



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

District Court

[2023] NZDT 377

**FIRST APPLICANT** TD

**SECOND APPLICANT** LD  
(new party)

**RESPONDENT** GP  
(removed party)

**RESPONDENT** Q Ltd  
(new party)

**The Tribunal orders:**

1. LD is added to the claim as Second Applicant.
2. GP is removed as the Respondent and replaced by Q Ltd.
3. The claim by TD and LD against Q Ltd is dismissed.

**REASONS**

1. In early April 2023, the Applicants, TD and LD, made a booking through [website] to stay with their family at a unit at the [the Property] ("the Property") for one night on Saturday, 6 May 2023. The Property is managed by the Respondent, Q Ltd ("Q Ltd"), and the units are independently owned. On 6 April 2023, TD paid [website] in full for the booking, which was \$379.04. On 6 May 2023, TD and LD did not travel from [town 1] and [town 2] to take up the accommodation due to a weather event. Instead, they contacted [website] and asked to cancel the booking.
2. TD and LD bring a claim against Q Ltd seeking damages of \$379.04, being the amount they paid [website] to book the Property.
3. I held a teleconference hearing of the claim on 12 July 2023. TD and LD attended. After the hearing, I noted that the booking with [website] was made in the name of LD rather than TD, so I have joined LD as Second Applicant. While this was not raised at the hearing, I am satisfied that this is appropriate and that service on LD is not necessary because she was present at the hearing and acknowledged that she jointly made the booking with TD. GP attended the hearing and acknowledged that she works for Q Ltd as the property manager of the Apartments. At the hearing, GP asked that she be removed as Respondent and replaced with Q Ltd, which is the company that manages the apartments. She confirmed that she was authorised to accept

service on behalf of Q Ltd and to represent Q Ltd. I was satisfied that it was appropriate to join Q Ltd as Respondent in place of GP and I therefore did this at the hearing.

## Issues

4. The issues I need to determine are:
  - (a) Is Q Ltd the correct Respondent, or should TD and LD bring a claim against [website] that they made the booking with?
  - (b) Was the booking contract frustrated?
  - (c) Is TD entitled to a remedy and, if so, is the amount claimed proved and reasonable?

### **Is Q Ltd the correct Respondent, or should TD and LD bring a claim against [website] that they made the booking with?**

5. Agency is a relationship which arises when one person (the principal) authorises another person (the agent) to act on their behalf. The agent can make a contract between the principal and a third party. Generally, an agent is not liable under the contract between the principal and the third party or entitled to enforce the contract. At the hearing, GP raised the issue of whether Q Ltd was the correct Respondent and expressed the view that TD and LD ought to have brought the claim against [website] for a refund because they booked with [website] rather than directly through Q Ltd. I am satisfied that TD and LD are entitled to bring a claim against Q Ltd rather than [website]. This is because [website] is Q Ltd's booking agent and, under the law of agency, a contract formed between Q Ltd and TD and LD when they made the booking through [website].

### **Was the booking contract frustrated?**

6. If the contract between the parties does not contain a provision about what happens if performance is prevented (called a force majeure clause), the Contract and Commercial Law Act 2017 ("the CCLA") applies and sets out what happens if a contract is "frustrated" (s61 to s69). The doctrine of frustration applies when there is a significant event for which neither party is responsible, and from which the whole basis of what remains of the contract is dramatically different from that contemplated by the parties. When a contract is deemed to be frustrated under the CCLA, the parties are discharged from the contract and money paid at the time of discharge is recoverable. The courts have said that it is a high bar to prove that a contract is frustrated, and whether a particular contract is frustrated will depend on the particular factual circumstances, so the same factual circumstances may frustrate some contracts but not others.
7. TD says that on Thursday, 4 May 2023 there was a public announcement of a major rain event about to hit the [town 3]/[town 1] region. TD says that, on 5 May 2023, the Police asked people in the region to stay off the roads and advised against travel. A civil defence travel warning was issued, and people were advised not to travel. On 6 May 2023, the day TD and his family were due to travel to [town 2], the state highway was closed between [town 4] and [town 5] and there was a public warning not to travel. TD says that this means that his booking at the Property was frustrated because the weather event prevented him from travelling to the Property on 6 May 2023. TD says that he contacted [website] on 6 May 2023 to cancel the booking. I note that there is some confusion between the parties about whether Q Ltd was aware of the cancellation on 6 May 2023, because TD's booking remains a live-booking on Q Ltd's booking system and the Property's owner has been paid by Q Ltd for the booking. However, I accept that [website] received TD's request to cancel, because it replied to him by email (date and time unclear) indicating that his cancellation request had been received and they would try to find the best possible solution. Although GP says that TD ought to have contacted Q Ltd as well as [website] about the cancellation, I accept that [website] (as Q Ltd's agent) received the cancellation request on behalf of Q Ltd.
8. Having carefully considered the available information and evidence, and having heard from the parties, I find that the contract between Q Ltd and TD and LD was not frustrated, and no refund is due. I make this finding for the reasons set out below.

