

**BETWEEN**

**AAP**

**APPLICANT**

**AND**

**ZZM**

**RESPONDENT**

Date of Order:

15 November 2012

Referee:

Referee Cheyne

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim is struck out.**

## **Facts**

[1] AAP has no presence in New Zealand but is an Australian registered company that works in Australia. ZZM is a New Zealand registered company based in Christchurch with clients in Australia. ZZM contracted with AAP to service its Australian-based clients. There are no written terms of this arrangement. AAP would respond to work requests either from ZZM or directly from AAP's clients and then invoice ZZM for payment in Australian dollars. ZZM paid in Australian dollars by direct credit into AAP's Australian bank account. Some invoices have not been paid. AAP seeks an order against ZZM requiring payment of its unpaid invoices.

## **Issues**

[4] The issues are as follows:

- (i) Can the Tribunal hear a claim by an overseas applicant against a New Zealand resident respondent?
- (ii) If yes, is the contract between AAP and ZZM covered by New Zealand law?
- (iii) If yes, is AAP entitled to payment for any of the unpaid invoices?
- (iv) And has AAP divided up its claim so as to bring it within the Tribunal's limit?

## **Law**

[5] The relevant law is the Disputes Tribunals Act 1988, the Disputes Tribunals Rules 1989 and the law of contract.

## **Decision**

[6] ZZM questions whether the Tribunal has jurisdiction to hear a dispute with an overseas-based applicant regarding a contract for work done in Australia, invoiced and paid for in Australian dollars deposited into an Australian bank account. However, the Act and the Rules entitle any person to commence proceedings by lodging a claim in the prescribed form in the Tribunal nearest by the most practicable route to where the applicant resides. In the present circumstances, I do not think it could be said that the [Tribunal in which the claim was lodged] was not the appropriate Tribunal. Even if the Applicant had lodged in another Tribunal, the Respondent would have been able to have the matter transferred to [city where hearing took place]. The prescribed form requires the applicant to give an address. Here, the Applicant has given a Christchurch address for service. It is not uncommon for an applicant to use an address other than their actual residential or business address. The given address is then treated by the Tribunal as the address for service of the applicant. This is not inconsistent with the Act or the Rules. No issue about service of the Respondent arises because of its New Zealand domicile. The Applicant appeared through its representative by phone. The Tribunal commonly permits parties to do so. If the Applicant succeeds in obtaining an order from the Tribunal against the New Zealand-based respondent, there will be no legal impediment to its enforcement. I therefore find that there is nothing to prevent AAP commencing proceedings in the Disputes Tribunal against ZZM.

[7] Just as I was completing this decision I became aware of *Fabrics One Pty Limited v Cha Cha Clothing Company Ltd* [1999] DCR 9. In that case, the Court concluded that an overseas based applicant is not prevented from commencing proceedings in the Tribunal merely by reason of being overseas.

[8] Regarding the second issue about the application of New Zealand law to the contract, more must be said. Parties to a contract are entitled to specify the applicable law. Here, that was not done. I must therefore consider which legal system has the closest and most real connection with the contract. The arrangement originally arose out of exchanges in Australia between a director of ZZM and a person who is now a former director of AAP. Only one client for whom work was done is a New Zealand registered company. The others are all Australian-based. In particular, the disputed invoices all concern work said to have been done in Australia for ZZM's Australian based clients. As noted, payment was always in

Australian dollars. On any view of the facts, it is Australian law that has the closest most real connection with the contract between AAP and ZZM. AAP is not without remedy – it may proceed against ZZM in Australia. I conclude that the dispute must be determined in accordance with Australian law.

[9] ZZM has foreshadowed the likelihood of proceedings against AAP in Australia arising out of the contractual relationship although not limited to breach of contract. To properly resolve AAP's dispute in the Tribunal, it would be necessary to make findings of fact that would be relevant to the foreshadowed proceedings. Often counter-claims and actions by way of set-off are dealt with at the same time, for various good reasons, including having one tribunal of fact. However, the Disputes Tribunal has limited jurisdiction and would not be able to take a comprehensive approach to the issues arising between AAP and ZZM. More fundamentally, the Disputes Tribunal is not in a position to apply Australian law to the extent that it would be applicable to the resolution of the present dispute.

[10] For these reasons I have decided that AAP's claim should be struck out for lack of jurisdiction.