



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

**District Court**

**[2023] NZDT 360**

**APPLICANTS** NQ and TQ

**RESPONDENT** WQ

**The Tribunal orders:**

WQ is to pay \$14,073.19 to NQ and TQ by 31/08/2023.

**Reasons:**

1. This order should be read with the two that preceded it.
2. Today the parties had the opportunity to and did speak fully to their written submissions and evidence filed to date.
3. I address the issues that require determination by me below.

**Time Barr?**

4. This claim is not time barred for the reasons set out in my first order.
5. Nothing was advanced today that alters that conclusion.

**Was the 2005 advance of \$13,609.00 a loan or a gift?**

6. This was an advance extended between family members and I assess it according to that background factual matrix. The family's practice appeared to include a failure to document the circumstances of the provision of funds between members of the family. If that had not been the family's practice, then this dispute would not have arisen.
7. The applicants have satisfied me to the required evidential standard that the advance was a personal loan to the respondent that was to be repaid on demand.
8. I say this because:
  - a. WQ gave verbal evidence at the previous hearings that the advance was a gift.
  - b. Against this NQ **and** TQ gave verbal evidence at the previous hearings and again today that the advance was a loan.
  - c. The only documentation either party has to support the nature of the advance is the contemporaneous record of the transfer of money from TQ to WQ dated 7/3/2005. That bank record describes the payment details as "Loan".

- d. This very persuasive and determinative evidence in the context of this dispute given both parties mutual decision to not otherwise record the nature of the advance between them.
- e. If the nature of the advance back in 2005 was a gift, then it is unlikely it would be described as a loan in the bank documentation.
- f. Notably there was also no response from WQ questioning or objecting to the nature of the advance being recorded as a loan in the bank record. Objectively, he would have read that document or his bank records and if it that was incorrect, then it would be normal to expect an objection to be raised to that by WQ.
- g. It was suggested that WQ was previously used to dealing with payments by way of cheque in [country] and this form of advance was unknown to him and he did not read it or understand it. I find this suggestion unlikely. It is the transfer of a substantial amount of moneyback in 2005 and is the only record of it. It is reasonable and more likely than not that the record of this transfer would have been read by the transferee.
- h. It also appears that a copy of this transfer record was also sent to him by TQ according to TQ's handwritten note on the bottom of the transfer record.
- i. It was also suggested that it was the extended family's practice to gift money within the family when family members needed funds, as WQ was here with the purchase of a [business]. Even though there was conflicting evidence on this issue, it may well have been a family practice back in 2005, but clearly was not in this particular instance given the clear contemporaneous description of the advance as a loan.
- j. The evidence of the [accountant] is of little weight as it goes only so far as to describe that the business accounts did not record any advance. Importantly the accountant was not privy to the personal arrangements between the parties. There are also many other reasons for it not being recorded in the company accounts including, taxation reasons, it was a personal family loan to an uncle and not a loan to the company and/or was not disclosed by the uncle to the accountant.

**Was contractual interest agreed to be payable on the loan and if so on what terms, i.e. what frequency and what interest rate.**

- 9. The applicant's claimed today interest on the loan at 6.25%, compounding annually, from the date of the advance to today's date of some \$16,300.00.
- 10. I have not satisfied me to the required evidential standard that the loan agreement included an interest quotient.
- 11. In relation to the family context of the advance it is not unusual for it to be interest free.
- 12. If there was an interest quotient, I would have expected to see that noted in handwriting on the bottom of contemporaneous record of the transfer of money as a loan along with TQ's other notations. That was not done.
- 13. A further document was produced in today's hearing (the withdrawal of the loan amount from TQ's fixed term deposit account which was earning 6.25% p/a interest). It was originally sought to be produced confidentially without the respondents seeing it, on the basis that it contained commercially sensitive information. That was refused and was then produced to the Tribunal and the respondent. The bottom of that document also had a handwritten note on it as to interest and a rate of 6.25%. I place no evidential weight on that document as, despite what had been asserted, it contained no commercially sensitive information. Also despite it being a document directly relating to one of the two main issues to be determined it was incredibly not identified as relevant and not been produced when the original claim was filed, or before the first hearing or before the second hearing.

14. It is also take into account when finding no contractual interest was agreed to be paid:

- a. It is difficult to accept that over the some 17 years of this loan ran there was no further communication or record of the alleged interest accruing on a compounding basis at 6.25% p/a
- b. The applicants text message of 18 May 2022 sought repayment of the loan. It was followed some 20 minutes later by another text message stating "plus interest of course". The timing and wording used indicates that interest comment was an afterthought rather than part of the 2005 agreement. It also does not state what the agreed interest rate was or that it compounded annually or how much was then owed.
- c. The lawyers demand for payment letter of 11/11/22, presumably taken on full informed instructions and authorised by the applicants before it was sent out, contained no claim for compounding interest of 6.25%. It instead only demanded a 5% rate "(as prescribed in the District Court Act 1947)".
- d. If the interest was agreed in 2005 then it would be expected the lawyers letter would accurately record the claimed interest rate.
- e. The original claim form only sought payment of the base debt of \$13,609.00 with no interest at all being sought or claimed. This is very unusual given the protracted nature of the loan and that the dispute that had recently come to a head, with the lawyers letter and filing the claim in this Tribunal..

15. For any contractual agreement to be enforceable (including any agreement as to contractual interest) its terms must be sufficiently clear/certain. Even if I had found there was an agreement to pay interest on the base debt while the loan ran (which I have found unproven), interest terms were so unclear I would have found that agreement unenforceable.

16. For the above reasons I award no interest on the base debt for the period of the loan being drawn down until the date it was due to be repaid.

### **The Interest on Money Claims Act 2016**

17. The Interest on Money Claims Act 2016 applies to this dispute. The primary purpose of this Act is to provide for the awards of interest as compensation for a delay in the payment of debts, damages, and other money claims in respect of which civil proceedings are commenced.

18. The date repayment was due of this "on demand loan" was the repayment date given in the lawyer's demand letter being 18/11/2022. That is the date the cause of action this dispute is founded upon arose. That date is the starting point of this interest calculation at an interest rate of 5% p/a.

19. I calculate there are 249 days between 18/11/22 and 24/7/23.

20. \$13,609.00 at 5% p/a divided by 365 x 249 days = \$464.19.

21. The base debt and the interest awarded comes to \$14,073.19.

**Referee: A Hayes**

**Date: 24/07/23**



## 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>.

