



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 288

APPLICANT HA

RESPONDENT Z Ltd

The Tribunal orders:

Z Ltd is to pay HA \$900.00 by 5 August 2023

Background

1. In February 2021, HA obtained a healthy homes assessment report for a rental property in [Suburb].
2. The front page of the report has the Z Ltd logo and it states “prepared by [Z Ltd]”.
3. On 7 March 2021, HA received an invoice for \$1150.00 including GST.
4. The invoice had the Z Ltd logo and contact details. It stated that payment was to be made to Z Ltd to a specified [bank] account.
5. The invoice was for the report, and for the supply and installation of an extractor fan in the kitchen and bathroom, and a panel heater in the living room. These were items that the report identified as being necessary for the property to achieve Healthy Homes compliance.
6. HA paid the invoice promptly.
7. In late 2022, HA discovered that the extractor fans and heater were not installed in the property.
8. His claim seeks reimbursement of \$1,150.00.
9. The hearing took place by phone on 20 June 2023. Both parties participated in the hearing. AI represented Z Ltd.

The issue

10. The report was prepared by “KV” a former sub-contractor to Z Ltd.
11. AI, the owner of Z Ltd, submitted that:
 - a. Z Ltd has no record of this job.

- b. Z Ltd did not receive payment from HA, and the bank account stated on the invoice does not belong to Z Ltd.
- c. It appears that KV engaged in fraudulent behaviour whilst acting as a sub-contractor for Z Ltd. KV stopped working as a sub-contractor for Z Ltd approximately two years ago, and her whereabouts are unknown.

Findings

12. I accept that Z Ltd was unaware of KV's fraudulent conduct, and that it did not receive any of the \$1,150.00 that HA paid in good faith.
13. Like HA, Z Ltd is an innocent party.
14. However, the question before the Tribunal is whether there is any legal basis for HA to recover his losses from Z Ltd.
15. Having reviewed the relevant case law, I am satisfied that there is a legal basis for HA's claim.
16. The leading case is *Lloyd v Grace, Smith & Co*¹, a House of Lords decision.
17. In that case, a clerk in a law firm altered documents to defraud a client of the firm. The following elements were present:
 - a. The clerk was acting within the course of his usual and apparent authority (albeit that he clearly did not have authority act fraudulently).
 - b. His employer was not aware of the fraud.
 - c. His employer did not obtain any benefit from the fraud.
18. The House of Lords held that the client could recover her losses from the firm, stating that:

An innocent principal [is] civilly responsible for the fraud of his authorised agent, acting within his authority, to the same extent as if it was his own fraud.
19. This decision was followed by the Supreme Court of New Zealand in *Dollars & Sense Finance Ltd v Nathan*². The Court noted that:

Liability for a fraud committed in the course of an agency does not depend on the attribution of legal fault or moral blame to the principal.
20. In *Dollars & Sense*, the person who committed the fraud was not an employee, but someone who was authorised by them to carry out a particular task.
21. Having regard to the reasoning of the House of Lords and the Supreme Court in these decisions, my finding is that the same principles apply to this dispute.
22. KV was given authority by Z Ltd to carry out work on their behalf, including conducting Healthy Homes compliance inspections, providing written reports, and supplying equipment to customers to assist with obtaining compliance.
23. KV was acting within the scope of her authority when she committed the fraud.

¹ [1912] AC 716

² [2008] NZSC 20

24. HA reasonably understood that when he was dealing with KV, he was dealing with Z Ltd.
25. The fact that Z Ltd was without “legal fault or moral blame” and did not benefit in any way from KV’s fraud, does not prevent Z Ltd from being legally liable to HA.
26. HA’s claim seeks \$1,150.00, which is the full amount that he paid for the report, the ventilation fans, and the heater.
27. HA received the report, and there is no suggestion that the report itself is deficient or inaccurate.
28. The invoice presented to HA does not provide any breakdown of the \$1,150.00 charge. Having regard to publicly available information about the average cost of healthy homes assessment reports, I will give a value of \$250.00 to the report.
29. Z Ltd is liable to HA for the balance of the amount that he paid, which is \$900.00.

Referee: Nicholas Blake
Date: 17 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>.