



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 523

APPLICANT O Homes Ltd

RESPONDENTS BL and SL

The Tribunal orders:

Claim: BL and SL and jointly and severally liable to pay O Homes Ltd \$3,904.38 within 28 days.

Counterclaim: The counterclaim is dismissed.

Reasons

[1] O Homes Ltd ("O Homes"), represented by director TM, claims \$17,479.07 from BL and SL. The sum comprises two invoiced amounts: \$3,904.38 for materials and labour, and \$13,574.69 for LVL beams that were supplied to the BL and SL. BL and SL's counterclaim for \$30,000.00 relates to a payment that they made for shipping and import costs, but which they believe was the responsibility of O Homes.

[2] The parties provided a large number of documents relating to their respective claims. I have read and considered them all, and taken into account the totality of the evidence provided to me.

The claim

The first invoice

[3] TM said that his company imported materials, mainly from [Country], for constructing houses made of timber, or logs. Some materials were also obtained in New Zealand, or from other places. In this case, O Homes had contracted to supply BL and SL with the materials that were required for them to build a log house in [Town]. The arrangement was that BL and SL were to contract a builder who had been recommended by TM, but that TM would maintain some involvement in the project by providing assistance when needed. The negotiations for the arrangement proceeded during 2021, and building proceeded in 2022.

[4] The first invoice for which O Homes claims was not in dispute, although BL and SL objected that it had arrived very late and had been backdated. They did not dispute, however, that it covered 11 days of work provided by TM, as well as a douglas fir beam that, it had been agreed with BL and SL, would be used as a substitute for a more expensive arch beam.

[5] BL and SL accepted that they had been happy with TM's work at this time, and that they had agreed to the beam being used.

The second invoice

[6] TM said that there had been an option of using LVL beams or solid timber for certain rafters. He said that the original plans had contemplated LVL, and that it would be covered by other timber. However, he said, BL had asked the builder to alter the arrangement, and the LVL had been installed so as to be exposed and visible. TM had paid the supplier for the LVL beams, and sought recovery of their price from the BL and SL.

[7] TM said that BL had himself sought a price for LVL, which indicated that he, BL, was happy to have LVL installed. TM and the builder had expected that BL would order it but, when he did not, they proceeded to order it themselves so that work could continue. TM said that he and the builder had not talked to the BL and SL about that, as the question of whether to use LVL was a structural one, and BL and SL were not knowledgeable about such matters.

[8] BL and SL said that they had never agreed to LVL being used, and that they would not have done so. They did not want any material that contained glue used in their house, as they thought that glue contributed to migraine headaches. BL had attempted to cancel the order for LVL when he had found out that TM had ordered it. BL provided evidence that he had ordered oregon timber to be used, which had been delivered to the site. That timber, he said, was now useless, as the builder had proceeded to install the LVL beams. BL agreed that he had at one point considered LVL, but he and SL had decided that they did not want it and had made that clear to TM and the builder.

Decision on the claim

The first invoice

[9] I consider that BL and SL must pay this invoice of \$3,904.38. There is no dispute that TM worked on the site for 11 days, and that the beam in question was supplied. I do not think that BL and SL have been prejudiced by any issue relating to the timing of the invoice.

The second invoice

[10] I do not think that BL and SL should be obliged to pay this. I accept that TM ordered it in the belief that LVL was the best choice for the area in question, and that he believed that he was benefiting BL and SL by doing so. However, I also accept that BL and SL did not authorise the use of LVL, as evidenced by their decision to order oregon for the rafters. TM has not provided any evidence that BL and SL instructed the builder to install LVL, or that they asked him not to cover it. Rather, the evidence is that BL and SL considered LVL when it was suggested to them, and then declined to accept it. Thus, they are not obliged to pay for it.

Counterclaim

[11] O Homes had agreed to order the materials from the [Country], and did so. The counterclaim relates to the cost of having the materials shipped to New Zealand, which was \$32,752.85, and the GST of \$17,806.28 that was payable upon their importation. BL and SL paid those costs, but consider that they were not liable to do so. They seek reimbursement from O Homes of \$30,000.00, the maximum sum that the Disputes Tribunal can order to be paid.

[12] BL and SL said that, when they had been considering contracting with O Homes, they had been sent a copy of O Homes' supply agreement. They had declined to sign it, as they had wished to make some alterations, and were intending to obtain and supply some materials themselves. They said that they had, therefore, not read the supply agreement closely, or paid attention to it.

[13] TM had also sent to BL and SL what TM described in his message, dated 18 January 2021, as a "breakdown of the major costs for the build". The document stated a list of items and their prices, including the "Materials Package ex [Country]", and stated a total of NZ\$370,277.44 inc GST". BL and SL considered that this was the quote for the complete supply of materials. They had been surprised when, in January 2022, TM had forwarded to them invoices for the shipping and GST costs, but had paid them because they had felt pressured to do so. They had wanted the goods to be released from the port, and the work to progress.

[14] BL and SL also produced a copy of a document dated 17 May 2021, which was a list of the materials in the [Country] order. Below the list, TM had written that the goods from the [Country] were ready to leave the warehouse, and that: "If there are no changes needed I will let you know the total cost of all the above including Shipping, GST, Customs, port charges, and fumigation very soon, all of these costs are included in the pricing you already have for the house."

[15] TM said that it had been clear in the supply agreement, although BL and SL had not signed it, that they, as clients, would be obliged to pay the shipping and import costs. He said that the reference to "GST" on the breakdown of build costs was for the GST ordinarily paid on goods and services in New Zealand; the "GST" payable in the port was a cost imposed on imported goods. As he had considered that BL and SL were liable to pay those costs, he had forwarded the relevant invoices to BL and SL, who had paid them. He said that the shipping costs, for which he had obtained a quote, and the GST cost, which he had been able to calculate in advance, had been included in the sum he had quoted to BL and SL. He was aware that some items had been deleted from the document that he had provided as a breakdown of major costs, but was unaware of what precisely those were.

Decision on the counterclaim

[16] In my view, BL and SL are not entitled to succeed on their counterclaim. I accept that they genuinely believed that they would not be obliged to pay any extra sums for shipping and importing but, in my view, it had been made reasonably clear to them that they would be required to do so.

[17] I accept that TM sent a copy of O Home's standard terms, as stated in its supply agreement, to the BL and SL. It was stated clearly in that document that shipping, clearance and port costs were to be paid by them, the clients. BL and SL apparently did not heed this; they chose not to sign it because they wished to supply some of the materials themselves, and apparently wanted some flexibility in doing so.

[18] BL and SL were, of course, justified in not signing the supply agreement that was sent to them. However, as they proceeded to accept O Homes' offer to import materials for them, they nevertheless formed a contract, albeit not in writing, with O Homes. In doing so, they must, in my view, be taken to have been aware that they would be required to pay for the costs involved in importing the goods. It was stipulated in O Home's standard terms that that was so, and that term had been brought to their attention.

[19] More broadly, it must have been apparent to BL and SL that there would be a considerable cost involved in shipping and importing the goods, and that they would be expected to pay those costs. The cost of shipping had been built into O Home's original quote. It is well known that costs are levied on imported goods, and I think that BL and SL would have understood the distinction between GST being levied on local goods and services, as compared with its use as, in effect, an import tax. I do not think that there was anything in the documents provided by O Homes that would lead them to believe otherwise.

[20] Thus, the counterclaim is dismissed.

Result

[21] The result is that BL and SL must pay O Homes \$3,904.38. They are not required to pay for the LVL beams. O Homes is not liable to reimburse BL and SL for the shipping and import costs.

Referee: C Hawes

Date: 12 October 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>.