



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 463**

**APPLICANT LQ and QQ**

**RESPONDENT T Ltd**

**The Tribunal orders:**

T Ltd is to pay the sum of \$1,275.07 to LQ and QQ immediately.

**Reasons:**

1. This amended order is made under the “slip rule”<sup>1</sup>. It changes the amount of the original order, and the calculation of that sum in the last paragraph of the original order, since the cost of both supply and installation was included in the invoice for \$5,325.07. In all other respects the order and reasons remain the same, being as set out below.
2. In September 2022, LQ and QQ accepted a quotation from T Ltd for landscaping work and installation of artificial turf to be supplied by LQ and QQ. T Ltd advised LQ and QQ to purchase the artificial turf from [Turf Provider]. LQ and QQ purchased 13 lineal metres at a cost of \$2,272.40, and T Ltd laid it.
3. LQ and QQ are unhappy with the shiny appearance of the turf, and claim that it should have been laid in the opposite direction so that the rough or strand side rather than the shiny side faced their predominant view. They now claim \$6,000.00 in damages from T Ltd.
4. The issues to be determined are:
  - a) Did T Ltd install the turf with reasonable care and skill?
  - b) What sum, if any, is payable?

**Did T Ltd install the turf with reasonable care and skill?**

5. Section 28 of the Consumer Guarantees Act 1993 (CGA) provides that where services are supplied to a consumer, there is a guarantee that the service will be carried out with reasonable care and skill. Where part of the service involves consulting with the consumer and providing advice on any choices to be made, the advice must itself be provided with reasonable care and skill, even if there is no extra charge for that advice.
6. LQ and QQ said they raised the issue of direction when the turf was first unrolled, before it was cut. T Ltd said the issue was not raised until after the turf was cut into shape. I consider that it does not matter when LQ and QQ raised the issue, because a reasonable installer of artificial turf would have proactively asked the consumers their preference for the direction, given the aesthetic purpose of the product and the likelihood that consumers would have a preference.

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<sup>1</sup> District Court Rules 2014 rule 11.10 Correction of accidental slip or omission

7. NI, [Turf Provider]'s installation manager, gave evidence that all synthetic turf products have the same issue of needing to be laid in the direction that will give the best appeal, and said there were tutorials online for novice installers.
8. Consultation with the consumer and advice on any choices to be made should have been part of the installation service, and should have been carried out with reasonable care and skill. In other words, T Ltd should have consulted LQ and QQ regarding which way to lay the turf, and explained the difference, even if they did not raise it. I therefore find that T Ltd failed to install the turf with reasonable care and skill.

**What sum, if any, is payable?**

9. BL, one of T Ltd's installers, gave his view that the direction does not make a big difference, one side just being a bit lighter, and that sand and brooming was sufficient to rectify the problem. However, the failure cannot be properly rectified by sanding and brooming, which would only be a temporary and partial solution.
10. LQ and QQ are entitled to be put in the same position as if the contract had been performed properly, and I accept that this will require the turf to be removed and new turf laid. [Turf Provider] has quoted \$5,325.07 for the cost of supply and installation. It is necessary to deduct from this cost the unpaid balance \$4,050.00 owing to T Ltd, else LQ and QQ would receive the equivalent of performance without paying the contract price for it. The sum payable by T Ltd in damages is therefore \$1,275.07.

**Referee: E Paton-Simpson**

**Date: 30 November 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>.