



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 345

APPLICANT LF

RESPONDENT JN

**SECOND
RESPONDENT** Christchurch Insolvency and Trustee Service

**THIRD OR
RESPONDENT** BH

**FOURTH
RESPONDENT** C Ltd

**FIFTH
RESPONDENT** E Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. JN agreed to store an artwork that LF had made for LF. The artwork was called “[the artwork]” it was made up of three [pieces]. It had been a finalist in a [art competition]. JN stored [the artwork] in a unit owned by a company he was director of from around 2019.
2. LF says that [the artwork] have gone missing. He seeks an order that he be paid \$16,400.00 which is his estimate of the value of [the artwork].
3. The issues to be resolved are:
 - a. Is JN liable to pay compensation to LF?
 - b. Is the Official Assignee liable to pay compensation to LF?
 - c. Are any of the other parties liable to pay compensation to LF?
 - d. If the answer to any of the issues above is yes, what compensation is appropriate?
4. I record here the various parties and their relationships insofar as they are relevant to this claim:
 - a. JN – JN was adjudged bankrupt in August 2018. He was also the sole shareholder of M Ltd and D Ltd both of which were placed in liquidation in May 2020. JN is also a trustee of the M Trust (the Trust), which is a registered trust, and which is in receivership.

- b. The Official Assignee, through the second defendant, the Christchurch Insolvency and Trustee Service (the OA), is the administrator of the bankruptcy of JN, and is also the Liquidator of M Ltd and D Ltd.
- c. C Ltd is the court appointed Receiver of the Trust.
- d. The Trust is the owner of several units in a commercial property in [city]. The body corporate of the property is [the body corporate].
- e. Assets of M Ltd, D Ltd and JN were stored in the units in [city].
- f. BH is the administrator of [the body corporate].
- g. E Ltd is the insurer of [the body corporate].
- h. LF says he has recently been acting as a "McKenzie Friend" for JN in various legal proceedings JN is involved in.

Is JN liable to pay compensation to LF?

5. I do not consider that there is sufficient evidence to make a finding that there was a contract between the LF and JN, or that JN is liable has any liability to LF in tort.
6. LF made [the artwork]. They were finalists in an [art competition]. They have been exhibited in a commercial art gallery. [The artwork] are very large (around 2mx1.5m). In around 2019 JN agreed to store [the artwork], rolled up in a piece of fluffy carpet like material, in one of several storage units in [city] which were owned by the Trust. Both JN and LF say [the artwork] were in storage unit 15. JN says the unit also held his personal items, and items owned by M Ltd, D Ltd, as well as other items that he was storing for other people.
7. In 2022 and 2023 the OA in its capacity as the administrator of JN's estate in bankruptcy, and as liquidator of M Ltd and D Ltd organised for an auctioneer to sort through the items in the storage unit, sell those it considered of value for sale by auction and dispose of the other items.
8. It seems most likely that [the artwork] were disposed of in this process. JN is adamant that [the artwork] were in unit 15 the last time he had access to it (he was trespassed from the unit at some point). The OA and C Ltd have both been to the unit since it was cleared and say that [the artwork] are not there now.
9. Having considered this matter and all of the evidence provided I do not consider that a contract existed in this case between JN and LF.
10. Both JN and LF said the arrangement for storing [the artwork] was an informal one between friends. There was no payment and no written agreement, although LF says he gave JN a koha each year of some Dutch liquorice that JN enjoys to say thank you for storing [the artwork].
11. A legal obligation arises under a contract where the parties decide to exchange something of value following an offer and an acceptance and intend the arrangement to be legally binding. In this case the evidence of the parties is that the arrangement about storage of [the artwork] was an informal one. I consider that it did not create legally binding obligations, and so do not consider that there has been a breach of contract by JN in relation to the loss of [the artwork].
12. The tort of conversion is an intentional tort that involves one party taking away the other party's property by using it or by altering it in a way that it inconsistent with the rights of the owner. There is no evidence that JN has converted [the artwork]. The evidence suggests that while he had control of the storage unit JN has looked after [the artwork]. There is no suggestion that JN has intentionally denied LF's ownership of [the artwork].
13. I have considered whether JN may have any liability to LF in negligence for the loss of [the artwork]. Liability in negligence arises where one party owes another a duty to act with reasonable care. If this duty is breached there can be a liability for damages.
14. Having taken responsibility for storing [the artwork] I consider that JN probably did owe LF a duty of care to use reasonable care to ensure that [the artwork] were kept safe.

