



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1348

APPLICANT NC

RESPONDENT MD

The Tribunal orders:

MD is to pay \$665.00 to NC on or before 2 April 2021.

Reasons

1. In September 2020 MD approached the neighbour of her tenanted property, NC, to consult him about shrubs/planting that she wished to have removed from a garden that straddles the boundary between the properties. There is no fence or other marker to delineate where in the garden the boundary lies.
2. However NC says the planting MD indicated was all on her side of the garden and he had no objection to the proposed work. He later gave consent by text for her contractors to access the garden from his driveway.
3. The following day MD's contractors, while carrying out the work, removed a mature loquat tree from NC's property before being sent from the site by NC's daughter, who was home at the time.
4. NC claims \$1500.00 compensation for the tree, which he said produced copious amounts of fruit each year with some distributed to the wider family and some preserved.
5. The issues to determine are:
 - Was MD negligent in the instructions and/or supervision given to her contractors?
 - What amount of compensation would restore NC to the position he was in prior to the tree being removed?

Was MD negligent in the instructions and/or supervision given to her contractors?

6. MD says that she pointed out trees to be removed generally to NC during their initial conversation (though does not claim that he gave specific permission for the loquat tree to be removed), something he strongly denies, saying he understood and agreed only to trimming on her property. She says "it could possibly have been a surprise to her" that the loquat tree was removed by her contractors.
7. I find, on the balance of probabilities and from the limited information available, that MD, at the least, gave inadequate instructions and supervision to her contractors and that this amounts to negligence. She is therefore liable in negligence for the reasonable costs of putting NC back into the position he was in with respect to the tree prior to the negligence.

What amount of compensation would restore NC to the position he was in prior to the tree being removed?

8. NC has not provided any evidence as to the availability and/or cost of a replacement mature loquat tree. MD provided price evidence for much younger trees, the clearest cost related to age being \$65.00 for a 3 year old tree. Information sought online at the hearing indicated that loquats have a 6-8 year juvenile period before fruiting, and NC says his 3.5m tree had been fruiting well for the entire 2.5 years he had lived at his property. I infer from this information that NC's tree was at least 10 years old.
9. Based on the above, and the lack of information about availability and cost of transplanting a larger tree onto NC's property (which, if possible, are likely to be significant), the best way to restore NC's tree is to allow purchase of a young tree, at \$65.00, and provide compensation for the value of fruit that he will not be harvesting from his new young tree for some time. Allowing for an 8-year period before fruiting, it is 5 years until a 3 year old tree will bear fruit, and I award compensation at the rate of \$100 per year, or \$500.00 for the 'non-fruiting' period. Given that NC's tree was at least 10 years old and fruiting more copiously than a newly fruiting tree, I award a further 2 year's worth of fruit at \$50.00 per year, or \$100.00 for the 'newly-fruiting' period. MD is therefore liable to pay \$665.00 to NC.

Referee:

Date: 12 March 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>.