



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 195

APPLICANT SX

RESPONDENT M Ltd

APPLICANT J Ltd
INSURER

The Tribunal orders:

M Ltd is to pay \$6,094.43 to J Ltd on or before Friday 14 July 2023.

Reasons:

1. On 6 October 2022 SX parked her car in an area allocated for staff parking at the rear of the shops where she works. At midday a neighbouring shop worker told her that she should check her car and she found mud splotches on it. After work she tried to hose the mud off, but found some remained stuck on. She contacted her insurer who assessed the paint on her vehicle. It found the paint was damaged and accepted the claim for a repair. SX claimed for her insurer to be compensated for the loss it incurred when it repaired the damage to her vehicle.
2. The issues to resolve the claim are:
 - (a) Did M Ltd breach its duty of care by water blasting close to SX's vehicle and cause damage to the paintwork?
 - (b) If so, what loss can SX show she has incurred that her insurer is entitled to be indemnified for?

Did M Ltd breach its duty of care by water blasting close to SX's vehicle and cause damage to the paintwork?

3. The law of negligence provides that a duty of care exists in situations where a person can reasonably foresee that as a consequence of their action that someone else's property may be damaged. In this case, SX considered M Ltd breached its duty of care as it operated a water blaster to clean the car park in close proximity to her car and as a result sprayed mud and debris from the car park onto her car which damaged the paint.
4. SX said she was not the only car owner who noted the damage, as a staff member from an adjoining shop, IP, also has filed a claim in the Tribunal for the damage to her vehicle.
5. SX said that across the road there was a large building construction for a [store] and a [store]. Concrete dust and stones settled over the car park during the construction period and the car park

area looked bad. SX had many photos taken of her vehicle and in particular provided one that showed a grey fleck of mud on her car.

6. SX found that some of the mud would not wash off with a garden hose. She found that there were many white chips on the black paint, particularly on the lower panels around her car, but also on the bonnet. SX said she was not asked to remove her car so the area could be cleaned and considered that car owners should have been given that option.
7. SP, a panel beater of 30 years, provided evidence as a witness in the hearing. He did not see SX's vehicle, but had seen IP's. He considered that pressure coming from a water blaster on gravel would be greater than a stone flying off the road as water blasters operated at around 5000 psi or more. He said he had come across damage done to cars from water blasting before, usually when a water blaster was operated too close.
8. The vehicle SP saw had a lot of fresh chips to the lower regions of the paintwork. He said that when a chip is fresh it reveals a bright white under primer, but the brightness fades over time. The vehicle he viewed also had some older chips.
9. The assessor for SX's vehicle also concluded that the paint damage was fresh and consistent with damage from water blasting.
10. QB, director of M Ltd, disagreed that water blasting caused stones to fly up and hit into cars. He agreed that the car park had not been kept clean and there was debris and stones on the surface, however, the car park was asphalted. He said that for this job he was in his ute at the site and someone else did the water blasting. He agreed that mud was flicked onto the vehicles and said that sometimes occurred and in those cases they usually washed the mud off and the cars were left cleaner than when they arrived. In this case, QB said the person performing the work forgot to wash off any mud flicks. When QB was notified of the issue several days later, he apologised and offered to have the cars washed, however, by then insurers had become involved.
11. QB provided a video to demonstrate that stones do not flick up from asphalt when they are water blasted. Instead they roll along the ground as they are pushed by the water. UX, a panel beater and spray painter of almost the same length as SP, provided evidence on behalf of QB. He had only seen photos of SX's car, but agreed with SP that if paint had been chipped off and the undercoat revealed, it would show a bright white until it faded over time. However, UX did not agree that stones could flick upwards from the pressure of a water blaster. He did agree that concrete dust can solidify with water and if that flicked onto cars it could cause damage if it dried onto the car. In that case the dirt could set like glue and when it is removed, it can take the paint off with it.
12. The car parking area is shared with [store], the owners of the car park and who engaged the services of M Ltd. QB has been water blasting for 25 years and has not had an issue with damaging the paint on cars in the past. QB provided very good evidence in support of his position that stones on asphalt roll with the pressured water and do not flick up. When I assess the evidence provided by both parties, I must arrive at a conclusion based on what is more probable or more likely. After assessing all the evidence, I am satisfied that it is more likely that when the mud from the asphalt stuck onto SX's car, it was left to dry on. When it flaked off, it took the paint underneath it off with it. That view is consistent with the photos that show paint pulled off in flakes. It is also consistent with SX's evidence that it was the dirt that stuck onto her car and she could not wash it off with a garden hose when she tried to do so. UX could not know what was in the mud that sprayed up onto SX's car, but if it was concrete dust then his evidence was that it could stick onto cars and could damage the paint if it was allowed to dry.
13. For M Ltd to be liable however, it not only has to leave the mud splashes on SX's vehicle, but also it must be reasonably foreseeable that if the mud was left, and dried, then it could damage the paint. This issue is more finely balanced between the parties, however, I am satisfied that it is reasonably foreseeable that if the mud dried onto the car it could potentially cause damage. It would be difficult to know what was in the mud that was flicked onto SX's car. Without knowing the composition, it could include concrete dust from the nearby construction as SX asserts. It could also contain other

compounds or corrosive material that could have been purchased from [store]. Without knowing that it could not contain anything corrosive or any concrete dust, QB could not assume that it was safe to leave the debris on the car. I found QB to be an honest person who readily provided truthful evidence even when it was contrary to his case. There was no intention to leave the cars without washing them down and it was simply overlooked on the day. Nevertheless SX does not need to show that M Ltd intentionally damaged her vehicle to be successful in her claim, only that it caused the damage and it was reasonably foreseeable that the mud could damage the paint. As I have found that it was reasonably foreseeable, I find that M Ltd breached its duty of care to ensure it did not cause damage to SX's vehicle.

What loss can SX show she has incurred that her insurer is entitled to be indemnified for?

14. SX's vehicle is a 2015 Mazda 6 and I am satisfied that at the repair cost of \$6,094.43 it was more economic to repair the vehicle.

Conclusion

15. As SX has proven her claim that M Ltd breached its duty of care, and that her insurer has paid the costs to repair her vehicle, an order is made for J Ltd to be paid \$6,094.43 as claimed.

Referee: K Cowie DTR

Date: 26 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>.