

BETWEEN

ADF

APPLICANT

AND

ZWU Ltd

RESPONDENT

Date of Order:

19 June 2013

Referee:

Referee Edison

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is transferred to the District Court pursuant to s 36(2) of the Disputes Tribunals Act 1988.

Facts

[1] ADF claims that her former accountant, ZWU Ltd, was negligent in filing a GST return for a tax refund when no GST invoice was held. ADF claims that this caused the IRD to impose a shortfall penalty of \$7,333.00, which ADF paid on 15 October 2008.

[2] At the hearing today, ZB of ZWU Ltd provided a certified copy of his office's mailbook, as kept by his receptionist. ZB told me that he believes the tax return was sent to the IRD on 4 May 2007, as shown in the mailbook.

[3] The claim was filed with the Disputes Tribunal on 7 May 2013, i.e. more than six years after the tax return was sent to the IRD. ADF seeks compensation for the tax penalty, plus various other costs and expenses. The claim is for \$15,000.00 and has been reduced to keep it within the monetary limit of the Tribunal's jurisdiction.

Decision

[4] In my view, a claim for negligent breach of contract is arguably statute-barred under the Limitation Act 1950. That is because a claim for breach of contract must be brought within six years of the breach of contract. In ADF's case, the filing of the tax return appears to be the negligent breach of contract giving rise to the claim. The evidence presented today indicates that this happened more than six years prior to the claim being filed.

[5] ADF may also have a claim in the tort of negligence. Although the limitation period is also six years, it runs from the date of damage, because damage is part of the cause of action in tort. In this case, there may be an argument that the damage was not suffered on 4 May 2007 but at some later point. In any event, the Tribunal's jurisdiction in tort is limited to the destruction or loss of any property, or any damage or injury to any property (s 10(1)(c) of the Disputes Tribunals Act 1988). As this appears to be a claim for financial loss, not related to physical damage or loss of property, I consider that the Tribunal does not have jurisdiction in tort in respect of it.

[6] I have considered the possibility of a claim under the Consumer Guarantees Act 1993. Assuming this legislation applies, the limitation period is again six years from the accrual of the cause of action. I take the view that the limitation period starts on the same day as for the claim in contract. Therefore, for the purpose of this statute, the cause of action accrued on the filing of the return, i.e. more than six years ago. It is arguable, in my opinion, that a claim under this Act is also statute-barred.

[7] Given my view that ADF may be restricted to her rights in tort, and because such a claim cannot be brought in the Tribunal, I consider it appropriate to transfer the claim to the District Court.

[8] I also note that the claim involves a certain level of complexity around taxation matters, particularly if the tax affairs of the estates of ADF's late parents need to be understood as part of the background to the claim. Tax is a specialist area of law, and perhaps, on this occasion, for this reason also, it is more appropriate that the claim be heard in the District Court.