



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 765

APPLICANT **YZ**

RESPONDENT **D Ltd**

SECOND **KZ**
RESPONDENT

The Tribunal orders:

1. D Ltd is to pay the sum of \$20,140.50 to YZ on or before 15 January 2024.
2. The claim against KZ is dismissed.
3. The counterclaim is dismissed.

Reasons:

1. YZ entered into a sale and purchase agreement in 2015 to purchase a plot of land in a planned residential subdivision on [Road], [Suburb], from D Ltd. D Ltd completed the subdivision, and settlement took place on 28 February 2018. When YZ started construction on the land in 2022, he discovered that there was no stormwater connection, despite it being a condition of the resource consent for the subdivision.
2. YZ originally claimed \$13,000.00 plus GST, subsequently increased to \$29,800.00, in damages against D Ltd and its director KZ. D Ltd counterclaims \$18,112.50, comprising non-liability and its costs defending the proceedings.
3. The issues to be determined are:
 - a) Has D Ltd breached any term of the sale and purchase agreement?
 - b) Have the respondents engaged in any misleading or deceptive conduct?
 - c) What sum, if any, is payable between the parties?

Has D Ltd breached any term of the sale and purchase agreement?

4. Clause 22.2(a) of the sale and purchase agreement provides:

“The Vendor will, with all due speed and diligence (but subject to delays beyond its control) do all things reasonably necessary to obtain the Consents and, if obtained, implement them.”

5. Condition 50 of the Resource Consent required individual stormwater connections for each lot, so D Ltd had a contractual obligation to implement this. D Ltd submitted that it relied on its engineers and the Council sign-off, but I consider that D Ltd retains contractual responsibility for implementing the resource consent regardless of whether it has delegated the work to other parties or obtained Council sign-off. Failure to provide a stormwater connection to YZ's lot was a breach of the contract.

Have the respondents engaged in any misleading or deceptive conduct?

6. It is not necessary to decide whether D Ltd engaged in any misleading or deceptive conduct given its liability for breach of contract.
7. KZ, on the other hand, is not a party to the contract, so it is relevant to consider whether he personally engaged in any misleading or deceptive conduct as D Ltd's director. However, there is no evidence that he did so, or was aware that the stormwater connection had not been put in. The claim against KZ must therefore be dismissed.

What sum, if any, is payable between the parties?

8. The normal measure of damages for breach of contract is the amount required to put the innocent party in the same position as if the contract had been performed. YZ produced evidence that he had to pay a total of \$20,140.50 to establish the stormwater connection, including the cost of excavation. I accept that this is a reasonable price, being significantly less than the earlier quotation for a cost of \$25,913.04 plus GST. The sum payable by D Ltd to YZ is therefore \$20,140.50, and the counterclaim is dismissed.

Referee: E Paton-Simpson

Date: 18 December 2023