

**BETWEEN**

**AGT Ltd**

**APPLICANT**

**AND**

**ZTV**

**RESPONDENT**

Date of Order:

8 August 2013

Referee:

Referee Reuevecamp

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim and the counter claim are struck out.**

*Material Facts*

[1] The applicant company claims that it is owed \$16,926.50 (including an amount of \$7,526.25 for additional work done) by way of final payment due for labour only services provided to the respondent pursuant to a building contract dated 25 July 2010. It reduces its claim to \$15,000.00 to stay within the jurisdiction of the Tribunal. However, it is now in liquidation.

[2] The respondent claims that it has suffered a loss due to deficiencies in the services rendered requiring remedial work before a code compliance certificate will be issued, as detailed in DUF Council's inspection report dated 27 October 2011 nr.69702 and 69703, at a cost well in excess of \$15,000.00 and estimated at this stage at around \$36,000.00. It cancelled the contract on 2 May 2012 and seeks compensation on the grounds of breach of contract. It counter-claims for an amount of \$15,000.00 to stay within the jurisdiction of the Tribunal.

*Summary of Reasons*

[3] The details of the Liquidator of the applicant company have been added.

[4] The applicant's claim is dated 24 May 2012, the respondent's counter claim dated 4 July 2012. The matter has been part-heard and adjourned for a variety of reasons since the last hearing dated 4 September 2012. The matter is now again before me.

[5] The disputed obligations are of a contractual nature between the applicant and the respondent. It now appears that the applicant company has gone into voluntary liquidation on 2 April 2013.

[6] The disputed debt relates to the period well before 2 April 2013, the date of the company's liquidation. There is no evidence that the former director of the company acted in his personal capacity or accepted personal liability.

[7] The Companies Act provides that, when a company is in liquidation, no legal proceedings shall be commenced or continued against the company unless the Liquidator agrees or the High Court orders otherwise.

[8] The claim which is summarised above must therefore be pursued by the Liquidator of the company, if it wishes to do so. In that case the counter-claim will also proceed. Alternatively, the respondent is to obtain the Liquidator's or the High Court's consent to a continuation of the proceedings.

[9] The Tribunal has now no jurisdiction to hear and determine these proceedings without the Liquidator's consent. The Liquidator will have to advise the Tribunal if it wishes to pursue the claim and/or consents to becoming a party to the proceedings in respect of the respondent's counter-claim.

[10] The respondent will have to advise the Tribunal if it has obtained the Liquidator's consent to continue the proceedings.

[11] In either of the circumstances referred to in paragraphs 6 or 7 the respondent may pursue its counter-claim as submitted to the Tribunal against the Liquidator and this file may be consolidated and joined with the Liquidator's claim, if pursued.

[12] The respondent may wish to contact its legal advisers or the Registrar of the Companies Office at the Ministry of Business, Innovation & Employment with regard to its rights and available alternatives in view of the pending winding up and deregistration of the applicant company.