



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

**District Court**

**[2023] NZDT 396**

**APPLICANT**      **NH Ltd**

**RESPONDENT**    **OZ Ltd**

**The Tribunal orders:**

1. OZ Ltd must pay NH Ltd \$28,437.56 by 4pm on 30 August 2023.
2. OZ Ltd's counterclaim against NH Ltd is dismissed.

**Reasons:**

1. The applicant provided weekly garden and ground maintenance services to the respondent for a property at [address]. The contract was terminated by the respondent on 5 April 2023 and at this time four invoices remaining outstanding which total amount of \$28,437.56. The applicant claims \$28,437.56 from the respondent.
2. The respondent filed a counterclaim for \$30,000.00 (reduced to meet the Tribunal's jurisdictional limits) for costs it incurred for garden maintenance and planting after it terminated the applicant's contract.
3. The issues to be determined were as follows:
  - (a) Was there an enforceable contract between the parties? What work was the applicant required to do?
  - (b) Did the applicant provide its services with reasonable care and skill?
  - (c) Has the respondent breached any of the terms of that contract?
  - (d) If the respondent has breached the contract, what is the appropriate remedy?
  - (e) If the applicant has not provided its services with reasonable care and skill, what is the appropriate remedy?
4. Any applicant (or respondent in the case of a counterclaim) to the Tribunal has the task of establishing the legal and factual elements of its claim to the required standard. That standard is the balance of probabilities which means that it is more likely than not. When assessing whether the onus of proof has been discharged by a party I need to consider and evaluate the evidence presented to the Tribunal by the parties. I would like to reassure the parties that all evidence presented to the Tribunal has been considered, but this order only refers to essential evidence material to the issues and is not intended to be a full record of the hearings or evidence presented.

**Was there an enforceable contract between the parties? What work was the applicant required to do?**

5. For a contract to be enforceable between parties, they need not be in writing, however all of the terms of that contract need to be clear and certain.
6. I accept the evidence provided at today's hearing showing that the applicant had provided weekly garden and ground maintenance services to the respondent since February 2022. The work done by the applicant would be dependent on the season, with more work being done when there was more growth, for example. The applicant told the Tribunal that it was also required to trim the hedges which it did, on average, twice a year, and after the storms in January, remove a tree which had become uprooted and was leaning over towards the neighbour's property.
7. The applicant had invoiced the respondent monthly and each invoice required payment within 7 days of the date of each invoice. From September 2022 the applicant began to invoice the respondent fortnightly. The applicant had accepted late payment on a number of the respondent's invoices.
8. Mr M for the respondent said that he had not received the applicant's standard terms and conditions. However, as the applicant did not seek to rely on any of the provisions of those terms and conditions, such as the requirement to pay interest on late payments, I do not find that this was relevant to this matter.
9. On this evidence I find that was an enforceable contract between the parties as there were services provided and consideration paid for those services. This resulted in a course of dealing which was accepted by both parties until April 2023.

**Did the applicant provide her services with reasonable care and skill?**

10. The Consumer Guarantees Act 1993 (CGA) provides guarantees to consumers who obtain services from a person who is in the business of providing that service. Section 28 of the 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. I accept that the services provided by the applicant are services of a kind ordinarily acquired for personal, domestic, or household use or consumption.
11. Mr M for the respondent had told the applicant that he was of the view that the applicant had not provided its services with due care and skill and that as a result the value of the property had been diminished, and it had to take on other service providers to remediate the work done by the applicant.
12. However, on the evidence provided, I do not find that the applicant failed to provide its services with reasonable care and skill. I say this because:
  - a. On the basis of the evidence provided by both parties, I find that it is more likely than not the work done by the applicant appeared to be done to a reasonable, if not high, standard taking into account the recent high rainfall and storms in [city]. I have made this finding based on the photographs provided by both parties and the other evidence as set out in this paragraph 12.
  - b. The respondent said that the tenants who vacated the property in June 2022 had made several complaints about the quality of the garden maintenance. However, the applicant said that no complaints were passed on to it. The respondent was also unable to provide any documentary evidence of complaints or what the applicant was asked to do to remediate any issues. The respondent told the Tribunal that the property was newly tenanted in January 2023 and that it was not aware that this tenant made any complaints but was not certain.

- c. The respondent told the Tribunal that the owner of the property had visited the property in February 2023 and was unhappy with the state of the garden maintenance. However, the applicant said that no complaints were passed on to it after this visit. The respondent was also unable to provide any documentary evidence of complaints or what the applicant was asked to do to remediate any issues. I also note that the owner of the property visited just after the [city] floods at the end of January. Therefore, it is reasonable to assume that it is more likely than not that the garden would not have been at its best given the damage done throughout the region.
- d. The respondent provided invoices to evidence that extra work that it claimed had to be done over and above weekly maintenance due to the failure of the applicant to provide its services with reasonable care and skill. However, after reviewing these invoices I find that it was more likely than not that these invoices were either for regular maintenance or for more intensive services such as hedge trimming and clearance which appeared to have been done at least two months after the applicant's contract was terminated. Therefore, I find it difficult to infer from these invoices that the work evidenced by these invoices was for work that was for any more than routine work that had previously done.
- e. On the evidence provided, I do not find that it is more likely than not that the new planting plan which has been proposed by the respondent's new gardeners was needed as a result of the failure of the applicant to provide its services with reasonable care and skill.

**Did the respondent breach any of the terms of that contract?**

13. At today's hearing I considered the invoices that had been rendered to the respondent and the payments made as per the statement for the period from 1 February 2023 to 31 March 2023. I am satisfied that taking into account the invoices and payments made, an amount of \$28,437.56 remains outstanding. The respondent's failure to pay invoices within 7 days is a breach of the terms of the contract.

**If the respondent has breached the contract, what is the appropriate remedy?**

14. The remedy for a breach of contract is for the breaching party to put the other party into the position they would have been in had the contract been performed. In this case, that means that the respondent is obliged to pay the applicant's outstanding invoices – that is, a total of \$28,437.56.

**If the applicant has not provided its services with reasonable care and skill, what is the appropriate remedy?**

15. Given that I have found that the applicant provided its services with reasonable care and skill there is no need for me to consider this issue.

16. However, even if the applicant had not provided its services with reasonable care and skill, section 32 of the CGA requires that the service provider be given an opportunity to remedy any issues unless the issues cannot be remedied, or the failure is of substantial character. As set out above, there was no evidence provided to the Tribunal that any issues were raised by the respondent with the applicant prior to termination of the contract or that the applicant had been given any opportunity to remediate any issues that the respondent had. The evidence also shows that if there were issues, they were not of substantial character.

17. For this reason, I must dismiss the respondent's counterclaim.

18. In summary, the respondent must pay the applicant \$28,437.56.

**Referee: K. Armstrong**  
**Date: 9 August 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>.