



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 322

APPLICANT T Ltd

RESPONDENT B Ltd

The Tribunal orders:

1. B Ltd is to pay T Ltd \$15,122.50 on, or before 31 September 2023.

Background

2. SB, the Director of T Ltd is an [occupation]. She is a creditor of P Ltd, a company currently in liquidation. She has acted as an informal agent/spokesperson for three other creditors, who are homeowners with unfinished or allegedly defective building work performed by P Ltd.
3. B Ltd is a project management firm, which has acted as a consultant to the liquidator of P Ltd (the Liquidator), to manage the construction aspects of the liquidation. Prior to the events of this application SB was in contact with the Liquidator about her own claim.
4. In late September 2022, SB was approached by NJ, an employee of B Ltd, about the homeowner's claims. SB says that she was asked to prepare reports on building defects and uncompleted work.
5. On 3 October 2022, SB emailed NJ advising that the reports would take some time to compile, and asked "[i]s this something we can put with my claim to compensate for the hours spent on it?" NJ responded "[p]lease can you keep track of your hours separately for this please. I will then present this to [the Liquidator] as this will form part of the Liquidator's costs."
6. Over the next 3 months, three building reports were completed and presented to B Ltd. The content of these reports was used as the basis for reports B Ltd then submitted to the Liquidator for which it was paid.
7. On 27 January 2023, SB issued an invoice to B Ltd for \$15,122.50.
8. B Ltd has disputed that it owes any money to SB.

Issues

9. To resolve this dispute I need to consider the following:
 - a. Did NJ have the ability to contract on behalf of B Ltd or the Liquidator?
 - b. Had a contract formed between B Ltd and SB for the provision of the reports?
 - c. If there is no contract, does quasi-contract apply?

Did NJ have the ability to contract on behalf of B Ltd or the liquidator

10. UI, the director of B Ltd, argues that NJ did not have the authority to enter into a contract on behalf of B Ltd. With respect, this is only partially relevant. Authority to contract did not rely on NJ's actual authority or role within B Ltd. Rather it relied upon the law of agency, under which there is a distinction between actual authority, and apparent authority. Apparent authority is when it appears to other people that the person with whom they are dealing has the authority to bind the principal.¹
11. In this case NJ was corresponding with SB as an employee of B Ltd. From what SB said during the hearing, and from the correspondence between NJ and SB, I note the following
 - a. NJ was an employee (albeit part-time) of B Ltd;
 - b. NJ was using an B Ltd email address, with an B Ltd header and signature block; and
 - c. NJ had corresponded previously about the various creditor's claims and was holding herself out as collecting information for B Ltd on behalf of the liquidator.
12. Based on these criteria and on the circumstances of the correspondence I conclude that to someone standing in SB's shoes, NJ appeared to have the apparent authority to enter into agreements on behalf of B Ltd. This is sufficient to bind B Ltd.
13. I also conclude that, as B Ltd was collecting information for Liquidator, albeit as a consultant on an ad hoc basis, NJ also had the apparent authority to enter into agreements on behalf of the Liquidator.

Was there a contract?

14. SB says that B Ltd is contractually bound to pay as NJ's statements led to a contract forming between the parties. She highlights that NJ contacted her and asked her to complete the reports for the homeowner creditors.
15. B Ltd says that the request was on the basis that SB was representing the homeowners, and so the request for information was to enable them to establish their claims, rather than as a service to B Ltd. UI says that as this is the liquidation, at a minimum there would have been a formal contractual agreement for the work to be undertaken.
16. The law of contract requires that people should keep promises that they legitimately agree to. This has led to the following characteristics of a contract being identified:
 - a. there needs to be clear communication between the parties of an offer to provide a service or product and acceptance of that offer;

¹ see *Cromwell Corporation Ltd v Sofrana Immobilier (NZ) Ltd* (1988) 1 PRNZ 352

- b. there needs to be consideration, in this case the provision of services in exchange for the payment of money;
 - c. certainty of terms; and
 - d. intention to create legal relations, in other words a commitment to the promises made.
17. Viewing the first of these characteristics, SB says that her correspondence and discussions with NJ were clear communication that she would provide the reports, and B Ltd would pay. However, NJ's email of 3 October 2022, clearly states that the costs would be "*present[ed] ... as liquidators costs*". Following this there were a number of emails between NJ and SB about the reports and also about SB's own claim against P Ltd. The tone of these emails is of NJ seeking evidence about the various claims against P Ltd, rather than seeking separate technical reports. Viewing the email of 3 October 2022, in the context of the discussions which followed it, I cannot interpret NJ's words as clearly promising that B Ltd would pay for the reports.
18. Viewing the third of the characteristics of contract, there was also an absence of terms. I have been provided with no evidence of discussions of the extent, timeframes, or costs of producing the reports. These are terms I would expect to see had there been an intention to contract.
19. I cannot conclude that there was a contract between T Ltd and B Ltd.

If there is no contract, does quasi-contract apply?

20. Under s 10 (1) (a) Dispute Tribunal Act 1988, the Tribunal has jurisdiction to decide claims based on the doctrine of quasi-contract. A quasi-contract may arise where, even though there is no actual contract, one person confers a benefit on another in circumstances where it would be unfair or unconscionable not to require some form of payment to be made.
21. In considering whether it is just to find a quasi-contract has arisen, it is relevant to consider all circumstances, including the implications of applying the doctrine. For example, it would be unfair and wrong for a contractor to go around doing work without agreement and then expect to be paid under the law of quasi-contract.
22. The Liquidator has advised that he does not intend to pay T Ltd's invoices or to get involved, as he considers that he has paid B Ltd \$48,070 for the reports. SB argues that this payment was received based on B Ltd repackaging her reports and submitting them to the Liquidator. An email from the Liquidator has been provided commenting that "*the reports I got were mainly the same as [T Ltd] report*". SB has also provided a statement from a report writer alleging similarities between T Ltd, and B Ltd's reporting.
23. Comparing the two sets of reports I am struck by the similarities, which extend to the same phrasing being used in many instances, the same formatting being used, the re-use of photos and others. I conclude that B Ltd has in fact repackaged the reports with minimal additional changes.
24. It is clear to me that SB and NJ misunderstood each other's intentions. Following this B Ltd had the opportunity to reject or merely pass on the reports unaltered. However not do so, and while I do not have full details of B Ltd's invoices to the liquidator, it was enriched by being paid for T Ltd work.
25. In the unique circumstances of this case, considering the misunderstanding between NJ and SB, and the benefit received by B Ltd for reproducing T Ltd work, I conclude that the invoices should be paid. It would be unfair to allow B Ltd to benefit from T Ltd work when T Ltd did not.

26. UI argued that the rates on the T Ltd invoices were too high, and they were not itemised. I do not accept this argument. The rates applied are similar or lower than I have seen in other cases and seem reasonable for the extent of work spread across all the reports. Moreover, B Ltd was paid more for its reproductions.

27. I order that B Ltd pay T Ltd \$15,122.50.

Referee: C D Boys

Date: 1 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 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>.