



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

**[2023] NZDT 604**

**APPLICANT      Z Ltd**

**RESPONDENT    P Ltd**

**The Tribunal orders:**

The claim by Z Ltd against P Ltd is dismissed.

**Reasons:**

1. In or about August 2020, P Ltd undertook gas fitting and plumbing work (“the work”) at the premises of Z Ltd at [Address] (“the premises”). The work was completed in August/September 2020 and an invoice was subsequently rendered by P Ltd to Z Ltd. There was a previous Disputes Tribunal hearing relating to the invoices rendered by P Ltd for the work done (“the previous claim”). An Order of the Disputes Tribunal was made on 14 July 2021 with respect to the previous claim. This new claim is different from the previous claim. A dispute has arisen between the parties whereby Z Ltd alleges that the work done by P Ltd was not done with reasonable care and skill and the resulting product/s were not fit for purpose. Z Ltd also alleges that P Ltd have therefore breached the terms of the contract between them, causing it loss.
2. QL appeared at the hearings on behalf of Z Ltd. RJ appeared at the hearings on behalf of P Ltd. Z Ltd claims \$1,999.00 from P Ltd. The issues to be determined are as follows:
  - a) Does the Consumer Guarantees Act 1993 apply?
  - b) Was there a contract between the parties, and if so was it a term of the contract that the work would be carried out with in an acceptable and tradesperson-like manner?
  - c) Did P Ltd fail to do the work for Z Ltd in an acceptable and tradesperson-like manner thereby breaching the contract between the parties?
  - d) Were there faults in the plumbing services provided by P Ltd which resulted in loss to Z Ltd?
  - e) Is P Ltd liable to pay Z Ltd all or any part of the amount claimed of \$1,999.00?

**Does the Consumer Guarantees Act 1993 apply?**

3. The Consumer Guarantees Act 1993 (“CGA”) makes provision for certain protections for consumers when they obtain goods and/or services from a supplier. Section 2 of the CGA provides that a consumer is a person who acquires, from the supplier, goods or services of a kind ordinarily acquired for personal, domestic, or household use.

4. A supplier is defined in the CGA as a person or entity “in trade” who supplies goods and/or services to the consumer.
5. Having considered all of the evidence I find that P Ltd is a supplier as defined by the CGA because it is a business and was “in trade” supplying services to customers. The fact that P Ltd operated a business in trade was accepted by both parties.
6. Having considered all of the evidence, I find however that Z Ltd was not a consumer as defined by the CGA. I have reached this conclusion because the services supplied and the resulting product/s of the services provided were acquired for a commercial kitchen situation whereby Z Ltd carried on business as “[redacted]”. I am satisfied that the services were not of the kind that would ordinarily be acquired for personal, domestic, or household use because the services supplied were with respect to a commercial kitchen and commercial hardware.
7. I find therefore that the provisions of the CGA do not apply in this case because whilst P Ltd is a supplier in terms of the CGA, Z Ltd cannot be defined as a consumer under the CGA.

**Was there a contract between the parties, and if so was it a term of the contract that the work would be carried out in an acceptable and tradesperson-like manner?**

8. The Law of Contract provides that a contract is formed when there is offer, acceptance, consideration, and the parties intend to be legally bound. The terms and conditions of a contract should be clear and known to both parties because each parties’ rights and obligations under the contract will arise from the terms and conditions of a contract.
9. The Law of Contract says that an implied term is a provision that is not explicitly stated in a contract but is considered to be understood and intended by both parties based on the nature of the agreement, industry customs, or the parties’ conduct. An implied term in a contract is legally binding on the parties, even though the term has not be explicitly written or stated when the contract is formed.
10. I am satisfied that a contract existed between Z Ltd and P Ltd for the provision of gas fitting and plumbing services. There was no disagreement between the parties about the fact that P Ltd offered to provide its services to Z Ltd, that P Ltd carried out the work for Z Ltd (the consideration on the part of P Ltd), and that P Ltd was then entitled to render an invoice to Z Ltd for the work done (Z Ltd’s consideration). There is no evidence to suggest that neither party did not intend to be legally bound by the agreement. Therefore a contract was formed in about August 2020.
11. The exact scope of the work done, the terms of the contract as they related to the work done, and the associated invoices were part of the issues in dispute in the previous claim, for which the order dated 14 July 2021 was made. Those issues and the order made on 14 July 2021, are not now for determination and will not affect the outcome of this current claim.
12. For the purposes of this claim it is necessary to consider whether it could be said that it was an implied term of the contract between the parties that P Ltd would provide its services to Z Ltd in an acceptable and tradespersons-like way.
13. I am completely satisfied that when Z Ltd and P Ltd entered into the contract for the work to be done that it would have been understood and intended by both parties that the work would be done to industry standards. Z Ltd contracted with P Ltd, as a business holding itself out to provide professional plumbing and gas-fitting services. Therefore, I find that it was an implied term of the contract that P Ltd’s work would be carried out in an acceptable and tradespersons-like way.

