



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 253

APPLICANT AU

RESPONDENT E Ltd

The Tribunal orders:

E Ltd, is to pay AU the sum of \$10,000.00 by no later than 19 July 2023.

The counterclaim is dismissed.

Reasons:

1. In January 2022, AU contacted XI, director of D Ltd (now called E Ltd following a name change on 9 May 2023), after seeing buses advertised [online]. After viewing available buses, the parties agreed AU would purchase a bendy bus, [registration number], for the sum of \$30,000. It was also agreed XI would get a COF and do all work required for the bus to get the COF. XI obtained a list of required works, and as it was quite extensive, AU agreed to pay an additional \$2800. It was expected the COF would be completed within two weeks. AU then paid a deposit of \$10,000.
2. Work to complete the COF took nearly six months. On completion, XI asked for a total of \$15,000 towards the COF costs. AU claims they agreed on \$5100, provided XI supplied invoices to support the cost of materials used.
3. AU claims XI did not supply invoices as promised. By July 2022, AU asked that either the bus be delivered, or he be given a refund of the deposit. Shortly after, XI blocked any further contact. AU has therefore claimed in the Disputes Tribunal for recovery of the deposit paid. D Ltd have counterclaimed for the sum of \$15,000, being the cost of repairs carried out.
4. It is for the Tribunal to determine if AU is entitled to a refund of the deposit paid, or if is liable to pay any additional amount to D Ltd.

Is AU entitled to a refund of the deposit? If not, is AU liable to pay for repairs undertaken to date?

5. Once the deposit had been paid, the parties had a binding contract for the sale and purchase of the bus. On the evidence presented, I find the contract was varied on completion of the COF by agreement, the agreement being for AU to pay an additional \$5100 in return for copies of invoices to support the cost of works.

6. I find D Ltd in breach of the contract by failing to deliver the invoices as promised and for failing to deliver the bus on completion of the COF. As D Ltd failed to deliver the bus and invoices as agreed, I find it reasonable to cancel the contract and order the deposit paid of \$10,000 be refunded in full.
7. The counterclaim fails as there is no evidence the parties agreed AU would pay the sum of \$15,000 for COF repairs. In addition, AU believes the bus has been resold by D Ltd.
8. This matter was heard today by teleconference at 2pm, however as a representative of D Ltd did not answer calls made to the number provided, the matter proceeded in their absence.

Referee: K. Edwards
Date: 30 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>.