



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 514

APPLICANT CI

RESPONDENT MT

The Tribunal orders:

1. MT is to pay \$10,795.02 to CI by 10 November 2023.
2. If \$10,795.02 is not paid by 10 November 2023 then interest of \$508.55 will be added for enforcement purposes.

Reasons

Is MT able to contest the cost of work in invoice #0939 for \$7,583.10?

1. In July 2021 MT requested CI, trading as [(J Design)] to provide services regarding the **renovation of her house**. CI and MT had known each other for a long period of time. MT not request a fixed price for the work she was asking J Design to complete. The work included designs to extend the lounge and a bedroom and deck and provide a design for an ensuite and walk in wardrobe. The lounge extension also affected the kitchen bench and cabinets. The house design work included design and drafting plans, writing specifications, arranging Council files, site measure, engaging an architect and meeting with MT.
2. In October, during the house renovation work, MT also contracted J Design for assistance to **relocate a shed** MT had purchased. J Design arranged two builders, one to brace the shed for removal and a second builder to provide a deck foundation for the shed at MT's home. Because MT moved the shed to her property before seeking Council approval, J Design was required to provide a Council Code of Acceptance and make a Resource Consent application. The shed work was invoiced 0882 for \$1,941.20 and MT paid J Design's invoice.
3. MT also requested J Design to provide **plans to convert the shed into a studio**. The design was to include a kitchen, bedroom, living/dining area and bathroom.
4. The first invoice for work other than the shed relocation was dated 23 December 2021. It included both completed and a deposit for ongoing work. On 30 December 2021 MT requested a full breakdown of the charges. J Design provided a breakdown of the invoice. MT paid the full amount of the invoice, \$7,583.10 on 25 January 2022.

5. The services provided by J Design are guaranteed by provisions of the Consumer Guarantees Act 1993 (CGA). That is because MT has acquired from J Design, services of a kind ordinarily acquired for personal, domestic, or household use or consumption. Section 31 CGA provides a guarantee that a consumer is not liable to pay a supplier more than a reasonable price for the service where the price is not determined by the contract. There was no price given for the work in this case. However s.31(2) & (3) CGA provides as follows:

`Where there is a failure to comply with the guarantee in this section, the consumer's right of redress is to refuse to pay more than a reasonable price.

Nothing in this Part confers any other right of redress.'

6. The effect of this section is that MT lost her right to challenge the amount charged in invoice 0939 when she paid the invoice. Therefore, MT's claims about overcharging regarding that invoice must be dismissed.

Is MT liable to pay for Council Fees for the studio – invoice # 1028?

7. On 13 April 2022 MT was invoiced for the Council fees for the studio. Invoice #1038. MT questioned this invoice and declined to pay the Council fees on the basis that she had paid the Council directly. When J Design approached Council for a refund based on a duplicate payment the Council informed her that there was only one payment made. MT was asked for evidence of her payment to Council. On 20 September, five months after being invoiced, she corrected the claim that she had paid Council and paid the invoice in full on 27 September. This was five months after it was due.

Is MT liable for invoice #1115

8. On 18 October 2022 J Design sent MT an invoice for the balance of the house and studio work including architect's fees, drawings, specifications and correspondence. The \$4,376.90 was the balance of the work from December 2021 to 18 October 2022. J Design provided a breakdown of the invoice in an email. In the correspondence between the parties about this charge, CI's employee L, referred to the architect's total fees, including Gst being \$6,900.00. She also informed MT that she should expect another invoice for Council fees for her house renovation of about \$3,200.00. On 19 October MT indicated that she needed a meeting about this invoice. The invoice remains unpaid. MT pointed out that in the breakdown of the charges provided L stated that the total charge for the architect was \$6,900.00 incl Gst and that therefore she had been overcharged when paying invoice #0939. On 30 December 2021 J Design provided a breakdown of that invoice and stated that the architect fee was \$7894.48. \$50% of that \$7,894.00 was in invoice #0939 as a deposit. As stated above, because #0939 has been paid I am unable to review the price charged. However I can accept the offer that J Design made regarding this. Although she believed the \$6,900.00 was incorrect, she agreed at the hearing that I could reduce the amount claimed by \$1,000.00 to cover this difference. I have included that discount in the amount ordered.
9. MT's view is that she had paid for all the work when she paid for invoice #0939 dated 31 December 2021. She referred to the breakdown in which it referred to, initial consultation fee, set up, scope of work, draft drawings, write specifications for house renovations, etc etc. MT believed that she had been given a full price and no further amount would be charged. However the invoice itself stated that the amount charged was a DEPOSIT towards the areas of work listed in the invoice. That clearly indicated that the job was a work in progress and not a finished product. MT should have known that there would be more invoices as the work progressed and she continued to give input to the work.

