



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 483

APPLICANT E LTD

RESPONDENT DM

**SECOND
RESPONDENT KA**

**APPLICANT'S U Ltd
INSURER**

The Tribunal orders:

DM and KA, jointly and severally, are to pay the sum of \$26,263.45 to E Ltd on or before 7 July 2023.

Reasons:

1. DM had been an employee of E Ltd, and in 2020 returned to work for E Ltd as a subcontractor. E Ltd claims that DM and his girlfriend KA asked E Ltd to help them purchase a car and promised to pay the money back. E Ltd applied for a loan from a finance company to purchase a [car] for the couple on 30 December 2020. The purchase price was \$41,000.00, and a cash deposit of \$16,500.00 was paid. The amount of the loan to E Ltd was \$27,560.64 including interest over 24 months.
2. A couple of months later, the respondents' relationship broke up. KA says she left both keys in the car and rang DM to say he could collect it any time. On 8 March 2021, she reported to the police that the car had been stolen by E Ltd staff. E Ltd denies that any of its staff took the car, and the car has not been located. E Ltd withdrew its insurance claim because KA did not cooperate with the insurer. DM and KA stopped making the monthly payments of \$1,148.36, but E Ltd paid the instalments until the loan was paid off in December 2022.
3. E Ltd now claims \$26,263.45 from DM and KA, comprising the amount of the loan less the two payments paid by the respondents, plus insurance and a court fine.
4. DM did not attend the hearing or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.
5. The issues to be determined are:
 - a) Does KA's bankruptcy prevent the Tribunal from hearing the claim against her?
 - b) Were either or both of the respondents contractually liable to pay E Ltd?

- c) If so, does the disappearance of the car excuse payment to E Ltd?
- d) What sum, if any, is payable?

Does KA's bankruptcy prevent the Tribunal from hearing the claim against her?

- 6. Section 76(1) of the Insolvency Act 2006 provides that on adjudication, all proceedings to recover any debt provable in the bankruptcy are halted. However, the Insolvency Register records that KA was adjudicated bankrupt on 28 May 2020, before the dealings with E Ltd. Therefore the debt is not provable in the bankruptcy, and the claim against KA can proceed in the Tribunal.

Were either or both of the respondents contractually liable to pay E Ltd?

- 7. The common law of contract allows parties to enter into legally binding agreements. A contract need not be in writing; an agreement can be formed verbally or inferred from the parties' conduct.
- 8. The contract between E Ltd and the finance company was in writing, but the arrangement between E Ltd and the respondents was largely verbal. KA submitted that DM bought her the car as a gift, and that she did not have any liability to pay E Ltd for it. However, whatever the arrangement between the respondents may have been, I am satisfied that both DM and KA agreed to pay E Ltd, based on texts, voice messages, and payments made.

If so, does the disappearance of the car excuse payment to E Ltd?

- 9. It is unclear what has happened to the car, but there is no evidence that E Ltd staff stole the car, so the disappearance of the car does not excuse the respondents from paying E Ltd.

What sum, if any, is payable?

- 10. I conclude that the respondents are both liable for the amount of the loan less the \$2,296.72 they paid in instalments, plus \$486.03 for insurance and \$100.00 for the court fine. The total sum payable is therefore \$26,263.45.

Referee: E Paton-Simpson

Date: 23 June 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>.