



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 28

APPLICANT **C Ltd**

B Ltd

RESPONDENT **SU**

The Tribunal orders:

1. B Ltd is joined as an applicant to this claim.
2. The claim is dismissed.

Reasons:

1. In October 2022, B Ltd provided a quote to SU for the re-roofing of a property in [Town].
2. Between February and April 2023 there were some further discussions between the parties regarding the work and the price.
3. The work was carried out and on 6 July 2023, B Ltd sent an invoice to SU which was paid in full without delay.
4. In August 2023, SU received an invoice from C Ltd for \$3,485.08 for the supply, install and dismantle of scaffolding for the roofing job done by B Ltd.
5. SU has not paid this invoice as he says he understood the scaffolding was covered by the quote given by B Ltd and he has paid the quoted amount in full.
6. The claim was originally filed in the name of C Ltd. After the hearing in this matter started on 29 January 2024 and following on some discussions, DN of C Ltd asked that B Ltd be joined as an applicant to this claim. The Tribunal joined B Ltd and SU indicated that he was happy to continue with the hearing with both C Ltd and B Ltd as applicants.
7. The applicants are seeking \$3,485.08 for the scaffolding.
8. The issues the Tribunal has to consider are:
 - a. Was there a binding contract between C Ltd and SU and if so, what was it?
 - b. What was the agreement between B Ltd and SU?

- c. Was SU misled as to whether the price quoted for the roofing job included or excluded the scaffolding?
- d. Are C Ltd and / or B Ltd entitled to the amount sought of \$3,485.08 on a contractual or quasi contractual basis?

Was there a binding contract between C Ltd and SU and if so, what was it?

9. A contract may be defined as a legally binding agreement or a promise or set of promises between two or more parties that the law will enforce. For a contract to be formed there needs to be an offer, an acceptance of that offer, and an exchange of something of value called consideration.
10. This issue was discussed at hearing and all parties agreed that there was no contract between C Ltd and SU.
11. DN is the sole director and shareholder of both C Ltd and B Ltd. He said that he initially provided a quote from B Ltd which included a section dealing with the cost of scaffolding. He accepted there was no reference to that part of the work being done by another company. He agreed that B Ltd subcontracted that part of the job to C Ltd.
12. There was no binding contract between C Ltd and SU.

What was the agreement between B Ltd and SU?

13. There was a contract between B Ltd and SU.
14. The original offer by B Ltd was set out in a written quote sent to SU on 2 October 2022. That offer was not accepted by SU.
15. In February 2023, SU contacted B Ltd and asked if the quote could be looked at again for any savings that could be made.
16. There were some phone calls between DN and SU after that email.
17. On 9th February 2023, DN emailed SU and stated, *"I have had a wee look here for you and if you deal with all the rubbish and we move to Cheap black roofing underlay we could do this for \$19,979.09 + GST."*
18. SU replied on 10th February and asked if the revised price included the spouting and also asked about some other work to the patio area.
19. On 13th February DN replied that the price did not include the spouting, but that option would be \$3,781.97. He also gave a price for the patio work if SU wanted to add that on.
20. In April 2023, after some emails regarding the timing of the work, SU said that he would not replace the spouting and would do the patio work himself. He stated, *"So we will run with your quote of \$19,979.09 plus GST"*.
21. A quote is a firm offer to provide certain goods and services for a fixed price.
22. B Ltd's offer to *"do this for \$19,979.09"* was accepted by SU and that was the agreement between B Ltd and SU.

Was SU misled as to whether the price quoted for the roofing job included or excluded the scaffolding?

