



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

**District Court**

**[2023] NZDT 323**

**APPLICANT**     **ZZ**

**RESPONDENT**   **L Ltd**

**The Tribunal orders:**

The application is dismissed.

**Reasons**

1. In August 2022 ZZ engaged W Ltd to construct a new concrete driveway at his property. L Ltd was the supplier of the concrete under a contract with W Ltd. Soon after completion of the work, ZZ noticed areas of discoloration with the concrete and he claims that this because of defects in the product supplied by L Ltd. He provided a quote totaling \$24,688.20 to have to have the driveway removed and replaced. However, he is limited to the amount claimed in his application, \$20,000.00.
2. The relevant law is found in the Consumer Guarantees Act 1993 (the Act). That Act creates a number of statutory guarantees upon the supplier of goods and services to a consumer. It also provides a consumer with a right of redress against a manufacturer of goods where the goods fail to comply with the guarantee of acceptable quality. Where any of the guarantees are not complied with, the Act provides the right of redress against suppliers and manufacturers.
3. As this is ZZ's claim he has the onus of proof. The burden of proof is on the balance of probabilities (or 'more likely than not'). Therefore, to be successful ZZ must provide sufficient evidence to establish that the concrete supplied by L Ltd was not of acceptable quality and this has caused the problems he has with the discoloration of the driveway.
4. Thus, the issues to be determined are:
  - i. Does the Consumer Guarantees Act apply?
  - ii. If yes, has ZZ established that the concrete supplied by L Ltd was not of acceptable quality?
  - iii. If yes, what remedy is ZZ entitled to?

***Does the Consumer Guarantees Act apply?***

5. I find that it does.
6. L Ltd is not the supplier of the concrete (the goods) to ZZ because ZZ did not have a contract with L Ltd for the supply. The contract for the supply was between W Ltd and L Ltd.
7. However, as mentioned the Act also provides a consumer with a right of redress against a manufacturer of goods where the goods fail to comply with the guarantee of acceptable quality. "Manufacturer" is defined in the Act as "a person that carries on the assembling, producing, or processing of goods". CH, who represented L Ltd accepts that L Ltd comes within this definition.

***Has ZZ established that the concrete supplied by L Ltd was not of acceptable quality?***

8. I find that he has not.
9. CH claims that the problems ZZ has identified with the driveway is because of environmental factors or the site itself, including leaching from gardens and grassed areas adjacent to the driveway. CH said that he has contacted other customers who received concrete from the same batch on the same day as the concrete supplied for ZZ and these other customers have not had any issues with discoloration.
10. Unfortunately, the evidence provided by ZZ also does not support his position. He provided a report dated 25 July 2023 from IX of TD (who also provided the quote to remove and replace the driveway). IX inspected the driveway and he records his findings as to what he considers to be construction defects with the driveway, in particular: insufficient fall to prevent ponding or holding of water on the driveway; and lack of drainage which is causing flooding to the surrounding lawn areas. IX makes no mention of any discoloration or of defects with the concrete itself.
11. I therefore find that ZZ has not established his claim that the concrete supplied by L Ltd is of acceptable quality. His claim is therefore dismissed and there is no need for me to address the third issue (remedy).

**Referee:** R Merrett

**Date:** 11 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>.