



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 659

APPLICANT Q Ltd

RESPONDENT F Ltd

The Tribunal orders:

1. F Ltd is to pay \$16,339.20 to Q Ltd on or before 12 January 2024.

Reasons:

2. In September 2021, the Respondent placed an order with the Applicant for the manufacture and supply of [a louvre roof] for installation at a client's address. A quote in the amount of \$16,891.20 was accepted on 14th September 2021 by the Respondent.
3. The louvre roof was supplied by the Applicant to the Respondent in November 2021, the parts of the louvre roof being couriered to the requested address. The Respondent advised the Applicant that there were parts missing while the installation of the louvre roof was progressing, namely, screws, gutter straps, and footing plates. The Applicant organised and sent the missing parts to the Respondent within 3-4 days (2 working days).
4. In December 2021, the Respondent advised the Applicant of the measurements of the flashing that would need to be custom built for the completion of the louvre roof. The Applicant advised that their supplier was unable to manufacture this prior to Christmas and it was agreed between the parties that the Respondent would source the flashing from another supplier to complete the work.
5. A credit, in the amount of \$552.00, was provided by the Applicant to adjust for the agreement reached relating to the flashing and, a revised invoice of \$16,339.00 was issued to the Respondent. The Respondent has not paid that invoice.
6. The Applicant brings a claim against the Respondent in the Tribunal seeking damages of \$19,759.34, being a payment of \$16,339.00 owing under the invoice, and debt collection costs incurred of \$3,420.34.
7. The issues to be determined are:
 - a. Did the Applicant breach the terms implied by the Contract and Commercial Law Act 2017 (the Act) when supplying the louvre roof?
 - b. Did the Respondent breach the terms of the contract by not making payment to the Respondent for the louvre roof?
 - c. Is the Applicant entitled to a remedy and, if so, what should that remedy be and is the amount claimed proved and reasonable?

Did the Applicant breach the terms implied by effect of the Contract and Commercial Law Act 2017 (the Act) when supplying the louvre roof?

8. The Consumer Guarantees Act 1993 does not apply in the present case as it provides guarantees relating to contracts for the supply of goods and services between suppliers and consumers. A consumer for this purpose is a person who acquires the goods or services for personal, domestic, or household use or consumption. It does not include a person who acquires goods or services for resupply in trade or using them in the course of a process of production or manufacture. In this case, the Respondent acquired the louvre roof to on-supply this to a customer including installation of the same.
9. The relevant legislation therefore is the Act which sets out implied conditions and warranties with respect to contracts.
10. This was a contract for the sale of goods. Section 137 of the Act deals with implied conditions and warranties in relation to the sale of goods. It sets out the starting point which is, in a contract for the sale of goods, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale except as set out in section 138 to 141.
11. Section 138 applies if the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgement, and the goods are of a description that it is in the course of the seller's business to supply (whether or not the seller is the manufacturer). If section 138 does apply there is an implied warranty that the goods are reasonably fit for the purpose as set out in section 139.
12. Section 139 of the Act states that there is an implied condition in a contract of sale that the goods are of merchantable quality if the goods are bought by description from a seller who deals in goods of that description. However, if the buyer has examined the goods, there is no implied condition with respect to defects that the examination ought to have revealed.
13. I find that the Applicant did not breach the implied terms of the Act based on the evidence submitted.
14. I am satisfied that the louvre roof provided was as ordered by the Respondent. The louvre roof was the product that had been ordered, and it was this product that was supplied.
15. While there were some parts that were missing, I am satisfied that the Applicant provided the missing parts to the Respondent within a reasonable period once made aware of this.
16. There is no evidence to suggest, nor has the Respondent indicated, that the louvre roof supplied was not of acceptable quality or was not what was ordered by the Respondent for that project.
17. A statement was provided by the client who had contracted the Respondent to supply and install the louvre roof. In that statement he states that there have been issues with the installation of the louvre roof, rather than the product itself in their opinion. While I do not have to make a finding on whether or not the installation was done properly by the Respondent, the statement does indicate support for the conclusion that the louvre roof itself was the product that this customer had ordered, and this was what was supplied by the Applicant to the Respondent accordingly.

Did the Respondent breach the terms of the contract by not making payment to the Respondent for the louvre roof?

