



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1375

APPLICANT **IX Group Limited**
(respondent in
counterclaim)

RESPONDENT **UU Ltd**

SECOND **OADN Limited**
RESPONDENT
(applicant in
counterclaim)

The Tribunal hereby orders:

IX Group Limited is to pay OADN Limited \$5,459.63 by Friday 30 October 2020.

IX Group Limited's claim is dismissed.

Reasons

1. IX Group Limited (IX) engaged OADN to provide an NTV platform for streaming services. IX say there were problems with the platform and they did all the adjustments and recommendations but there were still issues. They are claiming \$14,999.51 being \$1,725.00 (the amount paid to OADN for the first month of the service) and \$13,274.51 (employee costs for getting the platform up and running).
2. OADN counterclaimed for \$6,057.63 being outstanding services charges of \$5175.00 and default interest charges on that amount of \$284.63 for 3 months and \$598.00 being the value of two Set-top multi-media boxes. OADN says the issues IX were operational and that information in the manual were not followed.
3. At the hearings on 12 November 2019 and 17 February 2020 I determined who the parties to the claim should be.
4. In my order of 12 November 2019, I said:

The correct parties to the claim should be TR Limited (as applicant) and OADN (as respondent). The written contract dated 22 February 2019 for the provision of services is between OADN (provider of the services) and

DT Limited who changed its name to TR Limited in March 2019. Invoices for the services were from OADN and addressed to DT Limited (now TR Limited). OADN must be given notice of the hearing.

5. At the hearing on 17 February 2020 it was determined that the applicant (and respondent in the counterclaim) should be IX because TR Limited and IX amalgamated to become IX.
6. The issues to be determined are:
 - a. Was there a breach of contract? If so by who?
 - b. What is the remedy for the breach of contract?
7. Each applicant in the Tribunal must establish the elements of its claim to the required standard to be successful. That standard is the balance of probabilities which means what is more likely than not (based on the evidence before the Tribunal).

Was there a breach of contract? If so by who?

8. IX are a media company who create their own content and therefore needed a platform in which to stream the content. They were introduced to OADN by XU Limited who had used the services of OADN. Mr L, who attended the hearings, is a shareholder of XU Limited. He is also the sole director and a shareholder of IX.
9. As mentioned above IX says there were problems with the NTV platform, and they did all the adjustments and recommendations but there were still issues.
10. The contract between the parties is dated 22 February 2019 and is headed "Streaming Service and the NTV Platform User Agreement." The Background to the contract says:
 - A OADN operates the NTV Platform that enables third-party to upload their contents and deliver through personal computer, mobile, tablet, over-the -top television devices and other Internet connected devices;
 - B [IX] desires to use the NTV Platform to promote its contents.
11. Clause 2 of the contract says IX will use the NTV platform to promote IX's content which includes audio, video and other material provided by IX and that OADN will provide technical support, services and digital spaces within the NTV platform for streaming IX's content.
12. In short customers use the NTV Platform to promote their product.
13. I have considered the evidence presented by both parties and I am satisfied on balance that the issues related to slow internet connection on the part of IX and not following the manual and other instructions.
14. No issues were raised by IX during the implementation stage of 4 weeks (which included training and an extended trial period) which ended on 1 April 2019. I note IX refers to the issues starting on 27 March 2019 on logos but that does not mean the issues related to OADN. The evidence suggests an unloading issue. Mr D of IX (in May/June 2019) had indicated everything was running well and that was well after 27 March.
15. I am not convinced that IX employees (including Mr D) had rectified any problems with the platform per se rather it is more likely than not that they worked out there were issues their end and fixed those.
16. In a text dated 31 May 2019 Mr D said "...I think it could be the internet issue". In an earlier text from Mr L dated 29 March 2019 he says "...the internet speed in my office is very slow and stops very often...And I'm thinking another internet company for the solution..."
17. In relation to the problem with streaming and buffering, the manual instructions were clear in relation to how to upload which required converting the video first. Mr I of OADN offered to upload these.

However, that offer was declined. Other issues relating to uploading was that multiple files were being uploaded at the same time instead of one by one.

18. I would have thought the issues IX raised would have been similar for other customers of OADN. However, I note that XU had been using OADN for some time and there is no evidence that they had similar issues. As mentioned above, Mr L is a shareholder of XU. OADN also produced written statements from Ms M (from XU) and Ms X a director of RN Corporation (also a customer of OADN). In Ms M's statement she says XU has become New Zealand's largest [redacted] television network. She says (in part):

OADN's online streaming platform NTV [is] one of a kind in the [redacted] community ...The NTV platform was very solid and reliable. Their staff [were] also very easy to communicate [with] and professional. We have not encountered any technological nor communication difficulties with NTV. I would highly recommend them to others who were in a position of requiring their services and platform.

As mentioned above it was XU who recommended OADN to IX.

Ms X from RN Corporation says they have been using the OADN platform since February 2018 says (in part):

RN was very satisfied with the services offered by [OADN]...The stability and high-standard streaming quality were also highly appraised by our clients. RN will continue to use the NTV platform...

19. Accordingly, the evidence supports a finding on balance that OADN did not breach the contract.
20. In relation to the payments due under the contract evidence supports a finding that IX breached the contract by not making the payments due under the contract.
21. I am satisfied that it was a good will gesture offered by OADN to suspend the service charges under the contract until the issues were resolved (not being issues caused by OADN as outlined above). As shown in the evidence (messaging records with Mr D on 31 May 2019 and reconfirmed on 5 June 2019) all issues were resolved. However, payment was not made even after various efforts by OADN to make contact.
22. Accordingly, I find that IX breached the contract by not making payment. Given the breach by IX under the contract OADN were entitled to suspend IX from the NTV platform (which it did) and are entitled to charge default interest on the unpaid amount (clause 4 of the contract).

What is the remedy for the breach of contract?

23. As mentioned above, IX breached the contract by not making payment. OADN is entitled to the moneys it is owed plus default interest at 22% per annum as set out in the contract.
24. The outstanding invoices are the invoices for April, May and June 2019 totalling \$5,175.00 including GST. This was the service fee being \$1,500.00 plus GST per month. They charged 3 months default interest on that amount of \$284.63. OADN would have been entitled to claim default interest to the date it filed its claim. However, it did not do so. Therefore the 3 months default interest is payable. This brings the total to \$5,459.63.
25. OADN have also sought to recover the value of two Set-top multi-media boxes (\$598.00). There is nothing in the contract relating to this. There is no invoice supporting this and could find no other supporting evidence that this is owed. Accordingly, OADN cannot recover this amount.

Conclusion

26. For the reasons above IX must pay OADN \$5,459.63.

Referee: Ms G Jaduram

Date: 8 October 2020



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 or a mistake was made.

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 outside of time, 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.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the 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, and 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>.