

BETWEEN

BE
APPLICANT

AND

YV
RESPONDENT

Date of Order:

22 May 2014

Referee:

Referee Paton-Simpson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed

Reasons

[1] On 25 February 2011, BE paid \$20,000.00 into the bank account of ABC Ltd (ABC) by way of a loan. At that time he was employed by ABC, and his friend YV was director of ABC. He also paid over \$13,000 directly to ABC's suppliers between February and July 2011 expecting to be reimbursed.

[2] YV repaid BE a total of \$5,920.25 in 2011, but BE has received no further repayments since then.

[3] ABC has ceased trading, owes substantial debts to the Inland Revenue Department, and is currently in the process of being removed from the Companies Register. BE now claims \$15,000.00 from YV. The claim has been reduced from the \$27,510 BE calculates is owing, to keep it within the monetary limit of the Tribunal's jurisdiction.

[4] The issues for determination are whether the loan agreement was with YV personally or with ABC, and whether BE can recover any money from YV.

Was the loan agreement with YV personally or with ABC?

[5] BE argued that the loans were of a personal nature, based on his friendship with YV. He pointed out that he would have insisted on a written contract if they had been business loans, but was content with a verbal agreement because he was trusting YV as a friend.

[6] However, I am not persuaded on the evidence that the loans were made to YV or that YV was personally liable under the loan agreement. The moneys were paid directly into ABC's bank account and to ABC's suppliers. In requesting that the loans be made, YV appears to have been acting on behalf of ABC in his role as director.

[7] I accept that BE was at least in part motivated by his friendship with YV when he made the loans. As an employee of ABC, BE may also have been motivated to help the company financially. Whatever BE's motivations, it does not change the fact that the loans were made to the company and the obligation to repay rests on the company rather than YV personally.

Can BE recover any money from YV?

[8] BE apparently trusted that YV would stand behind his company and repay the loans in the event that the company could not. However, such an agreement would amount to a personal guarantee of ABC's debts to BE. Section 27 of the Property Law Act 2007 requires a contract of guarantee to be in writing and signed by the guarantor. A verbal agreement to guarantee ABC's debts would be unenforceable.

[9] BE also raised the argument that YV might be liable for a breach of his duties as director under the Companies Act 1993. However, the Tribunal does not have jurisdiction to hear a claim based on a breach of that Act.

[10] Therefore the claim is dismissed.