



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 768

APPLICANT C Ltd

RESPONDENT HM

The Tribunal orders:

HM is to pay the sum of \$512.91 to C Ltd on or before Monday 15 January 2024.

Reasons:

1. In August 2022, HM inquired about purchasing [Trees] from C Ltd. On 22 August, C Ltd provided HM with quotations for purchase and delivery costs of different sizes of the trees. and said that they could be delivered “tomorrow if you need”. HM responded by email, “I will get 2 of the larger ones”, and received the reply, “Very good. When would you like delivery? Would you be ok with paying online via internet banking?” That evening, HM replied, “Done yes delivered please”. Early the next morning, C Ltd emailed, “Thank you. We’ll be delivering tomorrow.”
2. The trees were delivered to HM’s home the next day, but HM did not respond to requests for payment. When C Ltd referred the debt to a debt collector, HM refused to pay on the basis that he understood the trees would not be delivered until he had paid by internet banking. He said that something came up, so he went away, and that the trees had dried up by the time he returned some weeks later.
3. C Ltd now claims \$848.38, comprising payment of its \$485.00 invoice, external debt collection costs of \$213.38, and internal administration costs of \$150.00.
4. HM attended the first hearing, which was adjourned because his phone battery ran out. He did not attend today’s hearing. The absence of a party does not prevent the hearing going ahead.
5. The issues to be determined are:
 - a) Was a binding contract formed and, if so, what was agreed regarding delivery?
 - b) What sum, if any, is payable?

Was a binding contract formed and, if so, what was agreed regarding delivery?

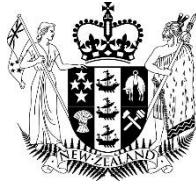
6. The common law of contract allows parties to enter into legally binding agreements. A contract need not involve a formal written document; an agreement can be formed by informal words, orally, or inferred from the parties’ conduct, so long as there is (as assessed objectively) an intention to contract.

7. HM said that he had purchased from C Ltd previously, and goods had never been delivered until payment was made. He said he was told that if he wanted to proceed, he would need to pay in advance, and the goods would be delivered once payment was received.
8. However, there was no evidence to support HM's recollection of what he was told, and C Ltd denied any such policy. Nothing in the email exchange before delivery suggested that the contract would not be regarded as final until payment was made.
9. Also, C Ltd produced evidence that, in September 2023, HM asked a question using the contact form on its website regarding the company policy on when the trees must be paid for, and it had replied that it was based on "a trust model", so that if a person agrees to receive trees and that delivery is actioned, payment is expected. The response continued, "More often than not people pay either, prior to dispatch which is our preference or within 7-days." Although this response was after the dispute, the question was semi-anonymous (unless the email address was recognised) and there was nothing in the reply suggesting the person responding realised at the time who had submitted the question.
10. In any event, HM's response "Done yes delivered please" suggested in the context that he had already made an online payment, so he can hardly object if C Ltd relied on his representation by delivering the goods.
11. HM was informed by email at 7:58 the next morning that the trees would be delivered the next day, and he did not make any objection. He had previously been informed delivery could be the next day. He had been asked when he wanted delivery, and chose simply to respond, "delivered please", so C Ltd was entitled to understand that delivery the next day would be acceptable.
12. There was a sufficiently clear offer and acceptance without anything to indicate the agreement was conditional on payment or that delivery should be delayed, so I find that HM is contractually obliged to pay for the trees.

What sum, if any, is payable?

13. C Ltd cannot recover its administrative costs since s 43 of the Disputes Tribunal Act 1988 provides that, with very limited exceptions that do not apply here, costs shall not be awarded against a party to any proceedings before a Tribunal.
14. Sometimes reasonable debt collection costs can be recovered where provided for in the contract, at least if the debtor did not initially raise a dispute that would allow a claim to be made in the Tribunal. However, there was no such contractual provision in this instance, so C Ltd must bear its own debt collection costs.
15. Under s 20(1) of the Disputes Tribunal Act 1988, the Tribunal may, if it thinks fit, award interest calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016 for the whole or any part of the period from when the cause of action arose to the date of the order. I have awarded interest from 31 August 2022, which comes to \$27.91, so the total sum to be paid is \$512.91.

Referee: E Paton-Simpson
Date: 18 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 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>.