



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 182**

**APPLICANT      LU**

**RESPONDENT    C Ltd**

**The Tribunal orders:**

Both claims are dismissed.

**Reasons**

1. LU engaged C Ltd to carry out decking work at her property in [Address]. Some extra work was agreed to during the build. The invoice (\$13,028.10) was more than LU expected and she arranged to pay it by instalments. After paying \$11,000.00 LU raised concerns with MJ, director of C Ltd, that she had been overcharged. As an agreement between them was not reached LU filed a claim for a refund of \$2,761.00. C Ltd filed a counter claim for the amount outstanding under its invoice of \$2,028.00.
2. The issues to be decided are:
  - a) Was the price given by C Ltd a quote or an estimate?
  - b) Was the price for the 140mm pine decking (\$8,058.45) shown on the pricing document calculated incorrectly?
  - c) What was the scope of work the estimate was given for?
  - d) Were the extras charged agreed to, and if so were they charged at a reasonable price?
  - e) Was the price charged in the invoice reasonable and in keeping with the price given?

**Was the price given by C Ltd a quote or an estimate? Was the price for the 140mm pine decking (\$8,058.45) shown on the pricing document calculated incorrectly?**

3. A legally binding contract is formed where both parties intend to contract on agreed terms. For a contract to be enforceable the terms of the contract need to be certain and clear.
4. The parties dispute whether the price given by C Ltd was a quote or an estimate. In addition, C Ltd accepts that the price of \$8,058.45 provided was calculated incorrectly and should have been \$7,242.15 for the 140mm pine treads.
5. A quote is an offer to do specified work for an exact price. The price charged cannot be more than the quote and even if the actual cost is less than the quote the supplier is entitled to the amount quoted. An estimate is an evaluation of the approximate cost of work to be done. A supplier is able to charge a reasonable amount more or less than the sum estimated if the actual charges for work/materials specified in the estimate are different. Charging 10-15% more than an estimate is

usually considered reasonable. If the cost is more than this variance the supplier needs to advise the other party that is the case and get their agreement for the increased work/costs.

6. LU said she asked for a quote and believed the price given was a quote. She referred to the use of the word 'quote' in C Ltd's email which had the costings attached. MJ said he never gives a quote and pointed out that the pricing document sent to LU has 'estimate' at the top and at the bottom states: "I have allowed 40 hours, but I will only charge you the materials used and the time it takes." There is no consensus between the parties as to whether they verbally discussed that the price C Ltd was providing was a quote or an estimate. Therefore the wording used in the relevant documents is significant.
7. I find C Ltd provided an estimate to LU. While C Ltd has been inconsistent in its use of both 'quote' and 'estimate' in providing a price to LU, I find the wording in the costing document makes it clear that the price may vary as she will be charged for materials used and time taken.
8. The pricing document/estimate included three different pricing options for different deck treads and showed a total for all costs/options (referred to as the Grand Total). A calculation error was caused as gst was not included when the cost of the other two options was deducted from the Grand Total in calculating the cost for the 140mm pine treads.
9. The miscalculation in the estimate for the 140mm pine treads was not picked up at the time the estimate was received by LU. However C Ltd has acknowledged the error and I am satisfied it never intended the estimate for the 140mm pine treads to be \$8,058.45, but intended it to be the sum of the total of all options less the cost of the treads for the other two options, which is \$7,242.15. Accordingly I find it is reasonable to consider the correct calculation of \$7,242.15 to be the estimate provided for the work.

#### **What was the scope of the work the estimate was give for?**

10. C Ltd's estimate does not set out the scope of the work that is to be done. As the estimate does not specify the work to be done I find it is reasonable to consider any work agreed to prior to the estimate being given is included in the estimate. This is the case as LU had asked for a price to do the work and would have reasonably believed the estimate/price given included all work discussed.
11. The parties concur that C Ltd was to remove and dispose of the treads from the existing deck; build a like for like deck using 140mm pine treads with the angled part of the deck being squared off and widened to 1.20m; and build two sets of three-step stairs. In dispute is whether the new 1.7m x 1.7m lower deck at the front of the house was part of the work discussed and agreed to before the estimate was given, and whether the baseboards for the deck were also included in the quote.
12. LU believes the new lower deck was part of the work discussed and agreed to prior to the estimate being given; MJ says it was not and is an extra. MJ did not take any notes on the two occasions he visited the site before providing the estimate. The only documentary evidence is a sketch LU provided at MJ's request, three months after the estimate was given. The sketch includes the lower deck. MJ's memory is that they had talked about a break point at the end of the house which does not include the lower deck.
13. I find the lower deck was included in the work it was agreed C Ltd was to do before the estimate was given. I find this for reasons that include:
  - a) MJ did not query the inclusion of the lower deck in the sketch forwarded by LU. If he considered it was not in the scope of work estimated it is reasonable to expect he would have raised it at that time. In not doing so, the work has proceeded on the basis that LU has relied on the lower deck being included.

