



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 577

APPLICANT NI

RESPONDENT QQ Ltd

The Tribunal orders:

QQ Ltd is to pay \$873.83 to NI by the 18th December 2023.

Reasons

1. In January 2021 NI and [his wife] entered into a contract with QQ Ltd in the form of an Agreement for Sale and Purchase to buy a section and a building contract for a completed building on the land. The contract provided for a completion date to be "16-20 weeks after the floor is laid." Settlement was to be upon the issuing of a CCC.
2. The floor was not laid until around 17 July 2021 making for a completion date of 17 December 2021 however, the CCC was not issued until 19 January 2023 making for a delay of 58 weeks for the completion date.
3. NI claims for damages due to the inordinate delay being for rental during the additional time, storage costs for a bath and tiling costs because concreting work had not been completed for the tiler to start.
4. Mr X, the owner of QQ Ltd responds that the delays were due to factors outside his control, the bath needed to be stored because NI had ordered it too early and the tiling costs were due to delays in the tiler getting on to the job promptly.
5. The issues to be decided then are whether the delay in completing the work was due to factors outside Mr X's control or not, and, if so, what amount should be paid, whether the storage costs were due to Mr X's delay and whether the tiling delays were due to Mr X's fault.

Findings

Delay

6. I find QQ Ltd is not liable for damages to NI for delay.
7. Factors outside the control of the builder

8. Firstly, NI alleges Mr X deliberately delayed NI's build so he would cancel the contract and Mr X would be able to re-sell the property at a higher price on a rising market. He alleges some unnamed person made this allegation to him.
9. I must disregard this allegation in its entirety because all evidence must be backed up with either documents or oral testimony. If the person making the allegation is not prepared to put their name to it and appear in the hearing to answer questions then the evidence must be disregarded and should never have been raised by NI in the first place.
10. NI has produced statistics obtained from the Council that show that, on average, builders in the region were obtaining CCCs for their work on average 12 months after consent being issued during the time in which his building was being constructed. In analysing those statistics, they certainly show that nine other builders were able to complete their projects in a twelve month time frame. While I assume that NI has obtained and presented this evidence of unreasonable delay on Mr X's part, there is no evidence those projects were comparable in scope to NI's.
11. Mr X has presented evidence of delays in obtaining gib-board for the project and delays with the roofing iron and window joinery. Shortages of building materials and delays to building projects were well canvassed in the press at the time. Consequently, I find much of the delay was due to the unusual market conditions pertaining at the time. NI submits Mr X should have been better prepared for the shortages and ordered materials earlier to ensure he was not caught but I agree with Mr X's submissions that these were most unusual times which he had no previous experience of.
12. However, I do agree with NI that the delay was inordinate in that 58 weeks is a long delay when a typical build of a standard residence should, in my experience, take no longer than 6 months. However, I am reluctant to place a figure on how much of the delay was unreasonable and how much was unavoidable when all I have to go on is a comparison with nine other builds of unknown scope.

Damages for delay

13. I find that NI is not entitled to damages for delay.
14. NI has not presented evidence that he was ready to settle 20 weeks after the laying of the floor. If he were to be entitled to damages he would have to provide evidence that he was ready to settle the purchase. In the case of vendor delay to the settlement of a real estate sale, the purchaser makes a formal offer to settle through his lawyer where by the lawyer undertakes he or she has the client's funds in hand and all finance ready to uplift upon title being available. In this case there is no evidence of that being the case.
15. NI's claim for extra rental does not allow for a set-off of the rent that was being paid against the interest that would have had to be paid to the bank after settlement. We do not know then whether the interest might have exceeded the rental being paid.
16. NI also claims for having to pay a higher interest rate on his loan due to the delay in settlement. However, that is not a reasonably foreseeable consequence of the delay and is speculative. It could well have been the case, for instance, that the delay would have resulted in a lower interest rate being charged.
17. NI then is not entitled to damages because he has not provided evidence he was ready to settle on the date he claims settlement should have been effected and has not provided a basis upon which to accurately assess a reasonably foreseeable loss.

Storage

18. NI claims he was charged storage costs of \$600 by QQ Ltd for the storage of product that had been ordered but could not be used due to the delays. However, again, how much of this delay was due to Mr X's fault or to factors outside his control cannot be fairly estimated.

Tiling

19. I find the delay was due to Mr X's fault.

20. Mr X blames the increase in tiling costs on delay, but NI has produced evidence that the delay was caused by the concreting of the shower bases not having been completed in time for the tiler to do the work which a consequent increase in costs resulting. I find this to be the case and that QQ Ltd should pay the difference of \$873.83.

Referee: G R Meyer

Date: 26th 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 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>.