



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 76

**APPLICANT**      B Ltd

**RESPONDENT**    F Ltd

**The Tribunal orders:**

F Ltd is to pay directly to B Ltd the sum of \$3,800.75 on or before Monday, 20 March 2023.

**Summary of Reasons:**

[1] The hearing was convened by teleconference. Both parties appeared at the hearing.

**Background**

- [2] The applicant provided commercial valuation services to the respondent in early 2022. The applicant was contacted by NT, mortgage broker, and asked to complete an urgent commercial valuation for NB on a property at [Address].
- [3] On 17 February 2022, the applicant sent NB its *scope of work and terms of engagement* by email. The applicant also requested NB provide documents required to complete the valuation.
- [4] On 22 February 2022 NB provided the requested documents.
- [5] On 8 March 2022 the applicant provided NB with a completed verbal valuation and was informed by the respondent that he no longer required the valuation.
- [6] On 11 March 2022 the applicant emailed NB asking him if he would like to proceed with the valuation. NB replied by email that; *no not going ahead anymore. Sorry for the late notice*. The applicant asked for confirmation of whom to invoice and NB replied *F Ltd*.
- [7] The applicant issued invoice V0227619 in the amount of \$3,800.75 to F Ltd. The invoice has not been paid. After some discussion today, the applicant considers it may also have a claim for payment against NB personally, however it has decided to continue with the hearing and only claim payment from the company.
- [8] The respondent denies liability, first claiming that it never engaged the applicant to provide any work merely asking NT to recommend a valuer. After some discussion the respondent accepts that after a recommendation from NT it did send the requested documents to the applicant after receiving the applicant's scope of work and terms of engagement by email. The respondent knew these documents were required to provide the valuation.
- [9] However the respondent claims that after a few days NB asked the applicant to stop work and therefore it is not liable to pay for any work after that time.

**Issues**

- i) Who are the contracting parties

- ii) What are the terms of the contract
- iii) When was the contract terminated
- iv) What is a reasonable price for the work done before cancellation

#### **Issue 1**

- [10] The evidence shows that the applicant commenced the work accepting that NB was its client. This is confirmed in both the *scope of work and terms of engagement* email and all written correspondence prior to 11 March 2022. However, the applicant also accepted by invoice dated 22 March 2022 that NB was acting as a representative of the respondent at the time and has filed this applicant against the company not NB personally.
- [11] At hearing, the applicant confirmed it wished to proceed naming only the company as the liable party. On the evidence before me I am satisfied that NB was acting as a representative of the respondent company in his dealings with the applicant.

#### **Issue 2**

- [12] Both parties agree the *scope of work and terms of engagement* was provided before the work was commenced. The respondent, by providing the documents requested in the accompanying letter has agreed to these terms and has authorised the applicant to complete the valuation at the agreed rate of \$400 per hour plus disbursements plus GST.

#### **Issue 3**

- [13] The applicant claims the respondent first advised it that it no longer required the valuation on 8 March 2022 in a telephone conversation after the applicant had given verbal advise of the property's value. This was confirmed in the respondent's later email dated 11 March 2022.
- [14] The respondent claims that it verbally advised the applicant it no longer required the valuation earlier, round 26 February 2022 and that it should not be liable for any costs incurred after this date.
- [15] The Tribunal is required to apply an evidential standard, that is on the balance of probabilities. The respondent has not provided any evidence of any verbal communication around 26 February 2022. The respondent cannot recall the actual date it informed the applicant it did not wish to proceed nor recall the conversation in any detail. The written evidence all supports the first the applicant was told the valuation was no longer required was 8 March 2022.
- [16] Given this evidence, and on the balance of probabilities, I consider it more likely that the applicant was told to cease work on 8 March 2022. It would make little sense for the applicant to continue work after it was told the valuation was no longer required and the respondent clearly apologised to the applicant for the late notice of termination in its 11 March 2022 email. I would expect further email evidence if the respondent had attempted to cancel the contract earlier.
- [17] I am satisfied the contract was cancelled on 8 March 2022 at the earliest and the applicant accepted this repudiation of the contract on 11 March 2022. The applicant is entitled to payment for work done to that date.

#### **Issue 4**

- [18] As stated above, the respondent agreed to pay the applicant \$460 per hour plus disbursements. The applicant has invoiced for 8 hours work. The invoice includes an outline of the work done. At hearing the applicant also confirmed that the valuation required a site visit and full measure of the property. It is difficult to see how this work could be completed in less than a day considering this site visit. The disbursements of \$120.75 are also modest.
- [19] The respondent has not provided any evidence that the work should have taken less than 8 hours or that the amount charged is excessive by industry standards.

[20] Given there is no evidence before me that the applicant has overcharged for this work, I am satisfied the amount charged is reasonable and within the contemplation of the contract. The respondent is ordered to pay this amount.

**Referee: Hannan DTR**

**Date: 23 February 2023**



## 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 working 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 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside 20 working 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>.