



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 569

APPLICANT D Ltd

RESPONDENT P Ltd

The Tribunal orders:

P Ltd is to pay \$18,000.00 to D Ltd on or before 29 November 2023.

Reasons

1. D Ltd supplied archaeology and heritage services in relation to a commercial property at [Address]. At the time D Ltd was engaged, excavation works were being undertaken at the property as part of seismic strengthening work on the building.
2. During the works archaeological remains were discovered, and Council heritage requirements led to the project's conservation architects, on behalf of the property owner at the time, engaging D Ltd to carry out investigations and reporting in accordance with the requirements of the Heritage New Zealand Pouhere Taonga Act 2014.
3. The property was subsequently purchased by P Ltd, part of the DC group of companies. DC signed a transfer of authority form (required under the Heritage New Zealand Pouhere Taonga Act) in September 2021 and D Ltd's work continued.
4. Five of D Ltd's invoices from August 2021 to October 2022 were paid, and two invoices totalling \$19,429.26 remain unpaid. Those two invoices are dated 29 July 2022 (for \$6839.63) and 12 April 2023 (for \$12,589.63), the first at the stage an interim report was produced and the final invoice at the stage a final report was produced.
5. In November 2022, BC, director of DC and an archaeologist himself, emailed D Ltd saying he had reviewed the (interim) report and found it to be 'superficial and substandard'. DC contends that the amount of work carried out by D Ltd was disproportionate, unnecessary and of limited value, given that the findings in the final report were 'inconclusive' (as in the interim report).
6. The issues to be determined are:
 - Was a contract formed between the parties and, if so, did DC cancel the contract at any stage?
 - Is DC liable to pay the outstanding invoice balance claimed by D Ltd?

Was a contract formed between the parties and, if so, did DC cancel the contract at any stage?

7. BC for DC submitted that there was no contract between the parties because no price or estimate had been provided and no scope of work was agreed. SD responded that work is commonly contracted for on a charge-up basis in this field due to the nature of the services. I accept SD's point in this regard, not least because this is how the project actually was proceeding and DC had already paid other invoices on that basis – there was clearly a contract afoot.
8. BC contends that D Ltd should not have continued with their work when he raised, in November 2022, an issue with what he perceived as the quality of the interim report. BC's email read "Just feedback. I have received the bill and, as an Archaeologist myself, have reviewed the report. Frankly, I thought it was superficial and substandard".
9. That communication does not put D Ltd on notice that they should stop or pause work and D Ltd's response by email makes it clear that work will continue – after explaining the scope and intention of an interim report for IO, the email reads "A full and final report (in preparation) is still required to fulfil the requirements of the authority". That statement means that BC's contention, that DC was given no notice by D Ltd that more time was to be spent after the interim report, is not accurate.
10. BC further contends that IO's 'Reporting Conditions', under 'Advice Notes', in IO's document, which state that "it is expected that all relevant directly affected parties have reviewed the report in question, are happy with its contents, and understand that it will be made available ...etc" mean that D Ltd should not have carried on with its work when DC was not 'happy with the contents' of the interim report. However, this sits alongside a contractual obligation for DC to instruct D Ltd to cease work, if they wished the contract to come to an end, particularly in the already-outlined circumstance above when D Ltd has made clear that a full and final report is still required to fulfil the requirements of the authority (and that it is already in preparation).
11. As there is no evidence that DC cancelled or purported to cancel the contract with D Ltd, work carried out by D Ltd after the interim report is payable on the same basis as all other work.

Is DC liable to pay the outstanding invoice balance claimed by D Ltd?

12. Under the contract between the parties, DC is liable to pay D Ltd's charges for all work carried out – it is an implied term of the contract that the amount invoiced on a charge-up basis must be reasonable. DC argues that the amount of work done was disproportionate to the needs of the site and suggest that D Ltd must have been needing to generate extra income for themselves.
13. This Tribunal is a general Tribunal, and necessarily relies on independent evidence when it comes to disputes in specialist areas. In this case SD, has applied his professional and expert view as [professional] as to what was necessary to fulfil the requirements of IO. BC, as a [archaeologist], holds a different view as to how much work was necessary. SD pointed out that BC's archaeology experience and knowledge is not in a New Zealand context. Even so, I am left with two conflicting opinions and no independent evidence which could assist me to make a finding on the quality and necessity of D Ltd's work.
14. D Ltd's invoices provide a breakdown of the work charged for, and as it is DC who contends that the work was unnecessary and/or sub-standard, the burden of proof to establish that lies with DC. In the absence of independent evidence to support its contention, I find that there is no legal basis on which I could reasonably make any deductions from D Ltd's claimed amounts.
15. However, D Ltd advised me at the end of the hearing that, although it disputes DC's grounds, it wished to acknowledge DC's dissatisfaction by reducing its claimed amount on a goodwill basis to \$18,000.00 (SD says the small reduction also factors in that D Ltd spent \$1540.00 on legal fees pursuing this claim which had not been included in the claim amount). For all the reasons given, I find that DC is liable to pay \$18,000.00.

Referee Perfect
Date: 3 November 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>.