



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 67

APPLICANT UC

RESPONDENT Council

The Tribunal orders:

The claim is dismissed.

Reasons:

1. UC lives on a corner section. On the other side of her fence is a footpath and near the corner is an area of vegetation which the Council refers to as a 'build out'. UC said some of the vegetation is at least 1.8m high, which is too high as it obstructs visibility for drivers turning at that corner. She raised the issue with the Council in October 2022 shortly after she moved into the area. Then, on 1 January 2023, a vehicle lost control after turning at that corner, and collided into her garage door. She claimed to be compensated for the cost to repair the damage.
2. The issues to resolve the claim are:
 - (a) Did the Council breach its duty of care to ensure vegetation growing on its land did not obstruct the visibility of road users, and if so, did the Council breach that duty?
 - (b) What loss can UC show she has incurred that she is entitled to be compensated for?

Did the Council breach its duty of care to ensure vegetation growing on its land did not obstruct the visibility of road users, and if so, did the Council breach that duty?

3. UC provided a timeline of her contact with the Council that showed on 5 October 2022 she telephoned it concerning the over grown vegetation on the street corner directly outside of her property. She said that on 1 January 2023 she was woken during the night by the sound of a car colliding into something. The driver sped off, but she found it had collided into her garage door. She said the driver lost control because their view was obstructed by the vegetation. As a result, it drove onto the curb on the opposite side of the road and then into her garage door. UC reported the incident to the Police and provided a copy of the online reporting of the event. She also spoke with her neighbour who told her they heard the car speeding before they collided into her garage door.
4. NN, team leader of the road amenity unit, represented the Council. He said the vegetation was a planned 'build-out' to deliberately reduce visibility so that drivers needed to slow down before they take that corner. If it was not a build-out at that corner, there would otherwise be a give way or stop sign. He said the Council monitors the growth of its build-outs and disagreed that this one was overgrown. In preparation for this hearing, he visited the site and took some photos which he provided, and considered there was no need for the Council to perform any remedial work to the vegetation.
5. NN agreed that there was some reduced visibility, but only for a small vehicle approaching that corner. The purpose of the build-out was to create some partial obstruction, and they were used all

over the city to reduce driving speed and improve road safety. Essentially, he considered the build-out was performing the function it was designed to do.

6. The law imposes a duty of care in determined relationships where a person can foresee that as a result of their act or omission, they may cause harm to someone else. On the facts of this case, it is not clear that the Council do owe a duty of care to homeowners or road users to ensure that vegetation is cut back so that drivers have an unobstructed view around a corner of a road. However, assuming the Council does owe a duty of care to ensure its vegetation does not obstruct the view of a road user, in this case there was insufficient evidence that the Council breached its duty of care.
7. For UC to show the Council breached its duty of care she would need to show that the vegetation caused the driver to lose control of the vehicle, and as a reasonably foreseeable consequence, they collided into her garage door. UC therefore, must show it was not through the fault of the driver that they collided into her garage door, but rather because of the vegetation obstructing their view.
8. I find that even if the vegetation does partially obscure a driver's view, as both parties agree it does, nevertheless, a reasonable driver must reduce their speed when they travel around the corner so that they stay in their lane of traffic. It was therefore not the layout of the road or vegetation that was planted on the side that caused or even contributed to the collision, but rather due to how the driver operated their motor vehicle.
9. In this case, there has been an act of negligence, but it was not due to any breach of a duty of care by the Council. Rather, it was through the careless driving of the person operating the motor vehicle on that night. The Council are not liable for a driver who drives out of their lane of traffic, and therefore the claim must be dismissed.

Referee: K Cowie DTR

Date: 27 March 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>.