



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

**District Court**

**[2022] NZDT 182**

**APPLICANT EN**

**RESPONDENT KH**

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. EN, KH and a third party are holders of a resource consent in respect of a proposed driveway. The consent was granted on 14 August 2018.
2. Mr EN now claims, in the alternative \$2,528.31 or \$4,999.00 from Ms KH. This is on the basis of half (or most) of the \$5,056.62 costs incurred in 2021 and 2022 for surveying, plumbing and engineering design work.
3. Mr EN said this work was necessary as the DCC had informed him that an existing, unconsented portion of driveway would be removed unless the proposed driveway was progressed. Mr EN said that he and Ms KH had an agreement based on the lodging of the resource consent and Ms KH did not inform him that she did not wish to proceed with the driveway (and that she agreed to the removal of the existing, unconsented portion of driveway) until July 2022.
4. Mr EN said that if they proceeded to put the driveway in, Ms KH should pay half of the costs incurred in 2021 and 2022 (\$2,528.31). However, if they did not, Mr EN said he was entitled to \$4,999.00 as he would not have incurred those costs if Ms KH had told him she did not want the driveway to go ahead.
5. Ms KH denies liability for any of these sums on the basis that since 2018 she has repeatedly informed Mr EN that she did not wish to proceed with the construction of the driveway.
6. The issues I have to consider are:
  - a. Does the Disputes Tribunal have jurisdiction to hear this claim?
  - b. If so, was there a contract or agreement that meant Ms KH should pay a half share of the costs incurred?
  - c. Is Mr EN entitled to the payment of some, or all, of the claimed amount of \$4,999.00 on the basis of quasi-contract?
7. There were two hearings before me as well as documentary evidence supplied by both parties. This decision is not intended to be a full record of all of that evidence and I have not referred to

every single point that was raised in the hearings. However, I would like to reassure the parties that in coming to my decision I have considered and evaluated all of the evidence presented to the Tribunal.

**Does the Disputes Tribunal have jurisdiction to hear this claim?**

8. The jurisdiction of the Disputes Tribunal is contained in ss 10 and 11 of the Disputes Tribunal Act 1988. Generally speaking, disputes about resource consents are not part of the Disputes Tribunal's jurisdiction.
9. However, this is not a dispute about the interpretation or application of a resource consent. Rather it is a dispute about what the parties agreed to do in relation to the construction of a driveway. The resource consent formed part of the factual matrix of this agreement, but the current dispute is not about the application or interpretation of the resource consent itself.
10. I accept that the Disputes Tribunal has jurisdiction to hear the claim under s 10(1)(a) of the Disputes Tribunal Act 1988 as a claim founded on contract or quasi-contract.

**If so, was there a contract or agreement that meant Ms KH should pay a half share of the costs incurred?**

11. A contract is a legal agreement between two parties, and the terms of the contract are what each party has agreed to do under the contract. The terms of a contract are formed at the beginning, not at the end, and must be sufficiently certain. What was agreed is looked at objectively, which means by looking at what was said and done. An agreement will only become a legally binding contract if the parties intended to create legal relations.
12. Mr EN argued that in 2018 when Ms KH signed the resource consent application and paid her share of the costs of the application and the engineering costs, she had also agreed to construct a shared driveway.
13. By contrast, Ms KH said she never agreed to construct a shared driveway. She said she only agreed in 2018 to undertake the necessary steps to see if a resource consent could be granted for the proposed project. In her view, she had carried out her obligations under that agreement. She said further negotiations would be carried out about the driveway at a later point.
14. I find that there was no binding contract or agreement that the parties would build a shared driveway. That is because I accept Ms KH's argument that the agreement in 2018 was limited to an agreement to take the necessary steps to obtain a resource consent. Ms KH said there had been no agreement about the cost of any driveway and she had not seen any quotes or estimates for the work.
15. Mr EN agreed that there had been no quotes obtained about how much it would cost to build the driveway, but that he had discussed that it would be less than \$20,000.00. I accept the parties may have discussed the general cost of the driveway. However, in the absence of a specific agreement about cost, there could not have been sufficient certainty for a formal contract to build the driveway.
16. Ms KH's recollection is also supported by an email she sent to Mr EN in 2018 which said she would not commit to any "further agreements regarding the driveway". That is consistent with her evidence that the original agreement only encompassed the application for the resource consent.
17. The conclusion that there was no binding agreement to build the driveway is confirmed by the fact that the resource consent was obtained by 3 neighbours, Mr EN, Ms KH and EI. Mr EI sold his property. Mr EN does not seem to be seeking to enforce any agreement to build the driveway against Mr EI, or his successors in title, which supports an inference that the parties

only agreed in 2018 to obtain, and pay for, a resource consent, rather than to actually construct the driveway.

