



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 435

APPLICANT M Ltd

RESPONDENT KE

The Tribunal orders:

KE is to pay M Ltd the sum of \$3,611.00 on or before 29 September 2023.

Reasons:

1. KE asked M Ltd to come to his property and provide a quote to carry a variety of exterior cleaning tasks.
2. On 4 May 2023 M Ltd came to the property, carried out an inspection for about half an hour which included speaking with KE's partner about the work, and then emailed through a detailed quote of both the work and the costs.
3. In a conversation also on 4 May 2023, after the quote had been sent, KE also asked for some additional cleaning of pavers/tiles around the pool and garage back door area.
4. The parties agreed that M Ltd would come to the property to carry out the work on 8 and 9 May 2023, as it appeared the weather would be good that day.
5. Although he received the quote, KE did not open or read it prior to the work being done.
6. The issues to resolve this claim are:
 - a. Did the parties agree what work was to be done at KE's property and the terms?
 - b. Did M Ltd carry out the work with reasonable care and skill?
 - c. Has KE paid M Ltd for the work, and if not, how much is due?

Did the parties agree what work was to be done at KE's property and the terms?

7. KE wanted to provide an opportunity to a new business and so asked M Ltd to come to his property and provide a quote for exterior cleaning work.
8. As agreed, M Ltd provided a detailed quote on 4 May 2023. KE does not dispute that he received the quote. However, he did not read it. He says that he didn't need to because he assumed it would be a fair price, based on his initial meeting with M Ltd. He says that M Ltd said its price "wouldn't be

beaten". M Ltd does not agree that this was said. I am not entitled on this evidence alone to make a finding that there was any representation or assurance about the price. When two parties provide different recollections about an event, without more, neither party is able to show on the balance of probabilities that their recollection is more likely to be correct.

9. The parties both agree that in the telephone conversations on 4 May 2023, they spoke about the work, including the extra work to be included and when it would be done. KE says they did not discuss the quote or the price during these calls. EF from M Ltd initially agreed that the quote was not discussed between them but later said he was mistaken about this and the quote was mentioned. In the absence of any corroborating evidence, I am not able to conclude the quote was expressly discussed during these calls. Again, without more, neither party is able to show on the balance of probabilities that their recollection is more likely to be correct.
10. For a contract to be formed, there must be a clear agreement between the parties about the key terms of the contract. Here they agreed how terms of the contract would be reached – namely that an inspection of the property would occur and then M Ltd would provide a written quote detailing the work and the price.
11. M Ltd provided this quote which was very clear about the areas to be cleaned and the type of cleaning service being offered (waterblasting including use of a chemical spray to address moss, mould and lichen). It also provided a clear statement of the price for the work to be done.
12. Although it is apparent KE did not actually read the quote, there was no way for M Ltd to know this. So when they discussed whether the work was to go ahead, the addition of some other work and when it was to be done, M Ltd understood from KE's conduct that he was happy with the quote provided. Acceptance can occur through conduct and I find that is what happened here.

Did M Ltd carry out the work with reasonable care and skill?

13. KE was happy with the scope and quality of the work at the time it was carried. Photographs provided with the invoice show considerable change from the state of the property from the photographs with the quote.
14. I therefore find that M Ltd carried out the work with reasonable care and skill.

Has KE paid M Ltd for the work, and if not, how much is due?

15. No payment has been made for the work done.
16. Upon receipt of the invoice, KE took issue with the amount.
17. KE provided costings from three other companies who looked at the cleaned property and provided some sort of estimate of the work done. KE advised them how long he says M Ltd took to do the work.
18. These costings are not a quote from these companies for them to do the work. It is not wholly clear from the wordings of these costings whether they are for comparable work, including the chemicals used by M Ltd.
19. KE supplies these because he says there must be some "industry standard" price that work must comply with.
20. Where the parties have not discussed or agreed a price for work or a process to set the price, then section 31 of the Consumer Guarantees Act 1993 says that a price for services must be reasonable. Here, the price was clearly set by a process that parties had agreed.

21. M Ltd has charged only what was quoted together with a comparable amount for the extra work agreed on. I therefore find that KE is contractually obliged to pay M Ltd the amount of the invoice, being \$3,611.00.

22. M Ltd has also claimed for its time in bringing this claim as well as the filing fee. The Tribunal has very limited jurisdiction to order costs, and none of the applicable circumstances apply. Therefore, this aspect of the claim is dismissed.

Referee: S Simmonds

Date: 4 September 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>.