

**BETWEEN**

**EK**  
APPLICANT

**AND**

**UP**  
RESPONDENT

Date of Order:

19 November 2013

Referee:

Referee Roberts

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim is dismissed.**

### **Facts**

[1] On 3 March 2013 UP's 13 year old daughter drove her 22 year old sister's car into the wooden wall at EK.

[2] The police told A and B, the owners of EK, that UP was liable for the cost of repairs resulting from the collision.

[3] UP agreed he was responsible and paid \$500 towards the costs of repairs. A payment plan was set up but he subsequently lost his job, is suffering serious health issues and has not paid any more money.

[4] A and B are claiming the balance of the repair costs for time and materials A used on making the wall secure before the final rebuild; the cost of rebuilding the wall; the cost of a new sign, umbrella and chairs for a total of \$2994.40.

[5] A and B have insurance and chose not to claim because of very high excess charged.

[6] I need to decide whether UP is legally responsible for the careless actions of his 13 year old daughter and if so whether he must pay the costs that are claimed.

[7] The law of negligence requires that persons going about their activities owe a duty to others not to act in a way that will cause harm to others or their property. In this matter the question is about whether a parent is liable for the negligent acts of their child.

[8] Parents are not liable for the careless acts of their children just because they are parents. However, they may themselves be negligent in relation to the activities of their children if they fail in their duty to control their child. A parent may therefore be under a duty to control where a child is known to them to have a reckless disposition so that the parent would be obliged to take precautionary measures to ensure the child caused no harm to others.

### **Issues**

*Was UP negligent by failing a duty to control his 13 year old daughter?*

[9] A and B were called after the collision happened and reviewed the video which showed 2 people, including UP's 13 year old daughter, in the car swopping around and driving in the

car park for about 20 minutes before the collision. A and B say they later found out the 13 year old was left in the car with another child while her older sister went into EK to play pokies.

[10] A and B say that after the collision the police were called and said the girl's father was liable to pay the damages.

[11] UP says the family was visiting from X city. They were waiting for his daughters at the grandparent's house for family photos when he got a text about what had happened, and it was only then he found out the 22 year old daughter and the 2 younger ones had made a detour to EK where the collision happened.

[12] He says his 13 year old daughter is the one person who has been totally reliable and she gets excellence marks at school. This type of behaviour is out of character for her. He says he agreed to pay the money because it is the right thing to do. He says he has not made any more payments as he was made redundant and has not found new work because he is undergoing treatment for serious health issues.

[13] I find that UP could not have foreseen his 13 year old daughter was likely to be driving in EK's car park and causing damage when she was supposed to be on her way to have family photos taken. I also find he had no reason to take particular precautionary measures himself to prevent such behaviour because this was uncharacteristic of her and she was in the care of another adult at the time. To find he owed a duty to control his daughter and take particular precautions to control her and that he breached that duty on the facts of this matter, would stretch the law too far.

[14] I find that the fact UP agreed to pay and did pay \$500 was out of a sense of moral obligation, however, this is not the same as a legal obligation and I find he was not negligent and is not legally obliged to pay for the damage caused by the 13 year old on the facts presented.

[15] Given my findings on this first issue it is unnecessary to go on and consider liability of the costs claimed.

## **Conclusion**

[16] I find that UP was not negligent in this matter and is therefore not liable to pay the costs claimed (\$2994.40).