



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 27

APPLICANT **D Ltd**

FIRST **BQ**
RESPONDENT

SECOND **GN**
RESPONDENT

The Tribunal orders:

The application is dismissed.

Summary of Reasons:

[1] The hearing was convened by teleconference. BQ did not appear, the applicant's representative and GN did.

[2] The applicant claims payment for tiling work carried out at an unspecified address in [An area] in early 2021. Despite the adjournment allowed, the applicant has not provided any written evidence of the contract, the address where the work was carried out nor the scope of the work. The applicant has also not provided an invoice for the alleged work, notwithstanding its claim that it has issued an invoice. Neither has the applicant stated who it issued the invoice too.

[3] GN has appeared at hearing and denied liability for any payment. GN's evidence is that he was contracted to provide cabinet making at the same property¹ and was asked to recommend a tiler. The applicant was engaged by the contractor employed by the homeowner to renovate their kitchen. GN claims that he has not been paid for his work either.

[4] The core issue is, who did the applicant contract with? GN and the applicant agree the applicant did carry out tiling work though the cost of this work is not supported by any evidence as stated above. It appears the applicant's habit is to not evidence its contacts in writing, nor provide quotes, estimates or written scope of works. Neither it appears does the applicant clarify who is going to pay for the work before it is undertaken.

[5] There are a number of possible contracting parties. GN admits he agreed to contact the applicant on the contractor's behalf, not that he agreed to pay for the work personally. I have been given two text messages which identify some possible contractors. The first dated 20 May² references BQ as a designer/consultant of the [Kitchen design company 1].³ The second dated 28 March names OL who appears to agree that he is the person who should pay the applicant, but has not done so. A Mr OL is

¹ GN is also unable to identify the property.

² Neither text disclose the year.

³ I can find no registered company using this name.

named as a director and shareholder of [Kitchen design company 2], but whether it is the same OL is not clear.

[6] The applicant was offered and refused an adjournment to further clarify the situation but declined on the basis that GN should be liable as he introduced the applicant to the work and therefore should have to pay. The applicant was aware that the work was not being carried out at GN's property and did not clarify with GN who was the head contractor.

[7] The Tribunal is required to apply an evidential standard. The burden is on the applicant to prove their claim on the balance of probabilities. On the evidence provided, it is simply not possible to determine the liable party. Further given the paucity of evidence provided by the applicant, in particular any scope of work or invoice, notwithstanding the adjournment allowed, I have no basis on which to determine the amount claimed as due even if I was persuaded GN is personally liable, which I am not.

[8] The applicant has not met its burden in proving on the balance of probabilities who it contracted with and therefore the application must be dismissed.

Referee: Hannan DTR

Date: 7 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 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>.