



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

**District Court**

**[2023] NZDT 508**

**APPLICANT      MT**

**RESPONDENT    EB**

**The Tribunal orders:**

1. The claim is dismissed.
2. The counterclaim is dismissed.

**Reasons:**

1. MT purchased a saddle after seeing it advertised on EB's [online] account. After her successful bid, she contacted EB on 6 February and asked her to "look at postage to [City] please? Urban not rural. If you go with [shipping company] it should be around \$40-\$50 I've shipped a whole western for \$60 in a big box".
2. EB's mother arranged the courier for the cost of \$61.50 and EB advised MT on 9 February that the saddle was sent on 8 February and the courier cost was \$61.50. The next day EB emailed MT that she had forgotten to send her bank account number, and she provided that number.
3. EB did not receive the payment and became concerned she would not be paid after she read three negative reviews on MT's [online] account. EB re-directed the delivery of the saddle to the address of a friend.
4. MT said she was expecting the saddle and so when it did not arrive, but the tracking number showed it was delivered, she contacted the courier. She was advised it was redirected to a different address. MT went to the address on 17 February and requested the saddle, but was told it would not be given to her until she paid. MT paid for the saddle and courier fee and after EB confirmed she had received the money in her account, the saddle was delivered to her.
5. MT claimed for a refund of the courier fee of \$61.50 on the grounds that EB wrongfully redirected the courier.
6. The issue to be resolved is whether EB breached a term of the contract by redirecting the saddle to a third party address, and if so, whether MT is entitled to a refund of the courier fee.
7. The issue to resolve the counterclaim is whether MT has brought a claim that is frivolous and vexatious.

**Did EB breach a term of the contract by redirecting the saddle to a third party address, and if so, is MT is entitled to a refund of the courier fee?**

8. MT considered that EB was not entitled to redirect the saddle as the saddle belonged to MT as the successful bidder. She relied upon sections 174 and 175 of the Contract and Commercial Law Act 2017 which she said allowed EB the right to stop the goods in transit only if MT was insolvent, which she was not.
9. EB referred to the [online] terms and conditions of the use of its on-line auction service. In particular EB referred to clause 5 relating to buying that stated, "we'll notify you that your bid has been successful, and you should promptly pay the purchase price (plus any agreed shipping) and complete the transaction in the manner specified in the listing".
10. Parties who use the [online] platform agree as part of their membership to abide by the [online] terms and conditions. I find it is an expressed term of contracts conducted through that platform that the purchaser must pay for the goods before they are delivered.
11. I agree with MT that she was unable to pay for the saddle until EB provided her with her bank account number. That occurred on 10 February. MT was contractually bound to pay for the saddle upon being notified that her bid was successful. There was no reason why MT could not transfer the agreed amount on the day she was sent the account number. I therefore find that MT breached a fundamental term of the agreement by failing to pay as she had agreed. The express term of payment implied that it was a condition of the sale that MT would pay before the saddle was delivered to her. The courier was engaged on behalf of EB and although she had parted with possession of the saddle, title to it had not yet passed to MT<sup>1</sup>. EB was therefore entitled to direct her agent to deliver the saddle to a different address as MT had breached a condition of the agreement.
12. It therefore follows that MT has not proven her claim and it is dismissed.

**The Counterclaim**

13. EB counterclaimed for the wages she lost to attend the hearing. She considered the claim was frivolous and vexatious. The saddle was personally delivered to MT on the same day that she paid and she had therefore not suffered any loss.
14. When the matter was first heard EB was not telephoned due to an administrative error. She requested a rehearing and one was granted. I agree with MT that the loss EB incurred appears in the main to have resulted from the administrative error. Although I have some concerns about the claim, I have decided that the frustration EB has encountered is more fairly a result of the administrative error rather than the dispute with MT. Further, EB did not provide any evidence in support of her position that she had lost income as a consequence of MT bringing this claim.
15. I therefore find that the counterclaim should also be dismissed.

**Referee: Ms Cowie DTR**

**Date: 1 November 2023**

---

<sup>1</sup> Sections 174 and 175 of the Contract and Commercial Law Act 2017 therefore do not apply on the facts of this case as title had not passed. The case of EE McCurdy Limited (in Liquidation) v Post Master General [1959] NZLR 553, which MT referred me to, therefore also does not apply for the same reason.



## 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>.