



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

**[2023] NZDT 679**

**APPLICANT      NM**

**APPLICANT      S Ltd**

**RESPONDENT   PT**

**The Tribunal orders:**

PT is to pay S Ltd the total sum of \$4,905.26 on or before Tuesday 26 September 2023.

**Reasons:**

1. S Ltd was engaged by PT to install roofing at [address] for a price of \$9,810.53. PT paid a 50% deposit.
2. S Ltd (the company) and its roofer NM claim \$4905.26 for the balance of the invoice. At the hearing, the claim by NM was withdrawn.
3. The issues to be determined are:
  - a. What were the terms of the contract and who were the parties?
  - b. Did PT breach the contract?
  - c. If so, what is the remedy?

**What were the terms of the contract and who were the parties?**

4. For a contract to be enforceable there must be agreed terms between the contracting parties.
5. There was no dispute that the company was the party to the contract and not its roofer, NM, and accordingly the claim by NM was withdrawn. PT's position is that his company I Ltd which is co-located at his home, was the other party. However, on balance, I find that he personally was the contracting party rather than his company. I say this as the quote was in his name, and he signed and accepted the quote in his name, without any reference to I Ltd. Also, I preferred the company's evidence that the only reason the invoice was in the I Ltd name is because PT subsequently requested it.
6. Nor was there any dispute that the agreed price for the work was \$9,810.53, and that PT paid the 50% deposit. Instead, PT's position is that the scope of the work was for the entire roof (both roofs) to be removed and refitted with new roofs. In support he said that he accepted the price quoted on this basis, that it made no mention of any restrictions to one roof only, that the entire building had scaffolding erected around it which he says pointed to his understanding that both roofs would be re-roofed, and he played recordings with the roofer NM which he says supported his view.

7. I accept that the quote made no mention of the parameters of the scope of the re-roof. Despite this, on balance, I accept the company's position that the agreement was only to remove and fit one of the roofs (one side). I say this for reasons which include:
- a. I preferred NM's evidence that he quoted for "only for one side of the roof" and that this quote was initially off [maps]. I accept that he then returned for specific measurements and gave the final 80 sqm;
  - b. I find that NM's evidence is consistent with the Job Sheet site measurement plan, which I accept was completed immediately after the site discussion with PT. This shows 2 roofs and is clearly marked "this roof only" with an arrow to one roof;
  - c. I preferred the company's position that the quantity of roof sheet recorded in the Job sheet reflected the limited 80 sqm of roofing for one roof (5.5.sheets x 18) and that twice this amount would have been required for both roofs;
  - d. I gave greater weight to the company's position that once the quote was accepted that 100 linear metres (80 sqm) of roof was ordered for one side;
  - e. I preferred the company's position that the pricing for roofing was fairly standard across the industry, and that the price quoted reflected 80 sqm, and would have been much greater had the scope been both roofs. This is also consistent with PT's evidence that he had to pay a further \$5-6000.00 for more colour steel;
  - f. I preferred NM's evidence that scaffolding was erected around the entire building by the sub-contractor in error before he had seen the drawing of one roof only, and it would not have been cost effective to remove it; and
  - g. I do not accept that there was any mistake about the scope of the quote. I say this as:
    - i. I preferred the company's evidence that while the quote was issued on 18 May it was not accepted until 1 June 2023;
    - ii. I accept NM's evidence that after the quote had been sent but before he ordered the materials, PT had then asked about the other side, and I preferred NM's evidence that he checked his records and made it clear to PT that he did not allow for the other side in his quote, but that as PT now wanted the other side he would speak with [BI, a director] about doing the other side at cost, because PT now wanted both done. So, I find that this aspect was outside the scope of the accepted quote, and I saw no evidence that any such agreement for the second roof at cost was concluded; and
    - iii. I did not find that the recordings of conversations between NM (who has left the company) and PT in December and January well after the quote had been accepted, and also after the work had been performed, favoured PT's position. Instead, I found the essence of those conversations and comments such as "just say [NM] said will do both sides .... won't have to pay any more" presented as collusion between the two, in an effort to get both roofs installed for the one roof price. In forming this view I took into account the timing, context of the conversations and that NM's willingness to support PT was likely impacted by other separate dealings between them.
8. For all these reasons, I find that the scope of the agreement as quoted for the price of \$9,810.53 concerned one roof only.

#### **Did PT breach the contract?**

9. There was no dispute that PT had not paid the balance of the invoice of \$4905.26, and PT acknowledged that this was primarily because only one roof was done. Given my finding on the scope of the agreement at paragraph 8, I accept that the agreed work was performed and is complete, so the amount is now overdue, and PT has breached the contract.

#### **If so, what is the remedy?**

10. The remedy for breach of contract is to place the affected party into the position it would have been in had the contract been performed.

11. I find that the company is entitled to payment of the unpaid balance of \$4905.26.

12. So I order PT to pay S Ltd the total sum of \$4905.26 on or before Tuesday 26 September 2023.

**Referee: GM Taylor**

**Date: 29 August 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>.