



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 169

APPLICANT OT

APPLICANT US

RESPONDENT N Ltd

RESPONDENT R Ltd
INSURER
(if applicable)

The Tribunal orders:

The claim by OT and US against N Ltd is dismissed.

Reasons

1. OT drove a [vehicle] into the parking area which is part of N Ltd's business. OT and US now bring a claim against N Ltd for \$3,731.23.
2. The issues to be resolved are:
 - (a) Did N Ltd breach their duty of care to look after the car?
 - (b) If not, did N Ltd provide its services with reasonable care and skill?
 - (c) If not what is the remedy?

Did N LTD breach their duty of care to look after the car?

3. Background: OT who is named as one of the applicants, drove US' car and parked the car in the yard belonging to N Ltd. The car was subsequently moved to a different position at the fence line which is boarded by tall pine trees. The car was not picked up until after Cyclone

Gabriel had crossed New Zealand causing wide spread destruction. During that time a pine cone or part of a tree fell on US' car and cracked the windscreen requiring a replacement.

4. OT attended the hearing on behalf of US who is currently overseas. OT said that US was unable to take his car to N Ltd and asked OT to do it for him.
5. OT said that he was aware that there were two signs at N Ltd's business stating the following: "PARK AT YOUR OWN RISK Not Responsible for theft or damage to vehicles".
6. OT said that although he was aware of the signage US who owns the car was not.
7. OT submitted that signage can not protect the business from responsibility. He said the Consumer Guarantees Act 1993(CGA) does not mention signage which he said in summary meant that the CGA applies and the signs are of no importance.
8. OT said that R Ltd should be covering a claim by N Ltd.
9. OT said that he left the car parked near the door and the last person who moved the car was responsible for its care and therefore responsible for its damage. OT said that because a staff member of N Ltd moved the car to repark in another position in the yard then ultimately N Ltd is responsible.
10. I am not satisfied that OT and US have proved that N Ltd breached a duty of care to look after the car for the following reasons.
11. I am satisfied after hearing from OT and reading the submission by US that when OT took the car to N Ltd premises, OT was in fact acting as US' agent. OT was aware of the signs referred to above. I do not accept OT's argument that because US did not see the signs, then effectively the signs have no authority.
12. Further, although OT said that he left the car parked in the yard by the door, it is a reasonable expectation that because N Ltd is running a business with a small yard, the car was going to be re parked in a position that would be most advantageous to the coming and going of the business.
13. I am satisfied that OT left the car in the yard despite the warning signs, knowing that it was likely that the car would be re positioned.
14. I am also satisfied that there was an extreme weather situation that caused the pine cone or part of a tree to damage the windscreen. I am satisfied that in all the circumstances OT and US have not proved that it is more likely than not that N Ltd breached its duty of care in re parking the car. I am satisfied that the signs were adequate an warned OT who was acting in an agency capacity when he dropped the car off.

If not, did N Ltd provide its services with reasonable care and skill?

15. The Consumer Guarantees Act 1993 (CGA) provides guarantees to consumers who obtain services from a person in trade. 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.
16. OT submitted that the CGA applies and that because N Ltd moved the car from the position he left it in, then N Ltd put the car in danger and did not look after it as they should have done while it was in their care.
17. I am satisfied that N Ltd did provide its services with reasonable care and skill.

18. I take into account that N Ltd made it very clear that the cars were parked at the owner's risk. Further, I take into account US' submissions that M told him on the 31st of January, that the car needed a light and would take four weeks so US should collect the car.
19. I note that US did not return to the premises until 11 February and for reasons unknown did not pick up the car. I accept that he may not have had a spare key.
20. Further, I take into account that the CGA refers to "reasonable care and skill".
21. I am satisfied that it was reasonable for N Ltd to warn OT through its signage that he was aware of, and that N Ltd also recommended that US pick up his car which he did not do so.
22. Further, I accept that even if the issue before me revolved around US' visit to the site on 11 February 2023, the sign was prominent enough for him to see on the closed door.
23. Further, I take into account that Section 33 of the CGA provides that there shall be no right of redress against a supplier because of a cause independent of human control.
24. I accept that the cyclone Gabriel was an extreme weather event and a "a cause independent of human control".
25. For these reasons I am satisfied that US and OT have not been able to prove that it is more likely than not that N Ltd breached the guarantees outlined above.
26. For these reasons the claim by US and OT is dismissed.

Referee: K Johnson
Date: 08 June 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>.