



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 247

APPLICANT EG

RESPONDENT KI

The Tribunal orders:

1. KI is to pay to EG the sum of \$1,851.50 on or before 3 July 2023

Reasons

1. In early 2022, KI trimmed some trees on EG's property to improve his view.
2. EG considered that the work went beyond what was authorised and sought damages of \$6,931.50 for the resulting damage to his trees.
3. KI defended the claim on the basis that he had consent to do the trimming, and that the trees he trimmed were not damaged or destroyed.
4. The issues to be resolved are:
 - (a) Did EG agree to the trimming of the trees?
 - (b) If not, are the trees damaged from the breach?
 - (c) What are the reasonable and foreseeable costs arising from the breach?

Did EG agree to the trimming of the trees?

5. It was established that the trees that were trimmed were on EG's property. Therefore, unless EG agreed to the trimming, the trimming would amount to a breach of duty or trespass causing physical damage to property, for which compensation can be sought.
6. It was established that there had been at least one conversation prior to the trimming in which EG agreed to certain trees being trimmed to improve KI's view. However, as this was verbal, and in EG's view related only to specific trees close to the boundary, it was not possible for KI to prove that the conversation had given him licence to trim any trees further down the bank.
7. KI recalled EG helping with the removal of branches, and not disputing the work being done. However, I was unable to make a finding that EG acquiesced, watched, or was there, when the work was undertaken. An email sent after the event did show there had been some discussion prior about the view, but the email did not go far enough to prove consent before the work was done to what had occurred. As the work was done by the time that email was sent, it could also not

be taken as acquiescence to any further trimming.

8. Given the lack of evidence of consent to the extent of the trimming that was undertaken, I find that the trimming of the trees beyond what was just inside the boundary was a trespass of EG's rights.

Are the trees damaged from the breach?

9. At least three trees were damaged from the trimming: one manuka and two pohutukawa.
10. Photos were presented that showed the tops had been trimmed in a way that left "stubs". These were unsightly, and not at growth points in the tree that would encourage proper future form.
11. I therefore consider that the trees were damaged. One was able to be rectified by trimming. The other two were removed altogether. KI made the point that the two trees that were removed were still alive. However, given the trees had been trimmed in such a way that they could not recover a natural or attractive form in the foreseeable future, I find that they were damaged in such a way that removal was a reasonable option.

What are the reasonable and foreseeable costs arising from the breach?

12. EG is entitled to be put back in the position he would have been in had the trespass not occurred, provided it is established that the costs being claimed are proportionate and proximate to the breach and represent a reasonable measure of the damage.
13. Where mature trees have been lost, this is never an easy equation to undertake.
14. An arborist was engaged to repair the manuka, and remove the damaged pohutukawa, at a cost of \$1,851.50. I am satisfied that this represents an actual outlay that was necessary to remove the unsightly limbs and trees. That cost is an actual, proportionate and proximate outlay that EG should be compensated for.
15. EG also sought the cost of removing the stumps of the pohutukawa and replacing them with mature trees (\$2,400.00 each). I am unable to award these additional sums. Given the nature of the area from where the trees were removed, which appeared as woodland bank, it did not seem a necessary or foreseeable consequence to remove the stumps, and this work has not yet been done. For the same reasons, where there would be self-seeded bush and a general canopy, it is not a necessary consequence of the breach to replace the trees, and they are not yet replaced. I was unable to make a finding that the loss of the trees would have a material impact on the value of the property. There are steps that could be taken to mitigate the cost of replacement by planting small, and potentially self-seeded, varieties. It is acknowledged that there is an unquantifiable loss from the fact of the trespass, and a reduction in amenity from the loss of two mature trees. However, the Tribunal can only award a loss associated with the damage to the trees, not the trespass itself, and given the lay of the land and the general aspect of the bush, the mature trees cannot be objectively valued at a reasonable and proportionate price for which they can be replaced.
16. For these reasons, an award is made for the sum paid to the arborist (\$1,851.50).

Referee:

J Robertshawe

Date: 12 June 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>.