



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 129

APPLICANT CN

RESPONDENT OQ

The Tribunal orders:

OQ is to pay CN \$1,518 on or before 21 April 2023.

Reasons:

1. During a storm on 13 February 2022 a number of trees fell onto CN's property at [Address] causing damage to some native rimu and avocado trees and parts of a fence. CN removed some of the trees and debris but a contractor was required to remove the rest of the trees and debris due to their size and height.
2. CN's property shares a boundary with the road reserve that is owned and managed by OQ. CN says that the trees that fell were located on the OQ's road reserve and claims \$1,900 in respect of the damage and the cost of removing the fallen trees and debris.
3. The OQ was represented by NS.
4. The relevant law is the law of negligence. The issues to be determined by the Tribunal are:
 - a) With respect to the maintenance of the trees which are the subject of this dispute, was there a breach by the OQ of a duty of care owed to CN?
 - b) Is CN entitled to a remedy and is the amount claimed reasonable?

With respect to the maintenance of the trees which are the subject of this dispute, was there a breach by the OQ of a duty of care owed to CN?

5. CN contends that as the road reserve is the property of the OQ, the OQ has a duty of care to those possibly affected by trees on the road reserve falling to monitor and, as necessary, maintain the trees on the road reserve. CN submits that the trees that fell are either dead or contain internal rot and that the OQ has failed to properly maintain and manage the trees on its property.
6. CN gave evidence that on three previous occasions over the last four years trees on the road reserve have fallen during strong winds and that on those occasions [redacted] were engaged by the OQ to attend and clean up the trees and debris. At the first hearing, CN invited NS to check the OQ's records to confirm these occasions. I do not know whether NS checked the OQ's records, but OQ has made no submissions in relation to those occasions or the evidence given by CN. Accordingly, I have no reason not to accept the evidence given by CN.

7. The OQ submits that it has been disadvantaged by CN not being precluded as a representative under section 38(7) of the Disputes Tribunal Act 1988 on the basis that he is enrolled as a barrister and solicitor. As discussed at the first hearing, section 38(7) precludes the Tribunal from approving a representative (for a party to the proceedings) who is enrolled as a barrister and solicitor. However, CN is a party to the proceedings (not a representative for a party) therefore section 38(7) does not apply to preclude him and he is entitled to attend and participate in hearings in which he is a party, just as any other person is.

8. The OQ submits that it is unclear whether or not the trees are on the boundary between the parties' properties or on the OQ road reserve. Accordingly, the second hearing was an on-site meeting to determine the location of the trees and their condition. OQ advised that prior to the site visit EB, a licensed cadastral surveyor had undertaken a road reserve survey (RR Survey) at the frontage of the property.

9. At the site visit CN provided copies of the Deposited Plan of the property referred to in the Computer Freehold Register and OQ's plan of the property and we inspected the boundary and the remains of the trees that had fallen. We also used a measuring wheel provided by NS to confirm that the fence dividing the property and OQ's road reserve was on the boundary line. At the site visit, NS confirmed that he would be following up with EB regarding the RR Survey. However, the submissions that have been made by OQ since the site visit make no reference to the RR Survey.

10. In its submissions to the Tribunal OQ states that it has no record of planting trees on the road reserve on [Address] and that the trees have either been planted by a previous adjoining property owner as a windbreak to shelter the property and the avocado trees planted in the area adjacent to the boundary fence on the property or have self-seeded. OQ notes that it would be impractical and costly for OQ to remove every self-seeded or illegally planted tree on OQ's road reserve and submits that it cannot be liable to pay for damage caused by trees which were not planted by the OQ.

11. Based on the site visit and the plans produced, I find that the trees which fell were on OQ's road reserve and not on the boundary and that at least some of the trees appear to be dead or decaying. I have had regard to the submissions made by the OQ, but I am not persuaded that the OQ cannot be liable on the basis that it did not plant the trees. I find that as a landowner, the OQ is responsible for the trees on its land irrespective of whether the trees were planted by the OQ or by a predecessor or some other person or whether they have self-seeded and arisen naturally.

12. Landowners have a general duty of care to a neighbouring occupier in relation to hazards on their land. In *Plaza Investments Ltd v Queenstown Lakes District OQ [2018] NZHC 1925* the High Court found that Queenstown Lakes District Council, as landowner, had a duty to take reasonable steps to prevent or minimise known hazards on its land from causing damage to its proximate neighbours. As trees on the road reserve in question have fallen during strong winds on three previous occasions over the last four years, I find that the OQ knew or ought to have known of the risk of the trees on the road reserve falling and was under a duty to take reasonable steps to prevent or minimise the risk.

13. Given my findings in paragraphs 11 and 12 above, I find that the OQ had a duty of care to CN to take reasonable steps to prevent or minimise the risk of the trees on its road reserve falling onto and causing damage to CN's property and is in breach of that duty.

Is CN entitled to a remedy and is the amount claimed reasonable?

14. A person who has caused damage to another's property due to his or her negligence is liable to pay damages for the reasonable costs or losses that flow from that negligence. The purpose of an award of damages is to put the wronged party back to the position he or she was in before the negligence occurred by compensating the successful applicant for reasonably foreseeable losses suffered as a result of the negligence.

15. CN claims damages of \$1,900 from the OQ calculated as follows:

- \$1,518, being the cost of engaging [redacted] to attend to the damage and removal of the fallen trees; and
- \$382, being the cost of CN's time to remove trees and debris.

16. As I have found that the OQ breached the duty of care it owed to CN and he has suffered loss as a result, he is entitled to damages for the reasonably foreseeable losses that he has suffered as a result of the OQ's negligence.

17. CN has submitted a copy of the invoice dated 13 April 2022 from [redacted] for \$1,518. I have had regard to OQ's submissions regarding the invoice. However, I note that the invoice contains a GST number and there is no evidence to suggest that the invoice is not genuine. There is nothing to prevent CN engaging a contractor from a neighbouring property and although the original invoice was not particularised CN has subsequently obtained those particulars from [redacted] and provided them to OQ. I am satisfied that the amount claimed is reasonable and I therefore award damages of \$1,518.

18. No evidence has been submitted to support the claim for \$382 in respect of CN's time and I accept the OQ's submission that this should not be awarded as it is unsubstantiated. Accordingly, I dismiss the claim for damages for CN's time.

19. For these reasons, I award damages of \$1,518 to CN. These damages are to be paid by the OQ by the date set out in the order.

Referee: R Burley
Date: 28 March 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>.