



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

District Court

[2023] NZDT 330

**APPLICANT** DT

**RESPONDENT** X Limited

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. In April 2012, X Limited manufactured a set of double-glazed cedar french doors for DT. The doors were installed in her house to replace some existing doors. In May 2023, moisture appeared in the double-glazed pane of glass in the right door. DT says that there are also cracks in the lower wooden panels of the doors which means they are no longer watertight. DT seeks an order that X Ltd is liable to pay her \$4,999.00.
2. The issues to be resolved are:
  - a. Is the claim statute barred?
  - b. If not, are the french doors of acceptable quality?
  - c. If not, what remedy is appropriate?

**Is the claim statute barred?**

3. I find that the claim is statute barred because the work done by X Ltd was building work in terms of the Building Act 2004 and so the claim is out of time because the building work happened more than 10 years before the claim was filed.
4. S. 393(2) of the Building Act 2004 states that no relief may be granted in respect of civil proceedings relating to building work if those proceedings are brought against a person after 10 years or more from the date of the act or omission on which the proceedings are based.
5. The parties agree that the french doors were installed in April 2012. They were built by X Ltd specifically for DT's house, to replace some old doors. The doors were installed by a builder who may have been found from a list of builders that X Ltd provides to its customers. DT cannot remember who the builder was.
6. X Ltd says that the quote it provided for the doors, including double glazing, was \$2,350.00 plus GST. It is presumed this is the price DT paid for the doors, but she could not recall the amount, which is why her claim was filed for \$4,999.00.

7. In April 2020 (after 8 years) the window on the left side of the french doors started to fog up, and a seal was found to be faulty. This window was replaced by the glass manufacturer under warranty.
8. DT says that in May 2022 the window on the other side of the door developed the same problem. DT approached X Ltd about the problem. X Ltd say that the glass manufacturer declined to replace the second pane under warranty because more than 10 years had passed since the glass was supplied.
9. DT says that in June 2022, water started to come through the lower wooden side of one side of the french doors. She says this may be because there are some cracks in the lower panels, or may be a problem with the joins in the panelling on the door.
10. If X Ltd's work in making the doors was building work in terms of the Building Act 2004, then the claim is not able to proceed because the claim was brought more than 10 years after the doors were built and installed.
11. The Building Act defines building work as work that is for or in connection with the construction, alteration, demolition or removal of a building.
12. The High Court<sup>1</sup> has said that "in connection with" has a wide meaning requiring merely a link or relationship between one thing and another. In that case a supplier's representations about the quality and suitability of a sealant was found to be "in connection with" the construction of an apartment complex.
13. On the other hand, "building work" has been found not to extend to cover the manufacture or supply of building products<sup>2</sup>. The work has to be in connection with a specific building to qualify as "building work".
14. In this case the doors were built by X Ltd specifically for DT's house, to her specifications, and for an alteration she was undertaking at her house, which was the replacement of the existing doors. I consider that in these circumstances the work undertaken by X Ltd is "building work" in terms of the Building Act.
15. The doors were both made and installed in April 2012, and so I am satisfied that the act or omission on which these proceedings are based occurred more than 10 years before this claim was brought. This means that the claim is barred by section 393(2) of the Building Act and so the claim must be dismissed.

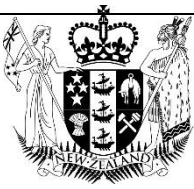
**Referee: L Trevelyan**

**Date: 31 July 2023**

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<sup>1</sup> *GPE Holdings Ltd v Tile 'N' Style* [2014] NZHC 802.

<sup>2</sup> *Minister of Education v Carter Holt Harvey Ltd* [2014]NZHC 681.



## 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>.