

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1379

Date of Decision: 17 June 2019

Complaint

The customer, Mr Brown, had been a director of a business called Red Wood Ltd but resigned and left to set up a new business called Red Wood Facilities Ltd. Red Wood Ltd subsequently went into liquidation. The company has passed Red Wood Ltd's £40,000 debt ("Debt") onto him personally and has said that it will disconnect his service if he does not pay. Mr Brown would like (1) a new account to be set up in the name of Red Wood Facilities Ltd; (2) it to be made clear that neither he nor Red Wood Facilities Ltd has any liability for the Debt; and (3) for the company to pay compensation of £2500.00 for distress and inconvenience suffered.

Defence

In February 2018, the account was put into the name of Red Wood Ltd after a request to do this by two directors of that business. From the evidence and timing of the request, it appears that this was done with the intention of striking off Red Wood Ltd - in effect making the Debt uncollectable. After investigations, the company considers that there are sufficient connections between the two businesses to justify transferring Red Wood Ltd's Debt over to Mr Brown and/or Red Wood Facilities Ltd for payment.

No offer of settlement has been made.

Findings

The Debt in question is owed by Red Wood Ltd. There is no proper basis for the company to seek to recover the Debt from any party other than Red Wood Ltd or its liquidators. In (1) looking to recover the Debt from Mr Brown personally and (2) refusing to open a new account for Red Wood Facilities Ltd, the company failed to provide its services to the standard to be expected. However, despite these failures by the company, it would not be appropriate to award any compensation to Mr Brown in this case.

Outcome

The company needs to take the following further action:

I direct the company (1) to desist from seeking to recover the Debt or its outstanding bills from Mr Brown and/or from Red Wood Facilities Ltd; (2) to desist from refusing to open a new account for Red Wood Facilities Ltd; and (3) to pay Mr Brown £50.00 in compensation.

The customer must reply by 15 July 2019 to accept or reject this decision.

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Party Details

Customer: Red Wood Facilities Limited

Customer's representative: Mr [] Brown

Company: [].

Case Outline

The customer's complaint is that:

- The customer's director, Mr [] Brown ("Mr Brown"), explains that he set up Red Wood Ltd in July 2014 with the support of his family and that that business operated from premises at [] ("Green Way Industrial Estate").
- The water supplier to Green Way Industrial Estate was RST Water, which later changed over to the company. Following this change, the company did not provide the customer with any invoices for almost 8 months. Since 2015, all invoices from RST Water had been paid by Red Wood Ltd.
- Due to a family dispute, Mr Brown walked away from Red Wood Ltd and resigned as director in March 2018. He decided to start his own (new) company.
- He began looking for premises and found a site at [] ("Unit 1 Cedar Road"). He signed up to a new lease in May 2018.
- The company maintains that Mr Brown is trading as []. Mr Brown, however, denies this and points to evidence of his bank statements and utility bills, etc., which are in the name of the customer (i.e. Red Wood Facilities Ltd) - not [].
- Mr Brown's understanding of the situation is that Red Wood Ltd went into administration in December 2018 with an outstanding amount owing to the company of £37,000.00.
- Mr Brown explains that the company was notified of this through the administrators (just as he was notified because he, Mr Brown, was owed money too). Also, there was a creditors meeting

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held on 31 January 2019, at which the company failed:

- to attend; or
- to dispute any matters with the administrators.
- Mr Brown also states that, in January 2019, somebody from RST Water turned up at the Unit 1 Cedar Road premises and gave him a disconnection notice for his water services (even though Mr Brown had never received a bill from the company). Mr Brown contacted the company and asked them what this was about. He was told that they had passed Red Wood Ltd.'s debt onto him personally and would disconnect his service if he did not pay. Mr Brown says that this was really upsetting and stressing to him and it put a lot of unnecessary pressure on him.
- The company's argument about Mr Brown supposedly being linked to [] through its website is not understood. Mr Brown explains that he has been onto the website and there is no mention on there of Red Wood Facilities Ltd or of the Unit 1 Cedar Road premises.
- Mr Brown says that the company has sent him a bill in his personal name, at the Unit 1 Cedar Road premises, for an amount in the region of £42,000.00. Mr Brown disputes this bill because the customer, Red Wood Facilities Ltd, has never benefited from the supply of this water.
- The company is also stopping the customer from setting up its water account with any other supplier because they are not releasing the meter in order for Mr Brown to choose his (new) supplier.
- In light of all of the above, Mr Brown:
 - would like a new account to be set up in the name of Red Wood Facilities Ltd; and
 - given that he resigned as a director before Red Wood Ltd was put into liquidation, would like it to be made clear that (in respect of the outstanding charges relating to the Green Way Industrial Estate premises) he has no liability and that the company needs to look to the appointed liquidators of Red Wood Ltd to deal with that debt; and
 - would like the company to pay compensation of £2500.00 for distress and inconvenience caused to him.

