



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

**[2023] NZDT 663**

**APPLICANT      UN**

**RESPONDENT    CD Ltd**

**SECOND          CD  
RESPONDENT**

**The Tribunal orders:**

UN's claims against CD Ltd, and CD is dismissed.

**Reasons**

1. In 2015, UN engaged the services of CD Ltd to survey his property at [address] for a subdivision. On 17 April 2019, CD Ltd invoiced UN \$11,715.63 for the survey fees including \$2,070.00 for the stormwater design. Mr I was engaged as the drainlayer to complete the public stormwater work as required under the resource consent plan. On 29 October 2019, Mr I invoiced UN \$24,253.50 for the drainlayer work and a deposit of \$8,000.00 was paid. The work was completed and signed off by [council] in 2021. However, UN stated that Mr I told him that there was 'nothing wrong with the pipes' and that he was only doing the work as instructed. UN also alleges that CD, from CD Ltd also advised that the 'new pipes were not needed'. UN disputed the final bill with CD Ltd. Over the following months UN has tried to communicate with CD over the disputed costs. The parties were not able to reach a resolution. UN now brings a claim against CD Ltd and CD for \$17,284.50 for a refund of 80% of the storm water design and the additional drainlayer costs.
2. The issues to be resolved are as follows:
  - a) Was the new drain and pipe work necessary?
  - b) If not, is UN entitled to claim \$17,284.50?

**Was the new drain and pipe work necessary?**

3. Under the principles of contract law, the terms of a contract must be clear and accepted by the parties to be enforceable. If a party breaches an essential term of the contract, the other party that has suffered is entitled to a remedy.
4. At the hearings, both parties made verbal submissions and presented evidence including photos, emails/correspondence with [council] and others, designs/plans, various consents approved by [council], and witness statements.

5. At the hearings, UN confirmed that the subdivision had been completed and signed off with all of the requisite certificates issued. He also confirmed that he had paid CD Ltd in full for the work. UN confirmed that he was made aware of the extra pipe/drain work and costs and consented to them. However, he said that he felt he was 'forced' and 'had to agree' in order to get the work progressing and completed. He said that the work took much longer than he expected to complete, and he alleges that the drainlayer and CD himself told him that there was 'nothing wrong with the pipes' and the work was 'not necessary'. UN said that his claim was based on his belief that he had been charged for stormwater pipework and drains that were not necessary.
6. However, CD gave evidence that the existing pipes were not on the Council's GIS when the plans were first drawn up. He said that a camera sent down could only take photos of the pipes but could not provide enough conclusive evidence or information to prove whether or not the pipes would meet Council's current standards in order to have the resource consent approved. CD said that regardless of whether he thought the pipes were in good condition or not, he could not prove that they met Council's requirements, so to get the consent approved and the work completed, the most appropriate thing to do was to dig up the existing pipes/drains and replace them with ones that did meet Council's current standards. He said that this work was carried out to a good standard, completed and signed off by Council and all the certificates were duly issued.
7. I have had regard to all of the competing evidence presented by the parties, including the witness evidence given by Mr O, the Team Leader of the Regulatory Engineering team at [council], who attended that final hearing via teleconference. I have had regard to all of the relevant law. Based on all of this, I find, on the balance of probabilities, that UN has failed to prove that the pipework was unnecessary, for reasons that include:
  - a. I accept the evidence that the pipes and drains were not on the Council GIS and the condition was not able to be conclusively confirmed. I find that CD Ltd could not confirm that the existing pipes/drain would have met the Council's current standards.
  - b. I accept Mr O's evidence that although it is the 'first choice' of Council to try to use an existing pipe/drain rather than dig it up, there was a 'good chance' the pipes in that area were old, not up to current specifications and needed replacing. He said it was 'unfortunate' that the pipes did not show up on the GIS. He stated that the infrastructure provided by developers must meet the Council's current standards and that it was 'not uncommon' for [suburb] pipes to be 'old' and probably would not meet today's standards. Mr O expressed his 'sympathy' for the parties.
  - c. I accept that there is evidence to show that Council did not 'instruct' CD Ltd to carry out the pipe work. However, I find that there is enough evidence, on the balance of probabilities, to show that the option CD Ltd chose, to dig up the existing pipes/drains and replace it with pipes/drains that would meet Council's current standards, was reasonable in all of the circumstances.
  - d. I find that UN was made aware of the costs for the pipe work and consented to the costs. I find that he has not provided enough evidence to prove that he was 'coerced' or 'forced' into accepting the costs and extra work. Therefore, I find, that his consent was not vitiated.
8. Therefore, I am satisfied, on the balance of probabilities that the new drain and pipework was necessary.

**If not, is UN entitled to claim \$17,284.50?**

9. The remedy for a breach of contract is for the breaching party to put the other party back into the position they would have been in had the contract been performed.
10. I have already found that UN has failed to prove that the new drain and pipework was unnecessary. This means that he has failed to prove that CD Ltd breached any essential terms of their contract regarding the design plan and pipework.

11. Therefore, on the balance of probabilities, I am satisfied that UN is not entitled to a remedy.  
Accordingly, the claim is dismissed.

**Referee: DTR Fuli**  
**Date: 16 October 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>.