



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

[2023] NZDT 675

**APPLICANT**      **WN**

**FIRST  
RESPONDENT**      **BC**

**SECOND  
RESPONDENT**      **BQ Ltd**

**The Tribunal orders:**

BQ Ltd and BC are jointly and severally liable to pay \$5850.00 to WN on or before 18 December 2023.

Reasons

1. WN engaged BQ Ltd to provide plumbing services for her house renovation. BC for BQ Ltd provided a written quotation for \$15,000.00+GST outlining a scope of work involving bathroom renovation work and minor plumbing work in the kitchen. The parties agree that they negotiated the quoted price and that the final contract price agreed was \$14,000.00 incl. GST.
2. At the outset it was agreed that BC's work would be overseen and signed off by an LBP plumber. BC had been given a copy of the architect's plans to work from prior to quoting. WN paid \$7000.00 to BQ Ltd at the start and a further \$2000.00 as work progressed.
3. Before the job commenced, BC advised WN that he couldn't find the shower-type specified by the architect, so he quoted for a different one, which involved tiling the bathroom and which ended up needing Council consent to change the plans.
4. During the course of the work, the bathroom failed two Council inspections and the architect became involved, bringing in BC's LBP supervisor, who told her this was the first he knew of the job. At one point a bedroom was flooded as a result of incorrect pipe connections, and there were issues with a trench, leading to the LBP supervisor, TU, to be called to site – after the second attempt at doing the trench correctly failed, TU advised WN to not allow BC/BQ Ltd back on site. TU completed some of the remedial work for WN, with other contractors hired as well.
5. WN claims \$10,800.00, on the basis that she has paid \$25,379.00 total for this job including the \$9000.00 already paid to BQ Ltd. That sum also includes \$10,600.00 paid to contractors for remedial and completion work, \$531.00 for the bath/shower panel, \$638.00 for tiles for the shower, carpet replacement of \$1460.00, \$1000.00 to repair the flooded ceiling, \$400.00 extra architect fees, \$400 Council fees for failed inspections and \$1350 total to relocate and reinstall the hot water unit.

6. The issues to be determined are:

- Did BQ Ltd carry out its services with reasonable care and skill and was the product of the service fit for purpose?
- What remedy is available to WN?

*Did BQ Ltd carry out its services with reasonable care and skill and was the product of the service fit for purpose?*

7. The Consumer Guarantees Act 1993 ('CGA') provides statutory guarantees to consumers, the relevant guarantees in this case being that a supplier will carry out its services with reasonable care and skill and that the product resulting from a service will be fit for purpose (sections 28 and 29, CGA).
8. I find that BQ Ltd did not provide plumbing services with reasonable care and skill because there were a variety of problems with their work, meaning also that the product of their service was not fit for purpose.
9. With respect to the change to the shower, BC points out that that occurred before the job had even started and that the change was agreed to by WN. I accept that because the original quotation refers to the shower being tiled. The method and the cost of tiling therefore formed part of an amended scope of contract, but I am not persuaded that BC adequately made known to WN the further implications of this change in terms of needing an amendment to the Council consent, and also that the tiling and waterproofing was restricted work which he could not carry out without an LBP. WN did however have the opportunity to discuss/check these issues with her architect (who had provided the original shower detail on the plans) which she did not take up before agreeing to BC's proposed solution.
10. The hot water unit is another issue that WN contends needed remedial work in that it needed to be relocated and reinstalled. BC disputed that there was a problem with the location saying that if WN wanted it in a different position, that was up to her. However, TU, the LBP supervisor, was phoned as a witness at one of the hearings of this matter and he stated that the cylinder needed to be repositioned, so although he didn't go into any further detail, I accept his word on this as the LBP.
11. BC accepts that he did the trench incorrectly – he says he inadvertently purchased the wrong filling product and was going to go back to correct his work, but the job was cancelled by WN before he could.
12. TU also gave evidence that he had to redo the trench and the shower waste line to correct the fall. He stated that he was not aware of BC's work until BC/BQ Ltd had already started the job. BC provided text evidence at the final hearing to show that he had emailed TU photos of the work on 7 November 2022. However, the quotation was given on 20 October and BC says he was working on site between 21 October and about 20 November 2022, so all these dates are consistent with WN and her architect saying that TU was not aware that he was 'supervising' the job until he was phoned by them after the leaking/flooding occurred.
13. This lack of LBP oversight is a serious issue, and in this case is more than a technicality because of the actual problems that are proven to have occurred on site. Saying that the job will be LBP-supervised without putting actual supervision in place in a timely and appropriate way is a failure of substantial character under the provisions of the CGA. It also amounts to misleading conduct in trade under the Fair Trading Act (section 13(b) relating to services) and for that reason, I find that BC is personally liable for that conduct and any resulting losses to WN, as well as his company as the contracting party (section 43, Fair Trading Act 1986).

