



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

[2023] NZDT 601

**APPLICANT**      S Ltd

**RESPONDENT**    E Ltd

**The Tribunal orders:**

1. S Ltd's application is dismissed.

**Reasons**

2. On 2 November 2021, S Ltd was contacted by an employee of E Ltd and was asked to design and price a kitchen for a customer for whom E Ltd was building a home. On 22 November E Ltd followed up on the quotes. The design and quote was subsequently prepared and forwarded.
3. On 1 December, E Ltd asked what payment terms were, and on 2 December 2021 S Ltd responded that no deposit was necessary.
4. On 6 December 2021 E Ltd's project manager emailed S Ltd advising that they were "*waiting to hear a response back from the clients*".
5. On 13 December 2021, E Ltd emailed advising that "*the clients have come back to us and they would like to proceed minus the window seat and the associated install costs*".
6. The kitchen joinery was subsequently manufactured and supplied, and E Ltd was invoiced. Five invoices were rendered, two of which were paid. However, the final three remain unpaid with a balance of \$15,472.81. The invoicing was made out to E Ltd, although the evidence is that it was forwarded to the customer and the customer paid direct.
7. It appears that a dispute arose between E Ltd and the customer, which has been settled by agreement. S Ltd attempts to have its outstanding invoices paid by E Ltd have resulted in E Ltd advising that the debt is owed by the customer.
8. S Ltd have brought an application to the tribunal alleging that the contract is with E Ltd, and E Ltd is liable for the outstanding payments.

**Issues**

9. To resolve this application, I need to consider:
  - a. Was E Ltd acting as the customer's agent when the contract was formed?
  - b. Was E Ltd's identification of the customer sufficiently clear that E Ltd was outside of the contractual relationship?

**Agency**

10. Agency is the legal concept where a person acts as the representative of another, and in doing so may enter into contracts on behalf of the principal. In this instance E Ltd was acting as the

agent of the homeowner when it entered into the contract with X. This is evidenced by the fact that the kitchen joinery was not for E Ltd, but for the homeowner, and by the fact that the homeowner made payments direct to X (although that the payment occurred after the contract had formed and is not evidence of the intentions of the parties when the contract was formed).

### **Undisclosed principal?**

11. When an agent does not sufficiently identify that it is acting for another, and enters and into a contract, the agent may be subject to the terms of the agreement and is liable for the principal's default.
12. The concept of the undisclosed principal is where an agent contracts on behalf of an identified third-party within the scope of the agent's authority, the authorised contract may, as a general rule, be enforced by or against the principal. However, if the agent contracts in terms that imply that the agent is the real and only principal, the other party, in this case S Ltd, may elect whether to enforce a breach against either the agent; E Ltd, or the principal; the homeowner.
13. In this instance I need to look at the correspondence between the parties to decide whether or not E Ltd was acting as the homeowner's agent. I note the following:
  - a. the emails of 6 and 13 December 2021, both identified that there was a client for whom the kitchen joinery was being obtained;
  - b. E Ltd is a home building company, and generally builds homes for third-party customers;
  - c. the terms of trade under which the invoice was submitted, were those normally forwarded to a building firm, rather than to homeowner (homeowners are required to play a deposit upfront);
  - d. payment was made direct by the homeowner, although this was not obvious to S Ltd; and
  - e. the homeowner was not identified in the correspondence between the parties until after the contract had formed.
14. Looking at these factors I conclude that it was sufficiently clear from the initial correspondence that E Ltd was transacting as the agent of the homeowner, rather than on its own behalf. In such instances the normal rules of agency apply, and the contract was with the homeowner, rather than E Ltd.
15. This means that it is the homeowner rather than E Ltd against whom the claim for breach of contract must be brought, as they are the contractually liable party.
16. Therefore, S Ltd application is dismissed.

**Referee: C D Boys**

**Date: 8 November 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>.