



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1419

APPLICANT DX
RESPONDENT

RESPONDENT I Ltd
APPLICANT

The Tribunal orders:

1. I Ltd's claim against DX is dismissed.
2. DX's claim for non-liability is upheld.

Reasons

1. In December 2016 DX telephoned I Ltd to book a service for a car. On 2 December 2016 I Ltd's technician came to DX's address and provided a quote for the work to be done to get it to a warrant of fitness standard. The work was done and an invoice was sent to DX. On that same day DX emailed I Ltd requesting that the invoice be sent to K, who was the owner of the vehicle. I Ltd continued to send DX invoices for the work done and eventually referred the debt to Baycorp. I Ltd now makes a claim in the Disputes Tribunal against DX seeking payment of the value of the invoice - \$453.01. DX has also made a claim seeking non-liability for \$818.95 which she says is made up of the original amount of the invoice sent to her and collection fees.
2. The issues to be determined are as follows:
 - (a) Was DX a party to the contract with I Ltd?
 - (b) If so, has she breached the contract by failing to pay the invoice?
 - (c) If so, how much ought DX pay?

Was DX a party to the contract with I Ltd?

3. The law that I have considered in relation to these claims is the law of contract relating to the formation of a contract and the law of agency.
4. Simply put a contract is an exchange of promises between two or more parties. In order to be bound by a contract all the terms of that contract must be clear and certain.
5. Further. where an agent, having authority to contract on behalf of another, makes the contract in her own name, not disclosing that she is a representative, the doctrine of the undisclosed principal comes into play. By this doctrine, either the agent, or the principal, may be sued. Where it is known that the agent is acting on behalf of a principal, then only the principal may be sued.

6. I Ltd states that a contract was formed with DX when she booked them to come to her address and when she accepted the quote for the work to be done. They say that they were not aware that K was the owner of the vehicle until after the work was done and after the contract had been formed.
7. As the entity seeking to enforce the contract against DX, the onus is on I Ltd to prove its case on the balance of probabilities. In this case that means that they are obliged to show that more likely than not a contract was formed with DX when she rang to book the car in and/or when she was acting as an undisclosed agent when she accepted the quote
8. I Ltd states that DX was a party to the contract because she was the person who rang I Ltd and booked a technician to go to her address and service the car. They say that she was the person who accepted the quote and that at no stage during this time were they made aware that the owner of the vehicle was K and that he was the person for whom she was making these arrangements. Their evidence is that it was not until after an invoice was sent to her that DX emailed them to say that the invoice should be sent to K “for accounting purposes”.
9. However, I find that I Ltd has not been able to show that DX was a party to a contract either at the time she booked the service or as an undisclosed agent when she accepted the quote.
10. Firstly, I do not accept that a contract was formed when DX phoned and booked a service. At this stage there was no concluded or enforceable contract because all the terms of the contract had not yet been determined – for example the scope of the work to be done or the cost. An enforceable contract between the parties was not formed until a quote was put forward (an offer) which was then accepted. It is only at this stage that all the terms of that contract were clear and certain.
11. Second, there is insufficient evidence to show that more likely than not DX was acting as an undisclosed agent when the quote was accepted. I say this because while I Ltd’s employee’s written statement indicates that DX verbally accepted the quote, there is no reason to prefer his written statement over DX’s verbal evidence that it was K who accepted the quote when she passed the phone to him to do so.
12. For these reasons I am dismissing I Ltd’s claim against DX, which conversely means that I am upholding DX’s claim for non-liability.
13. Given the above findings there is no need for me to consider the second and third issues described at paragraph 2 above.

Referee: C ter Haar
Date: 28 April 2021



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

You can only appeal outside of 20 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>.