



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

[2023] NZDT 770

**APPLICANT**      **B Ltd**

**RESPONDENT**    **JG**

**SECOND**          **WG**  
**RESPONDENT**

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. On 15 June 2017, B Ltd loaned \$4,000.00 to JG and WG (the debtors) for the purpose of car repairs, to be paid by instalments of \$360.00 per month, at an annual interest rate of 28.95% (loan number). On 15 December 2018, B Ltd refinanced the \$1,098.39 balance of the loan and loaned a further 5,000.00 for family reasons. The new loan (loan number) remained at the same annual interest rate, but was to be paid by instalments of \$400.00 per month.
2. The new loan quickly fell into arrears, and eventually the debtors stopped making payments altogether. B Ltd now claims \$4,265.65.
3. The issues to be determined are:
  - a) Did B Ltd act responsibly in making the loans?
  - b) Have all disclosures been made correctly?
  - c) What sum, if any, is payable?

**Did B Ltd act responsibly in making the loans?**

4. Section 9C of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) requires lenders under consumer credit contracts to comply with certain lender responsibility principles. One of these responsibilities is to make reasonable inquiries, before entering into the agreement, so as to be satisfied that it is likely that the borrower will make the payments under the agreement without suffering substantial hardship (s 9C(3)(a)(ii)). The Responsible Lending Code issued under the CCCFA elaborates that a borrower must be able to make the payments without undue difficulty while also affording necessities and meeting other financial commitments (such as repayments on existing debts), without having to realise security or assets (s 5.1 of the Code).
5. B Ltd approved the original loan based on an estimate that the debtors had a net surplus of income over expenditure of \$1,610.99 per week. Nevertheless, the debtors quickly fell behind in

their payments, which should have alerted B Ltd to the likelihood that the figures underlying the estimate were unreliable.

6. Despite a track record that should have rung alarm bells, and despite the estimated net surplus having fallen to \$284.85 per week, mainly due to other loan commitments, B Ltd approved a further loan for \$5,000.00 for unspecified “family reasons”.
7. In particular, there was good reason to be sceptical of the income figure, which was almost entirely from one income as a taxi driver. Responsible inquiries may include “the sources and stability of the borrower’s income, including likely changes” (s 5.7 of the Code). B Ltd was obliged to consider the variability of the taxi driving income in assessing the affordability of the loan repayments, and it appears not to have taken proper account of this factor in its lending decisions.
8. B Ltd would also have reason to doubt whether the debtors could realistically survive on the budgeted expense figures. Only \$120.00 per week was budgeted for food, and even if they were not providing food for their boarders, it would be difficult to feed two people on this sum on an ongoing basis.
9. For these reasons, I find that B Ltd failed to comply with the lender responsibility principles when granting the new loan.

#### **Have all disclosures been made correctly?**

10. A creditor under a consumer credit contract has obligations to make certain disclosures to the debtor (CCCFA Part 2 Subpart 2). Although B Ltd seems to have made the initial disclosure for each loan correctly, it failed to comply with some of the requirements for continuing disclosures.
11. Every six months from the start of each loan, B Ltd issued a Continuing Disclosure Statement. While most of the required information was included in these statements, B Ltd failed to disclose the annual interest rate or rates during the statement period, expressed as a percentage or percentages (CCCFA s 19(1)(h)) in its continuing disclosures for the new loan until 15 December 2020.

#### **What sum, if any, is payable?**

12. The debtors are entitled to statutory damages under s 88 for B Ltd’s breaches. The statutory damages for the breach of s 9C(3)(a) – the lender’s responsibility to make reasonable inquiries before entering into an agreement – are an amount equal to the interest charges, credit fees, and default fees that payable under the new loan agreement (s 89(1)(aaa)). The result is that B Ltd cannot recover any of the costs of borrowing on the new loan.
13. The new loan was for \$6,098.39, and the debtors made payments totalling \$10,199.14, so with the costs of borrowing excluded there is no balance to be paid. The claim must therefore be dismissed.

**Referee: E Paton-Simpson**

**Date: 21 December 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 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>.