

BETWEEN

ABE

FIRST APPLICANT

ABF

SECOND APPLICANT

AND

ZYZ, ZYY and ZYX as Trustees

RESPONDENTS

Date of Order:

8 February 2013

Referee:

Referee A Davidson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the Applicants' claim is dismissed.

Facts

[1] The parties own neighbouring properties in [a place]. The Applicants wished to replace the fence between the properties and served a notice on the Respondents under the Fencing Act 1978, setting out the details of their proposal. The Respondents responded with a cross-notice saying they did not agree with the Applicants' proposal. The Applicants proceeded to replace the fence anyway and now seek a contribution from the Respondents.

Issue

[2] The issue is whether the Respondents are liable to contribute to the cost of the replacement fence. The relevant law is the Fencing Act 1978.

Law

[3] The Fencing Act 1978 provides a mechanism for managing fencing disputes between neighbours. If necessary the Act allows for an unwilling neighbour to be compelled to contribute to the cost of a fence. For an occupier to receive the benefit of the Act they must comply with its provisions.

[4] The scheme of the Act is that where one party wishes to build, maintain, replace or otherwise undertake work on a fence then they must serve a notice on the other affected occupier(s) outlining their intention: s 10. If the other occupiers fail to respond or agree with the proposed work then the work can proceed and the various parties pay their part as set out in the notice: s 14(1). If the other parties do not agree with the notice then a cross notice must be issued (s 11(1)), and the matter resolved by agreement or the Court (s 13).

[5] Section 10(4) of the Act provides that a neighbour is not obliged to contribute to the cost of work undertaken in certain circumstances including:

- (i) Any part of the work that is done after the due service of such notice and cross-notice and while differences between the parties remain to be resolved either by agreement or by the Court.

Decision

[6] In this case a notice and cross-notice have been served and the parties have not been able to agree on how to proceed. The Applicants proceeded to remove and replace the existing fence notwithstanding the disagreement and now seek a contribution from the Respondents towards the cost of undertaking this work. I find that the Respondents are not liable to contribute to the cost of the work done, as s 10(4)(c) of the Act provides that where there is a dispute a neighbour is not liable to contribute to the cost of any work done before the dispute is resolved either by agreement or by the Court. The work done by the Applicants falls into this category: it was done before the dispute was resolved by agreement or the Court.

[7] Also in dispute today were issues as to whether the original fence was an adequate fence and whether the replacement fence was built on the boundary. It is not necessary for me to make a finding on either issue as the Respondents would not be liable to make a contribution because of s 10(4)(c) of the Act in any case.