



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 416**

**APPLICANT** M Ltd

**RESPONDENT** P Ltd

**The Tribunal orders:**

P Ltd is to pay to M Ltd the sum of \$3,266.85 on or before 21 September 2023.

**Reasons:**

1. In April 2023, M Ltd paid a sum of \$18.10 to P Ltd for some juice.
2. On the same date, M Ltd also paid a sum of \$2,777.25 to P Ltd in error. That money was supposed to be paid to another third party that M Ltd owed money to. It was paid into P Ltd's bank account.
3. M Ltd contacted P Ltd soon after the error was noticed and requested that the money be repaid back to M Ltd. P Ltd refused to return the money.
4. M Ltd contacted its bank and paid for a recovery request which was actioned by M Ltd's bank. That request from the bank was declined.
5. M Ltd took legal advice, and its lawyer wrote to P Ltd requesting a return of the money. The money was not returned.
6. M Ltd is seeking \$3,292.15 which is made up of the sum of \$2,777.25 it says was paid in error, a \$25.00 bank fee for the recovery request and \$489.90 legal fees.
7. This hearing took place by way of teleconference. Both parties answered their phones. At the beginning of the hearing the Tribunal advised all parties that the hearing was being recorded by the Tribunal but that no other party could record the hearing. SU representing P Ltd indicated that she needed to record the hearing and needed a record of it for evidence in relation to other matters. She said this was a bank issue and the bank needed to be sued.
8. The Tribunal repeated that she was not permitted to record the hearing and unless she was able to confirm that she was not recording, the Tribunal would not allow her to take part in the hearing. SU would not confirm that she was not recording and continued to state that she was going to record the hearing and needed to do so. The Tribunal advised that if she was disconnected from the hearing, the hearing would proceed without her. After some further exchanges SU disconnected from the hearing.
9. The matter proceeded in the absence of P Ltd. The absence of a party does not prevent a hearing from going ahead.

10. The issues the Tribunal has to consider are:

- a. Is P Ltd entitled to retain all or any of the amount paid to it by M Ltd of \$2,777.25?
- b. Is M Ltd entitled to the further costs of \$25.00 for bank fees and \$489.90 in legal fees?

**Is P Ltd entitled to retain all or any of the amount paid to it by M Ltd of \$2,777.25?**

11. The law has had a series of rules enabling one person to recover money from another where the retention of money or some other benefit would unjustly enrich that other party at the expense of the first. This is sometimes known as quasi contract. It can apply where one party has conferred a benefit on the other party in circumstances where it is fair that it should be paid for, or the benefit not retained.

12. I find that M Ltd has a quasi-contractual claim against P Ltd for return of the money. The quasi contractual action for money had and received applies when money is paid under a mistake of fact. The payer's right to recover the money from the recipient is based simply on receipt of the money without any right to retain it. It is not necessary to prove that the recipient was at fault in any way.

13. M Ltd paid \$2,777.25 to P Ltd in error. P Ltd was not entitled to retain that money.

14. While SU and P Ltd did not take part in the hearing, from what the Tribunal was told by TM of M Ltd and what appeared in some of the message exchanges between the parties, it appears that P Ltd had previously had an issue with money paid in error. P Ltd had told M Ltd that some years ago it had paid money into an incorrect account and was unable to recover it. P Ltd had stated that the bank had refused to tell P Ltd where the money had been paid to for privacy reasons. SU stated in a message to M Ltd's business mentor, *"But the banks are at fault for their shit system allowing customer error to occur"* and that *"reform is needed for these incidents."*

15. I appreciate that SU may be aggrieved if she has had a similar situation happen to her in the past and been unable to recover funds. However, that incident did not involve M Ltd in any way. This transaction was the first occasion on which M Ltd had dealt with P Ltd.

16. The money was paid by M Ltd to P Ltd in error. P Ltd has received the benefit of that money at the expense of M Ltd. I am satisfied that it would be unjust to allow P Ltd to retain that money as it was not the intended recipient of that money and had no right to receive it. Any issues P Ltd has had in the past with either a third party or a bank is not the fault of M Ltd and does not absolve P Ltd of its obligation to repay the money to M Ltd.

17. The Tribunal was told that P Ltd attempted to resolve this matter by delivering juice to M Ltd. TM made it clear that he does not want to accept juice in lieu of payment and that resolution was not acceptable to him. The Tribunal was told that no juice was delivered and M Ltd does not want any juice.

18. M Ltd is entitled to recover the sum of \$2,777.25 paid to P Ltd in error.

**Is M Ltd entitled to the further costs of \$25.00 for bank fees and \$489.90 in legal fees?**

19. M Ltd contacted P Ltd once it realised its error and asked for the money to be returned. P Ltd indicated it would not be returning the money. In later messages P Ltd referred to the previous experience it had with being unable to recover money and its view that this was a bank issue.

20. M Ltd paid \$25.00 to its bank for a recovery request which was payable regardless of the outcome. That is a cost M Ltd has incurred as a result of P Ltd retaining money it was not entitled to retain. P Ltd was not at fault by receiving the payment as that was due to M Ltd's error. However, P Ltd was advised of that error and did not claim it was entitled to that money as

payment for goods or services. P Ltd would have been aware from an early stage once contacted by M Ltd that that money was not intended for P Ltd.

21. I am satisfied that M Ltd is entitled to the \$25.00 bank fee incurred in its attempt to recover the money.
22. M Ltd also sought legal fees of \$489.90 inclusive of GST. M Ltd says it took advice and its lawyer wrote a letter in the hope that Disputes Tribunal or Court action would not be required. The letter states that if the money was not refunded as requested in the letter, further legal action may be taken, and the recovery of legal fees would be sought.
23. As P Ltd did not respond to the letter written by M Ltd, a claim was brought to the Tribunal. The legal fees sought are in relation to the initial advice and letter written. They are not in relation to preparation of the Disputes Tribunal claim.
24. I am satisfied that M Ltd incurred legal costs as a result of P Ltd continuing to retain money it was not entitled to retain. I will allow the amount charged by M Ltd's lawyer for advice as those costs are reasonable. That was a sum of \$404.00 plus GST. I do not allow the verification expenses. They may continue to be of benefit to M Ltd if it uses the same lawyer in the future and are not specific to this dispute.
25. I allow \$464.60 inclusive of GST for legal advice that it was reasonable to M Ltd to take in relation to this dispute.
26. P Ltd is to pay to M Ltd the sum of \$3,266.85 on or before 21 September 2023.

**Referee: P Byrne**  
**Date: 30 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>.