



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 522

APPLICANT **LD**

RESPONDENT **EQ**

**SECOND
RESPONDENT** **NQ**

APPLICANT'S **X Ltd**
INSURER
(if applicable)

RESPONDENT **Y Ltd**
INSURER
(if applicable)

The Tribunal orders:

1. The claim is dismissed.

Reasons

1. During the extreme weather event in Auckland a large tree fell from EQ and NQ's property across and onto LD's property damaging an uninsured car, a shed and its contents and a kauri tree.
2. X Ltd, LD's insurance policy paid out on the insured damage and removing the tree from damaged property but did not pay for the costs of removing the remainder of the tree, repairs to the uninsured car or the kauri tree. LD also had to pay \$500.00 in uninsured losses.
3. LD considers EQ and NQ were negligent in the care of the tree, they kept chickens around the base of the tree undermining the soil and did not have the tree pruned or assessed by an arborist prior to this event.
4. LD claims \$4775.00 for the removal of the tree not covered by X Ltd, \$517.50 for repairs to his uninsured car, \$305.00 to replace the kauri and his \$500.00 uninsured loss.
5. The issues to be determine are:
 - a. Were EQ and NQ negligent in the care of the tree; and
 - b. If so, can LD claim \$4775.00 for the removal of the tree not covered by X Ltd; and
 - c. Can LD claim \$517.50 for repairs to his uninsured car; and
 - d. Can LD claim \$305.00 to replace the kauri; and
 - e. Can LD claim his \$500.00 uninsured loss?

Were EQ and NQ negligent in the care of the tree?

6. If you have a duty of care to ensure nothing reasonably foreseeable damages another persons property and through your actions or inactions, damage occurs you may be responsible for making good that damage.
7. LD told me EQ and NQ failed to maintain this tree and other trees on their property, keeping chickens around the base of the tree eroded natural vegetation that would stabilise the tree. He told me the arborist who assessed the tree for Y Ltd Ltd lied about where the tree was growing and provided an incorrect report.
8. EQ and NQ told me they have had the trees on their property assessed over three years before this weather event. When advised to do so, EQ and NQ have removed and trimmed trees on their property.
9. There is no evidence the arborist provided a false or misleading report. The report states the soil was waterlogged from unprecedented rainfall, this made it prone to movement, or landslides and in this situation movement of the tree roots in the soil combined with cyclone's heavy wind gusts brought the tree down.
10. The arborist said the roots and tree did not have any structural defects that contributed to its failure. Had the chickens contributed to the tree's failure. He would have recorded that fact.
11. There is insufficient evidence to prove EQ and NQ were negligent in the care of the tree and the claim is dismissed.

Can LD claim \$4775.00 for the removal of the tree not covered by X Ltd?

12. As the claim is dismissed, I do not have to consider if the losses are reasonable, this claim is dismissed.

Can LD claim \$517.50 for repairs to his uninsured car?

13. As the claim is dismissed, I do not have to consider if the losses are reasonable, this claim is dismissed.

Can LD claim \$305.00 to replace the kauri?

14. As the claim is dismissed, I do not have to consider if the losses are reasonable, this claim is dismissed.

Can LD claim his \$500.00 uninsured loss?

15. As the claim is dismissed, I do not have to consider if the losses are reasonable, this claim is dismissed.

Referee: K O'Shea

Date: 25/09/2023



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>.