



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 166

APPLICANT **HN**

RESPONDENT **UC**

RESPONDENT **JS Ltd**

The Tribunal orders:

UC and JS Ltd are to pay \$5,500.00 to HN on or before Wednesday 21 June 2023.

Reasons:

1. HN collects classic [cars]. He was restoring a [classic truck] and took it to UC for a quote to have it repainted. UC operates a business restoring vehicles. On 23 November 2022 it was agreed that UC would repaint it for \$7,000 and he would do the work within the following two to three weeks. HN paid a 50% deposit of \$3,500 and left the truck with UC.
2. On the same day HN also asked for UC to build a well-side tray for the back of a [truck] that he was selling. It was agreed UC would also have that made within the next three weeks for a total cost of \$4,000. HN paid \$2,000 to UC as the deposit.
3. HN said he stopped in occasionally over the following three weeks, but no work was being done on his vehicle. He was concerned the truck was being left outside, as it caused the new white tyres to go brown in the sun, and because it was worth around \$90,000. A friend also checked on his vehicle and found that the keys were left in it and no work had been started to repaint it after three weeks. HN decided to cancel the contract and his friend arranged for the vehicle to be collected. HN said that he asked UC to urgently get onto fabricating the well-side, but he did not provide the well-side or refund the money as he promised. HN claimed to be compensated for the money he paid as a deposit.
4. The issues to resolve the claim are:
 - (a) Who did HN engage to build a well-side tray and paint and panel his vintage vehicle?
 - (b) What did HN request the repairer to do and what were the agreed terms?
 - (c) Was HN entitled to cancel the contract to panel and paint his vehicle?
 - (d) Was UC entitled to cancel the contract to make a well-side tray?
 - (e) What loss can HN show he has incurred that he is entitled to be compensated for?

Who did HN engage to build a well-side tray and paint and panel his vintage vehicle?

5. HN said his claim was against UC because that was who he thought he was dealing with, and he had no idea that he operated a company.
6. UC requested that the company JS Limited be added as a respondent because his business was operated by that entity.
7. UC agreed that the estimate for the works was given orally so he could not show that the quote was provided by the company on that estimate. However, he said there was a 2.4m by 1.8m sign that HN must have seen as he walked in the back entrance of the workshop that stated JS Limited. UC said he would urgently provide a photo of that sign, but none was received during the adjournment period.
8. In order for a business to get the benefit of its limited liability status it must inform parties that it is entering into a contract with a limited liability company. On the facts of this case, I find that it was not brought to HN's attention that he was entering into a contract with a company and not with UC personally. I accept the evidence of UC that he does operate a company that was the principal, however, as he has not disclosed the existence of the company to HN, the contract was made with UC. The company is potentially liable as an undisclosed principal and UC is potentially liable as being the person that was represented to JS as being the other contracting party.

What did HN request the repairer to do and what were the agreed terms?

9. The parties do not disagree that UC was to paint HN's [truck] and fabricate a well-side tray. There is some disagreement about the length of time it would take to do the work, nevertheless, after almost three weeks, HN collected the pickup and cancelled the repainting contract.

Was HN entitled to cancel the contract to panel and paint his vehicle?

10. HN said he cancelled the contract because no work had been done on his truck and it was outside during the day which caused the white new tyres to discolour in the sun. He raised his concern with UC, and was told that it was stored inside at night, however, HN said the truck was valuable and he was not satisfied with it being left in the sun.
11. The hearing was adjourned, and UC did not attend when it resumed. The best evidence that has been provided on which I can make a decision is that UC accepted HN's cancellation of the contract for the painting of the vehicle. HN said that UC agreed to refund him \$1,500 of what he had paid (which would leave UC with \$4,000 to complete the manufacture of the well-side) on Friday 16 December, but when his friend arrived to collect the money UC did not pay as agreed. It is therefore for the Tribunal to determine what relief should be granted.
12. In this case, none of the work for the repainting of the vehicle had been undertaken. As I have found that UC accepted the cancellation and has not incurred any expense before the contract was cancelled, I find that the full deposit of \$3,500 should be returned to HN and that amount is therefore added to the total of this order.

Was UC entitled to cancel the contract to make a well-side tray?

13. HN said that he still wanted UC to complete the manufacture of the well-side, but UC has not made it or refunded the deposit. I therefore find that UC failed to perform the contract for the manufacture of the well-side as he agreed to.

What loss can HN show he has incurred that he is entitled to be compensated for?

14. HN claimed for a refund of his deposit. As that is a direct loss that he has incurred, I find that he is entitled to be refunded the deposit he paid. Accordingly, the amount of \$2,000 is also added to the total of this order.

Conclusion

15. As HN has shown that he is entitled to be refunded for the total amount of his deposit of \$5,500.00, an order is made for that amount.

Referee: K Cowie DTR

Date: 6 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>.