



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

District Court

[2023] NZDT 455

**APPLICANT** IU

**RESPONDENT** ND

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. On 5 November 2022, the Respondent leased a show-jumping horse from the Applicant. The Applicant was pregnant and she wished for her horse to continue training and competing. There was no lease payment due, however the Respondent had to provide boarding and cover expenses during the lease period.
2. The parties agree that there was a signed written contract but neither party has produced a copy of the signed contract and the 3 different versions submitted to the Tribunal don't match. On the unsigned copy filed with the claim, clause 8.3 has obviously been added to the original contract template as it is in a different size font and is not aligned with the rest of the clauses.
3. The Respondent submitted her copy, which is a blank contract for a broodmare. The Applicant then submitted a second copy of the unsigned contract, which now has the font difference corrected and therefore is not the same document originally submitted with the claim.
4. Clause 8.3 states that if anything should happen to the horse during the lease period, the Respondent is liable for 50% of the value of the horse, 50% being \$15,000.00. No valuation information was provided. The Respondent states that she was unaware of such a clause and her copy contains no such clause.
5. The Respondent was 17 years of age at the time of the contract and was asked to sign it on the spot without seeking advice.
6. On 29 January 2023 there was a sudden flash flood in the middle of the night following heavy rain. The flash flood brought slash down the hills and through the [Respondent's family's] property, taking out fences and washing animals away.
7. The Applicant's horse was found two properties away and was seriously injured. The [Respondent's family's] mini-horse was found deceased a further distance away.

8. The [Respondent's family] sought immediate vet care for the Applicants horse and then took it to [Town] to a specialist equine vet for assessment and treatment. After 3 days and nearly \$5,000.00 in vet bills, the vet advised that the wounds were too severe and the horse was deteriorating, was in severe pain and euthanasia was recommended.
9. The Applicant did not have her horse insured, despite the claimed value, which would have covered the vet expenses and the loss of the horse.
10. The [Respondent's family] paid the vet bills, pursuant to Clause 8.1 of the contract. The Applicant then sought \$15,000.00 from the [Respondent's family] and sent a copy of an unsigned contract to Mrs D, the Respondent's mother, which included the added Clause 8.3, making the Respondent liable for \$15,000.00.
11. The issues are: Did Clause 8.3 form part of the contract? Is the Respondent liable for the Applicant's loss?

#### **Did Clause 8.3 form part of the contract?**

12. The Applicant is unable to produce a signed copy of the contract and 3 different versions have now been received by the Tribunal, none of which prove what contract the Respondent signed on the day and whether it contained clause 8.3 or not.
13. Clause 8.3 is particularly onerous and, if it was in the contract, should have been specifically brought to the Respondent's attention and initialled to prove it was read and understood.
14. Mrs D states that she never saw a contract with clause 8.3 until after the loss. The Respondent was a minor at the time and was not given the opportunity to discuss the contract with her parents, despite Mr D being on the property, having accompanied the Respondent to the Applicant's property to collect the horse and the Respondent being asked to sign the contract at that time.
15. The burden of proof is on the Applicant to prove their claim. Clause 8.3 is in dispute and the Applicant has not proven that clause 8.3 was included in the contract signed by the Respondent. There is evidence that the clause was added, not part of the template and there is no evidence as to when it was added as it was not signed and initialled.
16. Accordingly, the Tribunal finds that clause 8.3 does not form part of the contract.

#### **Is The Respondent liable for The Applicant's loss?**

17. As the Respondent was a minor at the time the contract was executed, the contract is not enforceable against the Respondent, pursuant to s86 of the Contract and Commercial Law Act 2017.
18. The loss of the horse was not due to any negligence by the Respondent and it has been found that there is no contractual liability under clause 8.3 by the Respondent
19. Accordingly, the Respondent is not liable for the Applicant's loss and the claim must be dismissed.

**Referee: L. Mueller**

**Date: 1 August 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>.