18. Under the law of contract, the general rule is that a supplier ought to be paid for goods supplied to a customer, unless there is a legal reason for the customer to not pay, or to only pay in part. If there is no legal reason for the consumer's non-payment, the failure to pay amounts to a breach of contract for which the supplier may seek a remedy.
19. In addition to the general law of contract, the specific trade terms between the parties stated that:

- a. payment for the supply of products would be made on the 20th of the month following the date of the invoice.
 - b. if an invoice was disputed, the undisputed amount would be paid in accordance with the terms of trade, and the disputed amount would be raised to the attention of the Applicant within 10 working days of the date of the invoice.
 - c. the Applicant would work promptly to resolve the issue if an invoice is disputed.
 - d. penalty interest may be charged on overdue amounts.
 - e. the customer would be liable for and reimburse all costs relating to instructing a solicitor and/or debt collection agency to recover any amounts overdue, and that any such costs would bear GST and interest.
20. The Applicant's standard terms of trade contract was signed by the Respondent on 23rd June 2020, and supplies made by the Applicant to the Respondent were transacted pursuant to these terms from then on.
21. I find that the Respondent did breach the terms of the contract it had with the Applicant regarding the louvre roof by not paying the invoice in the amount of \$16,339.20.
22. The Respondent has stated that the louvre roof supplied lacked certain parts and that in turn led to delays. Further that the delays resulted in costs for the Respondent.
23. The Respondent also states that they have had the same issue with previous supplies in that the supplies of the products had missing parts which led to project delays and costs for the Respondent. The Respondent has provided as part of their evidence a calculation of the costs that they consider has been borne due to delays caused by missing parts in the various supplies.
24. This evidence includes a calculation of costs based on the time spent on sourcing replacement parts, time spent on moving from one project to another when missing parts were discovered and a particular project could not be worked on, and cessation of work on projects while alternatives to the missing parts were sourced. The costs relate to all transactions where the Applicant has provided louvre products to the Respondent – rather than being a quantification of losses relating to the supply of the louvre roof which is the subject of this claim.
25. I find that each of the supplies of products made by the Applicant to the Respondent was a “distinct” contract. While there were missing components in past supplies, I am satisfied from the evidence that Applicant did provide the missing parts or provided alternative ways where the parts could be sourced at their cost. The Respondent could have, if they had wanted to, raised any issues relating to each of those supplies at the time – they did not do that. I find that it is not appropriate to consider any of the losses the Respondent is claiming for past supplies as a result.
26. In terms of the louvre roof supplied which is the subject of this claim, I find that while there were missing components, the Applicant did in fact provide these to the Respondent within a reasonable time frame. And the Respondent was able to install the louvre roof for their client.
27. I find that the Respondent breached the terms of trade by not paying the invoice as they were supplied the louvre roof they had ordered.

What remedy is available to the Applicant?

28. Once an applicant has proved their claim, they are entitled to a remedy. The usual remedy for a breach of contract is monetary damages. Before monetary damages are awarded to an applicant, the Tribunal must be satisfied that the amount claimed is proved and reasonable.
29. I find that the Applicant is entitled to be paid the amount owing on the invoice, being \$16,339.20.

30. The Applicant supplied the louvre roof as ordered by the Respondent. The Respondent has installed the louvre roof as per the project for his client.
31. The Respondent is therefore liable to pay the amount owing to the Applicant for the louvre roof.
32. The Applicant has also claimed the debt recovery costs incurred in pursuing the amount of the unpaid invoice, and these costs amount to \$3,267.84.
33. The Tribunal is precluded from awarding costs against any party under section 43 of the Disputes Tribunals Act 1988, except in very limited circumstances. Debt collection costs fall into the category of costs under section 43 and therefore cannot generally be awarded. However, the Tribunal may award debt collection costs where their recovery is provided for in the contract between the parties and whether the Tribunal exercises its discretion to award such costs will depend on the circumstances, taking into account the merits and justice.
34. The terms of trade specify that outstanding invoices may attract debt recovery costs. However, while the invoice in this case was an outstanding invoice, the amount was in dispute. It would seem to me that this clause is most appropriate where an invoice is simply outstanding and not where the outstanding invoice remains unpaid due to a dispute. And in the circumstances incurring debt recovery costs for a disputed amount may not have been the most appropriate avenue.
35. In these circumstances, I find that the Respondent is not liable to pay debt recovery costs in the amount of \$3,420.34. This part of the Applicant's claim is therefore dismissed.
36. For these reasons, I award damages of \$16,339.20 to the Applicant, which the Respondent is to pay by the date set out in the order.

Referee: A Chand
Date: 30 November 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>.