



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 504

APPLICANT EQ

RESPONDENT B Ltd

The Tribunal orders:

The claim is struck out.

Reasons:

1. In December 2016, EQ consulted B Ltd about her hair loss, and signed a contract to get a glued-on wig at a cost of \$4,361.00. The wig was fitted on 21 March 2017. EQ immediately experienced burning to her scalp but thought it would get better with time. However, her scalp continued to react badly and less hair was growing. She returned for four maintenance appointments, the last being in December 2017, but then stopped coming and had her head shaved. She was later medically diagnosed with an autoimmune condition, and treatment for that condition solved her problem.
2. EQ filed a claim on 27 April 2023 for \$10,000.00 in damages from B Ltd.
3. The issues to be determined are to what extent the claim is statute-barred, and to what extent the claim is within the exclusive jurisdiction of the Accident Compensation Corporation.

To what extent is the claim statute-barred?

4. Section 11(1) of the Limitation Act 2010 provides that it is a defence to a money claim if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based. The relevant acts or omissions here are primarily at the time the original contract was entered into, and the original treatment was given.
5. If “the claimant has late knowledge of the claim”, the limitation period is extended under s 11(3) of the Act. EQ was aware very quickly of some issues with the treatment. It was not till some time later that she became aware that the problem had a medically treatable cause rather than being hereditary, but this was still more than three years before she filed her claim. The limitation period under the Fair Trading Act 1986 (FTA) is also three years.
6. As it relates to the original consultation and treatment, EQ’s claim is therefore statute-barred, whether under the Consumer Guarantees Act 1993 (CGA) or the FTA.
7. As it relates to some or all of the follow-up appointments, which were \$83.95 each, EQ’s claim might not be strictly statute-barred if brought under the CGA, although B Ltd’s ability to defend these claims would be affected by the lapse of time. B Ltd said that the relevant staff members were no longer with the company, and practices have changed in the years since EQ’s treatment. Difficulties in defending old claims due to records being lost and memories fading over time form part of the rationale behind having limitation periods, and could also be a reason to view a claim under the CGA as having been waived by such a long delay. However, it is unnecessary to decide

whether a claim under the CGA relating to the follow-up appointments is available due to my conclusion on the next issue.

To what extent is the claim within the exclusive jurisdiction of the Accident Compensation Corporation?

8. Section 317(1) of the Accident Compensation Act 2001 (ACA) bars proceedings under any rule of law or any enactment for damages arising directly or indirectly out of personal injury covered by the ACA. The Accident Compensation Corporation has exclusive jurisdiction over such claims. An accident is defined to include “the absorption of any chemical through the skin within a defined period of time not exceeding 1 month” (ACA s 25(1)(d)).
9. To the extent that EQ’s claim relates to inadequate advice about her other options before she decided to go ahead with the expenditure for a glued-on wig, it may not be covered by the ACA, but is statute-barred as already explained.
10. To the extent that EQ’s claim relates to the follow-up appointments and the continued damage to her scalp, I consider that it is covered under the ACA. In *Mellow v Tsang* [2004] NZAR 537, it was accepted that a patient who had unsuccessful cosmetic surgery on her eyelids resulting in lid asymmetry had suffered personal injury. On this basis, Keane J held that the Disputes Tribunal had no jurisdiction to award the patient a refund of her theatre fees, and rejected the reasoning that the Tribunal could award a refund for services that had failed. He held that the word “damages” in ACA s 317(1) should be read broadly to cover restitution as well as compensatory damages.
11. I conclude that any part of this claim that is not barred under the Limitation Act 2010 comes within the exclusive jurisdiction of the Accident Compensation Corporation under s 317(1) of the ACA. The claim must therefore be struck out.

Referee: E Paton-Simpson

Date: 13 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 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>.