



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

[2023] NZDT 728

**APPLICANT**      **BP**

**RESPONDENT**    **G Ltd**

**The Tribunal orders:**

The application is dismissed.

**Reasons**

1. On 11 December 2021, BP entered into a contract with G Ltd to provide concept plans for a home on BP's property. The amount agreed to be paid for the concept plans was \$3,000.00 which would be deducted from the cost to build the home if a building contract was entered into with G Ltd. There was a clause in the contract that states:
  2. "... in the event of a design agreement/building contract not being entered into, the deposit shall be non-refundable."
3. BP decided to enter into a contract with another company to build her home and she seeks a refund of the \$3,000 paid to G Ltd. She said that the first plans she received from G Ltd were not what she asked for, there was a lack of communication from G Ltd, and she did not get the second design until after she told G Ltd that she did not want to proceed.

*Is BP entitled to a refund of the deposit paid?*

4. I find that she is not.
5. CK, who represented G Ltd, accepts that there were some delays in communications with BP particularly over the Christmas break. However, there was no agreement as to time for delivery of the concept plans and BP did receive the amended concept plans on 4 April 2022, before she told G Ltd that she did not wish to proceed further with G Ltd. G Ltd have therefore fulfilled their obligations under the agreement and there is no breach that would entitle BP to a refund or compensation.
6. BP's claim is therefore dismissed.

**Referee:** R Merrett

**Date:** 14 December 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>.