



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 521

APPLICANT T Ltd

RESPONDENT X Ltd

The Tribunal orders:

X Ltd is to pay T Ltd \$9,402.77 within 28 days.

Reasons

- [1] T Ltd, represented by NQ and FW, claims from X Ltd, represented by CS, the cost of repair work that it carried out for a client insured by X Ltd. X Ltd accepts that it had authorised and approved the work and payment for it, but says that it has paid the sum owing.
- [2] The facts of this matter are, so far as they are known, not in dispute. T Ltd carried out repair work on X Ltd's client's vehicle in November 2022. X Ltd accepted that its client, the vehicle owner, had cover for the repair costs, and T Ltd invoiced X Ltd for \$10,652.77, the cost of the necessary work. The invoice, dated 22 November 2022, stated T Ltd's bank account number as 02 ... ("the 02 number"). X Ltd responded to this invoice on 21 March 2023 by noting that the excess attached to the policy had not been deducted, and asked T Ltd to send an amended invoice. X Ltd received an amended invoice on 26 March for \$9,402.77.
- [3] T Ltd did not receive the invoiced payment, and contacted X Ltd to enquire about it. X Ltd replied to the enquiry by saying that it had already paid the money to T Ltd. Further examination showed that the bank account number for T Ltd that was stated on the amended invoice differed from that on the first invoice. The number on the amended invoice, from which the excess had been deducted, was 03 ... ("the 03 number"). X Ltd had paid the money destined for T Ltd into the 03 number which was, as how now been learned, in fact not an account owned by T Ltd.
- [4] Before the invoices were received by X Ltd, there had been some ongoing discussions between T Ltd and X Ltd relating to whether the vehicle owner was covered by X Ltd's policy, and the issue of the excess. These discussions had been between T Ltd's administrator, CD, known as "[redacted]", and HL, for X Ltd. The emails sent by CD were signed "[redacted]", and all the emails sent to X Ltd by T Ltd were from the same email address, [email address].
- [5] On 26 March, X Ltd received, together with the amended invoice, an email message asking that X Ltd note that T Ltd's bank account number had been changed. The email, from [email address], and bearing CD's usual automated name and details, said:

Hi [HL],

Had to do this myself, accounts are away and I've also been reminded about our new account, we are slowing changing over so have updated that.

Be good to get the needful done. Thanks

Regards
[CD]
[contact details redacted]

- [6] X Ltd's assessor then approved the amended invoice for payment. He then received another email, from the same email address, with the same signature and details:

Hi [HL]
Just a quick email confirm with my Accounts team the payment was being made to our new bank account on the revised invoice?
Regards
...

- [7] The assessor replied, confirming that payment was being processed. He then received another email from the same address and with the same signature and details:

Thanks for that. Just need to clarify as I sent out quite a few invoices and botched a couple.
Regards
...

- [8] And, on 4 April:

Hi [HL]
No reply on the email?
Hey look good as gold, will just let it run its course and cross our fingers.
Thanks
[CD]
...

- [9] NQ said that CD had not sent these emails, and this was confirmed by CD, who appeared as a witness. Nor, said NQ, had T Ltd changed its bank account, but it continued to retain the 02 number. Thus, said T Ltd, some unknown person must have hacked its email account. FW had gone to a local police station to report what had happened, but had been informed that it was not a matter that the police would deal with.

- [10] CD said that the computer that he regularly used for emailing with his [email address] was located in the premises of T Ltd. Although any one of four of T Ltd's employees could have had access to its location, no member of the public could have done so. He and NQ said that there was no reason to distrust any of T Ltd's staff, and it was therefore more likely that the computer had been hacked from the outside in some way. A camera at the site did not show anyone entering the building at the time the messages had been sent, although one of them was apparently sent on a Sunday afternoon.

- [11] T Ltd's position was that it had not been responsible for any hacking or misuse of its computer, and that X Ltd should pay the sum that it had invoiced. NQ said that X Ltd should have expected that something was amiss when it received the amended invoice because of the casual, or unlikely, language used in the emails that it received from "CD" together with, or after, the amended invoice was sent. NQ also noted that, although the amended invoice had the excess deducted, no adjustment had been made to the applicable GST. NQ thought that X Ltd, upon receiving the invoice and emails, should have been suspicious, and should have contacted T Ltd before paying the invoiced sum into the 03 bank account.

- [12] For X Ltd, CS set out a timeline that accorded with the evidence described above. She described the communications between CD and X Ltd's assessor. Her view was that the amended invoice was on T Ltd's headed document, and was identical in appearance to the previous invoice except for the altered bank account number. She did not think that the assessor would have examined it to check whether the GST amount had been altered, or that there was any reason for him to take any particular note of it.

