



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

**District Court**

**[2023] NZDT 75**

**APPLICANT J Ltd**

**RESPONDENT KG**

**The Tribunal orders:**

The claim is dismissed.

**Summary of Reasons:**

- [1] The hearing was convened by teleconference. Both parties appeared at the hearing.
- [2] The applicant claims debts under a credit contract assigned to it on 21 September 2021 by I Ltd. In its application the applicant claims it is entitled to pursue this debt both under its deed of assignment and because the respondent's last default date was 19 June 2017. This application was filed on 24 November 2022.
- [3] The applicant's claim is based on contract and is subject to the Limitation Act 2010 (the Act). The purpose of the Act is to encourage claimants to make claims for monetary or other relief without undue delay, by providing respondents with defences to stale claims. It is a defence to a money claim if the respondent proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based; in this case the date the respondent refused to pay his agreed weekly instalments by cancelling his bank authority.
- [4] I accept the assignment documentation put before me. An assignment is a process where a person, the assignor, transfers rights or benefits to another, the assignee. However, the assignee, in this case the applicant does not receive more rights than those held by the assignor, I Ltd, including being bound by the same limitation period.
- [5] The evidence before me shows the respondent raised a dispute with I Ltd in 2013.<sup>1</sup> The respondent's evidence is that I Ltd agreed to respond to his complaints, and on the assurance of an I Ltd salesperson that this would occur, he subsequently purchased a few further minor goods. When the dispute over the microwave was not resolved to his satisfaction, the respondent cancelled the credit contract and refused to pay anything further. The respondent's last payment is recorded<sup>2</sup> as being on 24 August 2016. The applicant has not provided any evidence that suggests the respondent's memory of events is incorrect. As this application was filed on 24 November 2022 it is out of time under the Act. The applicant has not provided any evidence supporting any extension of time is warranted in this instance.

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<sup>1</sup> It appears over faulty goods including a microwave.

<sup>2</sup> As shown in the applicant's records.

- [6] I have considered the applicant's submission that the date of breach is 16 June 2017, the last date I Ltd attempted to reactivate the cancelled bank authority. I am not persuaded this is the date of the breach, it is simply the date I Ltd, for its own reasons choose to stop recording its failed attempts to directly access the respondent's bank account. I Ltd's own records show it was aware of the breach and the cancelled authority from at least 19 September 2016. This is also outside of the limitation period under the Act. The applicant has been unable to explain the delay in filing this claim in the Tribunal within time, other than referring to its past claim manager leaving its employ.
- [7] I am satisfied on the evidence before me that I Ltd and therefore the applicant is out of time in filing this application, giving the respondent a defence to the claim. Further given the respondent clearly raised its dispute with I Ltd as far back as 2013, it would be unduly prejudicial to now allow the applicant to pursue a disputed debt given the passage of time and the evident lack of evidence on the dispute itself; the very situation anticipated by the Act itself.
- [8] The application is dismissed. The applicant is now prevented from pursuing any further claim against the respondent under the assigned debt.

**Referee: Hannan DTR  
2023**

**Date: 21 February**



## 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>.