



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

District Court

[2021] NZDT 1498

**APPLICANT** NB

**RESPONDENT** UJ Ltd

**The Tribunal orders:**

UJ Ltd is to pay NB the sum of \$1,687.50 on or before 14 May 2021.

**Reasons:**

1. In April 2019 UJ Ltd were carrying out work on the footpath outside NB's car yard in [Redacted]. In mid-April UJ LTD was pouring concrete and some splashed onto one of the cars he had parked inside his yard. UJ LTD has paid the sum of \$562.50 towards the cost of repairing the paintwork.
2. NB claims the sum of \$9,420.00 for the cost of repairing the paint work on the car, depreciation for car, and the Tribunal filing fee.
3. The issues to be determined are as follows:
  - a. Was UJ LTD negligent in pouring the concrete so that it splashed into an adjacent property?
  - b. Was NB contributorily negligent by not protecting his car within his property?
  - c. Are the costs claimed reasonable to put NB back in the position he would have been had the damage not occurred?

**Was UJ LTD negligent in pouring the concrete so that it splashed into an adjacent property?**

4. Under the law of negligence trades people owe a duty of care to the occupiers of properties neighbouring the area in which they are working. That duty requires them to take reasonable care to avoid damaging neighbouring properties and goods on those properties whilst carrying out their work.
5. UJ LTD maintains that it is not responsible for the damage to NB's car as it could not prevent the concrete from splashing. At the hearing Mr S, UJ LTD's Health and Safety Manager, explained that UJ LTD does not prepare the concrete and must use the concrete mix that its clients (Auckland Transport and Fulton Hogan) specify. He said it is reasonable to expect some splashing between 3 and 5 meters from the work.

6. I do not accept the argument that such splashing is a normal occurrence and therefore not UJ LTD's responsibility. I note that only one of several cars parked in the yard was splashed, and while Mr S pointed out that NB had a banner on the fence which may have protected the other cars, it does not cover all or even a significant part of the fence, so if splashing commonly spread 3-5 meters it would be expected that other cars would be affected. Further, if UJ LTD were aware of the potential for concrete to splash into neighbouring properties it could have taken steps to reduce the likelihood of damage, for example putting up protective barriers.
7. For these reasons I find that UJ LTD was negligent in pouring the concrete in a manner that allowed it to splash a car inside NB's property.

**Was NB contributorily negligent by not protecting his car within his property?**

8. The Contributory Negligence Act 1947 provides that, if a person suffers damage as the result partly of their own fault and partly of fault of another person, damages can be reduced to reflect the shared responsibility for the damage.
9. At the hearing Mr S argued that NB was aware that there were works taking place on the road and had not made a reasonable effort to protect his assets. Mr S pointed out that there were two flyers sent to property owners by Fulton Hogan and Auckland Transport informing them of the work. He also argued that it is common knowledge and NB ought to have been aware that concrete pouring could cause harm, and taken steps to keep his business assets safe.
10. The flyers inform residents that work on the footpath will be carried out, and warn of noise, vibration and dust. One flyer requests that cars are parked "inside your property" as street parking will not be available during work times. The other informs residents that driveway access will be affected when concrete is poured for vehicle crossings, and asks that cars are moved out of driveways and that the concrete is not driven over for 48 hours. Neither of the flyers address the issue of concrete splashing or asks residents to take any steps to move or protect items within their properties.
11. I do not accept the argument that it is common knowledge that concrete would splash a number of meters from a worksite. NB pointed out that there is approximately 6 feet between the footpath and his fence and the cars were within his property. No evidence indicating that NB should have known concrete would go beyond his fence was presented.
12. For these reasons I find that NB could not be reasonably expected to know that his property was likely to be damaged, and therefore was not contributorily negligent by continuing to park cars on his property throughout the period the works were undertaken.

**Are the costs claimed reasonable to put NB back in the position he would have been had the damage not occurred?**

13. If a person damages another person's property as a result of their negligence, they must pay the reasonable cost of putting the other person back in the position they would have been had the damage not occurred.
14. There were small concrete splashes over most of the left-hand side of the car. Mr Alfridi paid \$2,250.00 to have the concrete removed and the paintwork repaired. This cost was not disputed at the hearing, and I accept that it is reasonable, given the area of the car that was affected.
15. The car was in the yard as it was for sale. However, NB did not continue to try to sell it, as he was talking to UJ LTD about remedying or paying for the damage. Their communications went on for some time, and it was approximately 19 months before he had the paintwork repaired. NB estimates that in this time the car depreciated by \$6,990.00, so claims this amount in addition to the repair costs.

16. There is an obligation on parties to mitigate their losses. NB was not obliged to continue communications with UJ LTD for that length of time. He could have had the repair done, and/or filed in the Tribunal earlier, and avoided such depreciation. For these reasons do not consider that the depreciation claimed is reasonable.
17. The amount NB claimed included the Tribunal filing fee. The Tribunal does not have jurisdiction to award costs, including the filing fee in these circumstances (s43 Disputes Tribunal Act 1988).
18. NB also requested a letter of apology for the stress and inconvenience he suffered. The Tribunal does not have jurisdiction to order such an apology.

### **Conclusion**

19. For these reasons UJ LTD is to pay NB the sum of \$1,687.50, being \$2,250.00 less the \$562.50 already paid, by the date stated in the order.

**Referee: K Rendall**

**Date: 23 April 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 20 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 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 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>.