



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

District Court

[2021] NZDT 1614

**APPLICANT**     **KT**  
**APPLICANT**     **OX**  
**APPLICANT**     **SX**  
**RESPONDENT**    **P Ltd**

**The Tribunal orders:**

P Ltd is to pay to KT, OX and SX the sum of \$5,786.80 on or before Wednesday, 25 August 2021.

**REASONS**

1. KT, OX and SX (together referred to as “the Applicants”) own neighbouring lifestyle blocks at [Address A] to [Address B]. In early 2017, the Applicants commissioned a new water bore to be drilled at the joint easement of their properties to provide water to their properties. SX, on behalf of the Applicants, engaged P Ltd trading as KF (“P”) to carry out the electrical work required on the water pump for the new water bore.
2. The Applicants had ongoing problems with the pump and it finally burnt out in July 2020. The Applicants say that P made various mistakes when carrying out the electrical work on the water bore which were not corrected for more than two years and the Applicants have incurred costs engaging another supplier (FX) to bring the electrical wiring and the pump control up to standard and up to code. The Applicants also say that P’s mistakes resulted in the motor of the water pump failing in July 2020. The motor of the water pump was replaced with a new one. The Applicants also say that P charged them twice for a cable and P’s staff or subcontractor damaged a pipe that has had to be repaired. The Applicants claim compensation from P for their costs, but do not claim the cost of the new pump motor.
3. The Applicants claim from P damages of \$6,200.80 (the Applicants had claimed \$6,301.46 on the claim form, but reduced their claim at the hearing), calculated as follows:
  - \$336.19, for the cost of repairing the damaged pipes
  - \$945.39, being a refund of the double-charge regarding the one/three-phase cable (reduced from \$1,046.05)
  - \$1,779.48, being a refund of the wrong flex used to extend pump lead
  - \$3,139.74, being the amount paid to FX.
4. The Applicants attended the hearing. HC and LX attended the hearing on behalf of P and were appointed as its representatives.

## **Onus of Proof**

5. An applicant seeking a remedy in the Tribunal has the onus of proving his or her claim on the civil standard of proof which is the balance of probabilities (that is, that it is more likely than not). When assessing whether the onus of proof has been discharged by an applicant, I need to consider and evaluate the evidence presented to me by the parties. I would like to reassure the parties that all evidence presented has been considered, but this order refers only to essential evidence material to the issues and is not intended to be a full record of the hearing or of the evidence.

## **Issues**

6. The issues I need to determine are:
  - (a) Did P or its subcontractors damage the pipes?
  - (b) Did P charge the Applicants for an incorrect single-phase cable and then charge for the correct three-phase cable and, if so, should it refund all or some of this cost?
  - (c) Did P use the wrong type of flex to extend the pump lead?
  - (d) Were the services that P provided to the Applicants on the water pump not carried out with reasonable care and skill and/or were the services or the product of those services not reasonably fit for the purpose?
  - (e) Are the Applicants entitled to a remedy from P and, if so, is the amount claimed proved and reasonable?

### **Did P or its subcontractors damage the pipes?**

7. At the hearing, P's representatives agreed that P's subcontractor probably damaged the pipes and P agreed to pay the cost of repair which is agreed at \$336.19. This aspect of the claim is therefore resolved, and the settlement is approved.

### **Did P charge the Applicants for an incorrect single-phase cable and then charge for the correct three-phase cable and, if so, should it refund all or some of this cost?**

8. The general rule under the law of contract is that a supplier ought not to charge for putting right something that it has done incorrectly, however, it will depend on the particular circumstances whether this general rule applies.
9. During P's work, a single-phase cable was installed where a three-phase cable was required, so P replaced it. The Applicants seek a refund of \$945.39 (incl GST) charged to them by P for the incorrect cable plus labour in Invoice 19540 (corrected from \$1,046.05 set out in the claim form). P accepts that it put in the single-phase cable incorrectly. P says that the Applicants should pay for the three-phase cable and half the cost of the single phase cable to take into account that if the three-phase cable had been installed in the first place, OX's power could have been converted to three-phase in a different way. P also says that the single-phase cable was used by P during its work until SX's property was changed over to three-phase, so the Applicants should pay for some of the cost. At the hearing, the Applicants agreed that if P refunded the cost of the single-phase cable, they would agree to deduct \$414.00 from this (being \$360.00 plus GST).
10. As P accepts that it incorrectly installed the single-phase cable and later replaced it with the correct three-phase cable, I am satisfied that it ought to have put that right without charge to the Applicants. Therefore, the Applicants should only pay the cost of the three-phase cable which

should have been installed in the first place and could have been used by P during the work. The Applicants have agreed that \$414.00 should be deducted from a refund of the \$945.39 cost of the single-phase cable. Therefore, I award damages of \$531.39 to the Applicants (being a refund of \$945.39 less \$414.00).

