence to the Tribunal as to the value of the car. However, I accept that this was difficult for the parties to do given the current state of the car, lack of complete documentary evidence about what was spent on the car by each party and the fact that the car is so rare and unique and not something which is commonly bought and sold.

20. Nash v Barnes stated that the true owner of a car which has had sums spent on improving it by an innocent buyer can only claim the value of the car at the time of the conversion of it. The only evidence of the value of the car at the time it was converted, is the amount the first respondent paid for it, which was $25,000.00.

21. The applicant argued that the car was sold by KG for less than it was worth as he had paid more than this for it several years earlier and then spent time and money on the car. However, in the absence of any documentary evidence confirming the applicant's statements about value, all I have to rely on is the evidence of what was paid for it.

22. Therefore, I find that the first respondent must pay the applicant $25,000.00 being the value of the car at the time it was converted.

23. The applicant also made a claim against the second respondent. However, as the car was purchased by the first respondent and was now in the first respondent's name, there is no basis on which the applicant can make a claim against the second respondent. Accordingly, the claim against the second respondent is dismissed.

Referee: **K. Armstrong**
Date: **17 January 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.