



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 694

APPLICANT MD

RESPONDENT UI

The Tribunal orders:

UI is to pay directly to MD the sum of \$4,800 on or before 31 January 2024.

Summary of Reasons:

[1] The hearing was convened by teleconference. Both parties appeared at the hearing.

[2] The parties agree the essential facts. The applicant loaned the respondent \$4,800 in early 2020 to purchase a saxophone. Both parties agree the money was given as a loan and it would be repaid. They differ on the term of the loan. While both agree the money was to be repaid when the respondent was able to do so, the applicant claims the expectation was the money would be repaid as soon as the purchase of the instrument allowed the respondent to earn income to repay the loan. The applicant claims that by mid-2022, the respondent was in a position to repay the loan. The applicant requested repayment; the respondent refused to repay any of the loan.

[3] The respondent claims he has never been in a position to repay the loan being under severe financial pressure and therefore it is unreasonable of the applicant to expect repayment. The respondent restated that he will repay the loan, he just cannot say when.

[4] I have carefully considered this claim and all the evidence put before me today. The respondent admits the money is due, simply claiming he is unable to pay it. The respondent was offered an opportunity at hearing to reach a settlement with the applicant and repay the outstanding amount by way of instalments. The respondent was clear he did not wish to discuss this option.

[5] Given the agreement on the loan itself and the respondent's refusal to begin repayment at even a low level, I am persuaded the applicant is entitled to now claim the entire amount and order it paid in full. I have considered the respondent's claim that there was no agreed term to the loan and therefore the applicant is not entitled to enforce payment. I am not persuaded of this. After reviewing the written correspondence between the parties, it is clear the loan was made on a short-term basis, and it was anticipated by both parties that repayment in full would be made in considerably less time than the now three years that have now passed since the loan was made.

[6] I have also considered the respondent's claim that he cannot afford to pay, but that is not a ground on which I can refuse the application. The respondent is ordered to pay the outstanding amount by the due date. If he is unable to do so, the respondent can contact the Collections Unit of the District Court and discuss enforcement. Contact details are on the back of this order.

Referee: Hannan DTR

Date: 21 December 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>.