



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 390

APPLICANT IG Ltd

RESPONDENT IX Ltd

The Tribunal orders: It is declared that IG Ltd is not liable for the invoices issued by IX Ltd dated 30 November 2022 for \$4,471.20 and 16 December 2022 for \$2,300.43. The counterclaim by IX Ltd with respect to these invoices is dismissed.

Reasons:

- 1) In April 2019 the applicant opened a credit account with the respondent. This includes (clause 5) : “The Customer acknowledges that IX Ltd shall (for the duration of the hire period) liaise directly with one (1) authorised representative, and that once introduced as such to IX Ltd, that person shall have the full authority of the customer to order any further Equipment and/or to request any variation thereto on the Customer’s behalf.”
- 2) The dispute relates to certain invoices with respect to the hiring of equipment by DX. DX was, at the material time, a contractor working with the applicant on a roading project. The applicant says that DX did not have authority to hire equipment, and incur a debt on behalf of IG Ltd. The only person who had that authority was LP. LP says that she did not authorise the equipment hireage in dispute. That was hired by DX ‘fraudulently.’
- 3) The above is disputed by the respondent which has brought a counterclaim for the disputed invoices, together with collection costs. The respondent says that with respect to the disputed hireages, DX said that he was acting on behalf of IG Ltd. DX had contacted the respondent “on a number of occasions in the past on behalf of IG Ltd.” The applicant, in particular, LP “should reasonably have known that [DX] had made himself known to IX Ltd in the past as a representative of IG Ltd.”
- 4) The relevant law is the general law of contract. The issue to be determined by the Tribunal is whether DX had, if not actual, at least ostensible, or apparent, authority to incur a debt on behalf of the applicant? In this regard, did the applicant ‘hold out’ or represent to the respondent that DX had authority to hire equipment?
- 5) As an initial finding, it is clear that DX did not have actual authority from the applicant. The disputed invoices relate to 2 hireages of an excavator on, respectively, 30 November 2022 (the amount charged is \$4,471.20) and 16 December 2022 (the amount charged is \$2,300.43). The applicant’s evidence, which I accept, is that these hireages had nothing to do with IG Ltd. They would have been purely for DX’s purposes.
- 6) However, the above finding does not resolve the matter. As stated, the Tribunal has to consider whether the applicant placed DX in a position where he could be taken to have been held out to IX Ltd as someone authorised to deal with the respondent, on behalf of IG Ltd. If so, IG Ltd would be estopped (legally prevented) from denying DX’s ostensible authority.

- 7) I conclude that DX did not have ostensible, or apparent, authority to bind the applicant to the invoices in dispute. I make this finding for the following reasons:
- a) I accept the evidence of LP that when her company's account was opened with the respondent, she made it clear that only she would have the authority to hire equipment on behalf of IG Ltd. This important point should have been noted in the respondent's records (if it was not) and acted on when DX hired the equipment this dispute is all about.
 - b) The only relevant prior contacts by DX with the respondent were 2 'inquiry' phone calls on 6 and 28 April 2022. DX never actually hired any equipment on behalf of the applicant. This is not a case in which the respondent could say it was relying on a previous course of dealings with DX.
 - c) LP and DX were both involved in a business entity called 'XH.' This is separate to IG Ltd. I do not see this as a situation in which a company (the respondent) had ongoing dealings with inter-connected businesses and dealt in an overlapping way with individuals from both. The respondent's reference to XH, in its evidence, seems to me to be an 'after the event' attempt to hold the applicant liable for its dealings with DX in November 2022.
- 8) It follows that the respondent, will, with respect to the 2 invoices in question, need to pursue remedies against DX.

Referee: G.P.Rossiter

Date: 29 August 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>.