*What remedy is available to WN?*

14. I find that WN was entitled to cancel the contract with BQ Ltd as a result of the failures of guarantee being of substantial character, particularly because of the lack of LBP supervision on the job.
15. Sections 32(b) and (c) of the CGA provide for compensation for any reduction in value of the product of the service as well as recovery of other losses resulting from the failure. The best way to assess both these remedies is to look at what actual costs WN incurred in remedying and completing BQ Ltd's work.
16. Unfortunately, there is not much detail in the form of invoices/receipts for the remedial/finishing work as WN continued her practice with (most) subsequent contractors that she employed with BQ Ltd of paying cash. She has provided screenshots of bank transactions, some of which are marked as 'bill payments' with a reference entered by WN such as 'Builder', but some are only ATM withdrawals. The 'Builder' payments, I accept, relate to a texted price of \$10,000+GST WN provided from another plumber, R, to finish/redo the waterproofing/building components of the bathroom. The actual costs paid to R/'Builder' on the bank statements total \$7600.00 but I am not persuaded that all of those costs compare to items that were within the scope of BQ Ltd's contract, since WN also had an original builder contracted for the renovation and his work is also disputed and is the subject of a separate claim.
17. Further the issue of changing the shower is something WN agreed to at the outset, and although I have found that BC did not make sufficiently known the implications of this change, the new shower type was laid out in the quotation and accepted, which includes extra costs associated with tiling and waterproofing. WN could have easily checked with her architect before accepting this change, as when she did so subsequently the architect was able to quickly and easily provide shower information/availability which would have enabled the original plan to proceed. BC/BQ Ltd are therefore not fully responsible for additional costs incurred relating to this change.
18. Another area of uncertainty with respect to costs is the fact that \$9000.00 had been paid to BQ Ltd for a \$14,000.00 agreed price so there was still \$5000.00 left to pay which needs to be offset against costs of finishing/remediating the job. That cannot be done with any precision though, because the contract price included work to the kitchen that had not been started when the contract was terminated, and had not been itemised in the quotation. BC says plumbing work in the kitchen was minimal and WN has not yet had it done so there is no alternative price available to use as a basis for set-off of value remaining.
19. Given the combination of uncertainties above, I consider it appropriate to allow whatever value was left in the contract (aside from the kitchen work) to cover whatever portion of the \$7600.00 'Builder' costs were attributable to BQ Ltd's failure of CGA guarantees. The claim for tiles and bath/shower panels forms part of these total additional costs which are off-set against the value left in the contract price.
20. The best evidence I am left with in terms of other plumbing costs is what TU said had to be redone, as well as those issues for which there are invoices/receipts such as the relocation of the hot water cylinder. The other plumbing remedial work (trench and shower waste) is apparently the \$3000.00 cash withdrawals shown on the bank statements. Given TU's verbal account of what had to be redone, I accept that \$3000.00 is a reasonable actual cost. I also accept the invoice of \$750.00 for the HWC and dishwasher and allow half (because there is no proof) of the claimed electrical costs of moving the HWC, being \$300.
21. I find that the additional architect fees were part of what BQ Ltd failed to make clear to WN about the shower change and that BQ Ltd/BC are therefore liable to pay that amount of \$400.00 as well as additional Council inspection fees of \$400.00 for which proof has been provided.

22. I award \$500 towards replacement of damaged carpet due to the lack of an invoice as well as likely betterment (replacing used carpet with new carpet) and \$500 towards the claimed cost for plastering, also because only a bank transaction has been shown with no invoice or receipt to link the transaction to the flooding caused by BQ Ltd.
23. The total amount BQ Ltd and BC are jointly and severally liable to pay in remedial costs/reduction in value is \$5850.00.

**Referee Perfect**

**Date: 20 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>.