23. Section 9 of the Fair Trading Act 1986 (“FTA”) states that no person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
24. Section 13(g) of the FTA states that no person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services make a false or misleading representation with respect to the price of any goods or services.
25. DN says that B Ltd did not breach the FTA. He said during the negotiations he had with SU regarding price, he was at all times talking about the price for the roofing work. He said the original quote contained details of the work being quoted for under three different headings - Roof, Spouting and External Scaffolding. Each item had a quoted figure beside it. He said he was only reviewing the price under the heading “Roof.” He said the price for the scaffolding never changed and was always going to be needed as it was a legal requirement. The figure allowed for the spouting was removed from the revised quote as SU had indicated that he did not wish to proceed with it.
26. I find that the way in which B Ltd dealt with the quoting and subsequent invoicing of this job was likely to mislead SU.
27. B Ltd made a representation that “.... *we could do this for \$19,979.09 + GST.*” This was in response to a request by SU for B Ltd to have a look at “*the quote for any savings that could be made....*”
28. The quote which SU asked B Ltd to look at included the price for not only the roofing work, but also the spouting and scaffolding work.
29. SU later asked to clarify if the spouting work was included in the revised price and was told it was not.
30. At no stage did either party refer to the scaffolding cost.
31. B Ltd did not at any stage state to SU that the revised price was only in relation to the portion of the quote under the heading “Roof.” SU had asked for the “*quote*” to be looked at. He was entitled to rely on the revised price as given by B Ltd as the new “*quote*” for the work and services required to re-roof his house. The failure by B Ltd to clarify that the cost of the scaffolding would need to be added on to the revised quote was likely to mislead SU.
32. On 6 July 2023 B Ltd sent SU an invoice stating it was “*Final claim for the supply & install of new roofing as re quote emailed 10-02-2023.*” That emailed quote was for \$19,979.09 plus GST and that was the full amount invoiced by B Ltd.
33. I find it reasonable for SU to have concluded that once he paid this invoice, which he did, the job had been paid for in full.
34. B Ltd has a quote acceptance form that had been provided to SU along with the initial quote in October 2022. B Ltd did not request SU to complete this form when he accepted the revised offer of \$19,979.09 plus GST in April 2023.
35. The FTA does not require a party to intend to mislead another party. It is sufficient if the conduct misleads or was likely to mislead.
36. There was no evidence before me, and SU did not make any submission that DN or B Ltd deliberately misled anyone. However, the manner in which this matter was dealt with both by the provision of the revised quote, the issuing of the final invoice and then a further invoice from a

company with which SU had no contractual relationship with all gave rise to a set of circumstances where SU was misled as to the price of this work.

37. B Ltd is in breach of the FTA as it misled SU as to whether the price quoted for the roofing job included or excluded the scaffolding.

Are C Ltd and / or B Ltd entitled to the amount sought of \$3,485.08 on a contractual or quasi contractual basis?

38. As C Ltd did not have any contract with SU, it is not entitled to any payment on a contractual basis.

39. B Ltd did have a contract with SU. However, in light of my findings above I am satisfied that B Ltd agreed to do the job for the quoted price of \$19,979.09 plus GST. That is what B Ltd has been paid for the work done and so SU has fulfilled his part of the contract by paying what he agreed to pay for the job.

40. I have to consider whether either C Ltd or B Ltd are entitled to any payment on a quasi-contractual basis.

41. The law has had a series of rules enabling one person to recover money from another where the retention of money or some other benefit would unjustly enrich that other party at the expense of the first. This is sometimes known as quasi contract. It can apply where one party has conferred a benefit on the other party in circumstances where it is fair that it should be paid for.

42. SU received a benefit from B Ltd and C Ltd in that the scaffolding was provided to him and that was a legal requirement for the roofing work to be done. This was at the expense of C Ltd who paid a third-party company to erect and dismantle the scaffolding.

43. However, I am not satisfied that it would be fair that SU pay for it or that he has been unjustly enriched. SU had been in contact with other roofing contractors prior to the work being done. He had recently used another contractor in [City]. He said he was unable to say at this point if he would have still used B Ltd had he been made aware of the additional scaffolding costs, as he did have other options.

44. DN says C Ltd has paid another subcontractor to erect and dismantle the scaffolding and therefore it is out of pocket for those costs.

45. I appreciate the difficulties that C Ltd may have in that regard. However, it's contract was with B Ltd, and it may have to take the matter up with it. B Ltd breached the FTA and misled SU into believing that the revised quote covered the roofing work and the scaffolding.

46. It is worth noting that SU repeatedly stated during the hearing that he was very happy with the quality of work done by B Ltd and had no complaints in that regard. That is to B Ltd's credit.

47. I am not, therefore, satisfied that it would be fair that SU pay the invoiced amount for the scaffolding. Neither C Ltd nor B Ltd are entitled to any payment on either a contractual or a quasi-contractual basis.

48. The claim is dismissed.

Referee: P Byrne
Date: 1 February 2024



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>.