



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2022] NZDT 101

APPLICANT T Ltd

RESPONDENT TN

The Tribunal orders:

TN is to pay the sum of \$736.00 to T Ltd on or before Thursday 29 September 2022.

Reasons:

1. On 12 June 2022, TN contacted T Ltd stating that her septic tank had “started to spill sewage when it rains heavily”, and asked T Ltd to “come and have a look sometime this week”, noting “have had you out here before”. T Ltd responded that it could come the next day, which it did. T Ltd used its vacuum truck to partially empty the tank and inspect it and diagnosed that there was an issue with the effluent flowing in reverse from the soakage drains back into the septic tank.
2. T Ltd invoiced \$736.00 for its work, but TN has refused to pay, so T Ltd claims payment of its invoice.
3. The issues to be determined are:
 - a) Did T Ltd go beyond the scope of the work authorised by TN?
 - b) Did T Ltd carry out the work with reasonable care and skill, and was it fit for the purpose?

Did T Ltd go beyond the scope of the work authorised by TN?

4. The common law of contract allows parties to enter into legally binding agreements. When interpreting a contract, the courts take an objective approach. They inquire what a reasonable and properly informed third party would consider the parties intended the words of their contract to mean, taking into account the “factual matrix” surrounding the contract.
5. TN submitted that when she asked T Ltd to “have a look” she only expected them to take a “quick” look and give her a recommendation, so only expected to pay a callout fee. She did not expect them to drain the tank because other people had told her this would be the wrong thing to do while it was in flooded groundwater.
6. However, TN did not communicate these expectations and opinions to T Ltd, so they are not relevant to an objective assessment of what was agreed. T Ltd gave evidence that it needed to remove most of the waste in order to inspect the tank properly, and stopped emptying the tank once it got down low enough to see where the water was flowing in from. It had to remove nearly twice as much waste as the full capacity of the tank, due to the water flowing in, but did not charge the full cost of this.

7. I accept that T Ltd did only what was necessary to diagnose the problem properly, and that it was reasonable for T Ltd to understand TN's request as authorising it to do the work necessary for this purpose. Having used T Ltd previously, albeit for a different tank with a different issue, TN could reasonably be expected to foresee the possibility of a substantial charge, and to ask for a quotation if she wanted to preapprove the cost. I therefore find that T Ltd did not charge for any unauthorised work.

Did T Ltd carry out the work with reasonable care and skill, and was it fit for the purpose?

8. Since septic tank services are ordinarily acquired for personal, domestic, or household use or consumption, the Consumer Guarantees Act 1993 (CGA) applies. CGA 28 provides that where services are supplied to a consumer, there is a guarantee that the service will be carried out with reasonable care and skill. CGA s 29 provides that services must be reasonably fit for any purpose the consumer makes known to the supplier before the contract is formed, unless the circumstances show that the consumer does not rely on the supplier's skill or judgment, or it would be unreasonable for the consumer to do so.
9. TN submitted that T Ltd should not have emptied the tank while it was in flooded groundwater. She said that a plumber and another septic tank company had told her this, but that she could not name them because they did not want to get involved. She gave links to three American websites with information to this effect, but T Ltd pointed out various issues with the American information, including reference to plastic tanks rather than concrete.
10. TN said that she will not be able to discover whether any damage has been done until the flood waters recede (although T Ltd said they had already receded by the time of its visit). She is therefore currently unable to provide sufficient evidence to prove that T Ltd's work was substandard or unfit for the purpose of diagnosing the problem. If new evidence becomes available, TN may either apply for a rehearing or file her own claim against T Ltd. However, I find that TN is liable to pay T Ltd's invoice for \$736.00.

Referee: E Paton-Simpson

Date: 9 September 2022



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 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>.