



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

[2023] NZDT 552

**APPLICANT** FQ

**RESPONDENT** RH

**The Tribunal orders:**

The claim is dismissed.

**Reasons**

1. On or about 7 June 2016 FQ trading as HQ Ltd lent money to RH. The terms of the contract were that \$800.00 was advanced in exchange for the “pawning” of RH’s car, pursuant to the terms and conditions, which were expressly subject to the Secondhand Dealers and Pawnbrokers Act 2004. FQ gave the money to RH, but allowed him to take his son to school on the day he was due to pick up the car. Ultimately, at no time did FQ obtain possession of the car, nor did RH ever repay the sum he borrowed. After pursuing RH for a number of years, FQ filed a claim in the Disputes Tribunal on about 22 December 2022.
2. This is a claim for the repayment of a loan, the payment of contractual interest and the cost of debt recovery, and the sale value of the car that was pawned, in the sum of \$14,000.00.
3. The issues to be determined were as follows:
  - a. Does the Limitation Act 2010 prevent FQ obtaining the order he seeks?
  - b. If not, has he complied with the Secondhand Dealers and Pawnbrokers Act 2004 in all material respects?
  - c. If so, what orders can FQ obtain, in particular whether he can obtain an order requiring RH to pay the value of the car to him?
4. The hearing was convened by telephone conference. RH was unable to be contacted and did not participate in the hearing. Under the Disputes Tribunal Act 1988 I can resolve a dispute in the absence of one of the parties.

**Does the Limitation Act 2010 prevent FQ obtaining the order he seeks?**

5. It is a defence to any claim for a payment of money, under the Limitation Act 2010, that the claim was made more than six years after the day that the money became due and owing. There are some exceptions to this rule, for example when there is late knowledge of the debt becoming due and owing. Otherwise, the time limit is applied relatively strictly.

6. In any case to which the Limitation Act may apply, it is necessary to determine the start date of the limitation period.
7. In this case the debt arises under a pawnbroker's contract. The debt is referred to in the contract and in the Secondhand Dealers and Pawnbrokers Act 2004 as a "pledge". This refers to the status of a debt owed for goods pawned, and this is illustrated by a statement in the contract which says that "You are under no obligation to redeem this pledge". This however appears to assume that the pawnbroker holds the goods.
8. The contract's specific terms relating to RH are recorded in writing and provide that the vehicle owned by RH is being pawned. However the contract also provides that RH may keep possession of the vehicle in the meantime and is to surrender the vehicle if he fails to repay the amount outstanding. The amount outstanding is defined as the principal amount of the loan (\$800.00) and specifies that if the amount is not paid by 7 July 2016 (one month from the money being received by RH), then it will cost a further 15% of the sum advanced to renew the pledge, and so on up until three months have passed. It states that all pledges will be kept for three months, which in the context of the Act and the contract appears to mean for a maximum of three months. The intention then is that that date (in this case 7 September 2016) is the day that the debt falls due. I find therefore that this is the last possible date for the limitation period to start.
9. As a result of this the claim was filed outside the limitation period. The Respondent is entitled to have the defence applied, in my view, even in his absence. This means that unless there is any exception that applies, FQ's claim is not able to proceed.
10. I have looked at all the circumstances as FQ asked me to, in order to determine if there is any reason why the period could still have been said to be incomplete when this claim was filed. The exceptions to the length of the period in section 11 of the Limitation Act 2010 does not apply because there is no question of "late knowledge" of the debt by FQ. He has known of the debt since it was incurred. No demand was required, as might alter the start date under section 5 of the Limitation Act. I have a limited jurisdiction to extend the period in the case of incapacity or the debtor's age (if under 18) but none of those exceptions apply in this case. No previous claim was filed by FQ in any other Court or Tribunal which would change the application of the limitation period, and I am not aware of any such claim being filed by RH. FQ advised that RH was in prison for some of the intervening time, but that is not an exception, and there is no bar on suing a person for a debt who is incarcerated. I find that there are no exceptions that prevent the limitation period ending on 7 September 2022.
11. As a result of my findings above, the claim is statute barred and must be dismissed.
12. With respect to the other issues, I note that I do not need to discuss them to resolve the claim, though FQ and I went through all the details of the contract and the Secondhand Dealer and Pawnbrokers Act 2004, and his registration status and actions under them in some detail in case the claim was not time barred. I note that the Act (and the contract) permits the pawnbroker to keep only the amount required for the redemption of the pledge including any legally enforceable expenses or interest, and not the whole value of the item. The excess realised upon sale of the item, as provided for in section 64 of the Act, must be repaid to the "Pledger" (as the person in RH's position is called).

**Referee:** M Wilson  
**Date:** 3 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>.