The company's response is that:

- The complaint was logged on 28 January 2019 following an email from the Consumer Council for Water (CCWater). This contained an email from Mr Brown that was sent to the company on 2 January 2019. However, due to a technical fault, the company had not received this email. A credit of £20.00, therefore, was applied to the account as a GSS failure.
- On 1 April 2017, the account (which was at that time in the names of Mr A Brown & Mrs R Rowan with a brought forward balance of £3291.87) was transferred over to the company from

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RST Water.

- RST Water originally set up the account in the name of Mrs Hira A. On 22 August 2016, correspondence was received requesting that Mr A Brown be added and that the account name be changed to Mr A Brown & Mrs R Rowan.
- On 12 February 2018, Mr Brown (i.e. Mr K Brown) called to advise:
 - that the account should be in the name of Red Wood Ltd because that business had been responsible for the charges at the property for the past four years; and
 - that the names then on the account, i.e. Mr A Brown and Mrs R Rowan, had nothing to do with the business.
- Mr Brown confirmed that he was aware of the outstanding balance and that it was Red Wood Ltd's responsibility and that he would email with confirmation of this.
- Mr Brown made contact again on 22 February 2018 to set up a payment arrangement of £3,000.00 per month. He advised that he would pay extra where he could, as £3,000.00 per month would only cover the ongoing usage.
- As discussed with Mr Brown on the telephone, a payment arrangement was set up for the outstanding balance of £33,036.75. An email was also received from Mr Brown providing a Companies House certificate showing that Red Wood Ltd was registered on 7 July 2014 with company number 9119166. A search of the Register showed two active company directors: Mr K Brown, appointed from 7 July 2014 and Mr A M Brown appointed from 1 November 2017.
- Mr A Brown contacted the company on 26 February 2018 requesting that the account name be updated to Red Wood Ltd (as they were unable to pay the invoices if they were not in the name of the business). In the good faith expectation that payments would be made, the name on the account was updated as requested to show the name as 'Red Wood Ltd trading as City Laundry'. The company confirmed that the payment arrangement, which had previously been agreed with Mr K Brown, was still in place.
- As requested by the directors, the unpaid invoices were reversed and a new invoice was issued on 9 March 2018 for £32,822.46. This was:
 - addressed to Red Wood Ltd, [], Unit Green Way Trading Estate, []; and
 - was based on an 'actual' meter reading of 40212, which had been obtained on 23 January 2018.
- Monthly payments of £3,000.00 were received up until 29 June 2018. After that, the only other payment received was one for £2,000.00 on 21 August 2018.
- Due to a broken payment arrangement and an outstanding balance of £40,237.39, the company's Credit Control Team, on 12 September 2018, contacted all telephone numbers on

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the account. The Credit Control Team spoke to [] who advised that they had no knowledge of Red Wood Limited or of Green Way Trading Estate, []. As a result of this, the disconnection process was started.

