



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 72

APPLICANT CL and HD

RESPONDENT T Ltd

**SECOND
RESPONDENT** S Ltd

The Tribunal orders:

S Ltd is to pay CL and HD \$20,348.30 by Friday 17 March 2023.

Reasons

1. The parties confirmed that the correct respondent is S Ltd. S Ltd was represented at the hearing by LT (the owner of S Ltd).
2. S Ltd replaced CL and HD's roof of their home. There were workmanship issues which LT does not dispute and says this was because of one of S Ltd's employees who was working on the roof. LT says the employee was careless and that employee does not work for S Ltd anymore. LT says S Ltd wants to repair the work. CL and HD do not want S Ltd to do any repairs.
3. CL and HD claiming a refund of the amount they paid S Ltd (being \$19,474.30 and the cost of the roofing expert's report (being \$874.00)). I note the invoice was for \$24,550.50 and the amount of \$5,076.20 was not paid. Therefore, the amount of their claim is \$20,348.30.

Is S Ltd liable for the actions of its employees?

4. An entity is liable for the actions of its employees and contractors for works done for a third party client. S Ltd is therefore liable for any workmanship issues caused by its employees and contractors.

Was the roofing work that was done by S Ltd carried out with reasonable care and skill? / Was the roofing work fit for purpose?

5. The provisions of the Consumer Guarantees Act 1993 (CGA) apply. Under the CGA where services are supplied to a consumer (CL and HD are consumers for the purposes of the CGA) there is a guarantee that the service will be:
 - a. Carried out with reasonable care and skill.
 - b. Reasonably fit for any particular purpose; of such a nature and quality that it can reasonably be expected to achieve any particular result that the consumer makes known to the supplier before or at the time of making the contract for the supply of the service.

6. I have considered the evidence and find that S Ltd did not carry out the work with reasonable care and skill and neither was the work done fit for purpose. There were many defects from the poor workmanship carried out on the roof.
7. In particular, I refer to an independent roof report (Roof Report) prepared by TC. I also spoke to TC during the hearing.
8. The Roof Report refers to a few issues including:
 - a. Scratches in the coating of the roof.
 - b. The fixing pattern was inconsistent.
 - c. In some areas, the overdriving of fixings has caused distortion of the roof sheet.
 - d. A number of fixings were incorrectly driven.
 - e. Apron to the sides of dormers were inconsistently and incorrectly installed.
 - f. Where required, roof sheets have not been turned at the eaves line.

TC also says it is not a matter of just replacing some sheets of the roof because roofing comes in different batches so there would be a mismatch between the sheets.

9. In conclusion the Roof Report states:

...it is clear that this roof does not meet the required standards of weathertightness, durability and workmanship...

The detailing is inconsistent and untidy and significant remediation is required to reach the required [industry] standards. *[emphasis added]*

10. LT does not refute what is in the report.

11. I am satisfied that S Ltd breached its obligations under the CGA and did not carry out the roofing work to acceptable industry standard nor was it done with reasonable skill and care or fit for purpose.

Was there a reasonable opportunity to remedy?

12. Under the CGA, where a service supplied to a consumer fails to comply with a guarantee, if it can be remedied, the supplier is required to remedy the failure within a reasonable time.

13. I have read the various emails between S Ltd and CL and HD. The roof work was completed in March 2021. It was clear that there were workmanship issues and on 26 May 2021 CL and HD received an email from QK the then roofing manager for S Ltd listing the works to be done to rectify the issues. CL and HD responded the same day saying that they felt the remedial work would still leave them with a patched up job. QK responded 2 days later saying:

...the whole roof did not need to be replaced just needed more attention to detail and a few areas where some material was needed to be replaced...The roofing iron does not need to be replaced; it's the finishing details that has let us down here...

14. On 1 June 2021, CL and HD decided to let them go ahead with the remedial work. On 4 June, QK responded that they hoped to get the remedial work completed by the end of the week and that he would be onsite to ensure quality and completion of works.

15. However, CL and HD learnt on 25 June that QK no longer worked with S Ltd and that all the scaffolding had been removed without any remedial work being done. They said they then contacted the NZ Roofing Association and were told that LT was told to "treat the situation with respect".

16. They say that LT arranged to visit the property on 11 July and said he noticed the workmanship issues from the ground and he said he didn't know why they (the workers did it that way). He told them they had to let him fix the issues.
17. On 14 July, they received an email from S Ltd administration (DT) saying that they were in the process of ordering the necessary materials so that the works could be carried out and that their supplier had indicated that they would receive the materials within a week.
18. On 24 August, they received another email from S Ltd relating to the COVID restrictions saying they were not an essential service so they could not attend.
19. I find that CL and HD gave S Ltd reasonable time to remedy given the timeline, in particular I refer to the time period between 14 July and 24 August. On 14 July S Ltd indicated they would receive materials within the week which would mean by around 21 July. Over a month had passed when they received the 24 August email.

Were the issues of "substantial character"?

20. The CGA provides that where the breach of a guarantee is one of 'substantial character' then the consumer may cancel the contract and in addition, obtain from the supplier damages for any loss or damage to the consumer resulting from the failure. The definition of 'a failure of substantial character' under the CGA includes situations where the services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure.
21. I also spoke to DI from [Roofing Business]. He also provided a quote to replace the roof which involves starting the process over to replace their roof again.
22. I find on all the evidence there was failure of substantial character by S Ltd to complete the roof replacement to the industry standard. CL and HD would not have acquired the services of S Ltd if they knew the resulting nature and extent of the breach.

What remedy is available?

23. When services breach a guarantee in the CGA and a refund is required (which is CL and HD's claim), consequential losses are able to be claimed under the CGA. These would include losses of a type which are foreseeable or direct.
24. CL and HD paid S Ltd \$19,474.30 and paid \$874.00 for the roof report. I find that the cost of this report is a consequential loss claimable under the CGA in this case. Therefore, S Ltd must pay CL and HD, \$20,348.30.

Referee: Ms Gayatri Jaduram
Date: 14 February 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>.