



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 366

APPLICANT UO

RESPONDENT DU

The Tribunal orders:

DU, also known as DU, is to pay UO \$10,800.00 on or before 23 August 2023.

Reasons:

1. In September 2022 UO contacted U Ltd about a quote for a shed, and dealt with someone who identified himself as DU.
2. A quote was provided, and after some emails back and forward, was accepted by UO on 27 September 2022.
3. On the same day, UO paid 50% of the full quoted price of \$10,800.00. The remaining 50% was paid on 8 November 2022.
4. However, despite having paid the full contract price, UO has not received any plans for the shed, any of the materials, or anything else related to the shed.
5. UO now wishes to cancel the contract and receive a full refund of the price he has paid. Although his original claim included an additional \$500.00 for time spent without his shed and dealing with the dispute, at the hearing he limited his claim to a refund of the purchase price.
6. The hearing was originally set down to be heard on 8 June 2023. However, before that date the notice of claim and hearing sent to DU was returned to the Tribunal as undelivered.
7. UO located another address for DU through the New Zealand Companies Register website and the notice of claim and new notice of hearing was sent to that address. In addition, the documents were sent to the email address that UO had obtained the quote from, and which he had used for correspondence with DU.
8. The new hearing was scheduled for 2pm on Thursday 27 July 2023. When the Tribunal telephoned the number for DU, an automated message played, stating that the number was not currently active or was invalid. The telephone number the Tribunal had been calling was the same telephone number UO had for DU.
9. Although DU was unable to be contacted, the hearing went ahead without him. The documents sent to the updated physical address were not returned as being undelivered. The Tribunal had sent an email to the U Ltd email address on 15 May 2023, asking if there was a current address. The Tribunal also emailed on 19 April 2023 and 6 June 2023. The email of 19 April

2023 included the telephone number the Tribunal had recorded for DU, and which was used on the date of the hearing. I consider that in these circumstances, there is nothing to suggest that DU was unaware of the hearing, or did not have sufficient opportunity to provide up to date contact details.

10. I note that UO brought the current claim against DU. He said that the person he dealt with from U Ltd identified himself as DU. UO said that when he did not receive the shed as had been agreed, he did some research online and discovered a Stuff article which referred to other people not receiving sheds through U Ltd, which was a business run by DU. That article said DU now calls himself DU. On that basis UO made the claim against DU, who he considered was the same person he dealt with, and who called himself DU.
11. I accept that there is evidence to conclude that the person UO corresponded with and who called himself DU, is another name for DU. That conclusion is supported by quote and invoice, which refers to a sole trader named "DU" and I proceed on the basis that DU is also known as DU.
12. The issues I have to consider are:
 - a. Did DU breach the contract?
 - b. If so, can UO cancel the contract and receive a full refund?

Did DU breach the contract?

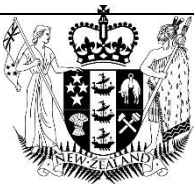
13. A contract is a legal agreement between two parties, and the terms of the contract are what each party has agreed to do under the contract. Where a party does not do what it has agreed to under the contract, it has breached the contract.
14. I find that DU has breached the contract. That is because I accept UO's evidence, which is supported by the quote that he accepted, that the contract required him to pay \$10,800.00 in two instalments. In turn, DU was to provide a 5m x 8m kitset bay shed, including timber and poles, a roller door, flashings, bracing straps, bolts, brackets, nails, building paper and netting, as well as coloursteel and drawings and a PS1 for the drawings.
15. I find that while UO has paid the full purchase price (which is supported by printouts from his bank account), DU has not delivered any plans or materials, or provided UO with a shed as anticipated by the quote which UO accepted.
16. The evidence includes a number of emails and text messages between the parties, where delivery arrangements were made, and then fell through, and DU made further assurances about delivery. These documents support UO's oral evidence that although he has attempted to arrange delivery of both the drawings and the materials, he has not received anything promised to him under the contract.

If so, can UO cancel the contract and receive a full refund?

17. Section 37 of the Contract and Commercial Law Act 2017 says that a party may cancel a contract if another party has breached a term of the contract, as long as the performance of the term is essential to the cancelling party.
18. This was a relatively simple contract, in which UO promised to pay the sum of \$10,800.00 and DU promised to provide a shed. UO's only reason to enter into the contract was to obtain a shed, which means that the term was essential to him.
19. I find that UO is entitled to cancel the contract and receive a full refund of the price paid, being \$10,800.00.

Referee: Souness - DTR

Date: 2 August 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>.