**Did P Ltd fail to do the work for Z Ltd in an acceptable and tradesperson-like manner thereby breaching the contract between the parties?**

14. The position for Z Ltd can be summarised as follows:

- a) The quality of the work done by P Ltd was unacceptable, and not professional. QL referred to the work as being “pathetic” and referred to the materials provided as being of “low quality”.
- b) The work done was not carried out in a tradesperson-like manner.
- c) It had been necessary for Z Ltd to engage other tradespeople to come in and fix and/or replace the work that had been done by P Ltd.
- d) P Ltd had breached its contract with Z Ltd by failing to do the work in an acceptable and tradesperson-like manner.
- e) QL said that if the work had been done right in the first place there would have been no necessity to employ other contractor to do the work. He said that there Z Ltd would not want to pay a contractor for work that did not need to be done. The work included on the invoices included;
  - (i) Work to a Deep Fryer;
  - (ii) Alleged leaking pipes/taps;
  - (iii) Alleged “leaking grease trap”;
  - (iv) A new califont that was required;
  - (v) An allegedly faulty thermocouple;
  - (vi) Alleged unacceptable low water pressure;
  - (vii) Pipes that were allegedly not the right size.
- f) QL relied on invoices that he said were from other tradespeople, and which he presented to the Tribunal, as proof that the work done by P Ltd was not acceptable.

15. The position for P Ltd can be summarised as follows:

- a) RJ said that all of the work done and invoiced for was done in an acceptable and tradesperson-like manner.
- b) RJ told the Tribunal that he had been a certified plumber, gas fitter, and registered drain layer for approximately 22 years.
- c) The hot water system and the deep fryer were second-hand.
- d) He did not replace the thermocouple on the deep fryer.
- e) In December 2022 P Ltd went to the premises to remove product due to the unpaid invoices, which were the subject of the previous claim. RJ took the view that any work done by a plumber at the premises after that was likely to be as a result of the product legally removed by P Ltd.
- f) RJ said that when he was at the premises in December 2022, the “grease trap” was so clogged that it could not have been “cleaned for months”. He said there was “rotten offal meat stuck in it and it couldn’t flow in or out of the grease trap due to a lack of maintenance”. Further he said if the grease trap was leaking then it was because of “lack of maintenance”.
- g) The invoices provided to the Tribunal by Z Ltd could not be relied on. In particular his position was that:

- (i) He wanted to talk to the plumbers who had allegedly done the work and produced the invoices;
- (ii) One of the invoices was hand written and could not be relied on;
- (iii) The invoices may relate to work done at other premises run or owned by QL and/or Z Ltd and not the premises in question;
- (iv) The invoices may relate to work done after he had legally removed product from the premises in December 2022.

16. There was considerable evidence given by both parties relating to the invoices that Z Ltd put before the Tribunal.

17. I have carefully considered all of the evidence, including the invoices provided to the Tribunal by Z Ltd. Both parties were provided the opportunity to have evidence from witnesses heard. Adjournment notices were issued which confirmed to the parties that any witnesses they wanted to be heard should be available at the hearings or available by telephone so that they could be called. Z Ltd chose not to call any witnesses at any of the hearings. Therefore the Tribunal did not have the benefit of hearing evidence from the trades-people who rendered the alleged invoices to Z Ltd.

18. Every claimant must provide sufficient evidence to the Tribunal to support and to prove the claims that they make. Therefore, Z Ltd needed to prove that it was more likely than not that it needed to have additional plumbing/gas fitting work done as a result of P Ltd failing to provide services to it in a reasonable and tradesperson-like manner thereby, breaching the terms of the contract between the parties.

19. I find that Z Ltd has failed to prove that it is more likely than not that P Ltd failed to provide services to it in a reasonable and tradesperson-like manner. There was simply a lack of evidence before the Tribunal to support the claim by Z Ltd. Without the evidence of the trades-people who allegedly did the work and who rendered the alleged invoices, the Tribunal was essentially faced with a "He said, He said" situation when looking at the evidence of both parties. That is insufficient to prove a claim to the standard of "it is more likely than not".

20. Therefore, I must also find that Z Ltd have failed to prove that it is more likely than not that P Ltd caused it loss. I am satisfied that the provision of the invoices, on their own, without supporting oral evidence from the plumbers who allegedly did the work detailed in the invoices is insufficient evidence to conclude that it is more likely than not that P Ltd breached the terms of their contract with Z Ltd and thereby caused it loss.

21. The claim by Z Ltd is therefore dismissed.

**Referee: K L Hoult**  
**Date: 7 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>.