



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2018] NZDT 1481

APPLICANT **ZC**

RESPONDENT **NU Limited**

The Tribunal hereby orders:

NU Limited is to pay the sum of \$182.50 to ZC on or before Thursday 16 August 2018.

Reasons:

1. ZC had a new kilt specially made in an unusual tartan and sent from Scotland as an early birthday present for her daughter, who does highland dancing and was about to turn twelve. On 28 March 2018, ZC took the kilt to NU Limited's [suburb] shop to be hemmed at a cost of \$128.00. When she collected the kilt, she was upset to find that 6cm had been cut off the tartan before it was hemmed.
2. ZC now claims \$688.00 from NU, comprising a refund of the \$128.00 together with \$560.00 in damages.
3. The issues to be determined are:
 - a) Was the service provided with reasonable care and skill, and fit for the purpose?
 - b) What sum, if any, must NU pay to ZC?

Was the service provided with reasonable care and skill, and fit for the purpose?

4. The relevant law is contract law and the Consumer Guarantees Act 1993 (CGA). Section 28 of the CGA provides that where services are supplied to a consumer, there is a guarantee that the service will be carried out with reasonable care and skill. Section 29 of the CGA provides that services must be reasonably fit for any purpose the consumer makes known to the supplier before the contract is formed, unless the circumstances show that the consumer does not rely on the supplier's skill or judgment, or it would be unreasonable for the consumer to do so.
5. Provision of a tailoring service first involves ascertaining what the customer wants done. As ZC pointed out, the NU website states, "Our friendly, experienced staff will listen to your needs ... and give you advice on the best way to alter, mend or design your outfit." Good communication is an important part of the service, and as such requires reasonable care and skill.
6. NU's director NL said that the business has "extreme procedures" to ask the right questions and get the right results. She stated that the only professional way of shortening the hem would

involve cutting the fabric, and that ZC agreed that the hem should be “as original” and never specified that she did not want the tartan cut.

7. However, ZC said she understood the words “as original” to be about the stitching rather than the depth of the hem. She emphasised that she was never told the hem would be cut. Although she did not say that she was hoping to let the hem down again later, she gave evidence that she told the first shop assistant that the kilt was for her daughter for dancing.
8. I find that it was the shop’s responsibility to make it clear that the hem would be cut, especially given that it was alerted to the fact that the kilt was for a child, and it is well known that children of an age to fit a kilt of this size often grow quite quickly. It was not enough merely to assume that ZC would be aware of professional standards in the tailoring industry, or to use unclear words such as “original”. Although NL felt it would be redundant to warn the customer that the hem would be cut, it would have easily prevented the misunderstanding that occurred, and is reasonable in a situation where the proposed alteration is not easily reversible. I therefore find that NU failed to use reasonable care and skill in ascertaining what ZC wanted.

What sum, if any, must NU pay to ZC?

9. ZC is entitled under s 32(c) of the CGA to recover damages for reasonably foreseeable consequential losses. It was foreseeable that the longer-term value of the kilt could be affected by cutting the hem. The normal measure of damages for breach of contract is the amount required to put the innocent party in the same position as if the contract had been performed.
10. ZC provided evidence that she paid £350 for the kilt, plus £45 for shipping of the kilt together with matching tartan hose. The exchange rate at the time was approximately 1.9, so the cost of the kilt including a proportionate share of the shipping was around \$730.00. ZC was hoping that she could get a couple of years of use from the kilt for her daughter by letting the hem down, but there is now 6cm less hem to let down, and ZC is also concerned that this could affect the resale value. Taking all of these factors into account, I find that ZC is entitled to recover from NU 25 per cent of the \$730.00 cost of the kilt.
11. ZC also seeks a refund. However, she has received the benefit of getting the kilt hemmed to the correct length, and is getting damages to compensate for the fabric being cut. If she got a refund as well, she would be better off than if the contract had been performed. Accordingly, the sum payable by NU is \$182.50.

Referee: E Paton-Simpson

Date: 2 August 2018



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.

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 outside of time, 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.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the 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 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, and 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>.