



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1358

APPLICANT **MG**

RESPONDENT **DI & Limited**

APPLICANT'S **WJ New Zealand Limited**
INSURER
(if applicable)

The Tribunal orders:

DI Limited is to pay \$5661.64 (being \$400.00 uninsured losses and \$5261.64 insured losses) to WJ New Zealand Ltd on or before 5 February 2021.

NB. This claim includes insured and uninsured losses which had been incorrectly set up administratively by the Tribunal as two separate claims – I have merged the two files.

Reasons

1. DI Limited ('DIL') installed a heat pump system at MG's house (with the external unit at second storey level above the garage roof) in January 2019.
2. In August 2020 the external unit fell onto the garage roof and was re-secured onto a stud by MG's neighbour after she was unable to get hold of DIL. The fall caused damage to the unit itself as well as the house and the garage roof.
3. MG contacted DIL to inspect the unit, and while DIL initially declined to get involved, it did then agree to do so, but failed to attend the property. MG then involved her insurance company - the unit was replaced and the necessary repairs were carried out.
4. Vero claims \$5661.64 (including MG's excess of \$400). MG claims further losses (unrelated to the external unit falling), being the cost of the condensation pump which she says had leaked frequently since installation despite to visits by DIL to remedy the problem. She claims a further \$595.00 in relation to that issue.
5. DIL did not attend the hearing – the absence of a party does not prevent a hearing from proceeding or an order from being made.
6. The issues to determine are:
 - Did DIL provide its installation service with respect to the external unit with reasonable care and skill?

- If not, what remedy is available to MG?
- Was the condensation pump provided by DIL of acceptable quality, and if not, is there a remedy available to MG?

Did DIL provide its installation service with respect to the external unit with reasonable care and skill?

7. The Consumer Guarantees Act 1993 ('CGA') provides statutory guarantees to consumers, the relevant guarantee in this case being that a supplier will carry out its services with reasonable care and skill (section 28, CGA).
8. WJ engaged two companies to provide services with respect to the fallen unit, both of which have reported that the external unit was sitting on a bracket which was attached to the second-storey cladding only, rather than affixed to a stud. Photographic evidence was provided that shows the original fixing points lined up with a horizontal crack in the cladding extending beyond the length of the bracket.
9. I find that the failure to securely attach the unit/brackets to the house in its position on a second-storey wall was a failure of the guarantee of reasonable care and skill on the part of DIL.

What remedy is available to MG/WJ?

10. The relevant CGA remedy in these circumstances is at section 32(c) of the CGA because the damage to the external unit itself and the damage to the building were both reasonably foreseeable as liable to result from the insecurely attached bracket/unit.
11. WJ's supplier invoices give a breakdown of what repair work was required to the house and the cost of that (\$2,875.29) as well as the costs to replace the unit (\$2398.00), which was deemed uneconomic to repair by WJ's supplier as a result of the impact damage sustained to it. I note that MG had given DIL the opportunity to inspect/repair the unit but they initially declined to do so, then failed to arrive once they had agreed to have a look at the problem.
12. The total losses as a result of the external unit falling are \$5661.64 and DIL is liable to pay that amount.

Was the condensation pump provided by DIL of acceptable quality, and if not, is there a remedy available to MG?

13. MG describes frequent and continual leaking from the condensation pump, attached to the heat pump inside the house, despite two repairs to it undertaken by DIL. She claims \$595.00 being a refund on the price paid originally for this part when the system was installed by DIL in January 2019.
14. However even if the condensation pump were not of acceptable quality, MG is unable to reject the pump under the CGA provisions as she is unable to return it to DIL, it having been disposed of with the rest of the system as a result of the later falling event. In addition, because of the remedy of replacement made necessary by the falling event, she has a new working heat pump system (albeit, one which, due to a change in location, does not need/include a condensation pump) so there is effectively no further loss as a result of any failure of guarantee of acceptable quality.
15. For these reasons, that \$595.00 part of the claim does not succeed.

Referee:
Date: 15 January 2021



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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.