



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 262

APPLICANT BE

RESPONDENT MG

The Tribunal orders:

1. MG is to pay BE \$19,000.00 on or before 11 July 2023.
2. The balance of the claim is dismissed.

Reasons

Introduction

1. In April 2022, BE and MG entered into a loan agreement where MG borrowed \$29,000 from BE to purchase a [car] registration [number] from BE. Under the agreement MG was to make weekly repayments, but the agreement was silent on the amount. MG made the first repayment at \$250 a week followed by \$500 a fortnight. The Loan agreement was set to end in June 2024. On 4 January 2023, MG missed a repayment. He missed a further three repayments, before making one further repayment on 1 March 2023. No further payments have been made, leaving an unpaid principle of \$19,000.00
2. BE further says that in 2016 he gave MG a personal loan of \$2000 and that there is an outstanding repayment of \$1,000 due. In addition, in 2017 BE paid MG's outstanding mechanics invoice of \$448.00.
3. BE claims a total of \$21,178.00, being the unpaid loan principal of \$19,000.00, the default payment fee of \$550.00, \$1,000 for the unpaid balance of a 2016 loan, \$448.00 for mechanical work paid for MG and the filing fee of \$180.00
4. The issues to be resolved are:
 - a. Is MG bound by the written loan agreement?
 - b. What was the weekly payment due under the contract?
 - c. Did MG breach the contract by not paying weekly from 4 January 2023?

- d. If so, is BE entitled to claim \$19,000 being the unpaid principal and \$550 being 11 default payments at \$50 each missed repayment?
- e. Does MG owe \$1,000 from the personal loan in 2016?
- f. Does MG owe \$448 for the balance of the IN Ltd Invoice?
- g. Is BE entitled to claim the filing fee of \$180?

Is MG bound by the written loan agreement?

- 5. The general principles of the law of contract apply to this dispute. A contract is an agreement that the parties intend to be legally bound by. It involves an exchange of promises and becomes binding when the parties agree on clear and certain terms. A contract can be in writing, oral or a mixture of both.
- 6. MG acknowledges he signed the agreement knowing that it was to borrow the \$29,000 for the purchase of the [car] from BE. In hindsight MG believes the price is unfair and he has paid too much.
- 7. However, I find MG is bound by the written agreement. When he signed it, he accepted the offer of the loan, and started making payments which also confirms acceptance.

What was the weekly payment due under the contract?

- 8. The loan agreement stated that the repayments were to be weekly. The loan agreement was silent on the repayment amount. However, by agreement between parties a term of the contract can be varied and then an act or action completed in reliance of that variation further confirms that the parties agree to the variation and continue to be bound.
- 9. Both BE and MG confirm that the agreed repayment period was fortnightly, and the amount of the repayment was \$500.

Did MG breach the contract by not paying weekly from 4 January 2023?

- 10. The loan agreement sets out the terms of the contract and though in this instance it was varied, the purpose of the agreement was for the money borrowed to be repaid. Therefore, a significant term of the agreement is the repayment term. If the term is not followed, then it is considered a breach of the term and the contract.
- 11. By agreement between BE and MG, a repayment was due on the 4 January 2023 and MG accepts that he did not make the payment on the due date. I find that MG breached the contract by not making the repayment.

If so, is BE entitled to claim \$19,000 being the unpaid principal and \$550 being 11 default payments at \$50 each missed repayment?

- 12. MG raises that he previously made payments to BE over and above what was required in a vehicle rental agreement, prior to entering this loan agreement. In hindsight he questions the value of the vehicle at the time of entering the loan agreement. However, I find that he willingly entered the loan agreement when he signed it in March 2022, and that there is \$19,000.00 still outstanding to be paid. Therefore, BE has proved the claim for \$19,000.00
- 13. BE claims \$550 for 11 default payments. Paragraphs 4, 5 and 6 of the agreement deal with default. The Default terms, state that upon default, the lender may declare the principal amount owing is due and payable and that if it is not paid within 5 days then the borrower will be charged \$50. If BE had declared the principal owing, he would only be entitled to \$50 if MG failed to repay the principal in 5 days. However, BE accepted that he did not at any stage declare the principal to be owing. Therefore, I find that BE's claim for \$550 is dismissed.

Does MG owe \$1,000 from the person loan in 2016?

14. BE and MG agree that BE lent MG \$2000 in 2016 and that MG made a repayment of \$1,000. MG understood that he had repaid the outstanding \$1,000 while BE was on holiday, and he had over paid BE and phoned him to get the overpaid monies back. BE recalled a phone call and was unsure if he had received the payment. BE did not provide any evidence to support the claim, therefore I find MG does not owe \$1,000 for the 2016 loan. The claim for \$1,000.00 is dismissed.

Does MG owe \$448 for the balance of the IN Ltd Invoice?

15. BE says he paid an outstanding invoice for MG. BE says he did this because it was his mechanic and he had introduced MG to him. BE says he felt obligated to pay MG's outstanding debt. An obligation to pay someone else's debt, does not bind that person into an agreement. An agreement requires two parties to intend to be legally bound. There is no evidence that BE entered into any agreement with MG to pay this debt. Though it was an honourable and a respectful gesture, I find BE is not entitled to claim the \$448.

Is BE entitled to claim the filing fee of \$180?

16. Costs cannot be awarded in the Tribunal, except in exceptional circumstances which do not apply here¹BE claims the filing fee. It is noted that under the loan agreement at page 3, there is a heading of Costs, and at paragraph 11, it attempts to set out where the Lender may claim costs. However, the paragraph lacks specificity as to whether such a claim can be made in the current manner in the current form. I therefore find that BE is not entitled to claim the costs of the Tribunal fee.

Conclusion

17. In conclusion, I find that MG must pay \$19,000 being the unpaid principal of the loan and the balance of the claim is dismissed.

Referee: Nigel Wolland

Date: 20 June 2023

¹ Section 43 Disputes Tribunal Act 1988.



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>.