



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 638

APPLICANT **IQ Ltd**

APPLICANT **DF**
(joined)

APPLICANT **US**
(joined)

RESPONDENT **ND Ltd**

The Tribunal hereby orders:

The claim is struck out for lack of jurisdiction.

Reasons:

1. IQ Ltd (herein Owners) filed this claim against ND Ltd on behalf of 2 of its members, US and DF, seeking a refund of \$9,474.25 they jointly paid to ND Ltd for SUIP rates, whom Owners assert were coerced by ND Ltd to pay or the sale of their lot would be blocked.
2. Owners then filed another claim for 2 more members over separate SUIP rates charged by ND Ltd. Both claims were set down to be heard together and the jurisdiction issues raised by ND Ltd to be dealt with at the outset.
3. ND Ltd has raised several objections to jurisdiction: Subject matter; prior determination by High Court Arbitrator; Owners' status as representative; monetary claim limit, arbitration clause and that the Tribunal does not have authority to make declarations.
4. At the first hearing on 15 June 2023, ND Ltd argued that the Tribunal did not have subject matter jurisdiction to determine disputes over land or interest in land and that the matter had already been determined in two private High Court Arbitrations (herein HCAs) and Owners are barred from disclosing those decisions. Owners argued that these claims are new matters that have arisen since the HCAs.
5. ND Ltd also argued that the 2 claims should be 3 separate claims as they involve 3 separate lot owners, US and DF jointly, KG separately and HK separately and that those lot owners should be the Applicants for those claims.
6. The hearing was adjourned for the second claim, [redacted], to be split, KG to be joined as an Applicant under this file number and a separate new claim to be filed for HK, which subsequently became [redacted].

7. US and DF were joined as Applicants to this claim, which had originally been filed in [City 1] on 27 September 2022 and transferred to [Town A] on 12 December 2022.
8. The Tribunal's Interim Orders, dated 10 July 2023 for [redacted] and dated 14 July 2023 for this claim, joined the above Applicants to their respective claims, except for HK as the new claim had not yet been filed, which was again directed in the Interim Order.
9. The Interim Orders also included the Tribunal's finding of subject matter jurisdiction on ND Ltd's primary jurisdiction argument, being the Tribunal does not have jurisdiction to determine matters involving land or an interest in land.
10. The Tribunal found that the dispute is over whether ND Ltd can invoice owners for separate SUIP rates, pursuant to the Deed of Covenant, which is the contract between ND Ltd and lot owners attached to the title of each lot. This is not a dispute over the recovery of or ownership/title of the land, pursuant to s11(5)(a) and (b) of the Disputes Tribunal Act 1988. The Tribunal finds that this is merely a contractual dispute, for which the Tribunal has subject matter jurisdiction.
11. Following the first hearing, ND Ltd made a series of submissions expanding on its objections to jurisdiction and making further arguments and references not raised at the original hearing and seeking further directions from the Tribunal. Unfortunately, these submissions and requests were not actioned and not forwarded to the Referee until the file (box) was sent 2 days before the second hearing on 14 September 2023.
12. It was also discovered then that prior to the second hearing, claims [redacted] and [redacted] had been withdrawn.
13. The Tribunal agreed at the outset of the second hearing that this should be a jurisdiction only hearing and the 2:20 hour hearing was spent discussing jurisdiction, primarily and repeatedly on the "interest in land" objection, which did not sway the Tribunal from the previous finding.
14. ND Ltd's other arguments were also discussed and my findings on those jurisdiction objections are as follows:
 - a. Representation, pursuant to s38 of the Disputes Tribunal Act 1988 (Act) and Rule 9 of the Disputes Tribunal Rules 1989 (Rules): ND Ltd argues that the Tribunal has failed to follow the Act and the Rule for approving Owners to represent the Applicants at the hearing. The Tribunal finds that Owners are a party to the matter, therefore the Tribunal was not required to approve a representative under the Act or the Rules. Pursuant to s38, all parties have a right to be present and be heard at the hearing. Further, Owners meet the criteria of a party with sufficient connection to the matter pursuant to s25(2) of the Act.
 - b. Monetary limit on DT claims, pursuant to s10(3) of the Act: This claim does not exceed the current \$30,000.00 limit. ND Ltd argues that all potential claims regarding SUIP invoices from all lot owners would currently exceed \$92,000.00. The limit applies to each claim and, by ND Ltd's own assertion, each lot owner's dispute would be a separate claim.
 - c. Declarations by the Tribunal: ND Ltd argues that the Tribunal cannot make declaration orders. This is incorrect. Claims can be filed for declarations under s10(1)(b) of the Act and the Tribunal can make declaration orders under s19(1)(b) of the Act.
 - d. Rates: Pursuant to s11(7), the Act bars the Tribunal from hearing claims in respect of money due under any enactment. If this was a claim between the taxing authority and the taxpayer/ratepayer, then the Tribunal would not have jurisdiction, however the taxing authority by enactment granting that authority, in this case the Council, is not a party to this matter.

- e. Arbitration clause in contract: Pursuant to s16(2)(a) of the Act, the Tribunal shall have jurisdiction in respect of a claim, notwithstanding any agreement relating to that claim that provides for submission to arbitration.
- f. High Court Arbitrations confidentiality: ND Ltd strongly objects to Owners referring to and providing excerpts from HCAs with its claims and to the Tribunal considering such evidence. ND Ltd cites the Arbitration Act 1996 and threatens legal action against Owners for breaching confidentiality under that Act. ND Ltd's position and threat is astonishing and inexplicable considering ND Ltd submitted full copies of the HCA decisions to the Tribunal as evidence at the outset and ND Ltd acknowledged at the hearing that copies of those decisions were made available to all and sundry at the front desk of [the Park] .
- g. Matter previously determined: ND Ltd's invoicing lot owners for SUIP rates has been the subject of 2 HCAs. Owners claim ND Ltd has failed to abide by the HCA determinations on the matter. The parties dispute whether the HCA decisions have ongoing application or were in respect of those particular SUIP charges by ND Ltd at that time. The Tribunal does not have jurisdiction to enforce the decisions made under another jurisdiction or to overrule a higher jurisdiction. The Tribunal finds that if the parties require enforcement or clarification of HCA decisions on ND Ltd's ongoing charges for SUIP rates, then that should be put back before the HCA, not the Disputes Tribunal. Accordingly, on this ground alone, the Tribunal finds that it does not have jurisdiction to hear this claim.

Referee: L. Mueller

Date: 11 October 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>.