



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1337

APPLICANT QN Limited

RESPONDENT SL

The Tribunal hereby orders:

The claim is dismissed.

Reasons

1. QN Limited (Q) acted for Mr L seeking to obtain improved compensation from EQC following damage to the property owned by Mr L. Mr L obtained further compensation from EQC of \$120,000. Q says \$3,200 of that sum represents legal costs that Mr L should pay on to Q. Q has also requested its filing fee for this claim, however this is a cost in a claim which is not available in the circumstances given section 43 of the Disputes Tribunal Act 1988 and that part of the claim is dismissed.

2. In relation to the balance of the claim for \$3,200 the issues I need to decide are:

- a. Did Mr L have a contractual obligation to repay Q any legal fees?
- b. If not, has Mr L obtained a payment of legal fees for which it would be unjust to retain?

Did Mr L have a contractual obligation to repay Q any legal fees?

3. Parties to a contract need to perform their respective obligations. If they do not they will be in breach of the contract and required to compensate the innocent party for foreseeable losses caused.

4. Q has explained that it was an implied term of the contract with Mr L that he would repay any legal costs.

5. I am not satisfied such a term can be implied between the parties. This is because the evidence of the negotiations that took place after Mr L sought to cancel Q's contract when it was no longer allowed to represent claimants in court, do not support such a term. For example, Mr L's email of 25 September 2017 states, among other things, "...the costs of running any litigation necessary will be met by us as per Mr K's letter..." and "...save that we will meet the costs of any hearing against EQC having to be run by a lawyer...". I consider an implied term of repayment would be contrary to these express statements which were made after Mr L had been clear he would not agree to pay any legal costs. I do not consider Q has a contractual right to the \$3,200 claimed.

If not, has Mr L obtained a payment of legal fees for which it would be unjust to retain?

6. The Tribunal has jurisdiction in relation to quasi-contract, which is recognised as including situations where it would be unjust to allow a party to retain a benefit at another party's expense.

7. There is no evidence before me that EQC provided an apportionment setting out *exactly* what the \$120,000 sum was comprised of. It was a global figure intended to cover the full and final settlement of the matters referred to in the settlement agreement. Q has explained that EQC has a legal obligation to pay legal fees and disbursements but that does not appear to be set out in the Earthquake Commission Act. I accept it is likely that as a matter of practice and as a part of any negotiation between the parties to ensure settlement is full and final, the negotiated sum would include an aspect of legal fees incurred by the claimant.

8. Whilst I understand Q contends the best explanation for the sum of \$120,000 is that it represents \$93,028.95 for damage (on EQC's calculations), \$23,049.87 for Mr L's various expert reports and the remaining \$3,921.18 being towards the \$3,200 Q now claims, on balance I am not satisfied it is more likely than not the settlement figure includes a payment of legal fees which would be unjust for Mr L to retain and which should be awarded to Q. I say this for the following reasons:

a. Q has not provided any document from EQC confirming this is the breakdown. The references by Q in emails to Mr L suggesting EQC's "Settlement Recommendation calculations" include a reimbursement of scale legal fees (8 November 2019) and that there was confirmation EQC "have paid you \$3000 for legal fess and \$200 for filing fees" (21 November 2019) are not supported by any external confirmation or communication from EQC stating that or agreeing to that apportionment.

b. It appears clear that Q and Mr L had agreed litigation costs would be met by Q as set out in the emails referred to above in paragraph 5. Mr L therefore had no litigation costs to claim from EQC and it does not appear Q had explained that was the agreement to EQC when it referred to a claim for scale costs. I accept Mr L did not appreciate what 'scale costs' meant. If EQC has mistakenly paid Mr L legal fees it had understood he had incurred, that does not mean Mr L is entitled to the money, but it does not support the money being transferred by an order of this Tribunal to Q.

c. An alternative explanation for the sum of \$120,000 is that it represents \$96,084.80 for damage (on Mr L's expert's calculations), \$23,049.87 for the expert reports with the balance of \$865.33 to provide a rounded sum.

9. For these reasons, and in the absence of an express explanation or breakdown from EQC confirming whether it has paid \$3,200 for legal costs incurred by Q, I am not satisfied Q is entitled to the amount sought and I dismiss the claim.

Referee: J Costigan

Date: 5 March 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>.