



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

**District Court**

**[2023] NZDT 205**

**APPLICANT UN Ltd**

**RESPONDENT MI**

**The Tribunal orders:**

MI is to pay \$3130.56 to UN Ltd on or before 11 May 2023.

Reasons

1. UN Ltd ('UN') provided an estimate to MI for the building work associated with a kitchen renovation at her house. MI had engaged a kitchen designer separately who had been contracted to design, supply and install the kitchen.
2. UN provided a written estimate of \$13,763.64 incl. GST on 4 June 2022 which provides a detailed scope of work based on the plans provided. While some sub-contracted work was included in this scope, electrical work was not.
3. UN invoiced MI on 8<sup>th</sup> and 14<sup>th</sup> September 2022 and both those invoices were paid, totalling \$11,267.88 incl GST. On 20 September, UN forwarded its final invoice for \$19,518.48 incl GST, and after some back-and-forth email correspondence about the unexpected final amount, MI emailed UN on 4 November 2022 that she had paid \$9402.55 in full and final payment against the final invoice. That means MI has paid a total of \$20,670.43 to date.
4. UN claims \$10,078.15, being the unpaid portion of the final invoice.
5. The issues to be determined are:
  - With respect to MI's payment on 4 November 2022, was there an 'accord and satisfaction' such that no further amounts can be claimed by UN?
  - If not, is any amount over and above the written estimate provided justified and payable by MI?

*With respect to MI's payment on 4 November 2022, was there an 'accord and satisfaction' such that no further amounts can be claimed by UN?*

6. MI's email to UN on 4 November stated that she was paying \$9402.55 in full and final payment. If UN had accepted it as such, an 'accord and satisfaction' would have been made and UN would not have been able to claim any further amount. However, UN replied by email with a question along the lines of "Are you not agreeing to pay a single dollar for brickworks and laying or plastering/painting?". The day prior, UN had emailed they would take enforcement action for the full amount outstanding as soon as possible as they "cannot take on a huge loss".

7. Further UN took no affirmative action, following MI's direct payment into their bank account, that would cause MI to have thought her offer of full and final payment was being accepted, rather referred the matter to their lawyer to follow up, which the lawyer did in December 2021, writing to MI. Based on all the above, I find there was no meeting of the parties' minds that MI's payment had been made in full satisfaction of the claim and so UN is entitled to pursue their claim for further payment.

*Is any amount over and above the written estimate provided justified and payable by MI?*

8. I accept UN's contention that some items were clearly not part of their original scope of work and therefore not included in the estimate of price. UN states that they thought the kitchen designer was organising the electrician and plumber for the kitchen and this would not be an unusual arrangement given that the kitchen designer was contracted to supply and install the kitchen.

9. Because UN's written estimate clearly detailed what was and wasn't included, they are not liable to absorb costs of additional sub-contractors they had not priced. I note that the hot water cylinder price was agreed as an extra and that MI has agreed to and already paid the electrician's cost of \$3446.38. The full plumbing and gas sub-contractor price of \$5956.17 (which included the hot water cylinder) was not included in the original estimate by UN (that just allowed for a connection fee of \$287.50+GST) so that amount is clearly an 'extra', payable by MI.

10. However, for items that were within the original scope of work, the estimated value cannot be exceeded by more than the reasonable maximum of 15% for estimates, unless the scope of work has changed in a way that could not have been predicted when pricing the job at the outset and has also, ideally, been discussed and agreed with the client. So where a job has just been priced inaccurately or a mistake made in pricing, any extra cost actually incurred would usually need to be carried by the supplier.

11. In considering all the evidence put forward by both parties, I find that UN has not sufficiently accounted for the extra time/costs associated with bricklaying work and painting/plastering work. While I accept from N's description of what was done and from the fact that he has supplied his sub-contractors invoices to demonstrate that the cost he has paid was actually much higher than he priced, without tangible evidence of why that was so and why that could not have been priced accurately at the outset, UN is limited to passing on to MI only a 15% increase on the originally-estimated amounts for those items.

12. That works out to be an additional amount of \$238.05 payable for bricklaying (15% of \$1380+GST estimated) and an additional amount of \$396.75 for plastering and painting (15% of \$2300+GST estimated).

13. This means that MI is liable to pay UN the following (all including GST):

Estimated contract price	\$13,763.64
15% increase on bricklaying costs	\$ 238.05
15% increase on painting/plastering	\$ 396.75
Electrician's total cost as an extra	\$ 3446.38
<u>Gas/Plumber/HWC cost as an extra</u>	<u>\$ 5956.17</u>

**TOTAL** **\$23,800.99**

14. MI has already paid a total of \$20,670.43 so the balance she must pay UN is the difference between that and the above total, being \$3130.56.

**Referee Perfect**  
**Date: 13 April 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>.