



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

**District Court**

**[2020] NZDT 1386**

**APPLICANT      ZG Limited**

**RESPONDENT    KJ Limited**

**The Tribunal hereby orders:**

KJ Limited is to pay ZG Limited \$270.95 by Friday 20 March 2020.

**Reasons**

1. The parties entered into a contract whereby KJ Limited (KJL) was to update ZG Limited's (ZGL) its website to get a higher google search ranking. ZGL says the work was not done in a timely manner and the work that was done did not justify the hours KJL said they had spent. ZGL cancelled the contract and is seeking a refund of the invoice they had paid being \$1,500.00. They are also claiming a refund of \$270.95 for the T Theme "[Redacted]" which they paid for separately which was the wrong Theme.
2. The issues to be determined are:
  - a. Did KJL breach the contract entitling ZGL to cancel. If so is ZGL entitled to the refund of the \$1,500.00?
  - b. Is ZGL entitled to the refund of the T Theme "[Redacted]"
3. An applicant in the Tribunal (in this case ZGL) must establish the elements of its claim to the required standard to be successful. That standard is the balance of probabilities based on the evidence before the Tribunal which means what is more likely than not.
4. ZGL was represented by YM and KJL was presented by CT.

*Did KJL breach the contract entitling ZGL to cancel. If so is KJL entitled to the refund of the \$1,500.00?*

5. From the evidence before me I have determined that the contract terms were as follows:
  - a. Service: The work to be done was to redesign ZGL's website to get a higher google search ranking.
  - b. Time: The estimated time to complete the project was 4 weeks. The email of 7 February 2019 says "...I anticipate the project taking approx. 4 weeks..."

- c. Price: An estimated quote was given being between \$2,800 and \$3,500. This was recorded in an email dated 13 February 2019.
- d. Payment: \$1,500.00 upfront followed by 2 weekly payments of \$1,000.00. The first payment was due 7 March, the next payment due 14 March and the last payment on 21 March.
- e. Start Date: The \$1,500.00 was paid on 7 March and the invoice refers to the payment as the "Project Engagement Payment". Therefore, I have determined that the start of the contract was 7 March 2019.

6. I make the following comments:

- a. A quote is a quote. Where someone gives a quote, it does not matter if the job took 10 hours or 50 hours. In this case the quote given was within a range. It is irrelevant therefore if JIL did or did not spend 15 hours.
- b. Time was not of the essence. It was only estimated. Therefore, timing is not a crucial element. Where timing is important the contract (even where as in this case it is recorded in emails) would stipulate that. It didn't. In any event ZGL had not made the subsequent payments (see below). KJL said they continued to do the work. They did not have to continue the work because payment was not made and furthermore why would KJL be obliged to work at a pace (so to speak) if payment was not made.
- c. It was ZGL who was in breach of the contract because it hadn't made the payments due 14 and 21 March. ZGL purported to terminate the contract on 27 April 2019. The payment due on 14 March was one week after the start of the contract. KJL would have been at liberty to cancel the contract when payment had not been made. They had made numerous requests for payment. Eventually KJL decided to stop work on 16 April 2019 until payment was made.
- d. ZGL have not satisfied me, on balance, that KJL was not doing the job it was contracted to do at the various times. CT said there is a lot of development work in the background. I agree. There are many situations where a background work is done before the final product is given to the client. For example, research may have to be done before giving advice to a client. ZGL were under no obligation to provide "timesheets". They were contracted to do a job at the quoted price. As mentioned above ZGL were in breach of the contract merely one week into it and KJL kept doing the work. In relation to YM comment that T said one cannot do work on a template unless the Theme is purchased, CT said they had a Theme (in trial mode).

7. For the reasons above ZGL's claim in relation to the return of the \$1,500.00 is dismissed.

*Is ZGL entitled to the refund of the T Theme "[Redacted]"*

- 8. CT confirmed that KJL had ordered the wrong Theme and that ZGL had paid them for it. Accordingly, KJL must refund that amount (\$270.95) to ZGL.

**Referee: Ms G Jaduram**  
**Date: 4 March 2020**



## 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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.