



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2019] NZDT 1362

APPLICANT KW

RESPONDENT QD

The Tribunal hereby orders:

The claim is dismissed.

Reasons

1. Mr W purchased a property from Mr D (and partner) in 2015. Mr W's neighbours had the boundary surveyed at some point after he purchased, and established that the fence, which all concerned had understood to be on the boundary, was inside the neighbour's property.
2. This meant that power cables that Mr D had contracted to be laid during his ownership of the property some years before, had actually been laid on the neighbouring property and a small corner of an existing carport was also located on the neighbour's property.
3. Mr W claims \$6676.00 from Mr D, being the cost to purchase the affected piece of land from the neighbour, boundary consultant fees, legal costs, land transfer and LINZ fees, although he did not specify on what legal basis the claim was made.
4. The issues to determine are:
 - Has Mr D breached the sale and purchase agreement?
 - What remedy, if any, is available to Mr W?

Has Mr D breached the sale and purchase agreement?

5. Mr W made no particular argument in relation to breach of the sale and purchase agreement but Mr D provided a copy of the agreement, and as it is the sole document that creates a legal relationship between the two parties, its terms were considered.
6. The sale and purchase agreement contains the standard clauses in relation to a purchaser's acceptance of vendor's title (clause 5) and vendor's warranties (clause 6). This particular agreement also included a special clause (clause 18) pertaining to Due Diligence by the purchaser which included the stipulation that the purchaser undertake a due diligence investigation of the property, including..."(d) the location of any building in relation to the boundaries of the land and any other survey matters" and "(e) all legal and title issues relating to the property and any encumbrances, easements or other memorials recorded on the file".

7. Mr W stated in relation to clause 18 that the requirement for due diligence could not reasonably extend to verifying the location of underground cabling. I accept that that would not be part of a due diligence investigation, however because the cabling was laid inside a fence that was assumed to be the boundary line, with the power feed also on the wrong side of the boundary, determination of the correct boundary line may well have revealed the problem. Due diligence investigations would certainly have revealed the issue of the existing carport being on the neighbour's land, and that issue alone would have given rise to the costs claimed.
8. With respect to the vendor's warranties at clause 6, in the absence of any particular argument by Mr W as to breach, I cannot see that the issue of location of the power to his house constitutes a breach of any of the specific terms at clause 6, as there was no notice or demand on the property, no charge of any electrical installations and Mr D said the electrical work did have a Certificate of Compliance issued at the time although this was not available to the hearing.
9. In any event, unfortunately for Mr W even if there was no Certificate of Compliance, the wording of that term refers to "any works done on the property" and the very point at issue here is that the electrical cabling was not laid on the property, so the term cannot apply. That points to the Due Diligence clause being the most relevant clause of the sale and purchase agreement in relation to this issue, which put the onus on Mr W to determine any survey matters.

What remedy, if any, is available to Mr W?

10. For the reasons above, I find that no remedy is available to Mr W and the claim is dismissed.

Referee:

Date: 29 November 2019



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 or a mistake was made.

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 outside of time, 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.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the 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, and 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>.