

**BETWEEN**

**ADG**

APPLICANT

**AND**

**ZWT**

RESPONDENT

Date of Order:

3 March 2011

Referee:

Referee A Davidson

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the Applicant's claim is dismissed.**

## **Facts**

[1] In July 2003, the Respondent, ZWT, engaged the Applicant, ADG [a firm of Barristers and Solicitors] in relation to a family/custody dispute. ADG provided services for which it issued a number of invoices. ZWT paid ADG's invoices except for the final two, dated 4 February 2004 and 30 March 2004, and a disbursement for Australian counsel retained by ADG that had been included in an earlier invoice. ZWT submitted ADG's final two invoices to the Auckland District Law Society for cost revision. On 20 December 2005, the Auckland District Law Society revised the amount of the two invoices down to \$1,696.50. ADG issued a revised statement on 21 December 2005 and ZWT paid ADG \$1,696.50 on 23 December 2005.

## **Issues**

[2] The issues to be considered are:

- (i) Whether ADG was entitled to appropriate ZWT's payment to the previously unpaid disbursement; and
- (ii) Whether the several invoices in relation to the same matter comprise a single debt or several debts.

## **Law**

[3] The law governing this claim is the law of contract and the Limitation Act 1950.

## **Decision**

[4] ADG argued in its submissions and at the hearing that it was entitled to appropriate ZWT's payment of 23 December 2005 to the oldest invoice. ADG also argued that the outstanding invoices between them constituted a single debt and, as such, ZWT's payment of 23 December 2005 constituted a part-payment of the larger sum giving rise to an extension of the limitation period for recovery of all the invoices to 22 December 2011, being six years from the date of payment, pursuant to s 25(4) of the Limitation Act 1950.

[5] *Laws of New Zealand* Limitation of Civil Proceedings (online ed) at [288] addresses the issue of appropriation:

If more than one debt is shown to have been due at the time of the payment, the payment is only effective to prevent time from running if made on account of all the debts or if appropriated by the debtor to any one or more of the debts. This appropriation need not be proved by any express declaration of the debtor at the time of payment, but any expressions used by him either before or after that time, or any other circumstances from which it may be inferred that the payment was intended to be appropriated to any particular debt or debts was made on account of all collectively, will be sufficient for this purpose.

[6] In the present case, ZWT made no express appropriation at the time of payment. However, as the quoted section states, appropriation need not be express: it may be implied from the circumstances surrounding the payment. In this case, the Auckland District Law Society revised the amount of the last two invoices down to \$1,696.50 on 20 December 2005. ADG issued a statement on 21 December 2005 showing that the outstanding balance in relation to those two invoices (not including the outstanding disbursement) was \$1,696.50 and on 23 December 2005 ZWT paid ADG \$1,696.50. From the circumstances, I find that it may be readily implied that ZWT's payment of \$1,696.50 was intended to be appropriated against the last two invoices, which, of course, also amounted to \$1,696.50. On this basis, I find that ADG was not entitled to appropriate ZWT's payment to the oldest invoice.

[7] I was unable to find any commentary or case law directly addressing the question as to whether a series of invoices relating the same matter comprise a single debt or a series of debts. That is not to say that such authority does not exist, merely that it was not found. Reflecting on the nature of an invoice, it is a charge for certain work undertaken and gives rise to its own cause of action. A distinction may be drawn between, on the one hand, the situation where payment for a single item or service is split for convenience of payment across multiple invoices and, on the other, the situation where each invoice, although related to the same matter, reflects charges for distinct and separate services catalogued in that invoice. This case is an example of the latter situation. I find that the invoices in this claim comprise separate debts. While such invoices may all properly be claimed under the same proceeding they are still each a separate and distinct cause of action. Each invoice could, if

the Applicant wished, have been its own cause of action and each invoice related to a separate and distinct set of services provided.

[8] On the basis of the foregoing, I find that ADG's claim is now time barred pursuant to s 4(1) of the Limitation Act 1950 and as such must be dismissed.