

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1842

Date of Decision: 2 March 2020

Complaint

The customer submits the company's works next to her property caused cracks to appear in her driveway. She claims for the cost of replacing her driveway, which she estimates at £5000.00 to £10,000.00.

Defence

The company denies the claim. It submits the customer's driveway already had cracks to it and its works did not cause any damage.

Findings

The customer has not proven any failing by the company.

Outcome

The company does not need to take any further action.

The customer must reply by 30 March 2020 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT 1842

Date of Decision: 2 March 2020

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The company carried out works near her property which caused cracks to appear in her driveway. When she raised this with the workmen they suggested this was a frequent recurrence and would be resolved. However, when she raised this with the company it denied responsibility for the damage.
- She claims for the cost to replace her driveway, which she estimates at £5,000.00 to £10,000.00.
- In her comments she disputes the company's defence.

The company's response is that:

- The company denies the claim.
- It has a dated and timed photograph of the customer's driveway taken before works started on 14 March 2019 showing the cracks were already present.
- The nature of the works could have not caused the cracks.
- The cracks appear to stem from a small surface box on the path, possibly a broadband box; the cabling from this likely caused the cracks.

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How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

1. In this adjudication process the burden is on the customer to prove her claim on the balance of probabilities. This means the customer must prove it is more likely than not, that the company has failed to provide its services to the standard to be reasonably expected and, as a result the customer has suffered a loss.
2. In this case, the customer must prove, on balance, that the company's works caused damage to her driveway. The company does not have to prove its works did not cause the damage.
3. The customer has provided photos of her driveway, reported to have been taken four years. While I appreciate the customer would not usually have reason to take photos of her driveway, this does mean she has no good evidence of its condition before the company commenced works.

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4. The company has provided a photo taken on the day it began works to show the cracks were already present in the driveway. However, as neither party can say what time the work started, I consider this photo does not assist.
5. The customer has provided a report produced in October 2019 by a chartered surveyor which states the company's works clearly caused the damage to her driveway. However, I note the surveyor compared the customer's photo of four years ago with the recent photos showing the driveway cracked. As explained above, I find neither photo proves the condition of the driveway immediately before or after the works. Therefore, on balance, I attach little weight to the surveyor's report.
6. It is not in dispute that there are cracks in the customer's driveway. However, there is no clear evidence to show they were not already present before the company started work. I therefore find the customer has not proven, on balance, the company failed to provide its services with reasonable care and skill. Therefore, the customer's claim is unable to succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 30 March 2020 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.

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Justine Mensa-Bonsu, LLB (Hons), PGDL (BVC)

Adjudicator

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