



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2019] NZDT 1487

APPLICANT EU

RESPONDENT LX

The Tribunal hereby orders:

LX is to pay the sum of \$3,703.31 to EU on or before Wednesday 6 November 2019.

Reasons:

1. In February 2014, LX and his former partner instructed EU to act on their behalf in relation to sale of a jointly owned property. LX's share of the final distribution of the net sale proceeds was \$6,157.23. On 7 May 2014, EU mistakenly transferred this sum into his bank account twice.
2. LX promptly notified EU that she had overpaid him, but she initially denied anything was wrong. On 9 May 2014, EU confirmed that she had paid twice by mistake. LX paid back \$3,000.00 on 20 May 2014. EU advised him that she had credited against the balance a refund of \$45.80 from funds retained for water rates, leaving a balance of \$3,111.43. However, LX failed to pay the balance and could not be contacted. In August 2018, EU referred the debt to a collection agency, [Collection Agency], but LX disputed the debt.
3. EU now claims \$4,122.33, comprising the balance of \$3,111.43 together with collection costs of \$653.40, a service fee of \$70.00, and \$287.50 for the cost of filing proceedings.
4. LX did not attend the hearing or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.
5. The issues to be determined are:
 - a) Is LX obliged to return the balance of the mistaken payment?
 - b) Are any other costs or fees payable?

Is LX obliged to return the balance of the mistaken payment?

6. I find that EU has a quasi-contractual claim against LX for return of the money. The quasi-contractual action for money had and received applies when money is paid under a mistake of fact. The payer's right to recover the money from the recipient is based simply on receipt of the money without any right to retain it; it is not necessary to prove that the recipient was at fault in any way.

7. EU explained that she had made the two payments from different accounts. She could not see the first payment because she was checking the wrong account, so she paid again. To support her account of what happened, EU produced copies of emails between herself and LX, bank statements, and trust account details.
8. Based on this evidence, and with no evidence to the contrary having been presented, I accept that EU mistakenly made a second payment believing that she had not already made a payment. Therefore LX must return the extra money.

Are any other costs or fees payable?

9. LX said that her terms of engagement allow for recovery of debt collection costs. However, [Collection Agency] did not provide a copy of her terms of engagement in evidence (only a copy of the relationship property agreement between LX and his former partner). Without this evidence, I am unable to establish whether the terms and conditions covered the situation of a mistaken overpayment. I therefore find that EU cannot recover collection costs or a service fee.
10. EU cannot recover the costs of filing this proceeding since s 43 of the Disputes Tribunal Act 1988 provides that, with very limited exceptions that do not apply here, costs shall not be awarded against a party to any proceedings before a Tribunal.
11. Under s 20(1) of the Disputes Tribunal Act 1988, the Tribunal may, if it thinks fit, award interest calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016. The Tribunal has discretion to award a lesser amount of interest, for example by calculating interest on only part of the sum ordered to be paid, or for only part of the period from when the cause of action arose to the date of the order.
12. In his email on 20 May 2014, LX said he had invested the extra money after EU initially said nothing was wrong, and that there would be a cost to have the funds removed. I therefore find that interest should be calculated from 9 November 2014, allowing six months for LX to have arranged alternative finance or covered his costs. The interest comes to \$591.88, so the total sum payable is \$3,703.31.

Referee: E Paton-Simpson

Date: 23 October 2019



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.

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 28 days of the decision having been made. If you are outside of time, 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.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside 28 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, and 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>.