



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1340

APPLICANT EU

RESPONDENT NO

The Tribunal hereby orders:

NO is to pay EU \$12,800.00 by 8 April 2020.

Reasons

1. In November 2019 EU paid a 50% deposit to P Limited for a cabin and shed to be installed at his property. The deposit amounted to \$12,800.00 in total and on 20 November 2019 NO, P Limited's sole director, acknowledged receipt of the deposit. On 19 November 2019 NO advised that the cabin and shed would be installed in the second week of December 2019. On 5 December 2019 EU's partner, Ms C, emailed NO to confirm the installation date. She was advised that P Limited had gone into liquidation on 25 November 2019. EU now brings a claim against NO personally in the Disputes Tribunal for \$12,800.00. NO did not attend today's hearing.
2. The issues to be determined are as follows:
 - (a) Is NO liable under the Fair Trading Act 1986 for misleading conduct?
 - (b) If so, is he liable to refund EU the deposit he paid?

Is NO liable under the Fair Trading Act 1986 for misleading conduct?

3. Section 9 of the Fair Trading Act 1986 (FTA) provides that no person shall in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
4. While I accept that the contract EU had with the company, there have been a number of cases in New Zealand where the court has made it clear that operating through or on behalf of a company will not afford individuals who are company directors blanket protection against liability under the FTA. For example, in *Kinsman v Cornfields Ltd and Others* (2001) 10 TCLR 342 the Court considered that it would be a rare case where a director who participated directly in negotiations would be able to avoid liability under section 9 on the grounds that he or she was only acting on the company's behalf.
5. In this claim, EU negotiated directly with the sole director of P Limited, NO. Further to this, in the absence of any evidence to the contrary, I find that when NO acknowledged receipt of the deposit and confirmed that the cabin and shed would be installed in the second week in

December, he would most likely have known that the company was going into liquidation five days later.

6. On this evidence I find that NO breached s9 of the FTA and is personally liable for the misleading conduct he engaged in, the name of the company.

If so, is he liable to refund EU the deposit he paid?

7. Under s43(3)(e) of the FTA I am ordering NO to refund the money EU paid as a deposit – that is, \$12,800.00.

Referee: C ter Haar
Date: 16 March 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>.