

BETWEEN

ACT

APPLICANT

AND

ZXI Ltd

FIRST RESPONDENT

AND

ZXH Ltd

SECOND RESPONDENT

Date of Order:

28 June 2011

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the matter is transferred to the District Court under s 36(2) of the Disputes Tribunals Act 1988 as a claim for exemplary damages is more properly determined in a District Court.

Facts

[1] The Applicant suffered chemical burns to her eyes resulting from eyelash tint provided by a beauty salon in Auckland, a salon owned by the First Respondent and managed by the Second Respondent. She claims \$4,999.00 for pain and suffering resulting from this injury.

Decision

[4] As the claim relates to a personal injury, the usual jurisdiction of the Tribunal under the law of general contract or the more specific provisions of the Consumer Guarantees Act 1993 is barred by s 317(1) of the Accident Compensation Act 2001 which states:

No person may bring proceedings independently of this Act, whether under any rule of law or any enactment, in any court in New Zealand, for damages arising directly or indirectly out of—

(a) personal injury covered by this Act...

[5] The exclusions set out in the section do not apply to this case and the Disputes Tribunal does not have jurisdiction under the Accident Compensation Act 2001. This means that the claim cannot be heard as a claim for general damages under contract or a claim for damages under the provisions of the Consumer Guarantees Act 1993.

[6] A claim for exemplary damages may still be made (s 319 of the Accident Compensation Act 2001) but such a claim is beyond the scope of the Disputes Tribunal. It should also be noted that a claim for exemplary damages cannot exist as an independent cause of action in its own right and the Applicant may wish to seek further legal advice on this matter.