



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1368

APPLICANT **OX**
(respondent in
counterclaim)

RESPONDENT **ST**
(applicant in
counterclaim)

The Tribunal orders:

Both claims are struck out.

Reasons

1. The Tribunal does not have jurisdiction to hear the claims.
2. The parties share a driveway. OX says the driveway requires urgent maintenance and repair work and is seeking half the cost of a quote he obtained. ST disputes the work that OX says was required. Both parties engaged lawyers. ST counterclaimed for his lawyer's fees, interest of the fees and a loan he took out for the driveway resolution and administration fees for time, calls, emails and the like.
3. At the last hearing I mentioned that jurisdiction will be considered at the next hearing. The issue therefore at today's hearing is to determine whether the Tribunal has jurisdiction to hear and determine the claims.
4. OX did not attend the hearing today. Hearings and proceed and be determined in the absence of a party. I have however received the letter from his lawyers dated 18 August (addressed to the Tribunal) which I have considered.

Does the Tribunal have jurisdiction to hear the claim?

5. The provisions in the Property Law Act 2007 ("PLA") relating to enforcement of easements and positive and restrictive covenants apply. There is an easement relating to the shared driveway which was created by an Easement Instrument dated 26 June 2008 (easement). Clause 2 of Schedule 5 of the PLA sets out provisions relating to the right to establish and maintain a driveway. These provisions include (and are implied as a provisions of the easement):

- a. The right to carry out necessary repairs to a driveway and to carry out necessary maintenance and upkeep.
 - b. The right to a reasonable contribution towards the cost of maintenance, upkeep and repair of the driveway.
6. Under the PLA the court may enforce easements and positive or restrictive covenants. Section 313 of the PLA says in part:
- (1) In determining a question or dispute concerning the existence or effect of an easement, positive covenant, or restrictive covenant, a court may make an order, on any conditions the court thinks fit, concerning all or any of the following matters:
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- b) the enforceability of an easement, positive covenant, or restrictive covenant by or against any person, and whether under this Act or otherwise:
 - (c) the question whether any work is work required to be done under the terms of an easement, positive covenant, or restrictive covenant (**required work**) and, if so, the nature and extent of any required work at the time in question:
 - (d) the reasonable and proper cost of any required work, including interest on outlay, expenses of survey, and reasonable remuneration for the superintendence or work of a person entitled or person bound who is or has been personally engaged on that work:
 - (e) the person or persons by whom the cost of any required work is to be borne and, if the cost is to be shared among 2 or more persons, the shares to be borne by each of them:
 - (f) the time at or before which, and the manner in which, any required work is to be undertaken:
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- (h) any other matters arising in relation to a question or dispute concerning the existence or effect of an easement, positive covenant, or restrictive covenant.
7. Under section 362(1)(a) of the PLA the District Court has jurisdiction to hear and determine a matter, or to make an order, in relation to a question or dispute concerning the existence or effect of the easement, so far as it can be resolved by the making of an order under section 313.
8. Accordingly, this Tribunal has no jurisdiction to hear and determine OX's claim.
9. I am also striking out ST costs claim as such costs relate to the easement dispute (section 313(1)(h) of the PLA – see above). In any event even assuming the Tribunal had jurisdiction the Tribunal cannot award such costs (s43 of the Disputes Tribunal Act 1988).

Conclusion

10. For the reasons above both claims are struck out.

Referee: Ms G Jaduram
Date: 8 September 2020



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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.