



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 451

APPLICANT C Ltd

RESPONDENT HN

The Tribunal orders:

HN is to pay C Ltd \$2060.00 on or before the 25th day of July 2023.

Reasons:

Introduction:

1. C Ltd entered into a contract via a contra agreement with HN around the 15th day of November 2022. C Ltd was to paint a stock car belonging to HN free of charge and HN was to put signage for C Ltd on the wings of the car. SC, the owner of C Ltd thought that this was a great way to advertise his business at the [Speedway].
2. The car was painted a pearly white colour. HN did not pick the car up but saw it soon after. He didn't like the colour and had the car repainted at his own cost. He did not speak to SC about having the vehicle repainted.
3. Once repainted, the C Ltd signage was not displayed on the stock car. The car was driven at the [Speedway] and damaged so that it is no longer in use.
4. On the 15th day of February 2023, SC sent an invoice to HN for \$2062.00 for the paint work done on the stock car.
5. The issue to be resolved is whether either party breached the contract and if so, what the remedy for the breach should be?

Did either party breach the contract and if so, what should the remedy be?

6. A contract is formed when parties decide to exchange something of value, creating an obligation to perform a particular duty that is legally enforceable. A contract is binding when the parties agree on clear and certain terms. The parties exchanged a paint job for an opportunity to advertise a business. Both items have value to the respective owners. There is no dispute that under the contract no money would change hands.
7. SC had shown HN the intended colour that the stock car would be painted on his computer and on a car that C Ltd had at the yard. SC said that he wanted the car painted pearly white as he was the sponsor and thought he should be able to choose the colour. HN said that he wanted

the car to be painted white like a piece of paper. He said he wanted to keep the colour simple. His son who was to drive the car wanted it painted white.

- 8 SC said that HN did not say anything about wanting the car painted white like paper. He said that HN had said he didn't care what colour the car was painted. HN said that he may have said this, but he also said he wanted it painted white like paper.
- 9 The car body was picked up after being painted pearly white. HN did not pick the car up but saw it soon after. HN didn't say anything about the colour of the car and had the car painted white without telling SC.
- 10 SC says that HN breached the contract by painting the car white without telling him. He further said that HN breached the contract by not putting the signage for C Ltd on the car when it was raced at [Speedway]. As a result of this, SC invoiced HN for the paintwork on the car. SC wanted to be paid for the work that he had done because he had no benefit out of painting the stock car.
- 11 HN says that he didn't want the car painted pearly white and he had it repainted at his own cost. He said that he had not displayed the signage of C Ltd on the car because it was not sent to him. He said that he expected the signage to be put on the car when it was painted.
- 12 HN made the offer to continue with the contract by putting C Ltd signage on another vehicle and racing it at the speedway. If agreed this would have the effect of varying the original contract. SC declined that offer saying that he no longer wants to be associated with HN.
- 13 It is clear the agreement was for SC to paint the car in return for HN allowing the car to display C Ltd signs. As HN knew the colour the car was to be painted, and as he did not instruct SC to paint it a different colour, I find SC has not breached the contract.
- 14 I find HN has breached the contract as he repainted the car without SC's knowledge and failed to display the C Ltd signs.

Conclusion:

- 15 I find that SC had done all that was required of him under the contract when he completed the work of painting the car. He received no benefit for the work that he had done and is entitled to claim the invoiced amount of \$2062.00 from HN.

Referee: Verdun Tawhara
Date: 6th day of July 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>.