



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 610

APPLICANT **KL**

RESPONDENT **BD**

The Tribunal orders:

BD is to pay KL \$600 on or before the 11th day of December 2023.

The money may be paid into [bank account number]

Reasons:

Introduction:

1. KL engaged BD as her wedding photographer.
2. BD photographed the wedding and on the 20th of December sent KL 461 high resolution digital images of the wedding day.
3. KL responded 5 days later saying they were very disappointed in the photographs, that they lacked professionalism and appeared not to be edited.
4. KL gave BD the opportunity to edit the photographs or to send her the raw photographs so that she could have them edited elsewhere. BD declined.
5. KL is claiming a refund of the \$899.00 she paid BD for her work.

The issues to be resolved are:

- I. Did BD apply reasonable skill and care to the photography and editing of the photographs?
- II. Were the photographs taken fit for purpose?
- III. Should BD refund some or all of the \$899.00 to KL?

Did BD apply reasonable skill and care to the photography and editing of the photographs?

6. The Consumer Guarantees Act 1993 (CGA) implies into all consumer contracts a set of minimum standards (guarantees) for goods and services when they are supplied in trade to consumers.
7. The question of whether BD applied reasonable skill and care to the composition of the photographs is highly subjective. The same question applied to editing of the photos is slightly different because the editing process is largely a technical one.

8. I find that BD used reasonable skill and care in relation to the photography. I say that because she worked without the benefit of having a pre wedding consultation and because she provided 461 photos in total to allow BD to choose amongst those photos.
9. In respect of whether BD used reasonable skill and care in the editing process, I find that she did not. I say this because of the independent evidence provided by KL.
10. KL said that she had hired a professional wedding photographer and that she expected to see work that reflected technical expertise and creative composition skills. KL said she expected BD to give her guidance on ideal poses and how they might deal with group photos.
11. KL said that she received photographs that looked like they hadn't been edited. She gave examples that included having objects in the background such as joggers and cars. She said that there were balustrades and a chillbin and bottles in pictures that should have been edited out. She pointed to photos that were poor because of lighting.
12. KL provided opinion evidence in the form of emails from photographers that she had showed the photographs, who said the photos appeared to be unedited.
13. In respect of this evidence, I accept BD's concern that we don't know which photos were viewed or the level of expertise those photographers have with wedding photography. However, I do accept the evidence has some relevance.
14. BD said one of the key issues was KL had declined a pre wedding online consultation. BD said the consultation was critical to the success of the wedding photos because it gave her an opportunity to discuss what the client wanted in their photos. As an example, she mentioned she had previously done weddings at [venue] and knew the lighting could be an issue in the afternoon and because the venue was at a public park there would be other park users in the vicinity.
15. BD said she had not been told at any stage KL did not want other people in the background of the photos she was taking.
16. She said she knew the couple would be too busy on the wedding day to arrange the details of the photos they wanted.
17. BD said she had provided KL with 461 photographs of the wedding. She said she preferred to work in this way, so the client had numerous options to choose from when looking for suitable photographs.
18. She said for the \$899 that she had been paid she spent four hours at the wedding and if each of the photographs that she sent had taken one minute to edit this would have taken her approximately 7 hours.

Were the photographs taken fit for purpose?

19. The issue of whether the photographs taken were fit for purpose is also highly subjective. Following on from my finding BD did not use reasonable care and skill in relation to the editing process it follows that the photos were not fit for purpose in KL's view.
20. KL expected BD would be able to capture the big day and to professionally retouch any images that needed editing. She was hoping that she would have 50 to 60 photos she could include in a photo album to commemorate the day.
21. KL said of the 461 photographs she received, 19 were suitable for inclusion in a photo album. This equates to 4.1% of the photographs taken being suitable.

Should BD refund some or all of the \$899.00 to KL?

22. I have found BD used reasonable care and skill in taking the photographs in the context of there being no pre wedding consultation.
23. For this reason, balancing the matter as carefully as I am able, I consider a partial refund should be available to KL.
24. KL had indicated she was willing to accept a partial refund of \$600.
25. I consider this is appropriate because despite the outcome, BD did expend 4 hours of her time at the wedding and an unspecified period of time editing the photographs. She also provided KL with 461 high resolution photographs may be edited to better suit her needs.

Referee: Verdun Tawhara
Date: 20th day of 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>.