**Is Mr EN entitled to the payment of some, or all, of the claimed amount of \$4,999.00 on the basis of quasi-contract?**

18. However, even if there is no contract, an obligation may arise in quasi-contract. The onus is on the party seeking payment to establish that the circumstances raise a reasonable expectation of payment.
19. Mr EN said he incurred costs in 2021 and 2022 to get engineering designs for a crossing at the bottom and an extension at the top. He said that if he had known that Ms KH did not want to go ahead with the driveway and supported the removal of the existing concrete slab, he would not have incurred those costs in an attempt to preserve the parties' position in relation to the resource consent.
20. I reject utterly the submission made by Mr EN that it was reasonable for him to expect Ms KH to pay part of the costs. In my view, it was totally unreasonable for Mr EN to hold the view that Ms KH still intended to undertake the installation of the driveway.
21. That is because as early as 14 October 2018 Ms KH emailed Mr EN to say "it is financially unrealistic for me to commit to any further agreements regarding the driveway as I cannot afford to pay for my share".
22. Mr EN pointed to the last paragraph of the email, which said "even though I think the driveway is a great idea I am unable to support it on my current income". He said that indicated that Ms KH still thought the driveway was a good idea and said that her circumstances might change in the future to allow it to be built.
23. I am not sure that the email in 2018 was intended to leave open the possibility that Ms KH's circumstances might change in the future, although I accept that Mr EN may have read it in that way. However, taken as a whole the email clearly indicates that Ms KH does not want to commit to any further agreements about the driveway.
24. This should have been further reinforced by a letter Mr EN received from Ms TH, General Manager City Services EDD ("EDD") in November 2019. That letter said "it seems Ms KH, owner of [address], no longer wishes to be involved in the project".
25. Ms KH explained that the letter came about because she had been sent a large amount of correspondence from Mr EN, including messages forwarded from the EDD. She said she wanted to be on record with the EDD that she no longer wished to be part of the driveway project.
26. Mr EN said that he contacted Ms KH to confirm whether this report from Ms TH was correct, but that Ms KH did not respond. He also said that the wording that "it seems" was not legal wording.
27. Ms KH accepted she had not responded but considered she had made her message clear to Mr EN that she no longer wanted to be involved in the driveway project. Again, I consider that the only reasonable interpretation of the EDD letter and Ms KH's failure to respond to a request for confirmation was that Ms KH did not want to be involved. After all, if the EDD letter was wrong, it could be expected that Ms KH would tell Mr EN that. She did not.
28. Ms KH also said that she received a high volume of correspondence from Mr EN about the driveway. At the hearing she estimated she received somewhere between 150 and 200 emails from him about it. In July 2020 she sent him a letter saying:

I have received legal advice regarding this matter and I write to request that you cease and desist all contact with me immediately regarding the constructed driveway on [address] and all issues regarding this. If you ignore this message and continue to contact me, I will be forced to take further legal action.

29. Mr EN said that to his understanding a “cease and desist” letter does not have any legal effect. Whether or not that is true, it was another clear indication from Ms KH that she did not want to be involved in the driveway project. It is impossible to interpret this letter in any other way.
30. In July 2021 Ms KH emailed the EDD and said she supported the removal of the existing concrete pad. Mr EN said that if Ms KH had cc’ed him into this email, he would have not have spent any money seeking to maintain that pad.
31. However, I accept Ms KH’s evidence that she had already made it abundantly clear to Mr EN that she did not wish to be involved in the driveway. She said she supported removing the concrete slab in the hope that it would bring an end to the situation.
32. Not only did Ms KH attempt to make it clear to Mr EN that she did not wish to be further involved, at some point between 2018 and 2022 she simply stopped responding to Mr EN’s many communications about the driveway. Ms KH’s failure to respond, or to engage with Mr EN in any way about the driveway, can be seen as another indication that she did not want to be involved.
33. In my view the evidence clearly establishes that Mr EN could not have a reasonable expectation that Ms KH would contribute to the costs of maintaining the existing driveway or preserving the position in relation to building a new driveway. All the indications were that she wanted nothing further to do with the project.
34. It is also worth noting that a trespass notice was issued against Ms KH and her partner in 2021 by Mr EN, or his daughter. That does not point to cordial neighbourly relations which could reasonably be expected to result in a shared or common building project.
35. The expenses incurred by Mr EN were incurred in a situation where he did not have a reasonable expectation that Ms KH would contribute to them. Therefore, he must bear the sole cost of those expenses.

**Referee:** Souness - DTR

**Date:** 23 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 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>.