- The Credit Control Team attempted further calls on 14 September 2018 and spoke to two different gentlemen, who refused to give their name. These gentlemen stated:
 - that they did not owe the company anything; and
 - that the company did not supply them.
- A check against Red Wood Ltd on Companies House found an entry of '*active strike off – suspended*'. RST Water attended site on 27 September 2018 to disconnect the supply.
- The company then identified further water use at the property after the disconnection on 27 September 2018. It contacted RST Water, therefore, on 16 October 2018, to query whether the meter was 'red plugged'. (When a disconnection takes place and it is carried out by the Wholesaler, a 'red plug' is put in place to stop any further consumption.) RST Water investigated and confirmed that it was not possible for the type of meter at the property to be red plugged. They advised that a warrant would not be a good course of action with regard to disconnection of the supply as the customer would be able to re-route the supply by fitting new pipework.
- Due to the balance outstanding, the company objected to the Companies House strike-off on 15 November 2018 and tried to make contact with the customer. The company was advised that Red Wood Ltd had gone into liquidation. The company sent a further email to Companies House objecting to the strike-off.
- When the company received returned correspondence from Royal Mail stating '*addressee has gone away*', its research on the company telephone number found that the business had moved to 3 Cedar Road, []. The company had not been notified by the customer that they were no longer trading from the Green Way Industrial Estate or that the business was moving to the Unit 1 Cedar Road premises (where both addresses were trading as []).
- The company carried out searches and checks on both entities, (Red Wood Ltd and Red Wood Facilities Ltd) and found that they shared a director in Mr K Brown. Given the links between the two entities, the debt that had accrued was transferred to the new premises and the disconnection process was begun again on 13 December 2018.
- Payment reminders were issued to the new business address (Unit 1 Cedar Road) for the overdue balance of £41,519.27. Due to no response being received to the reminder letters, RST Water attended on 2 January 2019, confirmed that the business was trading as City Laundry and left a disconnection notice. (On that day, the disconnection could not be completed

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due a van being parked over the stop tap. Furthermore, it was confirmed that the supply was shared between 2 and 3 Cedar Road and a warrant would be required for disconnection. The company initiated the process for a magistrate warrant on the 2 January 2019.)

- Following the 2 January 2019 visit, Mr K Brown called the company to register a new account for Red Wood Facilities Limited. However, due to a clear and direct link between Red Wood Facilities Ltd and Red Wood Ltd, the company advised Mr Brown that it could not open a new account or transfer the supply until the debt had been cleared.
- Buy Business Water then contacted the company on 18 January 2019 to set up a new account. They advised that Mr Brown had resigned as a director of Red Wood Ltd and was setting up a new business next door called Red Wood Facilities Ltd. Again, the company declined to set up the account until the debt had been cleared. A further email was sent to Companies House with the company's objection to strike off.
- Begbies Traynor contacted the company on 23 January 2019 advising that the director was proposing to place Red Wood Ltd into voluntary liquidation. Companies House confirmed that the 'hold' for the objection to Red Wood Ltd's dissolution was in place until 3 June 2019. However, despite the 'hold', the Register now shows Red Wood Ltd as being in liquidation.
- The account has now been placed into the name of Mr K Brown with invoices and correspondence being address to Mr A Brown and K Brown.
- The account was put into the name of Red Wood Ltd in February 2018 at the request, at that time, of the two directors. From the evidence and timing of the request, it appears to the company that this was done with the intention of striking off the Red Wood Ltd entity - in effect making the debt uncollectable. Had the account been in the name of Red Wood Ltd throughout the duration of the account's existence, the company explains that it would not have been able to amend the account detail back into the name of an individual.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its

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services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

1. The documents that I have reviewed include in particular:
 - a. The opening statement and appendices 1 to 12, all submitted alongside the customer's WATRS application form; and
 - b. the materials ("89 Pages") appended to the company's defence.
2. I have also had the benefit of reading the customer's comments ("Comments"), which were filed by way of reply to the company's defence.
3. At the centre of this dispute is a very sizeable debt of over £42,000.00 ("the Debt"), which is owing to the company. The critical question, it appears to me, is whether the company can legitimately or properly look to Mr Brown (or to Red Wood Facilities Ltd) for recovery of the Debt.
4. I do take on board the company's frustration at how the relevant events have unfolded. In its defence, I note that the company expresses its concern in this way:

"... The name on the account was changed into the ... company name of Red Wood Limited in February 2018 at the request of the two directors. From the evidence and timing of the request, it would appear that this was done with the intention of striking off the limited company in effect making the debt uncollectable ..."

5. I note also that the company says that its agreement to put the account into the name of Red Wood Ltd was given *"... in good faith that payments would be made ..."*
6. On Mr Brown's side, I have given careful consideration to his contentions. These are set out pointedly in his Comments, for example:

"... It is my understanding the basis of limited liability is that all debts incurred by a company are the company's liabilities and are not directly the legal liabilities of the shareholders or of

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the directors of the company. The company is a separate legal person from its shareholders and the directors ...

