



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 558

APPLICANT **ED**
(respondent in
counterclaim)

RESPONDENT **G Council**
(applicant in
counterclaim)

The Tribunal orders:

Both claims are struck out.

Reasons

1. ED's claim is for \$29,949.00 which he says are the costs incurred by him in pursuing a resource consent subdivision application. These costs included surveyors and valuer costs, fencing materials, contractors' costs and finance costs.
2. The Council filed a counterclaim for \$7,549.21 being fees and disbursements incurred by Council in processing ED's resource consent application.
3. In my adjournment order dated 2 August 2023 I raised the issue of the Disputes Tribunal's jurisdiction in relation to the party's respective claims. At the end of the hearing, I asked if they wanted to get their own advice regarding the Tribunal's jurisdiction. Both parties said they did. For this reason, the hearing was adjourned.

Negligent misstatement

4. As also mentioned in my adjournment order the Tribunal had earlier queried jurisdiction when ED submitted his claim. The Tribunal said in an email to him dated 15 May 2023:

"We have no jurisdiction to hear claims for negligent misstatement as all claims in tort that we can hear must have resulted in physical damage to property. Usually, claims against Council have to be considered by the Ombudsman, or DC, as they are not considered "in trade". Councils act under statutory powers of authority, rather than contract. If this was lodged, the filing fee would be lost if the case cannot proceed."

Please can you confirm whether you still wish to proceed with your claim.

ED responded the following day saying:

I want to have a hearing and present my case.

There is jurisdiction because physical damage to property is not mentioned in the Disputes Tribunal Act and I have suffered monetary loss, which is a property loss.

The Act does not say there needs to be physical damage to physical or tangible property arising from a tort, just loss of property, which I have encountered, ie I have lost money.

5. The Tribunal has jurisdiction to hear the claim in tort (section 10(1)(c) of the Disputes Tribunal Act 1988 (DTA)) in respect of:

“(i) the destruction or loss of any property:

(ii) any damage or injury to any property:

(iii) the recovery of any property.”

6. ED says monetary loss is property loss because the Property Law Act 2007 defines “property” as including money.

7. Negligent misstatement is not included in s10(1)(c). “Money” is not “property” for the purposes of s10(1)(c)(i) of the DTA.

8. Accordingly, the Tribunal has no jurisdiction in relation to ED’s monetary claim.

Declaration of non-liability and Council’s claim for amounts owed

9. ED is also seeking a declaration of non-liability for the money Council invoiced him. He says:

This declaration that no money is owed to the [council] for a service offered, is under contract or quasi contract and they have breached that contract.

10. Council also filed a claim for moneys it says is owing in processing ED’s resource consent application.

11. As well as the Tribunal’s jurisdiction in tort (referred to above) the Tribunal has jurisdiction in relation to claims founded in contract or quasi contract (s10(1) of the DTA).

12. However, there is no contract (or quasi contract) between ED and the Council as their relationship arises under the Resource Management Act 1991 (RMA). The Tribunal has no jurisdiction under the RMA. In particular I note s 11(7) of the DTA which says that nothing in the DTA “shall be construed as authorising a claim in respect of money due under any enactment.” The moneys are due under the RMA, being “any enactment”.

13. Accordingly, the Tribunal has no jurisdiction in relation to ED’s declaration of non-liability and Council’s monetary claim.

Referee: Ms Gayatri Jaduram

Date: 24 November 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>.