



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 159

APPLICANT **UE and QO**

RESPONDENT **CO Ltd**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. This order should be read with that dated 27/10/23.
2. This dispute had its origins back in 2012 when the UE and QO's (the applicants) home in [Street] suffered devastating and catastrophic damage in a natural disaster, a land slip. Their home was mortgaged with CO Ltd. After application of available insurance and the sale proceeds of their damaged home, UE and QO were left with no property and a portion of their mortgage and credit card debt to CO Ltd outstanding of around \$65,000.00.
3. Around 2013 they and CO Ltd agreed that no interest would be charged on that now unsecured debt, and they could pay it off at \$100.00 per fortnight. Interest forgone by CO Ltd, if at 4% per annum for 9 years, equates to \$23,400.00.
4. That agreement progressed till April 2022 when a second "discharge" of debt agreement was entered into between them. In rough terms the remaining unsecured debt was then \$45,800.00. That was discharged by a lump sum payment of \$9,000.00 with the remainder due of \$36,800.00 odd being forgiven.
5. The combined effect of these agreed terms was that the applicants were around \$60,000.00 better off, in relation to the original debt, than they normally would have been.
6. After their debt was discharged the applicants bought a complaint with the banking Ombudsman in relation to claimed acts and omissions by CO Ltd during this period seeking losses of around \$43,000.00.
7. The final determination of the complaint laid with the Ombudsman was issued on 2/11/21. That determination was the complaint was not going to be considered further for the reasons set out in that determination and its preliminary view dated 13/10/21.

8. In short, the Ombudsman declined to consider the complaint because it deemed the applicants had not suffered and were unlikely to suffer direct loss or any significant inconvenience. Further no such loss had been proved to the Ombudsman and even if it had been, it would not exceed the benefit they had already received which the Ombudsman assessed at \$38,857.35 (being the second discharge of debt agreement).
9. On 21 May 2022 the applicants filed a claim in this Tribunal seeking payment of \$43,717.00 on the similar grounds. These were expressed in their claim form as:
 - a. Unethical and abusive banking practice
 - b. Aggressive repayment terms that impacted on their ability to recover
 - c. Being repeatedly traumatised by CO Ltd
 - d. Being forced to obtain an interest-bearing loan (of \$9,000.0) to re-pay CO Ltd interest free loan (of \$45,800.00).
10. The applicants contended that the above alleged behaviour was in breach of the Responsible Lending Code in the Credit Contracts and Consumer Finance Act, the Fair Trading Act, Bankers Code of Ethics.
11. Putting aside that some of the matters complained of are time barred as they are outside the time limits imposed by the Limitation Act 2010, I have not been satisfied on the evidence presented by the applicants that the actions of CO Ltd have sufficiently breached any of its obligations to the applicants referred to so as to entitle the applicants to any award of damages. I have not been satisfied that CO Ltd engaged in unethical or abusive practice or imposed aggressive repayment terms.
12. The repayment terms agreed here could be described as lenient rather than aggressive. It cannot be ignored that the applicants agreed to repayment of a substantial unsecured debt at \$100 per fortnight. Further, that despite common practice, CO Ltd provided an interest free unsecured loan to them for many years and also forgave around \$36,800.00 of money they owed it. All being actions the applicants agreed to at the relevant times.
13. It is clear that, on occasions, CO Ltd could have provided a better and higher level of service than it did. It has acknowledged that in a number of pieces of correspondence and apologised for it. It has also offered ex gratia payments by way of apology, which have been refused by the applicants.
14. The referral of their account to a debt collection agency here was not intended to traumatise the applicants. It occurred due to an admitted mistake by CO Ltd. It wrongly credited a payment to 1 account instead of splitting it between two. When its errors were highlighted it apologised. Use of debt collections agencies is not in itself oppressive.
15. It is difficult to see how the parties' entry into the second discharge of debt agreement can be described as forced when they elected to do so and in return obtained a substantial forgiveness of the debt they then owed.
16. Despite the Tribunal having great sympathy for the financial position the applicants found themselves in after the land slip their claim is dismissed.
17. Finally, my apologies to both parties for the delay in the release of this decision.



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 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 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 20 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>.