



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

**District Court**

**[2023] NZDT 401**

**APPLICANT TX**

**RESPONDENT BT**

**The Tribunal orders:**

BT must pay TX \$30,000.00 by 4pm on 28 July 2023.

**Reasons:**

1. The applicant and his spouse engaged S Ltd to build a cabin with a bathroom in their garden. The respondent is the sole director and shareholder of S Ltd. The applicant claims he paid more than \$38,000.00 to S Ltd but the cabin has not been finished, is unusable and does not have any council consent.
2. A search of the New Zealand Companies Register reveals that S Ltd will shortly be removed from the Register.
3. The applicant claims that the respondent either personally engaged in conduct that contravened the Fair Trading Act 1986 (FTA) or aided and abetted S Ltd to contravene the FTA. The applicant claims \$30,000.00 from the respondent which has been reduced to meet the Tribunal's jurisdiction.
4. The respondent did not attend the hearing. Two calls were made to the telephone number the respondent provided to the Tribunal, but neither were answered. The absence of a party does not prevent a hearing going ahead.
5. The issues to be determined by the Tribunal were:
  - a. Who did the applicant contract with? Who did the applicant pay?
  - b. Did the respondent or S Ltd engage in misleading or deceptive, or unconscionable conduct?
  - c. Is the respondent personally liable?
  - d. If so, what amounts should the respondent pay the applicant?

**Who did the applicant contract with? Who did the applicant pay?**

6. In this case, the applicant and his spouse contracted with S Ltd and payments were made by them both to S Ltd or to a third party for materials. However, the applicant is making a claim solely in respect of the payments he personally made to S Ltd which was owned and operated by the respondent.

7. The evidence also shows that the applicant and his spouse made payments directly to the sub-contractor builder for materials that should have been included in the contractual price paid to S Ltd, as well as payments to S Ltd.

**Did the respondent or S Ltd engage in misleading or deceptive, or unconscionable conduct?**

8. The relevant law is the Fair Trading Act 1986 (FTA).

9. The applicant claimed that the respondent and S Ltd contravened numerous sections of the FTA, namely:

- a. section 7 (prohibition of unconscionable conduct in the course of trade);
- b. section 9 (general prohibition of misleading and deceptive conduct in trade);
- c. section 11 (prohibition of conduct in trade that is liable to mislead);
- d. section 12A(1) (prohibition against unsubstantiated representations made in trade);
- e. section 13(b) (prohibitions against false or misleading trade representations that services are provided by a person of a particular qualification of skill); and
- f. section 21 (prohibition of the demand or acceptance for payment for services with no reasonable grounds to believe the services will be supplied).

10. The applicant also claimed that the respondent aided and abetted S Ltd in the contravention of the FTA and in accordance with section 43(1)(b) of the FTA.

11. On the evidence provided I find that it is more likely than not that the respondent engaged in misleading, deceptive and unconscionable conduct or in the case of the respondent, aided, abetted or procured the contravention of this conduct. I say this because:

- a. The respondent communicated to the applicant that he was in the process of applying for a building consent from [Council] and requested the applicant to pay \$5,000.00 to obtain this consent. However, no application for a consent was made.
- b. The respondent started building work although no consent had been obtained which is in contravention of the Building Act 2004.
- c. Neither the respondent nor the subcontractor the respondent engaged were Licenced Building Practitioners, although the respondent held himself out to be and it was more likely than not that they were required to be given the nature of the work being done.
- d. The respondent assured the applicant that the work would be done however the applicant was left with a cabin which was only 25 per cent. complete and even if now completed, will not receive a certificate of compliance from the [Council] as no consent was obtained before building work started.
- e. The respondent requested payment from the applicant for the building consent and materials and for progress payments, but the work was not completed.

**Is the respondent personally liable?**

12. The applicant claimed that the respondent was personally liable as he is the sole director and shareholder of S Ltd, he did some of the building work and was the person the applicant communicated with at all times regarding the build. Further, the respondent aided and abetted S Ltd in the contravention of the FTA and was knowingly involved in the contravention of the FTA by S Ltd, so is liable under section 43(1)(b) and (d) of the FTA.

13. There is no general liability on directors for the actions or conduct of their company. Only the High Court has the ability to 'lift the corporate veil'. However, the courts and this Tribunal have found that section 43 of the FTA may confer personal liability on employees, directors or other persons in certain circumstances. This is particularly the case where a director acts in trade where their role is so closely connected to the company that they are effectively an 'incorporated sole trader', and it is the director who is making false statements or engaging in misleading conduct.

14. On the basis of the considerable preceding authority and the evidence provided to the Tribunal, I find that the respondent is personally liable for the contraventions of the FTA. I say this because:

- a. The respondent is the sole director and shareholder of S Ltd.
- b. The respondent was solely responsible for quoting the project and negotiating and communicating with the applicant.
- c. The respondent asked the applicant for payments to be made from time to time.
- d. It was intended that the respondent would manage the project and did do some of the building work.

15. Therefore, I find that the respondent is therefore primarily liable for any breach of the FTA as well as aiding and abetting S Ltd to breach the FTA.

**What amounts should the respondent pay the applicant?**

16. Section 43 of the FTA provides for a broad power for the Tribunal to make monetary orders, including that one party refund another party for amounts paid, or for damages or loss incurred by the party.

17. The applicant provided evidence to show that in spite of the respondent being paid \$57,000.00 for a full contract price of \$57,385.00 (including GST), the cabin was only 25 per cent. finished. Therefore, the best way of measuring compensation is to refund the money the applicant paid to the respondent. The applicant provided evidence that he had paid the respondent in excess of \$30,000.00 to have the cabin built. However, as the Tribunal's jurisdiction is limited to \$30,000.00, I find that this is the amount that the respondent should pay the applicant.

**Referee: K. Armstrong**  
**Date: 7 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>.