



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 491

APPLICANT HD

RESPONDENT MN

The Tribunal orders:

MN is to pay HD \$8,758.78 by Friday 10 November 2023.

Reasons:

1. HD and MN, who both attended the hearing by teleconference, both entered a loan agreement with each other, dated 30 August 2021, where HD loaned \$31,117.56 to MN for him to pay off debts belonging to he and his partner, LD, HD's daughter. The loan agreement provided for repayment instalments in varying amounts until the debt was repaid in full. MN made repayments until 29 March 2022 and then did not make any further repayments. HD relied on a clause in the loan agreement making MN liable for the full amount owing under the loan agreement upon his default. Initially, HD claimed \$18,317.56, which he amended during the hearing to a claim for \$8,758.78.

Who were the parties to the loan agreement?

2. At the time the loan agreement was executed, HD was still married to his former wife, DD. HD and DD separated on 19 September 2022 and settled their relationship property in an agreement dated 31 March 2023. The last loan repayment made by MN was on 29 March 2022, which pre-dated this separation.
3. HD said all the money loaned to MN came from his sole bank account. However, he acknowledged that the loan could have been viewed as a relationship property asset as between he and his former wife. He maintained that all the bank accounts of his into which the loan repayments were made were declared in and were the subject of the division of relationship property between he and his former wife.
4. MN said the loan was provided by "the D family", and involved HD, his then wife, DD, MN and his partner LD. He understood the parties loaning the funds were both HD and DD, though he acknowledged that the loan agreement only named HD as the lender, and only MN as the borrower. Initially, MN said he did not believe the loan would end up being disputed in the Disputes Tribunal and he thought it was a family loan, without interest. He then clarified both he and HD had discussed HD's reason for wanting the loan agreement to be formally drafted and signed by both parties, which was that, in the event of MN and LD ever separating, LD would

then be protected financially. As such, MN confirmed he did understand that the loan agreement was a formal binding legal document that he agreed to sign it as such. I find MN and HD intended to create a legal relationship with each other in entering into the formal loan agreement dated 30 August 2021.

5. At the start of the hearing, the issue of whether LD could be joined to the claim as a second respondent was discussed. Neither party wished to join LD as a respondent.

What were the contract terms?

6. Both parties agreed that most of the contract terms were contained in the loan agreement dated 30 August 2021. MN said that, when he and his partner were struggling financially, he approached HD about only making the lower payments of \$200.00/fortnight sooner than provided for in the contract, that a draft amendment to their contract was prepared by HD, but that MN did not sign this amendment. Both parties agreed the draft amended contract only varied the start time for the repayments of \$200.00/fortnight but everything else in the loan agreement of 30 August 2021 remained the same.

Was the contract performed or breached?

7. HD considered the contract breached by MN as he made his last payment on 29 March 2023 and had not paid anything since. Therefore, he sought full payment of what was owing under the contract.
8. Both parties discussed difficult family dynamics because of the separation between HD and his former wife, DD, which has left HD estranged from his daughter, LD, and his grandchildren. MN said that, when they did not hear from HD after not paying any further repayments, for about a year until April 2023, and being aware HD knew about their financial struggles, he believed HD was no longer pursuing the loan repayments. Further, MN said DD told him the loan was being taken care of in their relationship property division and she forgave MN and LD what she considered to be her share of the loan repayments. Thus, MN said that, as communication had broken down between the parties with the challenging family situation, it was not pursued further by him.
9. HD believed it was MN's responsibility to follow up and clarify with him about his situation and his understanding that he did not have to make the loan repayments, but he did not. HD said he followed up with MN about this on 1 April 2023.
10. HD said that MN paid \$13,600.00 in repayments, with which MN agreed. Therefore, the balance owing on the loan overall would then be \$17, 517.56.
11. HD maintained that, even accounting for DD forgiving MN and her daughter her half share of the loan, the loan repayments of \$13,600.00 were all received during the time he and DD were still married, that she received the benefit of these and that the loan repayments were made into a bank account which was included in the relationship property division, and so DD was then only entitled to forgive one-half of the remaining debt of \$17,517.56, which would be \$8,758.78.
12. DD was called as a witness by MN. She said she believed the loan of \$31,117.56 was relationship property and so she 'owned' half the total amount of the loan, which would be \$15,558.78. She said that as all the loan repayments of \$13,600.00 had gone into HD's sole bank account, he had effectively been repaid \$13,600.00 of the \$15,558.78 owing to him separately, and she had forgiven her share of \$15,558.78 entirely.
13. MN relied on DD's evidence and said that he only owes HD \$1,958.78 now.

14. DD said further that HD had repaid himself \$20,000.00 from a joint account called [company], a company where both were directors, and as the bank statement narrative had it as 'loan repayment' she assumed HD was repaying himself for the loan made to MN.
15. HD clarified, and provided bank statements of [company] to show, that he had made loans to [company] from his sole account, to shore up the [company] account over time. He showed his loans to [company] totalled \$21,200.00. He confirmed he had taken \$20,000.00 from the [company] account but said it was to repay himself for these loans to shore up [company] account and was not related at all to the loan to MN.
16. DD said, when this was put to her, that HD handled the finances at that time in their relationship and she had no idea whether he was repaying loans he had made to [company] or to MN, just that she saw the bank statement narrative that he was repaying himself a loan and she assumed that related to the loan to MN.
17. Based on the evidence outlined above, including that the last payment made by MN was on 29 March 2022, that HD and DD did not separate until 19 September 2022 (when family dynamics then led to a communication breakdown between the parties, as alleged), I find that MN breached the loan agreement by not making any further loan repayments after 29 March 2022.

What remedy, if any, is appropriate?

18. HD amended his claim during the hearing to \$8,758.78, being one-half of the balance owing on the loan of \$17,517.56.
19. MN was willing to pay HD \$1,958.78, being what he believed he owed HD after DD forgave her half share of the total loan and relying on DD's interpretation of who owned what part of the loan and loan repayments.
20. HD said all the loan repayments from MN were paid into his sole bank account, which was included in the relationship property division between he and DD. He claimed that DD's half share of the loan debt crystallised when they separated, at which time MN owed both HD and DD a total of \$17,517.56. There have been no further loan repayments since 29 March 2022 and so he said DD is only entitled to forgive half the balance owing under the loan agreement, which would be \$8,758.78, leaving him being entitled to the remaining half share of the balance owing on the loan.
21. I find that HD and DD jointly owned the loan debt and any repayments made prior to their separation. After their separation and given HD's evidence that the bank account into which all loan repayments were made was considered during their relationship property division and formed part of their relationship property agreement, I find that HD then owned a half share of the balance owing on the loan, which is \$8,758.78. Given that no further loan repayments have been made by MN since 29 March 2022, MN is to pay HD \$8,758.78 by Friday 10 November 2023.

Referee: C Price
Date: 20 October 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>.