



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1326

APPLICANT **QC Limited (in liquidation)**

RESPONDENT **WD Limited**

The Tribunal orders:

1. WD Limited is to pay to QC Limited (in liquidation) the sum of \$800.00 on or before 30 August 2020.
2. QC Limited (in liquidation) is to provide a credit note or fresh GST invoice to WDL for this sum.

Reasons

1. QC Limited (QCL) contracted with WD Limited (WDL) to undertake building work.
2. On 13 September 2019, QCL went into liquidation. JT and KL of ABC Limited (ABC) were appointed the liquidators.
3. After this occurred, Mr Q started working for WDL as a sole trader and billed WDL in his own name. However, on 16 September 2019, Mr Q also billed WDL for 32 hours of work done on four days that immediately pre-dated the liquidation (9-12 September 2019). WDL paid Mr Q the sum of \$1,024.00 for that work.
4. ABC considers that QCL was entitled to be paid for the work done on those dates. It has issued its own invoice to WDL for \$1,177.60 (including GST).
5. WDL defended the claim on the basis that it has already paid Mr Q for the work. It has filed a counterclaim seeking the costs incurred as a result of the proceedings.
6. The issues to be resolved are: (a) From 9-12 September 2019, who were the parties to the contract? (b) How much was QCL entitled to for that period? (c) Did the payment to Mr Q satisfy the debt to QCL? (d) If not, is QCL entitled to payment given that WDL has made payment to Mr Q in good faith? (e) Is any sum due to WDL under the counterclaim?

Who were the parties to the contract?

7. It was not in dispute that, prior to 13 September 2019, the contract was between QCL and WDL.

8. Whilst LQ, the director of QCL undertook the building work himself, accounts were sent from QCL and paid to QCL for that work, and QCL claimed and paid the GST on those sums.

How much was QCL entitled to for that period?

9. There was also no dispute that Mr Q had undertaken 32 hours of work between 9 and 12 September 2019.

10. Adding GST to the agreed hourly rate, the sum due for this period is \$1,177.60.

Did the payment to Mr Q satisfy the debt to QCL?

11. I find that the payment to Mr Q for that work did not amount to a payment to QCL for the sum it was owed. This is so for the following reasons:

(a) Mr Q is a separate entity in law to QCL.

(b) Upon the liquidation of QCL, Mr Q ceased to have any powers or duties as a director. Mr Q was therefore unable to retrospectively alter or terminate the contract that QCL had with WDL, or waive any sum that was due to it, so that he could have the money himself.

(c) The liquidators were therefore entitled to issue an invoice for the dates upon which QCL worked for WDL, and to expect payment for that sum.

(d) It follows from this that payment to Mr Q did not amount to payment to QCL.

(e) I have considered whether, despite Mr Q's lack of *actual* authority, he had *apparent* authority. A person who holds themselves out as being able to alter a contract on behalf of another, or waive a sum due, may vary or create a legally binding obligation without the knowledge or consent of the party for whom they are purporting to represent (the principal). However, for these circumstances to arise, the principal (in this case QCL) would have had to have acted in such a way that they gave an incorrect impression that Mr Q had that right. I have reviewed the correspondence sent after QCL was put into liquidation. Ms L sent an email to WDL advising of the liquidation and noting that, whilst Mr Q would bill WDL in his own name from the next Monday, that QCL would be sending an invoice for the days leading up to the liquidation (being 9-12 September). WDL believes that it may have got its Monday's mixed up. It is accepted that WDL acted entirely in good faith in overlooking the correct details of payment for 9-12 September. However, in the absence of any representation by QCL about Mr Q having authority to bill for that period, Mr Q could not act on his own behalf to change the arrangement, and any error made by WDL could also not result in a change to QCL's entitlement.

Is QCL entitled to payment given that WDL has already made payment to Mr Q in good faith?

12. WDL has paid for the work done in the honest belief that it should pay the account as it was presented by Mr Q.

13. As is explained above, WDL has made an error in doing so. However, as WDL pointed out, it acted without intent to prejudice QCL. WDL is a small company with limited cash resources. It pointed out that QCL has significant debts, and a failure to recover this sum would not be unduly prejudicial in the scheme of the liquidation as a whole.

14. Whilst I accept the hardship that this liability creates for WDL, I am unable to alter the fundamental legal relationships between the parties to bring these relative equities into account.

15. I note that QCL has a duty to WDL to mitigate its loss and should therefore pursue Mr Q first. I am satisfied it has done so, without success. Mr Q has offered to repay the sum received but has not. WDL can of course now pursue Mr Q, but may also have no prospect of recovery.

16. However, Mr T noted that a liquidator is entitled to reach a compromise and offered a reduction of the account to \$800.00 (including GST) if paid by the end of August, not in recognition of any right

to a reduction, but as a gesture to assist with the resolution of matters. Whilst this sum was not agreed to in the hearing, and had been offered without prejudice, Mr T allowed me to consider that sum as an appropriate amount to award in the case.

17. Having regard to all the circumstances, it is reasonable for there to be some sharing of the impact that Mr Q's actions have had on QCL and WDL, particularly given that recovery from WDL saves QCL further recovery costs in having to pursue further action against Mr Q. For these reasons, I have recorded the compromise as proposed by Mr T as an appropriate resolution of the matter.

Is any sum due to WDL under the counterclaim?

18. WDL sought the costs of the proceedings. These are not able to be awarded in the Disputes Tribunal except in limited circumstances that do not apply in this case (s43 Disputes Tribunal Act 1988).

Conclusion

19. For these reasons, an order has been made for WDL to pay QCL the sum of \$800.00. As this sum if GST inclusive, QCL is requested to issue a fresh or amended invoice for GST purposes.

Referee:

J Robertshawe

Date: 4 August 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 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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.