



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 298

APPLICANT T Ltd

RESPONDENT C Ltd

**SECOND
RESPONDENT** CD

**APPLICANT'S
INSURER** J Ltd
(if applicable)

**RESPONDENT
INSURER** GN
(if applicable)

The Tribunal orders:

The claim is dismissed.

Reasons:

1. On 20 May 2022, temporary metal scaffolding erected to cover a second story roof top swimming pool installed on the [redacted] building by C Ltd, fell to the street below onto neighbouring property rented by T Ltd.
2. T Ltd claims \$14,700.00 against C Ltd and CD comprising: \$14,000.00 for lost income and \$500.00 for damaged stock.
3. The issues to be determined are:
 - a. Did C Ltd fail to exercise reasonable steps to prevent scaffold lifting off the [redacted] Building causing property damage to neighbouring property?
 - b. Is CD liable for damage?
 - c. If so, what are the reasonable costs associated with the damage?

Did C Ltd fail to exercise reasonable steps to prevent scaffold lifting off building and causing property damage to neighbouring property?

4. For a claim of negligence to succeed, there must be evidence that the Respondent fell short in its duty of care to its neighbour causing damage.
5. In this case, where there was no dispute that the scaffolding had come off, the core issue to be determined is what was the cause, and did the actions taken by C Ltd in the circumstances fall short. C Ltd and its insurer GN's position was that it built the scaffolding to the specifications of

the designer [redacted], that the scaffolding was designed for a tall building to sustain winds, that it also took additional reasonable precautions to anchor it including metal bars and water tanks, and that on the evening of the event, checks were made to ensure the scaffolding was secured. Instead, it says that the cause of the scaffolding was an extreme weather event, and it pointed to “unbelievably high winds” as the immediate cause. In support it pointed to the report from the loss adjuster.

6. TL was invited on multiple occasions to respond and to comment on whether the steps taken fell short and to comment on the conclusions drawn in the report. Apart from initially expressing the view that the metal studs were not strong enough to hold the scaffolding and were broken, which he later acknowledged were only an additional safety measure, he did not dispute the explanations given by C Ltd or point to an absence of any reasonable steps taken, or refute any of the evidence presented.
7. Consequently, based on the evidence presented, on balance I am unable to find that it has been established that C Ltd failed to take reasonable care in the circumstances.

Is the CD liable for damage?

8. In general, a company is not liable for actions of its independent contractor unless it failed to take reasonable care appointing a suitably qualified business. Alternatively, an occupier may be held strictly liable if damage has been caused by the escape of something dangerous which has been brought onto land in the course of a non-natural use.
9. In this case, as above, but for the event occurring, and his view that he should be compensated for loss, TL presented no evidence as to why the CD should be liable.
10. So, on balance, in the circumstances I do not accept that it has been established that the CD company is liable, when I saw nothing to show that the scaffolder was not suitably qualified, and where no evidence was presented or argument made that use of scaffolding on the property was an unnatural use, escape of which would justify strict liability.
11. For these reasons, as I find that it has not been established that C Ltd or CD are liable, it is not necessary to determine the issue of reasonable costs.
12. The claims against C Ltd and CD are dismissed.

Referee: GM Taylor
Date: 10 August 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>.