

BETWEEN

**AY LIMITED
APPLICANT**

AND

**ZB LIMITED
RESPONDENT**

Date of Order:

26 September 2014

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] AY Limited contracted ZB Limited to provide a wooden building kitset with a 63mm profile for a construction project they were undertaking for a commercial client. The client's premises used ZB Limited kitset when it was built about 22 years ago and AY Limited says they wanted to replace 'like for like'.

[2] AY Limited contends that the kitset provided was not 'fit for purpose' as it was not the same as the existing kitset, could not be easily put together, and was of a quality that gave AY Limited cause for concern about the watertightness of the finished building.

[3] Due to delays resulting from this dispute (as well as consent issues), AY Limited's client has ended up engaging ZB Limited directly to construct the kitset which has now been completed and signed off by Council.

[4] AY Limited claims \$14,875.89 for losses suffered as a result of the alleged breach of contract and this represents a reduction of all possible claims (against ZB Limited by AY Limited for this site) to fall within the jurisdiction of the Disputes Tribunal.

[5] I note that even though AY Limited uses the language of the Consumer Guarantees Act 1993 in its claim ('fit for purpose') that Act does not apply as the kitset was to be re-supplied in trade by AY Limited to its commercial client. The relevant law is the general law of contract.

Issues

[6] Did ZB Limited breach the contract to provide kitset as specified?

[7] What, if any, losses is AY Limited entitled to?

Decision / Law

Did ZB Limited breach the contract to provide kitset as specified?

[8] I find that the kitset was supplied as per Schedule 2 of the written contract between the parties. Schedule 2 states the kitset profile is 63mm which is the same as the existing building. However, AY Limited says that some of the components measured up to 2mm less

and would not fit together without breaking. ZB Limited says those measurements fall within acceptable tolerances and that all components were made on a CNC machine.

[9] The most important and relevant of all the evidence is that ZB Limited themselves took over the construction of the kitset for AY Limited's client as a result of the dispute, after various forms of assistance were offered to AY Limited and the dispute could not be resolved. The work has recently been completed and fully signed off by Council without there having been any changes to the components of the kitset originally supplied to AY Limited. This must be the ultimate test of whether the kitset was of a satisfactory standard and able to be put together in a way that meets Building Code requirements. I find that it was of a satisfactory standard and that there was no breach of contract by ZB Limited.

[10] I note further that although delays relating to consent issues were referred to by AY Limited and it was implied that ZB Limited was partly responsible for those delays, there was insufficient evidence on this point and in fact, it seems that another (third party) company was involved in that stage of the process.

What, if any, losses is AY Limited entitled to?

[11] As there has been no breach of contract, there is no remedy available to AY Limited and the claim must be dismissed.