9. It is not disputed that TD and LD did not travel from [town 1] to [town 2] due to the bad weather on 6 May 2023, and therefore did not use the accommodation they had booked. It is also not disputed that the weather was bad on 6 May 2023, which made travelling between [town 1] and [town 2] difficult, and this was a circumstance beyond the control of both parties. However, the severity of the weather event that prevented TD and LD from travelling between [town 1] and [town 2] on Saturday, 6 May 2023 is unclear. TD and LD have not provided any evidence about the weather event. The internet notes that the weather event was a 'severe weather event' due to heavy rain and records that [state highway] between [town 5] and [town 4] was closed for part of the day on 6 May 2023. However, the Council's website ([redacted]) shows that [state highway] was reopened by 3pm on 6 May 2023 (as noted in the 3pm update), with a heavy rain warning orange remaining in place for the region. The 3pm update states: *"\*\*[STATE HIGHWAY] [TOWN 5] TO [TOWN 4]\* [state highway] has reopened following an earlier road closure. Please drive to the conditions and be prepared for hazards such as slips, rock and treefalls, and localised flooding."* Under "Road and Public Transport" the Council's website states: *"There is no easy access to [town 6] at present, as [state highway] is closed between [town 5] and [town 4] due to flooding... [town 1] [redacted] advises against travelling on the roads at this time, as there are a number of slips and road closures in place."* The NZTA website media release on 6 May 2023 at 2.55pm states that *"Waka Kotahi is urging drivers to take extra care on the roads as heavy rain continues to affect highways in several regions."*
10. I note that there is no information available which suggests that the inland route between [town 1] and [town 3] was closed on 6 May 2023, nor is there any information suggesting that there was a total ban on driving between [town 1] and [town 2] via either the inland route on 6 May 2023, or via [state highway] once it re-opened during the afternoon of 6 May 2023. Therefore, travel was not forbidden or impossible, and there is no available information which suggests that TD and LD could not have travelled to [town 2] if they chose to do so.
11. TD and LD's decision not to travel from [town 1] to [town 2] during the weather event is completely understandable. However, a party cannot rely on self-induced frustration. The contract was capable of performance by both parties at the time, but TD and LD decided not to perform their side of the bargain by choosing not to travel to the Property. At all times, Q Ltd was able to perform its side of the bargain because there is no information available which suggests that the Property was affected by the weather event. Had the Property been affected, it is likely that the contract between Q Ltd and TD and LD would have been frustrated, but this has not been suggested. I have also taken into account that the terms of the booking that LD made via the [website] website was that the booking was non-refundable. This suggests that any issue with the booking was at the customer's risk.
12. There is always a possibility of a customer encountering a problem with getting to a place where they have booked accommodation, and this is generally at the customer's risk as it would be unfair to expect accommodation providers to take on the risk of bad weather except in the most severe of situations where travel is impossible.
13. For these reasons, TD and LD's claim against Q Ltd is dismissed.

**Referee: D. Brennan DTR**

**Date: 28 July 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>.