



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

**District Court**

**[2023] NZDT 472**

**APPLICANT** T Ltd

**RESPONDENT** EL

**The Tribunal orders:**

The application is dismissed.

**Introduction:**

**Reasons:**

1. T Ltd had filed a previous application with the Disputes Tribunal being [file number]. Under this application V Ltd was ordered to pay T Ltd for an outstanding debt.
2. V Ltd went into liquidation before the money was repaid.
3. T Ltd has filed an application against EL, the director of V Ltd, personally for payment of the remainder of the debt being \$5,392.36
4. T Ltd are relying upon a clause in the terms and conditions of their contract to enable the Disputes Tribunal to find EL personally liable to pay the debt.
5. The issue to be resolved is whether EL is personally liable to pay T Ltd \$5,392.36.

**Is EL personally liable to pay T Ltd \$5,392.36.**

1. Under the heading "Payment Terms" at 6.6 in the terms and conditions, the contract states, if the client goes into liquidation or is unable to pay for any reason, the client director and or owner will become liable for any debt owed to the company, including late fees and interest."
2. The terms and conditions have the effect of a personal guarantee under the Property Law Act 2007.
3. Although in general a contract does not need to be in writing, an important exception applies under Section 27 of the Property Law Act 2007 in respect of a guarantee. Parliament has considered it necessary to ensure the obligations of a person who accepts liability for a debt owed by their company are detailed in writing to avoid unnecessary dispute about the extent of those obligations at a later stage. If the guarantee is not in writing, and signed by the guarantor, it is not enforceable.

4. BX appeared for T Ltd at the teleconference. He said that he had sent the original quote to EL and that the terms and conditions accompanied the quote. In an accompanying email he had asked EL whether he agreed to the terms and conditions. EL responded that he did.
5. The parties agreed that the terms and conditions were unsigned.
6. The clause in the terms and conditions of T Ltd, does not meet the requirements of the Property Law Act 2007 because it was not signed by EL and is unenforceable.
7. For this reason, the claim must be dismissed.

**Referee: Verdun Tawhara**

**Date: 9th day of 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>.