



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

District Court

[2023] NZDT 513

**APPLICANT** BC

**RESPONDENT** J Ltd

**SECOND  
RESPONDENT** M Insurance

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. BC's home is situated on [City]'s peninsula, and part of his home is described as a boatshed with a slipway. The slipway was damaged in a storm and in July 2022 BC lodged a damage claim with his long-standing insurer M Insurance, a division of J Ltd.
2. BC says J Ltd has breached his policy by incorrectly interpreting policy terms. He claims J Ltd is responsible for the cost of repair of the slipway. Having attended to repairs, the sum BC claims is \$6,428.00, a sum BC notes is significantly less than the \$10,000.00 notified as the repair cost by J Ltd's own assessor.
3. J Ltd stands by its decision to decline the claim, saying coverage under BC's [insurance policy] requires damage to occur to the "home". The policy description of a "home" provides for a policy exclusion for a "wharf, landing, jetty or pier". J Ltd says it is satisfied BC's boat ramp falls within this exclusion and therefore is not covered under the policy.

**Onus of Proof**

4. When an applicant brings a claim in the Tribunal, they have the onus of proving their claim on the balance of probabilities. This is the civil law standard of proof, requiring them to show the events or circumstances they claim are "more likely than not" to have occurred. When I assess whether that standard is met, I consider and evaluate the evidence presented to me by the parties. It is important to understand that while all evidence presented to the Tribunal has been considered, this order refers only to essential evidence material to the issues and is not intended to be a full record of the hearings or of the evidence presented.

**Issues**

5. The issues to be resolved are:
  - a. Has J Ltd correctly decided that the slipway damage is excluded under BC's policy?

- b. If not, is BC entitled to \$6,428.00 as claimed, or to any other sum?

**Has J Ltd correctly decided that the slipway damage is excluded under BC's policy?**

6. Contract law requires parties to perform the promises they make to each other, unless there is a valid legal reason not to. When questions of contract interpretation arise, a court considers what a reasonable and properly informed bystander would think the parties intended their words to mean, taking the factual context into account. Courts have also previously recognised the *contra proferentum rule*. This rule provides that ambiguity in a written contract can be construed against the party who drafted the contract, because that party had opportunity to express the wording more clearly.
7. Having carefully considered these facts, I find J Ltd's decision has been correctly made. I say that based on the following factors.
8. The parties acknowledge:
- a. the policy contains a definition of "home";
  - b. Part B of the policy further describes what is, or is not, covered under the term "home";
  - c. the description of what is not covered, includes a clear statement that some items will not be covered unless they are recorded as "special features". Of the 4 categories of items excluded in this way, the fourth category refers to "wharf, pier, landing or jetty";
  - d. the slipway or boat ramp attached to BC's house was not recorded as a special feature.
9. By way of summary, BC says the slipway is an integral part of his house. By definition, and by use, he says it is clear his slipway is not a wharf, pier, landing, or jetty. BC described this item to J Ltd as functioning as a slipway as it "*slopes down to the sea. About 5 metres of the slipway is above dry land, and about 5 metres is above or in the water*"; for clarity, it is the bottom part of the slipway that was damaged. In BC's view the slipway cannot be said to operate as a wharf, pier, landing, or jetty and he offers supporting evidence including information and/or opinion from, the engineer engaged to design his home; the builder engaged to build the home; and a marine consultant.
10. By way of summary, J Ltd says the ordinary English dictionary definitions of a slipway and a landing are such that these phrases may be considered interchangeable. J Ltd's explanation recognises that while a slipway may also have other synonymous words, it still fits the definition of a landing, like the way 'vessel' and 'boat', and 'port' and 'left', may be used interchangeably. J Ltd says it remains satisfied this structure is excluded from BC's policy.
11. Legal interpretation arguments often attract considerable debate. Courts recognise that parties value certainty and predictability in contractual relations, however decisions are still carefully analysed to examine the way in which they rely, or do not rely, on various interpretation factors. Here, interpretation of a 'landing' might include how that item is most like its surrounding words, i.e., wharf, pier, and jetty. Alternatively, focus can equally be placed on the way these linked items differ, i.e., to give effective value to their individual inclusion. The marine consultant referenced by BC says for example that landings are designed to be flat to achieve their purpose of allowing people to stand and goods to be stacked; a slipway is of necessity sloped into the water and desirably slippery for the purpose of launching a boat. He says these things therefore could not be considered synonymous.
12. On these facts however I am persuaded this slipway can, and did, operate as a slipway and as a landing. I say that because BC uses it to launch and retrieve a boat from the water, and by implication therefore also to land the boat and person/people and goods within that boat. Use of the slipway is how the boat is landed at this property, and to that extent I am satisfied it can be said that the slipway is a landing. While the two words may not be completely synonymous or completely interchangeable in all contexts, I am satisfied they are sufficiently synonymous to enable a valid and reasonable interpretation that this slipway is a landing.

