



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 636

APPLICANT **QI**
APPLICANT **UD**
RESPONDENT **P Ltd**

The Tribunal orders:

P Ltd is to pay QI and UD \$3,900.00 on or before 19 December 2023.

Reasons

1. QI and UD engaged P Ltd to complete plastering of the ceiling and walls for their lounge, hallway and bedroom at a price of \$6,694.35. The instruction was to provide a plastered surface ready to be painted.
2. QI and UD were not happy with the quality of the work, and had it assessed by a qualified plasterer, who was employed to carry out remedial work.
3. QI and UD claim \$3,900.00 for a partial refund of the money paid to P Ltd (\$3,500.00) and \$400.00 for extra sealant needed for the remedial work. This was amended from the original claim of \$7,000.00.
4. The issues to be decided are:
 - a) Were plastering services provided with reasonable care and skill?
 - b) If not, was the failure a failure of substantial character that would entitle QI and UD to claim a partial refund and compensation for extra sealant?

Were plastering services provided with reasonable care and skill?

5. The Consumer Guarantees Act 1993 (CGA) provides implied guarantees for consumers that services purchased from suppliers must be provided with reasonable care and skill and must be fit for the purpose intended. If the services are not provided with reasonable care and skill, and the failure is a failure of substantial character, the consumer is entitled to cancel the contract and get a refund of the money paid and claim compensation for any reasonably foreseeable losses (sections 28, 29, 32 CGA).
6. I find that the plastering services were not provided with reasonable care and skill. I make this finding for the following reasons:
 - a) The photos taken two weeks after the work was completed show that the surface of the walls and ceilings were not completed to a paint quality standard. The plaster surface had pitting, too

marks and scrape marks, inadequate skim coatings, cracks in the lounge ceiling, holes and poor finishing on the walls. In addition, the quality of plaster around coving, light switches and sockets was poor, and mitre joins were uneven and not straight.

b) The evidence of witness, NC, was compelling and credible. NC is a qualified plasterer with 20 years' experience. NC said that in his opinion the quality of the plastering is very poor and is not up to the expected level 4 paint quality finish. He said that the defects indicate inadequate preparation. In particular, old flaking paint was not removed, and paint was not properly sealed. Paint around joins had not been removed, back filled and taped, before plaster was applied. NC provided photos of the remedial work showing numerous patches that he had completed to remedy the defects. This work was completed at a cost of \$2,500.00.

c) I have considered the evidence of UP, director of P Ltd, that none of the defects were visible when he completed the job. UP provided a video of the work taken at the final inspection, along with still photos taken from the video. Unfortunately, the video was fast moving and often taken from a distance. I find that the video was not of a suitable quality to draw any conclusions about the quality of the work when it was finished.

d) UP suggested that the defects may have been caused by pressure applied when QI and UD applied sealer to the surfaces with a roller. However, I accept the evidence of NC that the process of applying sealant with a roller would not have caused the defects such as pitting, tool marks and scrapes, uneven surfaces and uneven mitre joins. A plaster surface is expected to be a sturdy product suitable to apply sealant or paint to, with a roller. In addition, UP was not certain whether his subcontractor carried out all proper preparation before applying plaster.

e) I note that NC said that not all defects would be immediately obvious. This is because moisture could come to the surface as the plaster dried if the appropriate preparation had not been completed. This is why cracks around joins might become more obvious after a couple of weeks. This is most likely why some defects were not obvious to UP immediately after the job was completed.

If not, was the failure a failure of substantial character that would entitle QI and UD to claim a partial refund and compensation for extra sealant?

7. I find that the failure is a failure of substantial character because it is not of a standard that a reasonable consumer would find acceptable. In addition, the plaster surface is substantially unfit for the purpose, because it was not suitable for painting. Many of the defects were obvious from the other side of a room, without any special lighting.
8. This means that QI and UD are entitled to a full refund of the money paid for the job. However, they consider that a full refund would be punitive and only claim a partial refund of \$3,500.00. I find that this approach is reasonable and therefore the claim is proved.
9. In addition, I find that QI and UD are entitled to claim \$400.00 for the extra sealant they had to buy to seal the plaster after the remedial work. UP agrees that this is a reasonable price for the sealant that would have been needed. Therefore, the claim is proved in full.

Referee: Sara Grayson

Date: 28 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>.