



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 46

APPLICANT KQ

RESPONDENT UI

The Tribunal orders:

1. UI is to pay KQ \$2980.25 on or before 24 February 2023.

Reasons:

1. KQ and UI own neighbouring properties. KQ has an easement over UI's property ("the driveway") that provides for ingress and egress to his home. KQ alleges that when UI carried out works to the driveway the contractors engaged by UI caused damage to his fence, plantings and removed boundary markers. KQ claims \$4500.00 as a contribution to remediation of the damage.
2. The issues I must decide are:
 - a. Did UI have a duty of care to ensure contractors she engaged were aware of the correct boundary so that damage was not caused to KQ's property?
 - b. If yes, is the amount claimed reasonable?

Did UI have a duty of care to ensure contractors she engaged were aware of the correct boundary so that damage was not caused to KQ's property?

3. An applicant to the Tribunal has the task of establishing the legal and factual elements of its claim to the required standard. That standard is the balance of probabilities which means that it is more likely than not. When assessing whether the onus of proof has been reached, I need to consider and evaluate the evidence presented to the Tribunal by the parties.
4. The relevant law is the law of negligence. Negligence concerns the duties that one person owes another to take care, including the duty not to damage another person's property. For the respondent to be shown to be negligent, it must be shown that there was a duty of care it owed to the applicant and it breached that duty of care and damage was a result of that breach.
5. KQ states that UI did not damage his fence rather it was UI's contractors that damaged his fence, plantings and removed boundary markers. He states he went on holiday and when he returned UI's contractors had deconstructed the driveway, pulled out his fencing and damaged it, removed boundary pegs/markers, and damaged or removed a number of large griselinia shrubs. He states all of the fences and the griselinias were inside his boundary and were able to be avoided by the contractors. KQ told the Tribunal that the contractors had also partially reconstructed driveway on his property where he had the fencing and shrubs. KQ provided the Tribunal with photos of the damage and a diagram showing the properties with the boundaries and the relationship of

the damage to the boundary. He states he spoke with UI about the damage in an effort to resolve the dispute and her response was she would see him in Court.

6. UI did not appear in the Tribunal and did not present any submissions.
7. UI has a duty to KQ to ensure her contractors are both aware of the boundaries and that they work only within the boundary of her property. For these reasons I find UI did have a duty of care to KQ. Further, the photographs and the diagram provided strong evidence that this duty has been breached and resulted in damage to KQ's property and the removal of boundary pegs.

Is the amount claimed reasonable?

8. In such situations UI is liable to put KQ back to the position he would have been before the damage was caused. KQ claims for the survey pegs to be reinstated, to remove the driveway created on his property, to level damaged areas, to reinstall fencing, replacement griselinia shrubs and to shift four of his own griselinia shrubs from the back of his property to the area where the large griselinias were removed.
9. KQ claims \$1420.25 for the survey, \$580.00 for replacement plants, \$280.00 to shift four plants and \$700.00 to remove five fence bases, dig out and remove driveway (9.6m x 1m) constructed on his property, to level out damaged areas and reinstall fencing. KQ provided copies of invoices and detailed explanations of the hours he worked to repair the damage and plant replacement plants. His hourly rate claimed of \$30.00 is reasonable. I accept KQ's very detailed explanation of the hours he worked and what work was carried out. Further, the claim for surveyor fee of \$1420.25 is supported by a detailed invoice. That said, KQ has not claimed for such things as fence posts, corrugated iron fence cladding, nails, hire of tools and the hire of a skip bin to remove the damaged property.
10. The total amount I find is reasonable is \$2980.25 and this is the amount UI is liable for.

Referee: C Murphy
Date: 10 February 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>.