15. JN says that when M Ltd and D Ltd were placed in liquidation he told the OA (as liquidator) that there were items stored in the storage unit that did not belong to either company or to JN, and he offered to help to sort through the items. JN says that this offer was declined and he was eventually trespassed from the storage units, so he was not able to ensure that items such as [the artwork] were returned to their true owner.
16. I am satisfied on the basis of the information available it is most likely that while he had access to the storage unit JN took reasonable care of [the artwork]. In the circumstances I am unable to make a finding that JN has been negligent in relation to the custody of [the artwork].
17. For these reasons the claim against JN is dismissed.

Is the Official Assignee liable to pay compensation to LF?

18. At the hearing the OA said that it organised the clearance of the items in storage units belonging to the Trust. This was in its capacity as the Administrator of JN's assets in his bankruptcy, and in its capacity as liquidator of the assets of M Ltd and D Ltd. The OA says it organised a firm of professional auctioneers to clear the units, and sell by auction those items that the auctioneers considered were of value, and dispose of the rest as rubbish.
19. LF suggested that the OA owed him, as the third party owner of some goods in the storage unit, a duty of care to ensure that it thoroughly listed all the items in the units, and made sure it only disposed of items that were owned by JN or one of the companies in liquidation. LF says that in failing to do this the OA has been negligent.
20. Both C Ltd and the OA said that in their opinion the units were an example of "hoarding". They said it was impractical to sort through the items in the units individually because there were so many. The OA said that JN had been difficult to deal with throughout the process ([redacted]). The OA said that in all the circumstances it did not consider it was reasonable to allow JN to have access to the storage units to assist with the organisation of the items in the units.
21. The OA also said that it does not agree that it owes a duty of care to third parties in carrying out its obligations under insolvency legislation. It further said that its actions as both OA in a bankruptcy and as a liquidator are subject to the supervision of the High Court, and it would be inappropriate to impose any further obligations in terms of negligence.
22. LF's claim relates to the exercise of statutory powers by the OA, under the Insolvency Act and the Companies Act. The Tribunal does not have jurisdiction to enquire into the validity of the exercise of statutory powers. As noted by the OA, this is reserved for the High Court. For this reason, I do not consider that the Tribunal has jurisdiction to consider LF's claim against the OA.
23. I note however that having considered all of the evidence provided in this case I do not consider that there is sufficient evidence to support a finding that the actions taken by the OA in disposing of the items in the storage unit were negligent, if it did owe a duty of care to third party owners of assets in an insolvency. I accept that this has been an exceptionally unusual and difficult insolvency process and consider it likely that the actions taken by the OA were reasonable in all of the circumstances.
24. For these reasons the claim against the OA is dismissed.

Are any of the other parties liable to pay compensation to LF?

25. I am satisfied that it was the OA that arranged for the disposal of the items in the storage unit in the exercise of its statutory powers under the Insolvency Act and the Companies Act. As noted above, it is most likely that [the artwork] were thrown away during this process. Given this I consider that there is no basis for a finding that there has been any negligence on the part of either C Ltd or BH in relation to the likely disposal of [the artwork].

26. E Ltd is the insurer of [the body corporate], and it said it had not received a claim from the Body Corporate in relation to [the artwork], and had been unaware of anything to do with them until it received the notice of hearing for this claim. There is no basis on which the Tribunal could make any orders against E Ltd in this claim.
27. For these reasons the claim against C Ltd, BH and E Ltd are all dismissed.
28. For these reasons it is not necessary to consider the final issue, which would have required a determination of the value of [the artwork], and the claim is dismissed.

Referee: L Trevelyan
Date: 7 May 2024



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>.