



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 579

APPLICANT **NW and NG**

RESPONDENT **TM Ltd**

The Tribunal orders:

TM Ltd is to pay \$7500.00 to NW and NG on or before 14 December 2023.

Reasons

1. NW and NG contracted TM Ltd to provide concreting services in the form of a new concrete driveway covering 123sqm. A price of \$21,975.00 was agreed and this included replacement of a section of the shared driveway. The contract price was paid in full by completion of the job.
2. The job took 20 days rather than the 4 days stated at the beginning. A section of the shared driveway was also driven on by a concrete truck and cracked. The full replacement driveway was to be carried out in a single pour, but due to a delay with one of the concrete trucks, it was poured at different times resulting in a compromised finish in the area where the different pours meet. The surface of the driveway has extensive patchy areas and the applicants says that Gap 20 was not laid to the depth discussed at the outset.
3. NW and NG claim \$5000.00 in compensation for the compromised quality of the finished driveway, \$2500.00 for the damage to the shared driveway, \$1000.00 for mental damage and \$512.00 for lost income/time spent preparing for the hearing.
4. The representative for TM Ltd did not answer the phone at the beginning of the hearing today (three attempts were made to reach him) so the hearing proceeded in TM Ltd's absence.
5. The issues to be determined are:
 - Did TM Ltd provide its services with reasonable care and skill and was the product of the service fit for purpose?
 - What remedy is available to the applicants?

Did TM Ltd provide its services with reasonable care and skill and was the product of the service fit for purpose?

6. The Consumer Guarantees Act 1993 ('CGA') provides statutory guarantees to consumers, the relevant guarantees in this case being that a supplier will carry out its services with reasonable care and skill and that the product resulting from a service will be fit for purpose (sections 28 and 29, CGA).

7. I find that TM Ltd has not provided its service with reasonable care and skill and the resulting product is not fit for purpose because a proper joint was not installed (or other appropriate method used) when the job could not be completed in one pour and because the surface finish across extensive parts of the driveway is not adequate. Further, part of the shared driveway area was cracked when the respondents gave access across it to a concrete truck instead of pumping the concrete the entire way.
8. The applicants have provided extensive photographs that show the poor quality joint and surface finish, with these issues affecting much of the new driveway. While the delay to one of the concrete trucks was likely outside TM Ltd's control, their response to that situation was inadequate – a solution that resulted in a proper joint where the older concrete met the newer concrete needed to be used because what was done is not fit for purpose.
9. The applicants have provided evidence in the form of correspondence with TM Ltd in which liability for the broken shared driveway is impliedly acknowledged when TM Ltd offers to repair it if the applicants pay the material costs. I find that the applicants are not liable to pay the material costs – they have established via photographs that TM Ltd should have been aware that the area in question was not fit for a concrete truck to drive on, which is why pumping of the concrete had been discussed and agreed.

What remedy is available to the applicants?

10. Section 32 of the CGA provides that the consumer may obtain a reduction in value where a failure cannot be remedied and I find that this is the appropriate remedy for the quality issues with the driveway. I find that the amount of \$5000.00, being just under 25% of the contract price, is an appropriate amount to compensate for the poor joint and surface issues given the extensive area affected.
11. Further, because the cracked section of shared driveway is relatively small, it is appropriate for a repair to be carried out and I accept the figure the applicants obtained verbally from another contractor of \$2500.00 for that purpose.
12. Compensation for stress is not awarded unless there are extraordinary circumstances, which is not the case here. Section 43 of the Disputes Tribunal Act 1988 does not allow costs of the kind claimed by NG (for unpaid leave) to be awarded so the total amount TM Ltd is liable to pay to the applicants is \$7500.00.

Referee Perfect
Date: 16 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>.