**Did P use the wrong type of flex to extend the pump lead?**

11. The Applicants say that P used the wrong type of flex cable to extend the pump and claim a refund of \$1,779.48 (incl GST), being the amount they were charged by P in Invoice 18399.
12. P says that the flex it used to extend the pump lead was correct as it was in accordance with the pump's manual (page 6). HC says he received advice from the manufacturer of the pump about what flex to use as he did not know which flex was correct because he is a residential electrician. However, I have taken into account that the screened flex installed by P was replaced by FX when the pump failed in February 2020 because, in QN's opinion, it did not meet the electrical code of practice or the rf radio interference standards or the VSD manufacturer's recommendations (see QN's report dated 4 April 2021). It is not clear from page 6 of the pump manual that the flex used was in accordance with the manufacturer's instructions, and I am satisfied that QN does not believe that the correct flex as used based on the applicable standards.
13. In the circumstances, I accept the evidence of QN and award damages of \$1,779.48 to the Applicants.

**Were the services that P provided to the Applicants on the water pump not carried out with reasonable care and skill, and/or were the services or the product of those services not reasonably fit for the purpose?**

14. Where a supplier in trade supplies services to a consumer under a contract of services, the Consumer Guarantees Act 1993 ("the CGA") implies various guarantees into the contract including that the services will be carried out with reasonable care and skill (s28 of the CGA), and that the services, and any product resulting from the services, will be reasonably fit for any particular purpose, and of such a nature and quality that it can reasonably be expected to purpose (s29 of the CGA). These implied guarantees are assessed on an objective standard, that is, what a reasonable consumer would expect from a reasonably competent supplier in the circumstances.
15. P says that it complied with all code and standards, and the settings required by the manufacturer of the pump. P acknowledges that it used the incorrect single-phase cable, but corrected that. P says it obtained assistance from the manufacturer of the pump regarding settings.
16. Having carefully considered the available evidence and information, I find that the Applicants have proved, on the balance of probabilities, that P failed in certain respects to carry out the services with reasonable care and skill, and that the services and the product of those services were not reasonably fit for purpose in certain respects. Therefore, P failed in certain respects to comply with the guarantees set out in s28 and s29 of the CGA. I make this finding for the following reasons:
  - (a) It is not disputed that P did the electrical work on the water pump which failed not long after installation and had to be replaced.
  - (b) I have taken into account that the Applicants say that it is highly probable that P's poor work caused the new pump to be permanently damaged due to several completely wrong electrical settings, but the Applicants are not seeking the cost of the new pump, rather, they are seeking reimbursement from P for the cost of having FX correct P's mistakes and bring the electrical work up to code. It is not disputed that P installed the incorrect power cable to

the water pump in October 2017 which P later replaced (as discussed above). When the correct cable was in place, P then installed the required Variable Speed Drive and/or a Variable Frequency Drive (“VSD”) in the bore shed which controls how the pump starts, operates and shuts down. I note that the Applicants say that P programmed the VSD incorrectly with several wrong settings and, although the pump was able to run, the motor was eventually permanently damaged because the pump did not start and operate correctly.

