



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 567

APPLICANT **ET**

RESPONDENT **EF Ltd**

The Tribunal orders:

This claim is dismissed.

Reasons

1. The parties contracted for the supply of engineering design services for ET's project in [Location].
2. An estimate of costs for a standard project was provided and a deposit of \$1,552.50 was paid to EF Ltd in December 2022. An initial draft of plan was provided in February 2023. There were modifications to the plan requested by ET that resulted in EF Ltd requesting an adjustment to the original estimate of fees.
3. In April, ET sought to cancel the contract and seek a refund of the deposit paid as well as interest of a bank loan for 6 months amongst other costs.
4. ET believes he has suffered a loss due to the project delays and additional fees requested. He claims an award of \$7,880.00 in this claim.
5. The issue for the Tribunal to determine is whether the contract was breached? And whether ET is entitled to claim a refund and costs?
6. The relevant law is the Contract and Commercial Law Act 2017, which is the law relating to contracts.
7. A contract is formed when both parties decide to exchange something of value, creating an obligation to perform a particular duty which is legally enforceable. The terms of the contract define the rights and obligations of the parties.
8. A breach of contract arises when one party has failed to perform their obligations under the contract. In order to make a successful claim for breach of contract the applicant must prove that a term of the contract has been broken and that there is financial loss suffered as a result of that breach.
9. In this matter an estimate of costs was provided by EF Ltd and the scope of works was for a standard plan for engineering was to be provided. A dispute arose when ET made modifications to the roof line structure, that was not present in the first brief of works, in December 2022. According to EF Ltd the change of plan required a significant change to the engineering

required and the work required was more than the initial estimate of fees. When EF Ltd requested further fees, ET cancelled the contract and went to another engineer firm.

10. According to EF Ltd their request for a variation was in line with their terms and conditions as they notified ET that his modification to plan request was a variation. In early April ET received the variation proposal but rejected the additional fees and communicated that, while he understood the additional engineering design time and effort may be needed to meet the new design requirements, he did not agree with the increase in the contract estimate. The contract work was stalled waiting agreement for the variation and scope of works. The agreement between the parties did not eventuate and by May ET rejected the fee variation and cancelled the contract.
11. I have considered all submissions made by both parties. I find EF Ltd did not breach their contract with ET. The terms of the contract allowed for variations to be requested. The issue was that EF Ltd required a variation to the initial estimate of works. In April this was relayed to ET. However, ET wanted to negotiate a more reasonable price for the variation. On April 6 EF Ltd had already indicated to ET that their price estimate for the variation was billable time at \$9,000. However, they offered a discount of \$6,000 to continue the extra work required on the contract. ET declined this and wanted a further discount.

Whether ET is entitled to claim a refund and costs?

12. I find there was no breach of contract by EF Ltd therefore ET is not entitled to a refund of the deposit paid. EF Ltd carried out the initial work on a standard design provided by the architect and the deposit of \$1,552.50 covered the time. The draft plan was provided in early February which was in a reasonable timeframe given the summer break of January. EF Ltd required a confirmation of the variations when they received modifications and requests for changes in early April. The delays in ET's works did not result from any negligence on the part of EF Ltd. ET made it clear he would not agree to the discounted variation and at his behest cancelled the contract. A refund and costs are not owed to ET.

Referee: S Connell

Date: 26 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>.