10. Invoice #1115 is not covered by any other invoice and is consistent with ongoing work for MT.

Is MT liable to pay for Council Fees - invoice #1141?

11. On 7 November 2022 MT was invoiced \$3,543.75 for Council fees for the house renovation consent. This also remains unpaid. MT stated that she should not have to pay this fee because she had not approved the plans before they went to council. CI stated that MT met with J Design on 15 November and amendments were discussed regarding moving a wall and installing a fireplace. The changes were implemented immediately and the plans were delivered to MT's physical address. The reason for submitting the plans to council was that there would have been extra cost to MT if the deadline for the submission to Council was missed.

12. Having considered the evidence I find there is insufficient reason for MT not to have to pay for Council fees for her project.

Is MT liable for invoice #1202?

13. On 20 January 2023 MT was charged \$3,624.37 for charges incurred after the 18 October invoice. The charges were for 'Client meetings, correspondence, update drawings and specifications during that time. A reminder of the outstanding amount was sent to MT on 21 and 28 February 2023 with a summary of outstanding invoices. MT responded, "I will begrudgingly pay the outstanding amount for the studio and will no longer be using J Design for any further work as I feel your pricing is extreme to say the least". However, MT did not pay the account.

14. MT submitted that she should not be charged because J Design informed her that it would not do further work for her because she had outstanding accounts. It is true that if J Design did not have authority to carry any further work for MT, she could not be charged. However CI submitted that MT continued to ask for service after the invoice dated 18 October 2022. There was a meeting on 26 October 2022 where MT wanted to discuss a complete change to the shed/studio design; inverting the kitchen/living area, moving the entry door, changing windows and sizes and adding French doors. The changes required the architect to redraw the plans for Council approval. Invoice #1202 also included obtaining a quote from an engineer to reuse MT's bay windows in her house renovation, an updating drawings and specifications. The charges follow from the service MT required. No service has been provided that was not authorized by MT.

Should MT pay for debt collection fees?

15. As stated above, MT emailed J Design promising to pay. She wrote, "I will begrudgingly pay the outstanding amount for the studio and will no longer be using J Design for any further work as I feel your pricing is extreme to say the least". After this MT failed to pay outstanding amounts. J Design informed MT in writing on 9 March that unless payment was made within 7 days the debt would be referred to a debt collection company. The debt was referred to Global Credit Agency (GCA) on 23 March 2023.

16. Following GCA's contact with MT she sent a letter to J Design complaining of the service she had received. J Design responded to the complaint on 21 April. J Design then lodged a claim in the Tribunal when MT sent further correspondence requesting further accounting for hours spent doing various tasks.

17. The reason J Design incurred a cost from a debt collection agency was because MT said she would pay and then did not pay. She was warned about that cost. In view of the fact that MT has not reasonably defended her failure to pay for services, she is also liable for the debt collection cost of \$250.00.

Other Consumer Guarantees Act guarantees (CGA).

18. MT stated in her letter to J Design dated 6 April 2023 that the service failed to meet the guarantee of services being provided within a reasonable timeframe and a reasonable cost. MT provided a CAD Service and design agreement for \$3,000.00 for someone else's extension/renovation. That is not a suitable way to calculate whether charges are reasonable. The way to compare is MT providing a price from another designer and architect for the same work she authorized. MT did not provide that evidence.

19. There is insufficient evidence to make a finding that J Design's work failed to meet the guarantees set out in the CGA. At no time did MT ask J Design to speed up work for her or question the quality of the service provided. MT's complaint was that the work was costing too much but she continued to use J Design's services for about a year after objecting to their charges on the first account for \$7,583.10 in December 2021.

20. It has not been proved that there has been a breach of the CGA by J Design.

Interest

21. Section 20 of the Disputes Tribunals Act 1988 provides for a Tribunal to order interest on an amount owed if it thinks fit. It is fitting that interest is ordered if the amount ordered is not paid by 10 November 2023. The interest is calculated using the Ministry of Justice Civil debt Interest Calculator which is based on the Interest on Money Claims Act 2016. Interest is calculated as follows:

- a. Invoice 1115 - \$208.72
 - b. Invoice 1141 - \$158.89
 - c. Invoice 1202 - \$140.94
- Total Interest - \$508.55

22. It is reasonable to order interest because MT has effectively had use of J Design's money while she has withheld payment. Interest will not apply if payment of \$10,795.02 is made by 10 November 2023.

Summary

23. For the reasons given about the order is made for payment by MT to CI.

Referee: B M Smallbone
Date: Wednesday, 25 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>.