



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 154

APPLICANT **NE and HE**

RESPONDENT **S Ltd**

The Tribunal orders:

The claim is dismissed.

Reasons

1. The applicants obtained a quote from the respondent for a house removal. The quote was one of two obtained, and after negotiation, it was selected as the most cost effective.
2. The applicants verbally indicated their acceptance of the quote. A month later, they sent a signed contract to the respondent, which was acknowledged.
3. However, two weeks after receiving that contract, the respondent reassessed the house and then advised they would not be able to complete the move. This was a shock to the applicants, who had felt they had a deal. The applicants had to go back to the other company that had provided a quote, and accept their price, at an additional cost of \$8,360.00. The replacement contract also did not cover a design fee for foundation design at an additional cost of \$1,800.00 plus GST.
4. The applicants claimed additional costs of \$8,360.00 in compensation from the respondent.
5. The issues to be resolved are:
 - (a) Did the parties enter into a contract?
 - (b) Were the terms of the contract still binding on the company at the time it cancelled?
 - (c) If there is a breach, what loss is recoverable?

Did the parties enter into a contract?

6. Having reviewed all the documentation provided, I have concluded that the parties entered into a contract for the removal of the house.
7. A quote had been verbally accepted on or about 19 April 2022, and at that point a contract was sent to the applicants to sign. This contract had been pre-signed by an employee of the company. That employee had apparent authority to bind the company, even if they did not have actual authority. That is sufficient to evidence an offer, which was accepted by signing and returning the document. The contract was therefore formed once that occurred, on 16 May 2022.

8. The one-month delay in signing had arisen as the applicants had needed to obtain information about insurance and building issues, which took a few weeks.
9. I am not able to find that the contract was in place on 19 April, as all that had been agreed at that time was the price. The contract contained many more terms. The contract was therefore not concluded until the full document was signed on 16 May.

Were the terms of the contract still binding on the company at the time it cancelled?

10. There is no dispute that the respondent pulled out of the deal on or about 1 June 2022, about 2 weeks after the contract had been signed.
11. The respondent submitted that it was entitled to cancel because:
 - (a) the contract had been frustrated, as two employees were no longer available;
 - (b) the deposit had not been paid by the time it cancelled; and
 - (c) the quote had expired by the time the contract was sent back;
12. I am unable to make a finding that the contract was frustrated. A contract can be considered terminated where it has become impossible to perform. However, the impossibility must be created by an external event that has so changed the landscape that the bargain has become fundamentally different, and performance is impossible. This test was not made out on the information provided. The applicants had offered manpower to make up the loss of the employees. More importantly, employment issues were internal to the company, not external, and are a risk that the respondent would be expected to manage, subject to any rights it reserved in the terms of its contract. The loss of employees was not a factor that could be relied upon to bring an end to bargain it had negotiated under principles of frustration.
13. However, I am satisfied that the non-payment of the deposit and the late return of the contract left the deal at the election of the company, due to the wording of the contract. I have reached this conclusion for the following reasons:
 - (a) The contract provided that a deposit was payable "*upon accepting referenced quote and signing this contract*". The contract then went on to state that the respondent could cancel the contract for non-payment of the deposit, but only if the deposit was more than one month late. As the contract was not signed until 16 May, that month had not passed by the date the respondent cancelled, on 1 June. However, the contract also stated that all conditions in the quote formed special conditions of the contract (clause 3). The quote provided that the deposit had to be paid to secure the price ("*20% deposit required to secure quote*"). Whilst there is an arguable inconsistency between the contract and the quote, the quote terms were elevated to special conditions.
 - (b) Additionally, the words in clause 1 operated to give the respondent a right to walk away, regardless of whether the deposit had to be paid to secure the quote. The opening clause of the contract (Clause 1) stated that the price was "*valid for the time period set out in the quote*". The quote, which was dated 19 April, provided that it expired on 25 April. This was a very short window for acceptance, but by providing this short window, the respondent was managing the risk of costs or circumstances moving against them and giving themselves an "out" if they needed it for any deal accepted after that date. As a result of that clause, by the time the applicants signed a month later, the respondent was no longer bound by the price, unless it elected to be. Once it had reassessed the house, it elected to walk away from the deal.
14. I have had regard to whether the verbal acceptance of the quote on 19 April locked the respondent in despite the words of the contract. I am not able to make that finding. Had the applicants not signed the contract, they would not have been bound, as the quote was only one aspect of the terms. It cannot therefore be said that the respondent was bound when the applicants had not yet committed.

15. I have had regard to whether there was a consumer guarantee breached (for example, reasonable skill and care in provision of a service) in failing to tell the applicants, either in the month they were undertaking their due diligence, or once they sent in the signed contract, that it might rely on the expiry of the quote to walk away. The applicants were receiving emails from the respondent's employee throughout this period that gave rise to a continuing expectation that the deal was still on foot, and at no time did the respondent alert the applicants to the risk that they might change their mind, and use the delay in signing, or paying the deposit, to justify this. The applicants consider this has caused them lost time and effort preparing for a scenario that was never likely to proceed. I can appreciate the applicants surprise at the loss of the deal given the way the respondent failed to flag any potential change of heart. Nonetheless, whilst the way the respondent acted may have amounted to poor customer service, I am unable to find a breach of duty that was sufficient to set aside the terms the applicants had agreed to. Had the applicants signed the contract and paid the deposit, the respondents would have been liable. As they had not done so by the timeframe allowed, they gave the respondent the opportunity to reconsider its involvement.

16. For these reasons, I am unable to find a breach by the respondent that justifies an award of the sum claimed.

Referee: J Robertshawe

Date: 1 May 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>.