



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2022] NZDT 123

APPLICANT LB

RESPONDENT VB Ltd

The Tribunal orders:

VB Ltd is to pay the sum of \$17,000.00 to LB by no later than 23 September 2022.

Reasons:

1. LB claims he purchased a car from VB Ltd for \$69,000 on 5 May 2021. The vehicle was purchased with finance of \$39,000 from NUG. The balance of the purchase price of \$30,000 was noted on the sale document as being paid in cash, however LB claims he did not pay that amount and was to pay it off in instalments directly to VB Ltd. This arrangement was informal and is not recorded on any paperwork.
2. LB claims that after he had possession of the vehicle for approximately 6 months, he was pulled over by the Police and was told the vehicle was stolen. The matter was then investigated by the Police, with the vehicle finally being seized by Police as a stolen vehicle in late 2021.
3. LB advised VB Ltd. VB Ltd refunded LB a total of \$22,000 of the \$39,000 that had been paid. LB claims VB Ltd did not want to refund the full amount he had paid as they felt they were not responsible for the fact the vehicle had been stolen when they purchased it. LB therefore claims in the Disputes Tribunal for compensation for his loss. As LB paid \$39,000 towards the vehicle price with the finance received from NUG, and as he has only been repaid \$22,000 by VB Ltd, the claim is for the difference, being \$17,000. It is for the Tribunal to determine if LB is entitled to full refund of that amount.

Is LB entitled to a refund of the price paid for the vehicle?

4. As the car was sold by VB Ltd in the course of their usual business activities, the Consumer Guarantees Act 1993 applies to the sale. Section 5 of that Act provides a guarantee that a seller has the right to sell the goods and a guarantee that the consumer has the right to undisturbed possession of the goods. In the event goods fail to comply with a guarantee, section 18 of the Act enables the consumer to obtain a remedy for the failure.
5. LB has provided evidence the vehicle was seized by the Police as being a stolen vehicle. As such, LB was unable to enjoy undisturbed possession of the vehicle.

6. As the vehicle was stolen when VB Ltd took possession, they acquired no better title to it than the thief had. As such, they had no right to sell the vehicle without the knowledge or consent of the true owner. As VB Ltd had no right to sell the vehicle, they could not pass title on to LB, which is a breach of their obligations under section 5.
7. As VB Ltd have sold a vehicle they had no right to sell, in breach of section 5 of the Consumer Guarantees Act, LB is entitled to a remedy under section 18.
8. The defect in the title cannot be rectified as VB Ltd had no right to sell the vehicle. I therefore find it appropriate to cancel the contract and order money paid by LB be refunded.
9. On the evidence provided by LB, his loss is the difference between the amount borrowed from NUG of \$39,000 to purchase the car, and the amount refunded to date of \$22,000, the difference being \$17,000. LB has provided evidence of the loan from NUG. In view of the above, I find VB Ltd liable to pay the amount of \$17,000.
10. The hearing took place on 15 August 2022 by teleconference, however as VB Ltd did not answer calls made to the number provided for them, the hearing proceeded in their absence.

Referee: K. Edwards
Date: 25 August 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 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>.