



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 764

APPLICANT A Ltd

RESPONDENT NT & TH

The Tribunal orders:

NT and TH are to pay \$28,983.69 to A Ltd by 30/12/23.

Reasons

1. This order should be read with that dated 11/5/23.
2. In brief A Ltd says that it is contractually entitled to be paid the amount of its invoices 879 and 876 and the installation of a power and/or water “meter” needs to be taken into account.

Are the charges in the two invoices due under the building contract and in the right amounts?

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3. This invoice is for various professional consultants’ fees in relation to the build in the amount of \$19,440.75.
4. I have been satisfied to the applicable evidential standard that these fees:
 - a. Are payable by the respondents to the applicant. That is because the written building contract they all entered into clearly specifies that all such fees are to be paid by the owner (being the respondents).
 - b. have been rightfully incurred and paid and were for the benefit of the respondents.
5. The respondents argued that earlier correspondence suggested that these fees would be lower or capped at a certain amount. I have not been convinced that they were and in any event that such would override the clear provisions of the contract they all signed which is the primary source of the parties’ reciprocal responsibilities and entitlements.
6. None of the other matters raised to successfully challenge payment of this invoice were established by the respondents on sufficient evidence.
7. This invoice is payable in full.

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8. I am satisfied on the evidence produced that this invoice dated 1/4/21 in the amount of \$10,627.94 is for justified extras to the contract price and have not been already paid for by the respondents and then charged again in this claim.
9. The respondents rely on an earlier "**Proforma Invoice**" dated 3/2/20 for \$22,500.00 and an email in relation to their allegation they have been charged twice for this work. They also directed me to a portion of the applicant's bank statement that shows the earlier invoice was paid by them on 9/3/20.
10. The respondents have chosen not to present a full record of what was charged and paid for. Instead, they have cherry picked a small and narrow and selected portion of documentation over the course of the entire project.
11. The two invoices do narrate similar work and on a simple reading do raise a concern.
12. However, on a more in-depth analysis the first is just proforma invoice used here to show how the extra costs were tracking. That is why its labelled here as proforma. The respondents did not pay this invoice on 9/3/20 as they allege.
13. The applicant's business records show what they did pay on 9/3/20 was the second part of an overdue progress payment recorded in invoice 596 in the total amount of \$88,000.00. Of that:
 - a. \$65,500.00 was paid and marked as entered on 2/3/20, and
 - b. The remainder of \$22,500.00 was paid and marked as entered on 9/3/20.
14. The respondents have failed to establish on sufficient evidence that those services were charged twice.
15. None of the other matters raised to successfully challenge payment of this invoice were established by the respondents on sufficient evidence.
16. This invoice is also payable in full.

Counterclaim for \$7,400.00: - Was work due to be done under the contract, not done and if so, what was the proven cost of doing that.

17. The respondents supplied a quote from [Handyman] from TT for various alleged remedial work required in the total amount of \$7,400.00 to evidence the work required and the cost of that. They also provided some photos to support their allegation that work was not properly done or not done at all.
18. The quote does not speak to any of the work quoted for being required due to any negligent or incomplete work done by the applicant.
19. There is no expert evidence to support the respondents' allegations.
20. None of the quoted work has been undertaken.
21. Apart from the 7 descriptions of work the applicant admitted/agreed to pay during the hearing, the remainder of the counterclaim has not been proven as due and fails.
22. Those admitted amounts for these 7 descriptions come to \$1,085.00.
23. Subtracting the successful portions of the claim from those of the counterclaim leaves a balance due from the respondents to the applicant of \$28,983.69.

Referee: A Hayes

Date: 13/12/23



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 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 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 20 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>.