

BETWEEN

ADS

APPLICANT

AND

ZWI LTD

RESPONDENT

Date of Order:

29 May 2013

Referee:

Referee Tunncliffe

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZWI Ltd is to pay \$1,265.00 to ADS on or before 7 June 2013.

Facts

[1] ADS submitted a quote to ZWI Ltd to lay 50 m² of timber flooring to floor joints. The quote was accepted. When ADS arrived to start work, he discovered the area was 90 square metres and the timber was to be fixed to a plywood subfloor. ADS advised HF, ZWI Ltd's Project Manager, that the job was not what had been priced and that there would be additional labour and materials. HF advised ADS to go ahead on the basis that the matter would be sorted out later. ADS commenced work on the understanding that he would be paid for the labour and materials required for the 90 m² of flooring attached to ply.

[2] After the work was completed, ADS handed the key back. At that time the Project Manager introduced ADS to DL. In a discussion with those two, ADS advised that he had decided not to charge for some additional glue used on the job as a goodwill gesture. On 5 October 2012, ADS submitted his two accounts for the work to DL as instructed by the Project Manager. Payment was due by 20 October 2012.

[3] The accounts were not paid by 20 October. ADS had contact with DL and GY about the unpaid accounts. Because ZWI Ltd had accepted the quote for 50 m² in the mistaken belief that it was for 90 square metres, GY suggested to ADS that the additional cost as a result of the mistaken belief should be shared but ADS did not agree. Because he had not been paid by the due date, ADS told GY he intended to charge for the additional glue. That additional cost was invoiced on 6 November 2012. ZWI Ltd subsequently paid the amount of the original quote. ADS continued to send reminder emails. ZWI Ltd made several payments over time and made final payment on the two October invoices in January 2013.

[4] ZWI Ltd has refused to pay the invoice for the additional glue of \$1,265.00. ADS seeks payment of that amount plus the Tribunal filing fee.

Issues

[5] The issues for the Tribunal to determine are whether ADS was entitled to charge for the additional glue used on the job, or whether he is disentitled to payment because he said he would not charge for it.

Decision

Is ADS entitled to charge for the additional glue?

[6] ZWI Ltd accepted the original quote from ADS in the mistaken belief that it was for 90 square metres. However, the quote clearly stated it was for 50m² of flooring to be fixed to floor joists. ZWI Ltd simply failed to take note of the details in the quote before accepting it. In addition, the mistake was drawn to ZWI Ltd's project manager's attention before the work started and ADS was told to proceed.

[7] If ZWI Ltd did not intend to make full payment to ADS for the additional labour and materials he indicated would be required, then ZWI Ltd needed to make it clear to ADS that he may not receive full payment. ZWI Ltd did not fairly inform ADS before he started work that ZWI Ltd did not intend to pay him in full. Telling ADS to go ahead and that payment would be "sorted out later" does not fairly inform ADS that ZWI Ltd did not intend to pay. ADS has gone ahead with the work in the reasonable belief that he would be paid.

[8] I find that, in advising ADS to proceed with the work after being advised there would be additional labour and material costs, ZWI Ltd has accepted and agreed to make the additional payment. Therefore, ADS was entitled to charge for the labour and materials used on the job.

Is ADS disentitled to charge for the additional glue because at the end of the job he said he would not charge?

[9] The terms of a contract are formed at the beginning, not at the end. There must be offer and acceptance and consideration (consideration being an exchange of values).

[10] What ADS did was to discount the amount he was entitled to charge by the cost of the additional glue in a spirit of goodwill, and in anticipation of prompt payment and formation of an ongoing good relationship.

[11] Had ADS received payment of the October accounts in full prior to submitting the account for additional glue, I would have considered the obligations under the contract had been discharged.

[12] However, payment had not been made in full. ADS received nothing in return for his gesture and therefore I find he is entitled to charge for the additional glue and is entitled to payment for the additional glue.