b) C Ltd has an obligation to carry out its work with reasonable care and skill<sup>1</sup>. This includes ensuring in situations such as this that the work included in an estimate is clear to the consumer. C Ltd's estimate does not do that. MJ took no notes during the two site visits and has relied on LU to provide an outline of the work to be done, and has requested the sketch months after the estimate was provided. Accordingly I find LU's version of the work agreed to at the site visits to be more convincing than MJ's.

14. I find the baseboards were not part of the scope of work estimated. The original deck did not have baseboards. LU has assumed they were included in the work to be done rather than discussing their addition with MJ. Therefore the base boards are work in addition to the work included in the estimate.

**Were the extras charged agreed to, and if so were they charged at a reasonable price?**

15. Any extra work agreed to in addition to work included in an estimate must be charged at a reasonable price<sup>2</sup>.

16. *Bearers and Joists, and remedial work for posts*

LU agrees that the work to install joists, replace the rotten bearers and provide support for the veranda posts was extra to the work included in the estimate. She accepts that \$1,123.62 charged for this work (\$264.00 for materials and \$859.62 for labour) is a reasonable cost for this work.

17. *Baseboards*

As I have found above, providing baseboards on the deck was an extra. I am satisfied from the evidence that \$1,088.81 (\$490.81 for materials and \$598.00 for labour) is reasonable.

18. *Widening deck that was straightened*

I find that the part of the deck that it was agreed would be straightened and widened to 1.2m was further widened by the width of a tread board. From the evidence I am satisfied that MJ discussed this with LU and she agreed the deck should be built "as wide as it could go". I find the costs charged of \$378.47 (materials) reasonable.

19. *Front 1.7m x 1.7m deck*

For the reasons given above I find this deck was included in the estimate. Therefore it is not extra work and the costs for this work are part of the cost estimated.

**Was the price charged in the invoice reasonable and in keeping with the estimate?**

20. After considering all of the evidence I find that C Ltd was entitled to charge \$8,328.47 for the work included in the estimate. This is 15% more than the estimate of \$7,242.15.

21. In addition, C Ltd was entitled to charge for the extras as set out above, being:

Bearers and Joists, and remedial work for posts	\$1,123.62
Baseboards	\$1,088.81
Widening deck that was straightened	<u>\$ 378.47</u>
	\$2,590.90

22. Therefore C Ltd should have charged LU \$10,919.37. I find the amount invoiced of \$13,028.15 was more than should have been charged.

23. In C Ltd's breakdown of its invoice, a sum of \$200.94 is included as the increase in the cost of materials (particularly wood) from when the estimate was given to when the deck was completed. I am satisfied that building materials did increase at a well faster pace than usual as stated by MJ, and that he has not charged LU more than the cost he has paid. However the estimate was accepted

<sup>1</sup> Section 28, Consumer Guarantees Act 1986

<sup>2</sup> Sections 11 and 31, Consumer Guarantees Act: where goods and services are supplied to the consumer where the price is not determined by the contract, the consumer is liable to pay a reasonable price.

by LU on 22 June 2022 and the work was not completed until early October. The delay in carrying out the work occurred for various reasons, including sickness (covid) and the amount of work MJ had.

24. LU accepted in principle at the hearing that it was fair that she was liable for the increased cost in materials, however in part I find the increase in the cost of materials was higher than it probably would have been had MJ completed the deck earlier.
25. The Tribunal has the discretion to determine disputes according to the general principles of the law relating to the matter and the substantial merits and justice of the case<sup>3</sup>. In considering this case I find the \$80.63 LU has paid in addition to the \$10,919.37 I have determined above, is a fair contribution to the increased cost of materials. Accordingly I find the substantial merits and justices of the case are best served by LU not being liable to pay any further money and C Ltd not being entitled to the balance of its invoice.
26. Accordingly both claims are dismissed.

**Referee: W Lang**  
**Date: 25 June 2023**

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<sup>3</sup> Section 18(6), Disputes Tribunals Act 1988



## 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>.