



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 408

APPLICANT BB

RESPONDENT KU

The Tribunal orders:

The claim is dismissed.

Reasons:

1. BB had a dining table and 8 chairs, which BB says has been in her family for many years and that she had used for 35 years before lending the set to KU approximately 7 or 8 years ago. BB had married KU's father in July 2011 and moved from [City 1] to [Town] and the dining set was put into storage. BB decided that KU and her family should use it as it would deteriorate if left in storage any longer.
2. BB and KU's father separated in March 2017 and reached a property settlement in July 2018, which stated that furniture in the possession of each partner stayed with that partner. There was to and fro about whether this included the dining set in the husband's daughter's possession.
3. This claim was initially filed by BB to recover the dining set from KU. At the hearing on 14 February 2023, KU stated she would return the set to BB. BB was directed to either confirm receipt and withdraw her claim or provide valuation evidence by 28 February 2023 if the set was not returned. BB had originally submitted a valuation with the amount and part of the description of the set blocked out on the copy of a July 2010 valuation.
4. The dining set was delivered back to BB on 26 February 2023 by KU's family members and friend as she did not want any confrontation with BB. BB was photographed inspecting the tabletop after it was delivered and raised no issues nor made any comment about any concerns over the condition of the set. BB did not withdraw her claim nor provide valuation evidence by 28 February 2023 as directed.
5. On 28 February 2023, BB had the table collected by a custom furniture maker and had the tabletop stripped and refinished for \$1,995.00 and the table was returned to BB on 2 March 2023. That day, BB advised the Tribunal she wished to claim for damage to the table by KU.
6. As the claim was still open, the Tribunal gave leave to BB to amend her claim by Interim Order dated 23 March 2023. That order directed that BB file an amended claim by 21 April 2023 and to include before and after evidence of condition of the table and remedial quotes.
7. BB filed her amended claim on 15 May 2023. BB's evidence did not include before and after photos nor any remedial quotes. Instead, BB provided the refinishing invoice dated 2 March 2023;

a subsequent statement from the refinisher dated 6 April 2023, a statement from a friend, dated 2 April 2023, who had seen the table back in [City 1] at some unidentified time in the past when the table had a TV on it; and a valuation of the table and 6 chairs dated 5 April 2023, which is after the tabletop was refinished.

8. BB has not re-submitted her prior valuation evidence that she had inexplicably redacted the relevant information from.
9. BB claims she obtained 2 remedial quotes but has not submitted either. It is unclear as to when the quotes were obtained as the table was delivered Sunday the 26 February and collected by the furniture maker for refinishing on Tuesday 28 February 2023.
10. The issues are: Has BB proven her claim? Is KU liable for the cost to refinish the tabletop?

Has BB proven her claim?

11. According to BB, she has owned the table for more than 40 years, having used it for 35 years then loaning it to KU 7 or 8 years ago. BB has documented the table having been moved from [City 1] to [Town], into storage for several years then moved to KU's property and then to BB home in [City 2]. Presumably based on the length of time BB has had ownership, it has been moved previously to these occasions. Despite this, BB claims the tabletop was pristine.
12. BB submitted one undated black and white photocopied photo of 4 people having a meal at a table. The table surface is not visible due to placemats, dishes and table settings, nor is any detail of the table visible due to how the photo has been presented.
13. BB has not submitted any photos of the tabletop damage. BB states that she asked the furniture maker to do so but he didn't.
14. KU, however, has submitted clear colour photos of the table whilst it was in her possession, including one taken before it left her home and one of BB inspecting the tabletop at delivery.
15. KU also states that the tabletop had heat marks when she received it from BB and that BB even told her the story of how they happened.
16. The burden of proof is on BB as the Applicant, to prove her claim. BB has to prove that KU was negligent in her care and use of the table and that the damage claimed was the direct result of such negligence.
17. BB has not provided any evidence to prove KU was negligent and caused the damage to the tabletop. The only evidence as to the damage to the tabletop is a statement from the furniture maker more than a month after the refinishing work was completed, however that statement does not provide any information as to when the damage occurred.
18. BB has made no allowance for any pre-existing damage from multiple moves, long-term storage or normal wear and tear, by BB, her family, by KU or historically.
19. BB failed to raise any issues of damage when she closely inspected the tabletop upon delivery and failed to document the claimed damage before having it refinished.
20. After considering all of the evidence, the Tribunal finds that BB has not proven KU was negligent and caused damage to the tabletop.

Is KU liable for the cost to refinish the tabletop?

21. Based on the apparent age, prior use, and moving and storage, it is very likely that a newly stripped and refinished tabletop is in better condition than it was when it was loaned to KU. This is known as 'betterment' and KU is not liable for betterment.
22. KU can only be held liable if she was negligent in the care and use of the table and that damage resulted from negligence. As that has not been proven, KU cannot be held liable and the claim must be dismissed.

Referee: L Mueller

Date: 26 July 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 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>.