

BETWEEN

ADW LTD

APPLICANT

AND

ZWC LTD

RESPONDENT

Date of Order:

25 November 2010

Referee:

Referee A Davidson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that pursuant to s 19(1)(b) of the Disputes Tribunals Act 1988 that the Applicant, ADW Ltd, is not liable to the Respondent, ZWC Ltd, for the \$618.75 specified in its invoice #5414 of 29 March 2010.

Facts

[1] ADW Ltd required certain engineering calculations to be made in relation to an outdoor awning proposed for a premises it was fitting out. ZWC Ltd visited the site and emailed ADW Ltd an estimate of the cost to do the work of \$200.00 + GST (for the site visit) and 5–6 hours at \$150.00/hour + GST. This amounted to an estimate of \$1,237.50 incl GST. ZWC Ltd invoiced ADW Ltd a total of \$2,475.01 over four invoices. ADW Ltd paid ZWC Ltd's first three invoices amounting \$1,856.26 but argues that it should not be liable for ZWC Ltd's final invoice of \$618.75 (incl GST).

Law

[2] The arrangement between the parties is governed by the law of contract with ZWC Ltd agreeing to do the work and ADW Ltd agreeing to pay ZWC Ltd for its time. Where price is not discussed the law implies a term that the price will be reasonable. Where price is discussed, then the law follows the agreement between the parties.

Decision

[3] Here, where an estimate was provided, the agreement between the parties may be characterised as ZWC Ltd agreeing to do the work and ADW Ltd agreeing to pay, provided the cost was in the vicinity of the estimate. Traditionally, Courts have interpreted this as meaning cost may vary by plus or minus 20 percent, but this is on a case-by-case basis.

[4] Naturally estimates are made on certain assumptions, and projects and instructions can change over time. An estimate is not a promise to do the work for approximately that cost irrespective of what may occur. In the event that there are unexpected complications, or new instructions, the vendor can update their estimate and seek to negotiate a new agreed

price. The fact the work took longer than expected would not fit into this category, without the express agreement of the other party, otherwise estimates would be entirely unenforceable and of no value whatsoever.

[5] ZWC Ltd has provided the Tribunal with its time sheets and work product. I am satisfied that ZWC Ltd did the work and that it took the time to do that it says it took. ZWC Ltd's invoices are nearly exactly twice its estimate. While ZWC Ltd has provided the Tribunal with evidence to support that it did the work and that the work took as long as it says it took, there is no evidence before the Tribunal to explain why the work cost twice as much.

[6] As noted above, if the additional cost arose out of new instructions, changed requirements or from a new agreement between the parties, then ZWC Ltd would be entitled to charge more than its estimate. There is no evidence of that here, however; on the balance of probabilities, it simply appears that the work took longer than ZWC Ltd expected, in which case it is not open to ZWC Ltd to simply continue with the work and tender a significantly greater invoice. The correct approach in such a situation is to raise the rising cost with the client before the estimate is exceeded and obtain authorisation to continue with the work at greater cost.

[7] ZWC Ltd's estimate was that the work would cost \$1,237.50 (incl GST). Adding an additional 20 percent variation increases that amount to \$1,485.00 (incl GST). ZWC Ltd's actual charges of \$2,475.01 (incl GST) are \$990.01 above that higher threshold. ZWC Ltd's outstanding invoice is for \$618.75 (incl GST), which is less than the difference between ZWC Ltd's actual charges and the upper bound of its estimate. On this basis, I find that ZWC Ltd has charged ADW Ltd more than it was entitled to pursuant to the agreement between them, and that ADW Ltd is not liable to pay the \$618.75 (incl GST).