



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 462**

**APPLICANT      SX**

**RESPONDENT      A Ltd**

**The Tribunal orders:**

The claim is dismissed.

**Reasons**

1. SX had a new house built by [Company 1] trading as “HI” in 2004/2005. [Company 1] was removed from the Companies Register in 2011 and [Company 2] had been trading as HI for some time.
2. A Ltd, which had the same director as the original [Company 1], was incorporated in 2007 and eventually took over the HI business.
3. In 2015 all three basins in SX’s house developed hairline cracks and SX contacted HI which was now run by A Ltd. A Ltd said it had no liability for homes built by previous companies under the trading name, but in an effort to assist SX, one of their staff members made a phone call to [building supplier] who had originally supplied the basin to see if they could assist SX.
4. LM says A Ltd had no more involvement and he does not know what happened after that. SX says he received replacement basins and they were fitted by his installer, [Plumbing company], at his own cost.
5. In 2021 the largest of the replacement basins developed a crack and SX claims \$1700+GST (reduced from \$2835.62 when he determined that the vanity would not need to be replaced as well).
6. The issues to be determined are:
  - Did A Ltd supply three new basins to SX in 2015 (that is, were they the supplier of the 2015 basins under the Consumer Guarantees Act 1993)?
  - If so, what was the cause of the hairline crack that appeared in 2021?

- *Did A Ltd supply three new basins to SX in 2015 (that is, were they the supplier of the 2015 basins under the Consumer Guarantees Act 1993)?*
7. The Consumer Guarantees Act 1993 provides a definition of 'supplier' that includes a 'person, who, in trade, supplies goods to a consumer by transferring the ownership or the possession of the goods under a contract of sale or as the result of a gift from that person. That means goods do not necessarily have to have been sold for a company or person to be a supplier under the CGA and for the provisions of the CGA to apply to the transaction.
  8. While A Ltd had no legal liability to assist SX in 2015 when the cracks appeared in three basins in his house (which SX now accepts although he did not realise at the time that a different company was 'behind' HI), because they had no legal relationship to the building of his house or the supply of the original basins, they say they made a phone call to [building supplier] on his behalf to help SX out. [Building supplier] was the original retailer of the basins, and another company, CD, was the manufacturer/importer of the basins.
  9. A Ltd states that they did not 'supply' the basins to SX and are therefore not the supplier under the CGA because their only involvement in the matter was that one phone call to [building supplier].
  10. SX engaged [plumbing company] to install the replacement basins and that work was done at his own cost.
  11. A Ltd says that they did not order or purchase the basins from [building supplier], did not collect the basins, did not install the basins and were never in possession of the basins. They assume, since they are now aware that SX did receive replacement basins, that [building supplier] or CD agreed to supply those to him.
  12. Neither SX, nor [plumbing company] who wrote a statement about the cracking that became visible in 2021, put forward any specifics about where the basins were collected from in 2015 or which company delivered them.
  13. I find, based on all the above, that there is insufficient evidence that A Ltd took actions that are consistent with supplying replacement basins to SX in 2015, even on the basis of a 'gift'. If A Ltd had decided in 2015 to purchase replacement basins and supply these to SX at no cost even though they had no liability to do so, they would have been a supplier under the CGA and would have subsequently been liable for any product failure of the replacement basins. However I find that a phone call, to relay SX's issue to another company that had supplied the basins for the new house, in the absence of evidence of other actions or involvement by A Ltd, is not sufficient for me to be persuaded that A Ltd became a supplier of basins to SX and the claim must be dismissed.

*What was the cause of the hairline crack that appeared in one of the basins in 2021?*

14. This issue does not need to be determined but I do note that the evidence shows the not-uncommon situation where the manufacturer of the basins, CD, has given a written opinion that the cracking is due to the installer not following their installation instructions, and the installer, [plumbing company], has refuted this in writing saying that they believe it to be a product fault.

**Referee Perfect**

**Date: 19 September 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>.