- (c) The Applicants had ongoing trouble with the pump. D (which had installed the pump) recommended that they engage QN of FX to inspect it. The Applicants say that QN was able to restart the pump, but he immediately noticed the substandard electrical work. QN contacted HC of P to give P an opportunity to correct the electrical work. The Applicants say that QN agreed that the work needed to be corrected and agreed to do it, but despite multiple reminders, P only once had an electrician do mainly cosmetic work on the wiring in 2020 and P’s work was never properly fixed.
- (d) I have taken into account the email from CN of D to the Applicants dated 14 July 2020 in which he states that P’s electrician did not follow the instructions given by D regarding ramp times when setting up the VSD, and did not contact D for assistance. In an email dated 15 July 2021, CN added that D had informed P about the critical minimum and maximum hertz settings for the pump (35 to 50HZ) and that setting it to lower than 35HZ will at some stage overheat the motor.
- (e) I have noted the conclusions of QN, a qualified electrician of FX. In his email report of dated 16 August 2020 he sets out his concerns regarding the pump and how it was running, and his conclusion is that: *“It is my option (sic – opinion) that there has been no wrong doing by D and that all the water problems have been created by the electrician who completed the original installation.”*. QN provided a detailed written report dated 4 April 2021. He noted that P incorrectly installed a single/two phase cable to the pump shed when the pump was a three-phase pump and needed a three-phase cable. Which P eventually corrected. On 18 July 2019, he was asked to inspect the pump because it was not working and he changed the settings and gave his opinion to KT that the wiring was sub-standard and of poor workmanship. He contacted HC, met with him, and HC agreed that the work was not up to standard, not legal, and he would send someone back to fix it. On 11 February 2020, Mr N was onsite and noted that the pump wiring had not been fixed and contacted HC who said he would send someone to fix it. Late in 2020, QN was asked to inspect the water pump and give a second opinion because the pump was not working, and P had said the motor was faulty. QN confirmed that there was a fault with the motor and it was replaced. He also replaced the screened flex installed by P because he was of the opinion that it did not meet the electrical code of practice or the rf radio interference standards or the VSD manufacturer’s recommendations. He also made changes to bring the wiring up to current electrical standard and to the workmanship standard he was happy with. He also reprogrammed the VSD as P had set the wrong parameters. In particular, I have noted QN’s conclusion in his report that: *“In conclusion the original install shows, that even the basic electrical NZ standards were not applied, and that the electrician did not know what he was doing (some evidence of this, is the fact that no danger signs were used, no earth bonding, no “MEN” system, just to name a few).”*
- (f) On QN’s advice, the Applicants paid FX to bring P’s work up to standard. I am satisfied that the Applicants would not have paid to have P’s work corrected unless they considered this necessary, and they did regard it as necessary based on the advice of QN. Understandably, they also wanted to avoid the new replacement pump burning out like the first one, so needed to have any problems sorted out in order to avoid this. The various remedial work carried out is itemised in FX’s Invoice ITR-1344 dated 30 November 2020 and the job audit sheet.

- (g) I have noted the report presented by P from HN of G Limited (undated – June/July 2021) which says that two independent electrical inspectors have looked at the photos of P's electrical installation and have concluded that it complied with the current electrical standards, and a certificate of compliance was issued after the job was initially completed (17972). The conclusion is that P's job was compliant and safe at connection as certified and based on the photos supplied they were unable to see any electrical faults with the installation. However, HN did not see the actual work and I therefore prefer the evidence of Mr N who inspected the work first-hand.
- (h) P provided a copy of certificate of electrical safety compliance (78968 dated 25 August 2020). If this relates to the pump work, it is unclear whether it was obtained before or after FX' remedial work, because it is dated in August 2020 and P did its work in 2017/2018. In any event, I am satisfied that some of the problems with P's work were not compliance related, but settings related.
- (i) While I accept that there is an element of subjectivity in how electrical standards are applied, I have no reason to doubt the opinion of QN regarding the problems with P's work, and I have taken into account that HC told QN that P would fix its work, but it failed to do so.
- (j) I am satisfied that P had ample opportunity to remedy problems with its work and it failed to do so over a lengthy period, so it failed to provide a remedy within a reasonable time.

**Are the Applicants entitled to a remedy from P and, if so, is the amount claimed proved and reasonable?**

17. Where services fail to comply with a guarantee set out in the CGA, the consumer may be entitled to a remedy provided he or she complies with the requirements set out in s32 of the CGA. Under s32, where the failure can be remedied, the customer must first give the supplier an opportunity to remedy it. If the supplier refuses or neglects to do so or does not succeed in doing so within a reasonable time, the customer may have the failure remedied elsewhere and obtain damages for the cost of remedying the failure or cancel the contract (s32(a)). In addition, the customer is entitled to damages for any reasonably foreseeable loss or damage resulting from the failure (s32(c)). Before the Tribunal awards damages to a successful applicant, it must be satisfied that the amount claimed is proved and reasonable.
18. The parties have reached an agreement that P will pay the Applicants \$336.19 for the damaged pipes. I have also awarded damages of \$531.39 regarding the one/three-phase cable and \$1,779.48 regarding the flex. As I have found that P failed to comply with s28 and s29 of the CGA with regard to various aspects of the electrical work relating to the pump, and was given an opportunity to remedy that failure by the Applicants, the Applicants are entitled to a remedy and I award damages of \$3,139.74, being the amount the Applicants paid to FX to remedy P's work. I am satisfied that these amounts are proved and reasonable.
19. Therefore, I award total damages of \$5,786.80 to the Applicants which P is to pay by the date set out in the order.

**Referee: D. Brennan**  
**Date: 4 August 2021**



## **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>.