... Up to the date of 31 January 2019 including but not limited to the .13 (Bill Number 5149[]) any meter readings thereafter for monies owed by Red Wood Limited at the commercial address of Green Way Trading Estate, [] all the Bills raised by [the company] falls under the insolvency of Red Wood Limited - In Liquidation ...

... The past and current Directors of Red Wood Limited have no contractual liability or any obligation to pay the insolvent debts or monies owed by Red Wood Limited - In Liquidation. [The company's] interpretation to change the contractual parties is wholly incorrect. [The company has] accepted the payments from Red Wood Limited ...

... For the avoidance of any doubt Red Wood Facilities Limited is a completely separate legal entity and it trades from a completely different address. Red Wood Facilities Limited has no legal obligation whatsoever to [the company] in part or in full for any of the indebtedness owed to them by Red Wood Limited - In Liquidation ...”

7. It seems to me that the legal principles to which Mr Brown refers in his Comments are inescapable. I accept as correct the submissions from the Comments that are extracted above.
8. I find that the Debt in question is owed by Red Wood Ltd. It is plainly very unfortunate that Red Wood Ltd has gone into liquidation. However, having examined all the evidence relied on in the 89 Pages, I cannot see that there is any proper basis for the company to seek to recover the Debt from any party other than Red Wood Ltd or its liquidators. The fact that the company considers that it can show ‘clear and direct’ links between Red Wood Facilities Ltd and Red WoodLtd is, in my assessment, not enough of a justification:
 - a. for putting the account into the name of Mr Brown personally; and/or
 - b. for looking to transfer the Debt (somehow) from Red Wood Ltd to Red Wood Facilities Ltd.
9. By seeking to recover the Debt from Mr Brown personally, I find that the company has failed to provide its services to the standard to be reasonably expected in this case. I shall make a direction that the company must desist from seeking to recover the Debt or its outstanding bills from Mr Brown and/or from Red Wood Facilities Ltd.

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10. In view of my conclusion (above) that the Debt clearly belongs to Red Wood Ltd, it follows that I also find that there are no grounds for the company to continue to refuse to open a new account for Red Wood Facilities Ltd, as Mr Brown has been requesting. In this respect, again, I find that the company has failed to provide its services to the standard to be reasonably expected.
11. Finally, I turn to consider what compensation entitlement (if any) should flow from the failures by the company that I have found above. I note that Mr Brown seeks compensation of £2,500.00 for distress and inconvenience and he describes how he has been 'really upset' by the company's actions and that he feels that those actions have 'put a lot of unnecessary pressure' on him.
12. Whilst it is perfectly lawful and proper for Mr Brown to decide to 'walk away' from Red Wood Ltd and its liabilities - and to set up a new business (as he has done) - the company is left in a position, now, where its prospects for recovery of the Debt must be quite remote. It is difficult to ignore the impact of this situation on the company. To some extent, I have weighed that consideration against the degree of distress and inconvenience that Mr Brown submits that he has endured. The value of the Debt, it seems to me, is enormous. I anticipate that a write-off of that sum will have a substantial impact on the company.
13. I have also taken two more factors into account, specifically that:
 - a. the named 'customer' in this case, i.e. Red Wood Facilities Ltd, is a corporate entity. I do not consider that I can or should make a 'distress and inconvenience' award when, strictly speaking, the claiming customer is a company; and
 - b. there is a tension, as I see it, between:
 - i. on the one hand, Mr Brown's reliance on the limited liability status of Red Wood Ltd in order to argue (successfully) that he cannot be pursued for the Debt; and
 - ii. on the other, his claim that he has an entitlement to financial compensation for distress and inconvenience suffered in a personal capacity, as a director of the corporate customer (Red Wood Facilities Ltd).
14. After pulling these strands together, I conclude that it would be appropriate to make only a relatively nominal award of compensation in Mr Brown's favour - that amount being £50.00.

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Outcome

The company needs to take the following further action:

I direct the company (1) to desist from seeking to recover the Debt or its outstanding bills from Mr Brown and/or from Red Wood Facilities Ltd; (2) to desist from refusing to open a new account for Red Wood Facilities Ltd; and (3) to pay Mr Brown £50.00 in compensation.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 15 July 2019 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



Nik Carle, LLB (Hons), Solicitor, DipArb, FCI Arb

Adjudicator

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