



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1334

APPLICANT BT

RESPONDENT DC

The Tribunal orders:

1. DC is to pay to BT the sum of \$1,680.00 on or before 31 August 2020.

Reasons

1. Ms T paid the sum of \$3,580.00 to a friend, TD, for him to hold in an account on her behalf.
2. Unbeknownst to Ms T, the account to which she transferred the money was a joint account between Mr D and his ex-partner, Ms C.
3. When Ms C noticed the money in that account, she transferred the sum out, and only returned \$1,900.00 to Mr D. Ms C retained the balance of \$1,680.00 to pay off a credit card debt that had arisen during her relationship with Mr D and for which she believed he was responsible.
4. Ms T has filed a claim seeking the balance of \$1,680.00.
5. The issues to be considered are: (a) Does the Tribunal have jurisdiction to consider the matter? (b) If so, is Ms T able to seek restitution from Ms C of the missing funds?

Does the Tribunal have jurisdiction to consider the matter?

6. I find that the Tribunal does have jurisdiction to consider the matter, for the following reasons:
 - (a) The Tribunal has jurisdiction in claims based in contract, tort (where a breach of duty results in damage to physical property) and in quasi-contract. In this case, there was no contractual obligation agreed between the parties, and no physical damage to property. The loss was purely economic. However, I am satisfied that a claim could be made in quasi-contract for return of the money.
 - (b) Quasi-contract arises in equity where one party can be said to have been unjustly enriched at the expense of another and is required as if ("quasi") there was a contract between the parties, to make restitution to the applicant. Such a claim can be made, for example, where a payment is made under a mistake or where work is done under an ineffective contract. The object of a restitutionary claim is not to compensate a party for loss suffered as a result of a wrong, but to put the applicant in the position he or she would have been in had some unexpected circumstances occurred that by chance or error resulted in the respondent receiving a benefit that was unexpected or not intended.

(c) This describes the claim being made in this case.

Is Ms T able to seek restitution from Ms C of the missing funds?

7. To succeed in the claim, Ms T would need to establish that money was paid under a mistake to Ms C and that it would be unjust for to retain the benefit of the funds. If this was established, then Ms C would need to establish that she received the funds in good faith, that she has altered her position in reliance of the validity of the payment and, having regard to all the circumstances of the case, it is inequitable to grant relief.
8. Applying these principles, I find that Ms C is liable to return the money, for the following reasons:
- (a) Ms T could have reasonably expected that Mr D would put the money into an account that he controlled, where it was safe. When he offered to put her money into an account in his name, he had an obligation, as “bailee” of the funds, to do so.
 - (b) Ms T had no idea that the money was to be put into a joint account, where it could be removed by Ms C.
 - (c) The money received by Ms C was therefore paid to her under a mistake.
 - (d) In the absence of any information to the contrary, it would be unjust for Ms C to keep Ms T’s money. It was not Ms C’s money and was never intended to be paid to her.
 - (e) However, the Tribunal must then consider the defences raised.
 - (f) In assessing all the evidence presented, I am satisfied that Ms C transferred the money out of the joint account and into her own account in good faith. Ms C had no idea at that time that it belonged to a third party. She states that she saw the money come into the joint account because that account still appears in her list of accounts on internet banking. The account had been dormant for some time, as she had separated from Mr D three years ago. Ms C states that she expected a COVID wage subsidy from WINZ at about that time and had been keeping an eye on her balances in case some funds appeared. Whilst she would not have expected the money to go into that account, the balance was not dissimilar to what she expected. She therefore thought nothing of the account it had gone into and transferred the money out, believing it to be her wage subsidy.
 - (g) Ms C transferred the funds out into her own account on the day she first saw them, being 6 April 2020. Mr D immediately contacted Ms C to explain that it was his, and that he wanted it back. Ms C states that he never explained it was Ms T’s money. I am unable to make a finding that he did tell her whose money it was.
 - (h) Ms C then paid the QCard debt in two payments, one on 7 April 2020 (\$100.00), and one on 8 April 2020 (\$1,500.00). On 8 April, she returned the balance of \$1,900.00 to Mr D.
 - (i) Ms C would not be liable to return the funds if she genuinely thought, when she paid the QCard, that she was using Mr D’s money. This would be so, regardless of who in fact ought to have paid the QCard, as between her and Mr D. However, if Ms C knew by the time she paid the QCard that it was Ms T’s money, then it is harder to see a defence to repayment.
 - (j) I am satisfied that Ms C did know, by the time she transferred the money to QCard, that it was Ms T’s money. I have reached this conclusion on the basis of the following evidence:
 - Ms T contacted Ms C by phone call and three texts on 7 April explaining the situation. The phone calls were not answered, but the texts are likely to have been read. This alone was enough to put Ms C on notice that it was not Mr D’s money. Mr D was remiss would have been remiss if he also did not explain this on 6 April, but nonetheless, a

direct explanation from Ms T should have halted any further use of the funds until Ms C could properly investigate the matter.

- At 11.39 am on the morning of 8 April, Ms T's friend (F) texted to seek the return of the funds. The sum of \$1,900.00 was then returned to Mr D sometime before 3.46pm (when Ms T texted to thank her for doing so), but the balance was paid to the QCard. It would be open to Ms C to prove that she was texted by F *after* the QCard was paid, but evidence of exact timing was not presented. It also appeared from the wording of F's text that no funds had yet been returned. In any event, Ms C already knew, from Ms T's texts on the 7th, that there was a claim against the funds.

(k) Had the funds been used without knowledge of Ms T's ownership, then the outcome would have been the reverse. Ms C would have received and used the funds in good faith and altered her position in reliance of how things seemed.

(l) However, having been notified of the error, she needed to return all the funds, and take up her dispute with Mr D in the appropriate forum for the repayment by him of the QCard balance.

9. I have had regard to the fact that Mr D is at fault for breaching his duties as bailee of the funds to Ms T, and for not explaining the true ownership of the money to Ms C on 6 April. I have given consideration to whether a claim can be brought in equity against Ms C when there is a claim that can also be made in law against Mr D. A claim in negligence against Mr D is not within the jurisdiction of the Tribunal, as the loss does not involve damage to physical property and is purely economic (s10(1)(c)). In any case, regardless of whether this would create an access to justice issue, it is not contrary to the substantial merits and justice that the funds be sought from the person who used them, provided that person had knowledge of the true position. I am satisfied that it is likely that Ms C did have that knowledge by the time the QCard was paid. I accept that Ms C had a genuine and firm belief in her right to receive a contribution from Mr D to her QCard debt. That is a matter she can still take up with him.

Conclusion

10. For these reasons, an order has been made for Ms C to repay the \$1,680.00 to Ms T.

Referee:

J Robertshawe

Date: 10 August 2020



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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.