IN THE DISPUTES TRIBUNAL **[2014] NZDT 665**

BETWEEN	**AU** APPLICANT
AND	**ZF District Council** RESPONDENT

Date of Order: 5 August 2014

Referee: Referee Savage

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is struck out.

Facts

[1] In 1974 CC Borough installed the sewer line on AU's street and offered the opportunity for connections, to property owners. Mr and Mrs AU did not connect and opted to continue using a septic tank which remains today. The Borough was part of an amalgamation and is now ZF District Council.

[2] In 2000 the property was sold to AU Family Trust (the Trust) with Mrs AU and her daughter as trustees. Mrs AU's daughter was not named as a trustee in the claim nor was the Trust named as an applicant. It was submitted at the hearing that Mrs AU's capacity at the hearing was both in her personal capacity and as a trustee.

[3] It is agreed by all parties that the Trust overpaid rates as the charge should have been half the amount as a non-connection charge. The anomaly was first discovered and brought to Council's attention in 2012.

[4] Mrs AU claims under the doctrine of unjust enrichment and seeks a refund of $6,500 for the overpaid rates. The $6,500 consists of an estimate at $230 per year for 30 years as the actual sums paid have only been identified back to 2003.

[5] The Council argues that the Tribunal has no jurisdiction under s 11(7) of the Disputes Tribunals Act 1988. It also argues that the Trust has not brought any claim and that Mrs AU's claim is only relevant from when she owned the property with her husband, up until 2000. It further argues that in accordance with s 41 of the Local Government (Rating) Act 2002, it has carried out its obligations by correcting the mistake and changing the assessment for 2012 onwards and paying back the overpaid portion for the previous five years (2007 – 2011).

[6] Mrs AU argues that the Council cannot rely on the Local Government (Rating) Act 2002 because her claim is based on unjust enrichment, referring to *ECNZ v Waikato Regional Council*.

[7] The first issue to be determined is whether the Tribunal has jurisdiction to determine the claim under the doctrine of unjust enrichment in light of s 11(7) of the Disputes Tribunals Act 1988. The issue of whether the Trust is an applicant and whether the claim is barred by

the Limitation Acts 1950 and 2010 is secondary and dependent on the outcome of the finding of the jurisdiction issue.

Issues

[8] Does the Tribunal have jurisdiction?

Decision / Law

Does the Tribunal have jurisdiction?

[9] Section 10(1)(a) of the Disputes Tribunals Act gives the Tribunal jurisdiction in respect of a claim founded on quasi-contract. This term is used to describe situations where one party has been unduly enriched at the expense of another and is required as if from a contract to make restitution. The jurisdiction is however limited by s 11(7) which provides that money due under any statute is not included under quasi-contract and any claim for such relief is therefore outside the jurisdiction of the Tribunal.

[10] The jurisdictional limitation in the context of a penalty claimed by a local authority under the Rating Powers Act 1988 (repealed) was considered by the High Court in *Auckland City Council v Henderson District Court*. There, Auckland City Council had imposed a rating penalty on a BB in respect of a block of shops. He claimed that he had not received the relevant notice and denied liability. The Council declined to remit the penalty and BB applied to the Tribunal for an order declaring him not liable, which was granted. On judicial review the issue for the Court was whether the Tribunal had jurisdiction. It held that the Tribunal did not have jurisdiction –

> Enactment is defined in subs (8) of the Disputes Tribunals Act 1988 and clearly includes the Rating Powers Act 1988. **In my view Disputes Tribunals do not have jurisdiction to deal with claims in respect of money due under enactments, even if those claims could otherwise somehow have been couched in terms of a quasi-contractual claim.**

[11] Despite the bar to jurisdiction above, Mrs AU submits that her claim is based on the doctrine of unjust enrichment, referring to *ECNZ v Waikato Regional Council* in support.

[12] In that case, ECNZ successfully recovered rates it had overpaid to Waikato Regional Council. The Council declined to refund the rates and invoked what it contended a five year "limitation" defence created by s 118(1) of the Rating Powers Act 1988. Although the arguments were substantially based on statutory provisions, Wild J considered that ECNZ could recover the rates on basic restitutionary principles.

[13] While this argument may be advanced in the courts, in light of the Disputes Tribunals Act, I find the Tribunal does not have jurisdiction in respect of money due under any enactment, even where the action is couched in terms of a quasi-contractual or restitutionary claim. The claim here involves rates which were due under the Rating Powers Act 1988 and Local Government (Rating) Act 2002. Accordingly, the doctrine of unjust enrichment cannot be applied in the Tribunal in this case.