



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 181

APPLICANT KM

APPLICANT LM

RESPONDENT BN

The Tribunal orders:

1. The claim is dismissed.
2. The counter-claim is dismissed.

Reasons

Background

1. The parties own properties on [Road], a private road on a semi-rural subdivision in [Town].
2. Five properties in the subdivision have a right of way over [Road].
3. In July 2023, E Ltd carried work on the road. LM and KM submit that the work was necessary because the road was damaged in a severe weather event in late March 2023.
4. The cost of the work was \$15,756.31. Three of the five owners paid an equal one-fifth share of the cost of the work (\$3,151.27 each). BN paid \$1,650.00. LM and KM paid a one-fifth share plus the shortfall in BN's payment.
5. Their claim seeks reimbursement of the shortfall.
6. BN's counter-claim seeks refund of the \$1,650.00 that she paid.
7. The claim came before me by way of a re-hearing granted by Referee Johnson on 28 April 2023.
8. The hearing took place in [City] on 24 May 2023. Both parties attended the hearing.

Law

9. Schedule 5 of the Land Transfer Regulations 2018 sets out the rights and powers that are implied in easements.

10. Section 11 of Schedule 5 details the obligations of grantors and grantees of easements in terms of repairs and maintenance. The following provisions are relevant to this dispute:

If the [...] grantees and the grantor share the use of the easement facility, each of them is responsible equally for the repair and maintenance of the easement facility, and for the associated costs

Any repair or maintenance of the easement facility that is attributable solely to an act or omission by the grantor or the grantee must be promptly carried out by that grantor or grantee at their sole cost.

However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the grantor or grantee,—

(a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission;

The dispute

11. The parties disagree about:

- a. The nature and cause of the damage to the road.
- b. The nature and purpose of the work carried out in July 2023.
- c. How the cost of the work should be apportioned.

12. LM and KM submitted that:

- a. The road was damaged by a severe weather event in March.
- b. All of the owners except for BN agreed that remedial work was necessary.
- c. All of the owners except for BN agreed to share equally in the cost of the work.
- d. The road needs to be maintained to ensure its continuing viability.

13. BN submitted that:

- a. The damage is attributable to high volumes of stormwater and inadequacies in the culverts and drainage around parts of the road.
- b. Her property does not discharge water onto the road. The natural contour of her land slopes away from the road.
- c. Most of the volume of damaging stormwater comes from Lot 12.
- d. Work has been carried out on Lot 12 that has significantly increased the flow of stormwater, including:
 - i. Creation of a driveway.
 - ii. Establishment of a shed.
 - iii. Heavy trucks traversing the land causing ruts / tracks.
 - iv. Reduction of grass.
- e. The other main source of stormwater onto the road is Lot 5, which is LM and KM's property.

- f. Prior to those changes / developments the road was able to deal with stormwater from severe weather events, including the [redacted] flood that hit [City] in [redacted].
- g. Most of the work done in July 2022 was upgrading of the channelling on the sides of the road.
- h. After a meeting between the owners about the work, she sent a detailed letter setting out why she considered that she was not liable to pay any share of the cost of E Ltd' work, but also stating that she would contribute \$1,500.00 "as a gesture of good will".

Findings

- 14. The Land Transfer Regulations impose an obligation on grantors and grantees of an easement to share equally in the cost of repairs and maintenance.
- 15. That obligation is not premised on equal use, or equal advantage, or equal contribution to wear and tear on the easement.
- 16. The exception to this rule is if the need for maintenance or repairs is solely or partly attributable to an "act or omission" by one of the parties.
- 17. BN's clear and comprehensive submissions establish that:
 - a. The work in July 2022 was necessitated by substantial volumes of stormwater hitting the road, scouring out the drains and damaging the road.
 - b. The volume of stormwater was not just attributable to the nature of the weather event in March 2022, but also to changes in the topography, in particular on Lot 12, which have increased and concentrated the flow of stormwater.
 - c. Stormwater from BN's property has not contributed to the problem.
 - d. The work in July involved a significant element of upgrading / improving the 'channelling' on the side of the road (as described in the E Ltd invoice).
- 18. Having regard to section 11 of Schedule 5 of the Land Transfer Regulations 2018, I am satisfied that the need for the July 2023 work (both in terms of repairs and improvement) is disproportionately attributable to the acts / omissions of owners other than BN, in particular to the work that has taken place on Lot 12.
- 19. Clearly the owners of Lot 12 did not intend the consequence of additional stormwater runoff and an overload of the channelling on the side of the road. There is nothing unlawful or negligent about the work that has been carried out on Lot 12. However, section 11 does not refer to negligent or unlawful acts or omissions, only to acts or omissions that create a need for repairs or maintenance.
- 20. I do not agree that the need for repairs is solely attributable to that cause. There remains an element of routine maintenance / repairs and even upgrading that all Lot owners should contribute to, even if they do not contribute equally to the need for it.
- 21. Having regard to those principles, my finding is that the contribution that BN made to the E Ltd invoice was appropriate and reasonable.
- 22. Therefore I find that:
 - a. BN is not obliged to pay any more; and
 - b. BN is not entitled to a refund of the amount that she has paid.

Referee: Nicholas Blake

Date: 12 July 2023 (date of issuance of amended Order)



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>.