



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

**District Court**

**[2023] NZDT 40**

**APPLICANT      CK**

**APPLICANT      NK**

**RESPONDENT    BG**

**SECOND          HG  
RESPONDENT**

**The Tribunal orders:**

1. HG is joined to the claim as second respondent.
2. BG and HG are to pay CK and NK \$1,559.79 by Friday 10 November 2023.

**Reasons:**

1. CK and NK and BG and HG, all attended the hearing by teleconference.
2. Despite CK and NK's objections, I joined HG as a second respondent, with BG and HG's consent and at their request.
3. The parties both owned flats next door to each other that were the subject of a cross-lease. CK and NK proposed to BG and HG that they formally update the cross-lease situation to improve the situation for buyers, as CK and NK's were selling their flat, to which BG and HG agreed. CK and NK said BG and HG agreed to pay half the cost of legal and surveying and other fees involved in the cross-lease transaction, which was disputed by BG and HG. CK and NK claimed \$3,899.48, which they said was a half share of planning, surveying and legal costs involved in the cross-lease transaction.

*Did BG and HG agree to pay any share of legal, surveying and other costs for the cross-lease transaction? Was there any other basis for BG and HG to be liable to contribute to the cross-lease transaction costs?*

4. CK and NK said there was no written agreement between the parties providing for BG and HG to contribute to the cross-lease transaction costs, nor did they think there had been a verbal agreement to this effect either. They recalled a meeting in their conservatory to discuss how to tidy up the cross-lease situation but did not think a costs share was discussed at the meeting or subsequently. Nor did they provide evidence of any other basis upon which they believed BG and HG could be liable to contribute towards these costs. CK did believe, however, that BG and HG

would have understood that CK and NK could not take care of the cross-lease update costs without BG and HG contributing anything.

5. BG and HG denied there was ever any verbal or written agreement for them to contribute towards the legal, surveying or other costs relating to the cross-lease transaction. They pointed to two letters from CK and NK's lawyer in this regard, as indicating there had been no formal agreement to this end.
6. I find CK and NK have provided insufficient evidence to prove that BG and HG agreed verbally, in writing or otherwise that they would contribute towards the legal, surveying and other costs of the cross-lease transaction, or of any other basis upon which BG and HG were liable to contribute towards these costs.

*Did BG and HG gain benefits from the cross-lease transaction that they did not have before it?*

7. The parties all agreed there were areas that had been all common areas that surrounded both flats, which became exclusive use areas for each of the flats following this update of the cross lease. These newer exclusive areas, which are marked A, B, C and D on the plan provided by the parties, apportion area A to CK and NK's property, areas B and C to BG's property and area D was retained as a common use area.
8. The cross-lease transaction removed the requirement of each flat owner to provide consent to a sale by the other and changed a requirement relating to pets also. Further, the cross-lease transaction required a registration of a transmission of ownership on the part of the UL Trust, who owned the property and of which BG is the sole surviving trustee, as one of their trustees had passed away. This was a requirement so that BG could sign the legal documents for CK and NK to sell their flat. BG and HG pointed out that this was for CK and NK's benefit and a further transmission could be required if and when a replacement trustee is appointed.
9. CK saw many benefits that accrued to BG's flat from the cross-lease upgrade, particularly access around the garage and driveway areas, as well as the new exclusive areas, amongst other perceived benefits.
10. HG thought any benefits they gained from the cross-lease upgrade were marginal and they had no particular advantage from that transaction. He pointed out that they believed the cross-lease upgrade was only required because CK and NK had extended their property beyond their legal entitlement and this had to be rectified prior to them selling their flat. HG maintained that the cross-lease transaction would not have been required had CK and NK not needed the situation tidied up for their flat sale.
11. NK denied they had extended their property beyond their legal entitlement and said the cross-lease transaction was completed prior to them selling their property, but she acknowledged they had listed their property for sale during this period.
12. I find that, as BG's flat gained new exclusive use areas, which would likely make the property more attractive to potential future purchasers, and other more minor benefits, from the cross-lease upgrade, that her property gained benefits from this transaction which would potentially improve her property.

*What remedy, if any, is appropriate?*

13. CK and NK claimed \$3,899.48, which is a half share of total costs of \$7,798.96, which included planning consent fees of \$806.25, LINZ lodgement fee of \$257.00, surveying costs of \$3,220.00 and legal fees relating to this transaction of \$3,515.71.

14. Section 18(6) Disputes Tribunal Act 1988 ("DTA") provides that the Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.
15. Whilst I have found there was no express verbal or written agreement on the part of BG and HG to contribute to the cross-lease upgrade costs, I have also found that BG's flat received benefits from this transaction. I find it likely that the motivation for the cross-lease upgrade was CK and NK's sale of their flat. However, I find it reasonable, based on section 18(6) DTA as to the substantial merits and justice involved, that BG and HG would contribute towards these costs based on the evidence of the benefits they gained from the cross-lease upgrade. In the circumstances, I find a contribution of 20% by BG and HG towards the total costs of \$7,798.96 involved in the cross-lease transaction is reasonable, which is \$1,559.79.
16. BG and HG are to pay CK and NK \$1,559.79 by Friday 10 November 2023.

**Referee: C Price**  
**Date: 19 October 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>.