



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 229

APPLICANT L Ltd

RESPONDENT CT

The Tribunal orders:

The application is dismissed.

Summary of Reasons:

[1] The hearing was convened by teleconference. NS represented the applicant. CT represented himself.

[2] The applicant claims the return of an amount paid to [restaurant] plus damages following its cancellation of a venue hire booking. The parties agreement is not evidenced in writing, but the applicant does have an invoice evidencing \$8,635.00 paid to [restaurant]. Clearly there is no such identity as [restaurant]. At hearing NS claims to have tried but failed to discover who is behind this trading name.

[3] In its written submissions the applicant claims CT is the owner and operator of the [restaurant]. The applicant admits it initially contracted SJ to arrange hire of the venue and was then referred to the respondent to arrange the details after the venue was booked for 12 August 2022. At hearing NS claimed not to know who SJ is, but in its written submissions the applicant claims SJ is CT, the respondent's uncle and that SJ works for the respondent, not the other way around.

[4] CT denies any ownership or control over the restaurant. He claims he is an employee of whoever owes the restaurant and was asked to act as the events manager for this function. CT denies SJ is his uncle or has the same surname. The respondent knows SJ as SJT. As far as he is concerned, he works for the restaurant called [restaurant].

[5] The applicant claims the respondent is the contracting party, the respondent denies this claiming he is only a part time employee.

[6] I agree there is some circumstantial evidence showing the respondent may be more involved with the restaurant than he admits. However, there is an equal if not higher probability that that the respondent is an employee only and therefore cannot be liable under the contract. Surprisingly NS admits that the applicant has not visited the restaurant and asked for the name of the operator. This is of course a matter for the applicant but in the absence of this I am not persuaded there is sufficient evidence to find the respondent the contracting party.

[7] On NS's own evidence the applicant approached the restaurant and was referred to SJ. SJ met her and her boss, LD at the restaurant and showed them the function room. The applicant booked the venue for 6 pm on 12 August 2022 through SJ. The applicant's first contact with the respondent was only after this booking had been made. This is not sufficient to persuade me the respondent is personally liable under the contract.

[8] In the alternative, the applicant claims against the respondent in negligence, claiming his failure to adequately arrange the hire led to financial loss.

[9] The Tribunal has limited jurisdiction. Under section 10 of the Disputes Tribunal Act 1988, the Tribunal has jurisdiction in tort in respect of the destruction or loss of any property, any damage or injury to any property and the recovery of any property. The Tribunal does not have jurisdiction to consider the applicant's claim in negligence.

[10] Given there is some doubt over who operates the [restaurant] and is therefore liable under the contract, leave is given to refile this application if the applicant obtains clear evidence the respondent does in fact, operate the restaurant.

Referee: Hannan DTR

Date: 15 September 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 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>.