



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 721

APPLICANT E Ltd

RESPONDENT O Ltd

The Tribunal orders:

1. O Ltd is to pay E Ltd \$30,000 on or before 5.00pm 28 December 2023.

Reasons:

1. In 2020, E Ltd purchased timber from O Ltd, who supplied H4 treated timber for decks and stairs that were being built in his property development. In June 2021, during the building of the decks it appeared some of the timber shade did not match and after testing was done it was found that the timber supplied was not H4 treated timber.
2. E Ltd seeks \$30,000 for the cost remedial work in redoing the decks, including purchase of the correct H4 treated timber.
3. The issues to determine are:
 - a) Did O Ltd breach the contract?
 - b) Is O Ltd liable to pay \$30,000?
4. In a civil claim such as this, the burden of proof is on the applicant to prove their claims on a balance of probabilities. Although I have reviewed all the evidence and submissions, I have only referenced what I find necessary to give context to my decision.

Did O Ltd breach the contract?

5. A contract is formed when both parties decide to exchange something of value, creating an obligation to perform a particular duty which is legally enforceable. The terms of a contract define the rights and obligations of the parties.
6. A breach of a contract arises when one party has failed to perform their obligations under the contract. In order to make a successful claim for breach of contract the applicant must prove that a term of the contract has been broken and that there is financial loss suffered as a result of that breach.
7. OE of E Ltd purchased H4 treated timber from the respondent to build 12 decks and stairs for his property development.

8. OE ordered 140 x 45 H4 treated timber for the decking and stairs. However, in June 2021, after he completed some of the work, he noticed that timber on some of the completed framed decks had not developed darker shades of green that H4 timber would do on weathering.
9. A sample of the timber was sent for testing, the results were a finding that the sample did not meet the H4 standard. After contacting the respondent to resolve the matter which would have included replacing the affected Timber, no resolution was found.
10. On all the evidence presented before me, I am satisfied that there has been a breach of the contract. OE believed he was being supplied with H4 treated timber that he had purchased, when in fact it was not the right timber.

Is O Ltd liable to pay \$30,000?

11. Where a breach of contract is established, a party is entitled to seek damages. The object is to place the aggrieved party in the position that they would have occupied had the contract been performed as originally agreed.
12. The applicant has presented its costs which exceed the claim for \$30,000. It is noted that the applicant has reduced the amount of its claim to fall within the maximum financial jurisdiction of the Tribunal.
13. I am satisfied the costs presented are reasonable for the remedial work that is required to undertaken. I also accept the costs for the testing the timber samples and retreating some of the timber can also be awarded.
14. I therefore find that O Ltd is to pay E Ltd \$30,000.

Referee: D Alofivae
Date: 1 December 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>.