



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1545

APPLICANT US Ltd

RESPONDENT NH

The Tribunal orders:

US Ltd is to pay NH a total of \$8000.00 on or before Thursday 30 September 2021.

Reasons:

1. On 27 March 2021, NH engaged US Ltd to supply and install a new .55 gauge Maxx colour steel roof at [Road] for \$10,600.00 including GST. This included new underlay, flashings, ridges and screws and replacing any damaged roof battens and a warranty. Work commenced on 15 April and took 4 days and NH paid a 50% deposit of \$5340.75, followed by a later payment of 25%, totalling \$8000.00.
2. US Ltd claims \$2,600.00 from NH for the unpaid balance.
3. NH counter-claims \$8000.00 from US Ltd for failure to install the correct roofing material.
4. The issues to be determined are:
 - a. Did US Ltd exercise reasonable care and skill and was the roof fit for purpose?
 - b. If not, what is the remedy?
 - c. If so, how much is owed under the contract?

Did US Ltd carry out the roofing work with reasonable care and skill and was the roof fit for purpose?

5. Section 28 of the Consumer Guarantees Act 1993 (CGA) provides that a supplier must exercise reasonable care and skill. Broadly “reasonable” means what a reasonable consumer would expect in the circumstances, including having regard to the price and any discussion between the parties preceding the work. The guarantee under section 29 of the CGA requires services and any products resulting from the services to be reasonably fit for the common purpose or any particular purpose the consumer makes known, and of such a nature and quality as to be reasonably expected to achieve that result.
6. TS, the Director of the US Ltd (the Roofer) acknowledged at the hearing, NH’s evidence that:
 - a. the roofing material was incorrect, as instead of .55 gauge Maxx colour steel, it was .40 gauge, which impacted on the thickness and strength of the material;
 - b. there were 10 dents on the roof; and

- c. when the scaffolders that he had contracted took down the roof, they damaged the carport roof.
7. However, his position is that the roofing warranty was not impacted by the dents and that the roofing outcome was good. He also claimed that the dents in the roof could well have been caused by NH or his mates checking out the roof after it had been installed.
8. While I accept that there was a marked improvement in the overall appearance of the roof, as would be expected, on balance for reasons which include the following, I find that the roof was not completed to an adequate standard and the outcome fell short in terms of both material and workmanship, and failed to meet the particular result specified:
 - a. I accept that the wrong cheaper material was used and this impacted on the thickness and strength of the roof, compared with the specified .55 Maxx colour steel;
 - b. I prefer NH's evidence supported by [Company] that the warranty from Colour Steel in his area was only 15 years for paint and 15 years for perforation;
 - c. I accept that 10 dents were left in the roof and I prefer NH's evidence that he did not cause the dents and that several dents arose from nails protruding through the paper underlay producing humps;
 - d. I prefer NH's evidence that the dents may well impact on the warranty.

If not, what is the remedy?

9. Where a breach is established, a customer is entitled to the remedies set out in section 32 of the CGA. Where a failure is minor, or can be rectified, section 32(a) provides that the remedy is one of repair, or where there is a failure to repair, the reasonable costs of repair elsewhere, or the right to cancel. Where the failure can't be remedied or is of a substantial character (s36), section 32(b) provides that there is a right to cancel or to obtain damages in compensation for any reduction in value of the product of the service below the charge paid or payable. Cancellation entitles a refund of sums paid (s38), unless there is some value retained in the work done (s39(4)). In either case, there is a right to reasonably foreseeable consequential losses (s32(c)).
10. I accept that the parties had initially proposed that the Roofer would replace the damaged roofing panels and as additional compensation replace the damaged carport roof at a discount, once a further 25% of the outstanding bill was paid, which it was. However, despite the Roofer stating that he planned to rectify the damage, I prefer NH's evidence that he only cancelled the contract and requested a refund after the Roofer failed to remedy the issue within a reasonable time. I say this because I accept that the Roofer repeatedly fail to meet NH at the various agreed times to progress this matter, the last being 5 June, and I also accept that the Roofer's posts on social media stating he would remove the roof if payment was not made are inconsistent with an intention to remedy.
11. Regardless, apart from the failure to remedy, in the circumstances I find that the failure to provide the .55 gauge colour steel specified, which resulted in a much thinner product was substantial. The CGA considers a breach to be in this category if a reasonable consumer would not have proceeded with the work had they known what would ensue (s36). I am satisfied that is the case.
12. As I have found there was a failure of a substantial character, NH is entitled to a refund of all sums paid, unless it is established that he has received some value from the work (s39). He is also entitled to reasonably foreseeable consequential loss (s32(c)).
13. I accept that NH has received some benefit from the new roof, however the roof is not the quality of material that he contracted and substantially paid for, but a cheaper material. Also, on balance I accept his evidence that he plans to replace the entire roof with the correct .55 Colour Steel Maxx material, and he provided a quote from [Roofing company] of \$14,835.00 in support. I accept this amount is higher than original contract, and I have also considered TS's position that some components, such as the cowlings, flashings and back tray, may not need to be replaced. However, on balance, even if that is the case, I find that those are minor

components, the cost of which is balanced out by his quote charging for a higher priced product which was not received, and also the reasonably foreseeably consequential loss arising from the damage to the carport roof by the scaffolders' he contracted.

14. Consequently I find that NH is entitled to a refund of \$8000.00. I also find that he is not liable for the balance of \$2650.00, so US Ltd's claim is dismissed.

Referee: G.M. Taylor

Date: 16 September 2021



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 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>.