



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 248

APPLICANT FL

RESPONDENT C Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. On 8 October 2021, FL contracted C Ltd to make 6 bridesmaid dresses to a single design for \$250.00 plus GST each. The bridesmaids each paid for their own dress.
2. The contract required each bridesmaid to provide her measurements by a certain date in accordance with C Ltd's measurement template. The provision of the measurements was complicated by failures of some bridesmaids to meet the measurement and return for alteration deadlines; changes to the wedding date significantly long enough to require new measurements be provided; pregnancy of one bridesmaid; significant, intentional weight loss by another bridesmaid after having provided measurements.
3. Some bridesmaids did not provide their measurements timely or at all. One sent one of her own dresses and expected C Ltd to calculate her measurements from it. Some wanted alterations that effectively changed the design of the dress. Some chose to have their alterations done locally rather than by C Ltd. C Ltd did pay for one local alteration service and sent extra fabric for the maternity dress to be altered closer to the date.
4. The design and fabric of the dress did not suit all the bridesmaids and significant design changes were required to conceal a lesion for one; the pregnancy of another, sleeves to be added for modesty requirements for another and the another that wanted the draping style dress to be form-fitting.
5. The contract allowed for alterations, which required the dresses to be pinned in the desired locations and sent back to C Ltd for the alteration. The final lock stitching of the seams and hems was left until alterations were completed to minimise damage to the fabric by unpicking seams, however FL and her bridesmaids saw this as poor workmanship.
6. One bridesmaid cut up her the dress to provide fabric to the pregnant bridesmaid who had not sufficiently allowed for growth in her measurements in the interim period to the wedding date.

7. None of the dresses were rejected and returned to C Ltd. Four of the dresses were worn at the wedding, which took place on 10 December 2022 and 2 chose to purchase different dresses one of them being the bridesmaid who cut up her dress.
8. FL filed this claim on 20 December 2022, seeking a full refund of the 6 dresses, the costs of alterations done elsewhere and the cost of the 2 replacement dresses, which results in free bridesmaid dresses. No documents to support the claim were filed with the claim and FL checked "No" on the claim form to the question as to whether she had further documents to file.
9. The hearing date was postponed twice due to FL's unavailability. The matter was finally heard on 14 June 2023. Despite numerous requests and numerous promises to provide her evidence, FL did not produce any evidence to support her claim until 13 June 2023, the day before the hearing, and only to the Tribunal, not copied to C Ltd as instructed.
10. FL's late submission did not include any receipts for the expenses she has claimed. FL explained that she has been very busy.
11. It is noted that C Ltd made its detailed submission to the Tribunal and to FL on 22 February 2023.
12. The issues are: Is FL entitled to a refund? Is FL entitled to remedial and replacement costs?

Is FL entitled to a refund?

13. The Consumer Guarantees Act 1993 (CGA) applies. The CGA applies to goods and services and this contract includes both.
14. Pursuant to the CGA, goods must be of acceptable quality. If there are defects the consumer must notify the supplier within a reasonable time and give the supplier the opportunity to remedy the defects.
15. If the supplier fails or refuses to remedy the defects, then the consumer can choose to remedy elsewhere at the supplier's expense. If the goods cannot be remedied, then the consumer can reject and return the goods and obtain a refund.
16. FL did not return the goods and request a refund. Four dresses were used for the purpose they were intended. One was intentionally destroyed and therefore not returnable or refundable pursuant to s20 of the CGA. The sixth was not returned to C Ltd for remedy or refund.
17. It has not been proven that the dresses were defective or could not be remedied. Alterations were expected and formed part of the contract. The measurements were provided by the bridesmaids. There is no comparative evidence from FL to show that the dresses did not match the measurements provided.
18. The dresses that were sent to the C Ltd for alterations were pinned by the bridesmaids where the alterations were required. There is no comparative evidence to show that the alterations were not as pinned.
19. The timeline for the making of the dresses was included in the contract and provided to each of the bridesmaids, however the timeline was not adhered to for providing measurements or for alterations which did not give C Ltd adequate opportunity to alter all the dresses pursuant to the terms of the contract.
20. FL's claim for a full refund plus alteration costs and replacement dresses is unreasonable as it means FL and her bridesmaid would have free dresses.
21. FL is barred from rejecting the dresses and getting a refund as she did not reject and return the dresses but instead used four of the dresses for the purpose they were intended and destroyed one.

22. FL did not comply with her obligations under the CGA and has lost the right to a remedy under the CGA.

Is FL entitled to remedial and replacement costs?

23. C Ltd contributed to alteration costs and supplied fabric on an as-discussed and as-agreed basis for the maternity dress.

24. C Ltd disputes liability for any other alteration costs on the basis that the failure to return dresses for alteration or to abide by the timeline meant that some dresses had to be altered locally or just due to the personal convenience of the bridesmaid.

25. FL has not produced any evidence of third-party alteration expenses or for the two alleged replacement dresses, therefore such costs have not been proven.

26. As FL has not proven such expenses and has not proven C Ltd is liable for such expenses, there can be no award of such expenses.

Referee: L. Mueller

Date: 30 June 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>.