



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 652

APPLICANT **U Ltd**

 U Trust

RESPONDENT **D Ltd**

 U Ltd

The Tribunal orders: D Ltd is ordered to pay U Ltd the sum of \$15,631.37. Payment of this sum is ordered no later than 11 December 2023. The counterclaim by D Ltd and the claim by the U Trust are dismissed.

Reasons:

- 1) For a period from 2007 the applicant supplied aggregate, and sand, to the respondent, D Ltd. The applicant, for a time, leased and operated its business from a property owned by the U Trust. D Ltd conducted its business from part of the same industrial complex as the applicant ran its operation.
- 2) There is overlapping control, and 'ownership' of D Ltd and the U Trust. When the applicant pressed D Ltd for payment of the aggregate and sand supplied, the latter company presented U Ltd with invoices for 5 years' worth of water usage to the amount of \$12,354.07.
- 3) At the time the respondent billed the applicant for water usage, the invoices from the applicant, (for a period from 2016 to 2018) for product supplied, totalled \$27,297.32. The applicant credited against this sum the amount it had been invoiced by the respondent, which left a balance owing by D Ltd to U Ltd of \$14,943.25. This is as at the last invoice for product supplied, dated 2 November 2018.
- 4) The applicant seeks an order for \$14,943.25 but says there is interest owing charged at 2.5% per month in the amount of \$21,652.99. The applicant claims \$30,000.00 being the limit of the Tribunal's monetary jurisdiction.
- 5) There is a counterclaim filed by a) the respondent, D Ltd and a claim by b) the U Trust, as the landlord of U Ltd. (As stated above, there is over-lapping control of both D Ltd, and the U Trust. These entities were represented at the hearings by OH, who is a director of D Ltd, and a trustee of the U Trust):
 - a) D Ltd seeks compensation for the applicant allegedly using land that was included in that to which the respondent was entitled in terms of its lease with the U Trust. Compensation is claimed by the respondent in the amount of \$11,500.00 (\$10,000.00 plus GST) for 13 years of use by the applicant of the area in question.

- b) The U Trust says that there were costs incurred to clean manholes, sumps, and drains which were full of silt, sludge, and residue, as a result of the operations of the applicant. The respondent further states it had to excavate and replace pipes that had been blocked by sludge. Compensation is sought by the Trust in the amount of \$7,033.45.
- 6) The relevant law is the general law of contract. The issues to be determined by the Tribunal are:
- a) What sum is owing by the respondent to the applicant with respect to product supplied?
 - b) Are either the respondent, or the U Trust, entitled to compensation with respect to their claims?
- 7) Firstly, I accept the applicant's evidence with respect to the product supplied to the respondent. There was no real dispute by the respondent to the applicant's invoices, other than to say that there was no contractual right for U Ltd to charge interest. I accept the last point but, as I indicated at the hearing, even if interest is not covered by the relative contract, it may be awarded in terms of the Interest on Money Claims Act 2016.
- 8) The applicant says that interest should be chargeable as from when the relative invoices begin in 2016. I do not accept that. There has been massive, unexplained, delay on the part of the applicant. In terms of the substantial merits and justice of the matter, I intend awarding interest pursuant to the Interest on Money Claims Act on, net, \$14,943.25, from the date of the filing of the claim in the Tribunal (14 December 2022) to today's date. Whilst there was delay on the part of the applicant in pursuing its invoices, there has equally, and, unfortunately, been delay in the Tribunal's determination of this matter. This has largely been because of successive adjournment requests by the respondent.
- 9) As regards the counterclaim by D Ltd, the applicant admits that, from time to time, its trucks did park in the area behind the main building, which is the focus of the respondent's counterclaim. However, the applicant's director, UX, says that he had verbal permission from OH to do this. There was never any suggestion by the respondent that there would be a charge for the permission to-sometimes-use this area. I accept this. There was no claim for compensation brought by the respondent until the applicant pressed for payment of its invoices. This was some 13 years after the applicant did begin to use the area in question. It does seem to me that the counterclaim is a 'tit for tat' response by D Ltd to being asked to pay for product that had been supplied to it over a considerable period.
- 10) With respect to the claim by the U Trust, the onus and responsibility is on this body to prove, to the required standard of proof, that the applicant was responsible for the blockage of drains, manholes, and sumps which caused cost to be incurred by the trust in having these things cleared. I conclude that the trust has not met this onus, and, again, I prefer the evidence of the applicant with respect to the issues arising regarding this aspect.
- 11) Further to the above, the applicant says that the drains were substantially blocked when it first moved into the premises in late 2006. U Ltd denies that any of its material was spilled into the drains. The sumps it had access to, were, the applicant says, regularly cleaned. If concrete material had been poured into the drains, they would have been "blocked solid."
- 12) As with the claim by D Ltd, the applicant states the assertions by the U Trust were only raised in 2023 when invoices, from the trust, backdated to 2021, were received. The claim by the U Trust is dismissed.
- 13) In the result, the applicant is awarded the sum of \$15,631.37. This includes interest [see paragraph 8) above] of \$688.37. The counterclaim by D Ltd, and the claim by the U Trust, are both dismissed.

Referee: GP Rossiter
Date: 27 November 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>.