



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 277

APPLICANT **LT**

RESPONDENT **NS**

The Tribunal orders:

NS is to pay directly to LT the sum of \$27,577.77 on or before 28 August 2023.

Summary of Reasons:

- [1] The hearing was convened by teleconference. Both parties appeared at the hearing.
- [2] The hearing was previously adjourned to allow the parties to provide further evidence of their agreement and submissions on whether this application was within time.

Background

[3] On 18 November 2013 the applicant lent the respondent NZ\$12,500 and US\$17,000. The parties did not evidence this transaction in writing. At hearing both parties were very evasive as to why the loan was made without proper documentation and what the money is for.

[4] Given the transaction is not evidenced in writing I can only determine the terms of this loan from the parties' oral submissions. The respondent refuses to make any submissions other than to recognise the applicant and not dispute the loan. The respondent also seems to accept there was a meeting in 2022 to discuss the loan but is noncommittal on this point. The respondent refers only to legal advice that he should say nothing, and the loan is not enforceable given the Limitation Act 2010 (**the Act**) and the uncertainty of its terms.

[5] Given this I only have the evidence of the applicant as to the terms of the loan. The applicant claims the respondent agreed to repay the money within a short period. The applicant claims the respondent agreed to monthly interest of \$2,000 and the money would be paid on demand once the respondent returned from [Country]. Both parties refer to some business dealings in [Country], but neither are at all clear on what this business is other than *brokerage*. The respondent has not alleged that the money paid was part of a joint business venture and seems to accept the amount paid by the applicant was indeed a loan.

[6] The applicant claims that by 2015 the respondent had repaid most of the NZ\$12,500 and then the money stopped coming. The applicant made repeated demands for repayment plus interest, the applicant claims today this interest exceeds \$200,000, but she is no longer seeking any interest, wanting a return of the capital only.

[7] The applicant filed this application on 1 March 2023 some 9 years after the loan was made and approximately 7 years after the first breach. The applicant has no real excuse for this tardiness other than she thought, rather optimistically that the respondent would repay the money. However I accept the applicant's evidence that the respondent did repeatedly assure her that he would repay the money as soon as he was able and mentioned further trips to [Country].

[8] On 29 April 2022, the applicant claims the parties had a meeting and agreed a new contract. The applicant would forgive any outstanding amount owed under the New Zealand loan, forgive any interest and the respondent would begin repayments on the outstanding US\$17,000. There also appears to have been discussion on the respondent making provision for the repayment of any outstanding portion under his will. The applicant recorded the meeting in note form, the respondent did not sign the note. The respondent has provided no evidence on the content of the meeting nor confirmed the date on the advice of this lawyer. He has not denied a meeting took place and discussion on the outstanding loan took place.

Issues

- i) Has the application been filed out of time
- ii) Is the respondent liable under the loan agreement

Issue 1

[9] This is a difficult matter. Both parties were very evasive, the respondent more so. However, I am satisfied the loans made in 2013 were indeed loans and both parties intended to be legally bound by the terms of their agreement. In reliance on their contract, the applicant paid the money to the respondent¹ and the respondent began repayments. By 2015 these repayments stopped. It is unclear on the evidence of the parties what amount of the New Zealand loan remained outstanding. Both seem to agree none of the United States money had been repaid.

[10] When the respondent stopped his payments the applicant demanded a return of the outstanding balance. Again, neither party can tell me when this occurred but regardless of this, the applicant admits she did not file a claim in the Court until 1 March 2023. Further the applicant agrees the first breach was more than 6 years ago and no further repayments has been made. This gives rise to a consideration of the limitation period under the Act.

[11] The Act came into force on 1 January 2011. The purpose of the Act is to encourage claimants to make claims for monetary or other relief without undue delay by providing defendants with defences to stale claims. Time runs from the date of the breach until the claim is filed. However, the Act makes provision for time to start again and run from acknowledgement of amounts owing in certain cases. Under section 47 of the Act either a part payment or an acknowledgement of debt in writing can raise a fresh claim for the purposes of the Act.

[12] The applicant has a written note of the meeting of 29 April 2022 where she claims the respondent acknowledged the debt. I am not persuaded the applicant's handwritten note of the meeting without the respondent's signature is an acknowledgement of debt in writing for the purposes of the Act.

[13] However as stated the respondent does not deny this meeting took place nor that the note is an accurate record of conversations he had with the applicant at this time. The note does not simply record an acknowledgement of debt, it also alters the terms of the original agreement. Interest and the remainder of the New Zealand loan are waived, and the applicant is to repay the US\$17,000 and provide for any unpaid balance in his will. Given this I am persuaded a new contract was entered into on 29 April 2022 and this agreement is not barred by the Act.

Issue 2

¹ The applicant has bank records disclosing the amount paid to a bank account the respondent does not deny he has control over.

[14] As stated above I can only consider the terms of the 29 April 2022 contract. This agreement meets the conditions of an enforceable contract in that the requirements for contract formation, including certainty of agreement, and consideration are met. The applicant has forborne her claim for interest and any further payment under the New Zealand loan and the respondent admits the United States debt and agrees to make provision for it. The applicant gains certainty, and the respondent has obligations under the 2013 contract waived. This amounts to consideration.

[15] As to the exact terms of the agreement, while informal, the intent is clear, the respondent will repay the loan. There is no evidence before me the respondent has made provision for the debt in his will. In the absence of such evidence, I can only conclude that the parties intended the agreement to pay to be enforceable if payment was not made.

[16] The evidence shows payment has not been made, therefore the debt remains due, and I order it paid. US\$17,000 is NZ\$27,772.14 at today's conversion rate. As the applicant has only claimed \$27,577.77, she is limited to this amount.

Referee: Hannan DTR

Date: 2 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 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>.