



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

District Court

[2023] NZDT 100

**APPLICANT** T Ltd

**RESPONDENT** R Ltd

**The Tribunal orders:**

R Ltd is to pay to T Ltd the sum of \$7,429.00 on or before 21 April 2023.

**Reasons:**

1. In or around September 2022, T Ltd carried out work for R Ltd.
2. T Ltd sent an invoice to R Ltd in October 2022 for \$7,429.00.
3. A number of reminders were sent from T Ltd's accounting system, [AB].
4. R Ltd says that on 27 October 2022 it paid a sum of \$7,429.00 to a Westpac account that appeared on the invoice R Ltd received.
5. The account R Ltd paid the money to is not an account of T Ltd. It appears that the original invoice sent by T Ltd was intercepted and a "fake" invoice created with a different bank account number on it. This was sent to R Ltd from a similar but different email address to that of T Ltd. R Ltd paid money into a [bank] account on the basis of that invoice.
6. R Ltd says it has attempted to retrieve the money paid through its bank but was unable to do so. R Ltd has reported the matter to the Police but there has been no progress on that matter as yet.
7. T Ltd is seeking \$7,429.00. It says it never received any money from R Ltd and R Ltd is still obliged to pay T Ltd the amount as set out on the original invoice.
8. The issue the Tribunal has to consider is:
  - a. Does R Ltd remain liable to T Ltd in the amount of \$7,429.00?

**Does R Ltd remain liable to T Ltd in the amount of \$7,429.00?**

9. It is likely that this claim involved email hacking or what is sometimes known as business email compromise ("BEC") fraud.
10. The law in this area is still developing and the methods being used by hackers are becoming more sophisticated.
11. There was a lot of discussion at the hearing on this matter as to which of the parties' email or server had been hacked. T Ltd believes R Ltd's server is not secure and is vulnerable to hacking such as this. R Ltd believes that by sending out an email with an invoice attached as a pdf, T Ltd's system was vulnerable.

12. There was no evidence produced from either party as to where and when the intercept of the email took place.
13. The limited amount of case law there has been seems to focus on which party was in the best position to prevent the fraud.
14. This claim is different to the decision of the Disputes Tribunal submitted by the applicants in *QL v GT Ltd [2022] NZDT 129*. In that case the person who had paid the money to the fraudster was a consumer dealing with a business. The Tribunal found in that case that the business had obligations arising out of the Consumer Guarantees Act 1993 to be aware of BEC and take precautions against it. A consumer could not be expected to have the same level of awareness.
15. By contrast, this claim involves two businesses. It is therefore difficult to determine who was in the best position to prevent the fraud.
16. T Ltd points to the recommendations made that businesses double check the validity of bank account details directly with the other business before paying accounts. This is particularly so when dealing with a new supplier. T Ltd also highlighted the fact that the email which sent the invoice to R Ltd was a [email platform] account and that should have alerted R Ltd to a possible problem. T Ltd said it appeared that NQ from R Ltd paid the account himself rather than using his bookkeeper.
17. NQ of R Ltd said he always pays accounts himself and he does not use his bookkeeper to make payments such as this. He said T Ltd could have called R Ltd when it sent the invoice to check the correct bank details had been received. He said he did not notice it was a [email platform] account which had sent him the email and even if he had, it would not have raised concerns with him. He believed that if T Ltd had just sent an email with a link to the invoice, rather than attaching it as a pdf, this may not have occurred.
18. Both businesses could have done more to prevent this from happening. However, that is not to be seen as a criticism of either party. Both parties said this had never happened to them before, but as a result of this, they now do things differently. Both appear to have been victims of a fraud in this matter.
19. I then turn to look at the contractual obligations in this matter. There was no written agreement between the parties so there was no agreement as to who was to carry the risk should an event such as this occur. Nor was there any agreement as to how invoices were to be sent or how payments were to be made.
20. T Ltd carried out the work as agreed. It was entitled to receive payment for that work from R Ltd. T Ltd has not received payment.
21. The fact that R Ltd has paid the amount to another bank account does not release it from its obligations to pay T Ltd for the work done.
22. There is some overseas authority for this finding such as the decision in *J Brazil Road Contractors v Belectric Solar Ltd [2018] 1 WLUK 294* which was referred to by T Ltd's lawyer when it wrote to R Ltd seeking payment.
23. I appreciate the frustration this brings. However, T Ltd is still entitled to be paid for its work as agreed and has not received the payment as yet. R Ltd remains liable to pay T Ltd for its work.
24. R Ltd is to pay to T Ltd the sum of \$7,429.00 on or before 21 April 2023.

**Referee: P Byrne**  
**Date: 24 March 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>.