



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 517

APPLICANT B Ltd

RESPONDENT UE

**SECOND SE
RESPONDENT**

The Tribunal orders:

1. B Ltd's claim is dismissed.

Reasons:

2. In August 2022 B Ltd (the applicant) entered into a contract with UE and SE (the respondents) for concept plans, developed design, detailed design and managing building consents for extensions to their existing house. Specifically, the plan was for additions to the lounge and master bedroom, a new ensuite and WIWR, more storage, and ideas around new entry to the house from a designated carpark area. The estimate amount was \$9,960.00 excl GST, with additional fees for engineering, interior design and project observation to be added on a charge up basis of \$120.00 per hour GST incl.
3. On 29 September 2022 the applicants produced the initial concept plans. Upon review of the plans, the respondents identified an error in the measurements which they said led to failures in the concept plans. The applicant acknowledged the failure and provided options which were not accepted by the respondents.
4. On 5 October 2022 the applicants issued an invoice to the respondents for \$3,771.54 for work carried out on the concept plans. The invoice was not paid and the applicant filed a claim seeking damages for the same amount. The respondents dispute liability on the basis that they received no value from the contract.
5. The issues to be determined are:
 - (a) Were the services provided with reasonable care and skill, and were the goods (concept plans) fit for the particular purpose?
 - (b) Are the applicants entitled to payment for its services?
6. Any applicant to the Tribunal has the task of establishing the legal and factual elements of its claim to the required standard. That standard is the balance of probabilities which means that it is more likely than not. When assessing whether the onus of proof has been discharged by a party I need to consider and evaluate the evidence presented to the Tribunal by the parties.

7. I would like to reassure the parties that all evidence presented to the Tribunal has been considered, but this order only refers to essential evidence material to the issues and is not intended to be a full record of the hearings or evidence presented.

Were the services provided with reasonable care and skill, and were they fit for purpose?

8. The supply of architectural services is subject to the statutory guarantees set out in the Consumer Guarantees Act 1993 (the Act).
9. Section 28 of the Act gives consumers a guarantee that services will be carried out with reasonable care and skill. The degree of care and skill required is the supplier must exercise the standard of care and skill appropriate to his or her professional status. The guarantee requires the consumer to prove fault. Because the duty is to take only reasonable skill and care, there is no guarantee that a supplier will achieve a particular result unless that result would necessarily be achieved if reasonable care was taken.
10. Section 29 of the Act requires services and any products resulting from services to be reasonably fit for any particular purpose that the consumer makes known to the supplier, and of such a nature and quality as to be reasonably expected to achieve any particular result that the consumer makes known to the supplier. Unlike section 28, this guarantee does not burden the consumer with the requirement to establish fault. The guarantee is only that services are reasonably fit for the particular purpose made known by the consumer, so it is not always necessary that the services be 100 per cent capable of fulfilling their purpose. In determining whether a service is reasonably fit for its purpose, factors such as the nature of the services, reasonable consumer expectations and particular circumstances are all relevant.
11. Having given careful consideration to the evidence from the parties, I find that the applicant was in breach of the guarantees for the CGA as the services were not provided with reasonable care and skill, and the concept plans were not fit for the particular purpose made known by the respondents for the following reasons.
- (a) The applicant relied the original house plans/design, designed by another architect, as the basis upon which to draft its new concept plans. Unfortunately, the original plans were inaccurate.
 - (b) One of the employees of the applicant, who was working on this phase of the project, failed to check for accuracy and this gave rise to the errors in the applicant's concept plans. The work was not reviewed by the applicant's primary architect prior to going out to the respondents.
 - (c) The respondents identified the error shortly after handover the concepts plans and notified the applicant. I accept the respondents' evidence that, it is more likely than not, that the flow on affect would have been that they would not achieve their desired outcomes and/or at a greater cost than they were expecting. For example, they would have to make changes to the door in bedroom two and accept a narrowing of the lounge.
 - (d) I have regard for the fact that the applicant was quick to provide an amended version of the concept plans and two options for respondents to contemplate. However, without a further meeting to discuss the issues, the relationship between the parties became untenable and broke down, and the applicant issued an invoice for 25 hours of work to date.
 - (e) I acknowledge that the applicant showed a willingness to continue to work on the concept plans, but only on a charge up basis in accordance with the contract. However, the respondents said they had lost confidence in the contract, they had not received any viable outcomes for 25 hours of billed services, and it was on that basis they decided not to proceed with the services of the applicant for their house renovations.
12. Based on the evidence presented, I am satisfied that the standard of the service and the goods supplied fell below that any reasonable person would believe was reasonably acceptable. Given

there were no measurable outcomes and no clear indication of a remedy, the respondents were entitled to cancel the contract.

Are the applicants entitled to payment for its services?

13. I understand that the applicant believe it had provided a reasonable service, and even if the concept plans were not to be relied upon in the future, the knowledge the respondents gained from the process has value such as finding out what they can or cannot achieve in their budget.
14. However, the Tribunal is required to apply an evidential standard I find there is insufficient evidence of a nominal gain for the respondents from the process.
15. Accordingly, the claim is dismissed.

Referee: DTR Goddard

Date: 2 October 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 of 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>.