



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 404

APPLICANT TU

RESPONDENT SM

**SECOND
RESPONDENT** S Ltd

The Tribunal orders:

1. SM is to:
 - a. return the food truck to TU on or by 30 September 2023, and
 - b. pay TU \$1,500 on or by 30 September 2023.

Reasons

2. SM and TU were friends for some years. Both operated food businesses. In November 2020, TU purchased a food trailer for \$23,344 (the Trailer).
3. Unfortunately, TU suffered covid related health issues, and decided that he could no longer operate the business. In mid-2022 he asked SM if he would either buy it or sell the Trailer on TU's behalf, as he had done with other people's equipment and vehicles in the past. The price for the trailer was to be \$15,000. TU says SM told him that he could not afford the Trailer and would sell it, SM says it was agreed that he would buy it.
4. As the trailer did not sell immediately SM parked it at his shop, and it was used to store items. Due to the items that were stored in it an offer to purchase the vehicle fell through. SM was in some distress as he needed money to pay loans including the loan for the trailer, and to pay an outstanding hospital bill.
5. SM says that it was agreed that he would buy the trailer for \$15,000. However, due to business and family issues, he could not afford the full amount. He says that he made four cash payments to TU:
 - a. 23/10/2022 \$2,500.00
 - b. 21/11/2022 \$1,250.00
 - c. 28/11/2022 \$ 850.00
 - d. 11/12/2022 \$ 500.00

6. As evidence of this he has provided copies of a handwritten page from an exercise book. No bank records or other evidence was provided. He says that the payments were made when TU visited his [Suburb 1] takeaway shop.
7. TU says he could not have visited the shop on those days, as he was at work and his lunch break was not sufficient time to travel from his work at [Suburb 2] to [Suburb 1] and back.
8. In December 2022, SM left for the South Island but made no arrangements relating to the trailer and TU did not know where it was parked. Shortly after SM went to [Country] for family reasons.
9. TU discovered that SM was using the trailer for his business at a number of events in late 2022, and subsequently. His attempts to recover the vehicle from SM have been unsuccessful, and he seeks \$15,000 from SM. SM for his part says he owes TU \$10,000.

Issues

10. To resolve this application, I must consider the following:
 - a. Was there a contract for the sale of the trailer?
 - b. What, if anything was paid by SM to TU?
 - c. What is the outcome?

Was there a contract?

11. TU says that he offered to sell the Trailer to SM, who turned down the offer as he couldn't afford it. SM says he accepted the offer and paid \$5,000.
12. The law of contract requires that people should keep promises that they legitimately agree to even if not recorded in writing. 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;
 - b. there needs to be consideration, in this case the transfer of the ownership of the Trailer 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.
13. In this case there was no written agreement. The evidence of the contract is the correspondence between the parties and their oral evidence given at the hearings.
14. It was agreed that there was an offer by TU for SM to buy the Trailer for \$15,000, the question was whether this offer was clearly accepted. I conclude it was not. Following the offer, on 1 January 2023, there were texts between SM and TU in which SM says he will sell the Trailer and forward the funds. This does not indicate that there was a clear acceptance of the offer to sell SM the Trailer. The sale which fell through indicates that the intention was for SM to sell the Trailer on behalf of TU.
15. Furthermore, even if there was offer and acceptance, the consideration from TU would have involved the transfer of the registration of the Trailer, which has not occurred.
16. I cannot conclude that there was a contract for the sale and purchase of the Trailer.

What was paid to TU

17. There is a fundamental disagreement between the parties about payment. SM says he has paid \$5,000. TU says nothing has been paid.
18. As the party wishing to argue payment as either evidence of the part-payment of the contract or as a partial defence against TU's claim, the onus is on SM to prove the payments.
19. I cannot accept that the handwritten "ledger" is evidence of the payment. All four entries, which are said to have occurred over 2 months, are on the same page, which is undated. There is no supporting bank or accounting evidence, which I would expect to see in a legitimate business transaction. Moreover, the payroll records supplied by TU show that he worked three of the days on which payment is said to have been made. He could not have made the trip between [Suburb 2] and [Suburb 1] in the timeframes involved.
20. SM's partial defence fails for lack of evidence.

Outcome

21. There was no contract, and there was no payment. TU seeks payment of \$15,000. In the absence of a contract, I cannot make this award.
22. However, TU still owns the Trailer. I order that SM is to return the Trailer to TU on or by 30 September 2023.
23. TU also made claims totalling an additional \$26,000 in the hearing. This amount included interest, rent for the Trailer, and re-furbishment and depreciation of the Trailer. Ignoring for the moment that such a sum would push the total claim beyond this Tribunal's monetary jurisdiction, I note that:
 - a. Interest may only be awarded where is an agreed term allowing for interest in a contract, there was no contract in this instance.
 - b. No evidence of rental costs was provided.
 - c. There is no evidence of any damage or alterations made to the Trailer. If damage has occurred, TU may bring a separate application.
 - d. No depreciation of the worth of the Trailer has been proven.
24. However, SM has admitted to using the Trailer for business purposes on at least five occasions. This was not authorised by TU at any stage. It is fair that SM pays for the use of the Trailer. I order that SM pays \$300 for each day he used the trailer, \$1,500 in total.

Referee: CD Boys

Date: 11 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>.