



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 457

APPLICANT EX

RESPONDENT QU

The Tribunal orders:

1. The claim is dismissed
2. The counterclaim is dismissed.

Reasons:

Introduction:

1. In July of 2022, EX first spoke to QU about building a new lawn and garden at his home. In September of 2022, QU provided a quote accepted by EX, and the work began. The job was completed on the 4th of November. On the 5th of December, EX contacted QU to tell him that the lawn was dying, and the concrete driveway had cracked and he asked for QU's help.
2. QU didn't offer any assistance and so EX had the lawn and concreting remedied and is claiming \$9,525.00 it cost him to remedy the failures. He is also claiming costs for a day and a half away from work and the cost of time preparing for the hearings.
3. QU counterclaims \$1565.00 for a day and a half away from work and the time taken to prepare for the hearings.

The issues to be resolved are:

- a) Did QU build EX's new lawn with reasonable care and skill?
- b) Did QU concrete the driveway with reasonable care and skill?
- c) Are the parties entitled to claim against each other for the cost of attending the Tribunal?

Did QU build the new lawn with reasonable skill and care?

4. The Consumer Guarantees Act 1993 (CGA) implies into all consumer contracts a set of minimum standards (guarantees) for goods and services when they are supplied in trade to consumers. The relevant section is s 28 -that a supplier will carry out its services with reasonable care and skill.
5. EX said he was looking for a high level of skill because he wanted a particular type of lawn, "a lawn like a billiard table." QU said he had been in the industry for 15 years and the two were introduced based upon a recommendation.

6. EX said QU had used the wrong type of soil and grass and that the weeper system that he had installed didn't work. This resulted in the grass dying
7. EX produced a letter from LE saying he had seen the work and the soil was not the best. He thought this because the soil was not holding moisture. He recommended EX buy 8-10 cubic meters of premium soil mix. EX did this and had it added to his lawn.
8. EX said that when he could not get QU to help fix the lawn, he sought help elsewhere. As a result, the grass recovered.
9. I find that QU did use care and skill in building EX's lawn because QU consulted with ND of [lawn supplier] before choosing the type of grass to be laid as ready lawn bearing in mind the result EX was looking for. The ready lawn was fine fescue. [Lawn supplier] went on to lay that ready lawn.
10. QU said he had used screened topsoil and included 4 cubic meters of lawn mix, a product for levelling and smoothing soil. He said that this was probably the same as the premium soil recommended by LE. He said he used less because he was trying to keep to budget.
11. I find that the main cause of the failure of the lawn was incorrect watering. I find this because QU said he had told EX he must top water the lawn regularly in addition to using the weeper system.
12. QU's view was that if EX had followed the instructions that both he and [lawn supplier] had given him, to top water the lawn, the lawn would not have failed.
13. Both QU and [lawn supplier] have expertise in lawn management. I find that they had a common interest in the lawn taking and would have given advice about the correct watering requirements for new ready lawn.

Did QU concrete the driveway with reasonable care and skill?

14. EX had to get the concreting work repaired because the concrete laid across his driveway had cracked. The concrete had been put in by C. The concrete was to fill a gap left in the driveway under which the weeper watering system and CCTV cables crossed the driveway. The concrete strip was quite narrow, being perhaps 20-25cm across.
15. EX agreed that he had driven his Ute up the driveway across the concrete strip before the recommended 7 days to cure the concrete had elapsed. He also agreed the digger he was using had been brought in on a truck but calculated this was on the 7th day after the concrete had been put down.
16. When asked whether C had told him not to use the driveway until after 7 days had elapsed, EX said he had not.
17. There was no evidence given by C though the Tribunal records he had appeared to give evidence on the 24th of May 2023. The Tribunal ran out of time to hear that evidence and he was not recalled by QU.
18. I find the most likely cause of the concrete cracking was that it had been driven over before the recommended time to cure had elapsed. This is because EX agreed that he had driven over the concrete in his Ute before it had time to cure.

Are the parties entitled to claim against each other for the cost of attending the Tribunal?

19. QU's counterclaim is for \$1565.00 the cost of defending the application made by EX.

20. EX likewise wanted to claim for the cost associated with attending the Tribunal. His daily rate was considerably higher.

21. Section 43 of the Disputes Tribunal Act 1988 prevents the award of costs for attending the Tribunal but for some exceptions. The costs sought by the parties do not fall under the exceptions and therefore are disallowed.

Conclusion:

22. I find that QU used reasonable care and skill in his work and did not cause the failure of the lawn or the cracking of the concrete.

23. I find that the parties cannot claim costs against each other.

Referee: Verdun Tawhara
Date: 18th day of August 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>.