

BETWEEN

ABG

APPLICANT

AND

ZYW

RESPONDENT

Date of Order:

5 September 2011

Referee:

Referee A Davidson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the Applicant's claim is struck out as it does not fall within the jurisdiction of the Disputes Tribunal.

Law

[1] The Disputes Tribunal's jurisdiction is set out in s 10(1) of the Disputes Tribunals Act 1988, comprising broadly of claims in contract, quasi-contract and property torts.

Facts

[2] The Respondent, ZYW, gave the Applicant, ABG, and a third party her opinion in relation to a rule of the golf club of which they are all members. ABG and the third party had placed a wager on the correct interpretation of the rule. ABG says that ZYW volunteered to give an opinion while ZYW says that she was asked to by the third party. For today's purposes, the distinction is not important. ABG was not satisfied at the manner in which ZYW provided her opinion or escalated it for a second opinion.

[3] ABG argued that the arrangement between himself and ZYW was contractual and accordingly that his claim could be heard in the Tribunal. ABG argued that ZYW promised to give him her opinion, a promise he characterised as a contract.

Decision

[4] On the balance of probabilities I find that there was no contract between the parties. ZYW was asked for or volunteered her opinion regarding a club rule. ZYW provided her opinion in the ordinary course of her role at the club not on the basis of some consideration. The relationship between the parties was that of club member and club officer, not two contracting parties. Attempting to create a contract out of a promise, a promise that ZYW does not agree that she made, is overly artificial and stretches the idea of a contract as a mutual exchange of promises beyond breaking point. Not all promises are contracts and not all disputes may be brought before the Disputes Tribunal. In this case, ZYW was merely

attempting to assist in a dispute between two members and I can find no contract in that nor does it appear to fall within any of the other established areas of the Tribunal's jurisdiction.

[5] On this basis, I find that ABG's claim does not fall within the Tribunal's jurisdiction and accordingly must be struck out.