



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

**District Court**

**[2023] NZDT 128**

**APPLICANT      QN**

**RESPONDENT    NI**

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. In May 2019, NI engaged QN to do some painting on a holiday house she and her husband owned in [Address]. QN made some suggestions about other repair work that he could do and NI agreed for him to do that work as well.
2. In June 2020, NI's husband died. Before the funeral, QN told her he had moved into the property because he had no where else to go. NI said her mind was on arranging the funeral and she was not bothered about QN moving into the house.
3. QN said that from June 2020 until September 2020 he was not paying rent because the property needed a lot of work done on it. QN wanted to buy the property and said NI agreed to sell it to him. However, in December 2020, QN became aware that NI had an offer from a third party to purchase the house and so he had his solicitor put a caveat on the title, which has since been removed.
4. On 29 July 2021 DP, the solicitor for QN, wrote to NI and explained the events as QN saw them. He wrote that his client had agreed to purchase the property and desired to pay a lump sum payment on the basis that it was sold "as is where is". In good faith QN had spent money on the property on the understanding that what he spent would be deducted from the purchase price. He had worked on the property in the expectation that the property would become his, however, it was noted that the relationship had now become strained.
5. NI agreed that she would have sold the property to QN for \$100,000, however, her solicitor advised her not to sell the property to QN as he had twice been adjudicated bankrupt; the first time September 2000 and more recently in August 2017. QN was discharged from the 2017 bankruptcy on 11 August 2020.
6. QN claimed to be paid \$6,349.61 for the costs he incurred to repair the property.
7. The issues to be resolved are:
  - (a) Did NI agree to sell her house to QN?

(b) If not, did NI allow QN to perform work upgrading the property that she has been enriched by?

(c) If so, what loss can QN show he has incurred that he is intitled to be compensated for?

### **Did NI agree to sell her house to QN?**

8. QN said that the agreement was that he would purchase the property for \$100,000 (or \$80,000 if red stickered). It was a rent to buy arrangement where the rental he paid, and the cost of any improvements he made, would be deducted from the purchase price. The agreement was an oral one and QN said there was no written communication that referred to that agreement before his solicitor sent NI a letter in July 2021.
9. DP wrote that QN had been paying a weekly instalment of \$200 per week, but he now wished to conclude matters and pay a lump sum payment for the property on an 'as is where is' basis so he could register the property in his name. No offer was made concerning what the value of the lump sum was.
10. NI agreed that she had discussed selling her property to QN for \$100,000. She asked for her solicitor to draft a contract for that purpose, but was advised that QN had been twice adjudicated bankrupt and she should not sell to him. NI said she advised QN that she would not sell to him on account of his bankruptcies, and at that point his demeanor towards her changed and the relationship deteriorated. She said that when QN moved into the house, he had not told her he was an undischarged bankrupt.
11. Section 24 of the Property Law Act 2007 provides that a contract for the sale of land is not enforceable unless the contract (or its terms) is recorded in writing and signed by the party against who the contract is sought to be enforced.
12. I find that the parties discussed the possibility of QN purchasing the property and had arrived at a price of \$100,000 on the basis that QN accepted the property with all its defects as it was. QN was familiar with the house because he had worked on it for NI. The law provides that contracts for the sale of land must be in writing and if QN wanted to enforce it against NI, then she must have signed the agreement. The parties also envisaged that they would enter into a formal contract, which is why NI instructed her lawyer to write up the agreement. The parties were bound by their agreement only once they each signed the contract. That never occurred. Until the contract was signed, the parties were negotiating the agreement and performed acts in anticipation of a contract coming into effect.
13. As NI has not signed a written contract for the sale of her land to QN, she is not bound by an enforceable agreement to sell.

### **Did NI allow QN to perform work upgrading the property that she has been enriched by?**

14. QN said that the only reasonable explanation for him doing \$6,349.61 worth of work on the property must have been because he expected that he had contracted with NI to purchase the house. In fairness, he claimed he should be compensated for the costs he incurred.
15. NI agreed that she was aware that QN was working on the property, however, she said that she asked him to stop until they had a signed agreement. At that stage, however, she thought QN would buy the property and she was not too concerned with the work he was doing.
16. Although NI was aware that QN was altering the house in anticipation of him purchasing it, she disagreed that she should have to pay him any of his claim as she considered she had not been enriched by any of the work he performed. NI said QN had removed the kitchen entirely. He had also removed the opening window in the bathroom and replaced it with one that did not open, however, the window needed to open to allow the room to be ventilated. He had removed her fireplace and many of the fittings in the home that existed before he arrived. QN had put in a drainage pipe, but it

needed to be redone because no one would certify that the work had been done correctly. She agreed some electrical work had been done, however, that was to change the location of the kitchen and she wanted the kitchen to be reinstated to where it was. NI said her house was left in a very damaged state and she was in a worse position than she was before QN moved in.

17. QN agreed he removed all he fittings that he had installed as well as other items, such as the fridge, that had been stored in a container on the site.
18. From the evidence provided, I cannot be satisfied that QN has shown that NI has received a benefit and therefore been enriched, by the work he performed on the property. It was always a risk that until a written contract was signed, that the sale might not proceed. Indeed, QN was aware that in the time he was interested in the property NI received a better offer from a third party. QN was hopeful that he could purchase the house, but it was not a certainty and therefore he risked he may not be compensated for the work he performed. Additionally, QN agreed he had taken assets belonging to NI.
19. In the circumstances of this case I am not persuaded that NI has received a benefit or been unjustly enriched at QN's expense. QN therefore has failed to prove he is entitled to be reimbursed for the amount of his claim. His claim is therefore dismissed, and I do not need to consider the final issue of what loss he can show he has incurred.

**Referee: K Cowie DTR**  
**Date: 12 May 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>.