



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 156

APPLICANT **FG trading as BN**

RESPONDENT **QP**

APPLICANT **G Ltd**
TO COUNTER-
CLAIM

The Tribunal orders:

The claim relating to the contract for music arrangement is struck out and the counter-claim is struck out; and

QP and G Ltd are jointly and severally liable to pay \$2928.05 to FG, trading as BN, for performance services, on or before 28 July 2023.

Reasons

1. FG provided QP originally with quotations that QP had requested for music medley arrangements for two events he was planning for March 2023. The quotations were accepted, FG carried out the work and provided arrangements which were performed at QP's events.
2. A dispute arose after the original contract was formed concerning the intellectual property rights of the parties in relation to the arrangements produced. FG provided a written 'Commissioning Agreement' dated 30 March 2023 to QP – this was after the events had occurred and well after the contracts had been formed, and QP declined to sign it.
3. Disputes concerning intellectual property do not fall within the jurisdiction of the Disputes Tribunal. As FG's claim for payment for his arrangement services is inextricably bound up with what intellectual property rights apply to that contract, that entire matter should be heard and determined together in a forum where the intellectual property dispute can be considered. QP's claim for a refund for amounts paid towards the arrangement fees should similarly be heard at the same time. These claims are all struck out for lack of jurisdiction.
4. I note that QP's company G Ltd has brought the counter-claim. However there is no evidence before me to show that FG was made aware that he was contracting with a company. Although later emails from QP contain a digital signature including the name 'G Ltd', the email accepting FG's original quotations does not. FG's invoices are made out to QP. These facts mean that at the time the contract was formed, there was an 'undisclosed principal' (G Ltd) – this gives rise to a right for FG to claim against QP personally. Since QP's company was apparently doing the contracting, any liability for payment to FG will therefore be joint and several liability.

5. Before the events went ahead, the parties also formed an agreement, which was the subject of separate quotations, for FG to perform at the events. He did so and invoiced QP the amounts agreed for his performance services. Those invoices total \$2928.05 and FG claims payment of that amount.
6. I find that the performance services were contracted separately and although QP has raised issues of intellectual property in relation to FG's performance of the musical arrangements, I consider that issues of copyright or licensing do not lie at the heart of that contract. QP was engaged to play at the event and he played at the event.
7. As the contract for performance services was distinct and separate from the original contract, set-off will not be applied, the two matters being appropriately determined separately.
8. Even if FG and/or QP/G Ltd as the event organiser did require a license of some kind to perform some or all of the arrangements (which FG denies), that does not affect payment of the performance fees agreed. As the parties explained, any issues of licensing of music involve other agencies and are not a matter that directly impacts the contract formed between FG and QP for performance services.
9. As there were no disputes over quantum put forward, I find that the invoices for performance services are payable as claimed.

Referee Perfect

Date: 30 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 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>.