

BETWEEN

AGF Ltd

APPLICANT

AND

ZVQ Council

RESPONDENT

Date of Order:

20 March 2012

Referee:

Referee Haronga

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the AGF Ltd's claim is outside the Tribunal's jurisdiction and is to be struck out.

Facts

[1] AGF Ltd has brought a claim against ZVQ Council for the cost of moving a water supply valve in order to comply with a resource consent condition for a subdivision. AGF Ltd is seeking the Tribunal to provide a determination on the quality of the ZVQ Council's process to grant consent and, more specifically, on the conditions contained in the ZVQ Council's notice of decision of 4 December 2006.

Decision

[2] Under s 10 of the Disputes Tribunals Act 1988, the Tribunal's jurisdiction is limited to claims founded on contract or quasi-contract, claims of non liability for a claim based on contract or quasi-contract, claims in tort in respect of damage, loss or destruction of property and other jurisdiction as conferred in Acts as specified in the First Schedule of the Act.

[3] ZVQ Council states there is no contract between the parties and that their relationship has been created by ZVQ Council's statutory authority under the Resource Management Act 1991 (RMA), under which the Tribunal has no jurisdiction. I note that ZVQ Council also referred to ss 11, 88, 72 and 108 of the RMA in its verbal submission. I confirm that the Tribunal does not have jurisdiction under the RMA.

[4] AGF Ltd argues that the Tribunal has jurisdiction to hear its claim under the Fair Trading Act 1986 (FTA), as this Act covers local authorities. The Tribunal does have jurisdiction to hear claims under the FTA, however I do not consider that this Act applies to AGF Ltd's claim. I have looked at both the definitions of "business" and "trade" under s 2 of this Act and the relevant case law. In my view, ZVQ Council, in exercising its statutory authority under the RMA, cannot be regarded as it undertaking a business activity in trade which could be covered by the FTA.

[5] As the AGF Ltd's claim is not within the jurisdiction of the Tribunal, it must be struck out.