13. Consumer contracts have attracted considerable attention over recent decades. Documents have been reduced in length and complexity to be readable by all users. Those efforts and the use of plain English have brought a welcome end to legal clauses with endless alternative descriptions of items, or actions. As a result however, legal document drafters no longer have their prior 'luxury' of describing every possible item, eventuality, or occurrence.
14. The contra proferentem rule plays a valid part in contract consideration. I am not persuaded however this is a situation where true ambiguity arises and where the rule should be applied. I say that because I am not satisfied that failing to apply the rule would result in extreme circumstances where the contract could be said to bind the parties to an agreement they did not make.
15. With those thoughts in mind, I return to where this discussion started. What view would a reasonable person form of the meaning of this document?
16. I am satisfied a reasonable person would see and say:
- a. I need to consider both the disputed clause, and the whole contract;
  - b. under the contract the insurer offers to provide cover over a home, but excludes non-standard or unusual items if they are part of the home;
  - c. because only some customers' homes would have these types of excluded items, different risk assessments arise than for homes with just standard and usual items;
  - d. while the contract excludes such items, items can be included as a "*special feature*" once the insurer considers their risk and an individual assessment is made of a relevant '*special feature sum insured*';
  - e. the slipway, or boat ramp, at this property does fall within the category of wharf, pier, landing, or jetty because it is a non-standard or unusual item, and, it is used as a landing point for the arrival and departure of BC's boat. If it is used for landing the boat, goods, and people, it can be described as a landing, and it therefore falls within the items excluded in that section of part B.

**If not, is BC entitled to \$6,428.00 as claimed, or to any other sum?**

17. If a party suffers loss resulting from a breach of contract, contract law requires, as far as is possible, that the party be put back in the position they would have been in, had the contract not been breached.
18. As I have found no breach of contract, I am satisfied there is no basis for me to consider compensation.
19. I am not required to consider compensation, however for clarity I record my view that if a different finding was made in paragraph 7, any consideration of compensation should be impacted by:
- a. the conversations between M Insurance and BC on 7 and 9 October 2013; verbatim statements of these are provided in evidence;
  - b. these discussions about renewing existing policy cover included an enquiry from BC about whether it was worthwhile insuring the slipway, which BC seemed to indicate he did not believe was currently insured;
  - c. in those discussions M Insurance specifically states:
    - i. "*I'll have a chat with our people to see whether or not we'd be able to include (those), and if so, how that would alter your policy. I'll need to give you a call back.*"; and
    - ii. in the later conversation, "*once we have (photos of the slipway) ... we'd be able to go to our senior underwriters, our technical team, and be able to see if we can include that for you*";
  - d. BC did not follow up on this conversation at all, but I am satisfied there was clear communication by M Insurance to BC that:

- i. M Insurance did not consider the slipway covered under the policy; and
  - ii. M Insurance would need specialist views/advice before any offer to insure could be made;
- e. BC says he later looked at the policy and formed a confident view he was already covered because the policy wording (i.e., wharf, pier, landing, or jetty) did not and would not exclude his slipway;
- f. given the clarity of the discussion with M Insurance however, and its clearly expressed view, I do not find BC's argument persuasive.

**Conclusion:**

20. For all these reasons, I dismiss BC's claim.

**Referee: Malthus**

**Date: 30 September 2023**



## 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>.