[13] GO, from X Ltd's investigation team, appeared as a witness. He said that he had examined the matter as thoroughly as possible, and talked to the staff of X Ltd who had been involved in the payment. He was satisfied that no one on X Ltd's staff had been involved in any fraudulent conduct relating to the payment, and he had not identified anyone who might have opened the 03 account. He considered that there had been no red flags that ought to have alerted X Ltd to any problems with the payment. The amended invoice appeared genuine. He said that he had attempted to find out the name of the holder of the 03 account, but that the bank in question had refused to supply that information to him.

The issue

[14] The question for me to decide is whether X Ltd must pay T Ltd the sum that T Ltd claims. Each party considers that the other was at fault, and that some failure in the other's systems or actions allowed fraudulent conduct by an unknown person to occur.

Decision

[15] I consider that the starting point is the parties' agreement. In this case, X Ltd had authorised T Ltd to repairs its client's car; it had accepted that the client was covered by X Ltd's policy, and approved payment of T Ltd's cost for the work that T Ltd did. The question is whether, it not having paid T Ltd, X Ltd is entitled to refuse to pay on the ground that it has already paid the sum invoiced by T Ltd into another bank account. In my view, that depends upon what the evidence discloses about where fault lies.

[16] I was given no evidence about the possibility, theoretical or practical, that a third party in a different location and using a different computer, could hack into CD's emails and make use of them. If such a thing can be done, it may be that an unknown person committed this fraud. It is also possible, or perhaps probable, given that the email address was the same for T Ltd in all its communications with X Ltd, that an employee or other person in T Ltd's premises wrongfully used the computer in order to deceive X Ltd. Nor do I know whether it might have been possible for an employee of X Ltd, perhaps a person with a copy of the first, unamended invoice, to alter that invoice and somehow give the appearance that it had come from T Ltd's usual address.

[17] It does not follow, whether the fraud was committed by an unknown third party or by a person connected with T Ltd's business, that T Ltd must, without more, be regarded as responsible for the fraud. If it was committed by an unknown person, unconnected in any way with T Ltd, T Ltd would not be liable for those acts. T Ltd would be liable for the fraudulent conduct of an employee or visitor to its premises only if it had authorised that person, or held him or her out as authorised, to deal with T Ltd's finances; or if T Ltd's office practice was negligent, so as to enable a financial fraud to be carried out. Thus, if the fraud were committed by, for example, a cleaner or mechanic, T Ltd would be vicariously liable for his or her wrongdoing only if T Ltd's careless conduct enabled it.

[18] T Ltd's evidence was that it is a small business, and CD was employed to deal with accounts. NQ did some part time administration. Other employees could, if they wished, enter the area where the computer was kept. I do not think that such an arrangement can be regarded as unusual for a small business of this kind, where the people involved were all known to each other, and could freely move about the premises. Thus, I do not think that the evidence establishes that T Ltd was negligent, or that the fraud was committed by a person whom it had authorised, or held out as authorised, to deal with its accounts. There is simply no evidence that establishes with any degree of certainty the identity of the person who sent the false invoice and emails.

[19] I do not consider that X Ltd was at fault, or that it was responsible for the fraud. I do not think that anything in the amended invoice should have alerted X Ltd to the possibility that it was not genuine. It had the same format as the first invoice, and the bank account was altered in accordance with what was stated in the accompanying email. Nor do I think, given that X Ltd has a large number of customers with varying kinds of written expression, that the language used in the emails should

have warned X Ltd of the possibility of fraud. HL and CD, although they had discussed the insurance matter in question, did not know each other well, and there was no reason for him to suspect that the amended invoice and associated messages had not come from CD. Nor do I think that the fact that the GST sum was the same in both invoices should have caused X Ltd to suspect fraud. Rather, I think that X Ltd reasonably relied on the genuine-seeming appearance of the documents that it received from an email address that it knew belonged to T Ltd.

[20] In the end, therefore, I consider that the evidence provided to me does not establish who committed this fraud. Given the evidence that I have, I can only say that it is clear that a fraudulent person has obtained, by means of using a false invoice sent to X Ltd, payment by X Ltd into a bank account that did not belong to T Ltd. Without further information, I consider this a case in which an innocent party, X Ltd, has have been deceived by the actions of an unknown person. The fact that the fraud was committed by means of an invoice that had the appearance of being sent by T Ltd does not mean, of itself, that responsibility lies with T Ltd.

[21] Thus, I consider that it has not been established that any conduct on the part of T Ltd disentitles it to the payment that was due to it by X Ltd. X Ltd must therefore pay T Ltd the claimed sum.

Referee: C Hawes

Date: 28 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>.