

BETWEEN

**BL LIMITED
APPLICANT**

AND

**YO
RESPONDENT**

Date of Order:

22 November 2013

Referee:

Referee McKinstry

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] On 30 April 2013 BB of BL Limited contracted with YO – ABC for 4 pages of advertising in their magazine 'Beautiful You'. The following day YO called BB to rescind the contract. The parties disagreed whether YO had signed subject to her discussing this with her partner CC.

[2] The applicant is seeking \$3,570.75 being the contract price plus interest as provided in the contract against YO in her personal capacity.

[3] YO says that she was acting as an agent of ABC Limited.

Law

[4] The relevant law is the law of contract.

Issues

[5] The issue is whether YO was contracting in her personal capacity or as agent for ABC Limited.

Findings

[6] BB speaking for the applicant says that the contract did not have 'limited' next to ABC and therefore YO was contracting in her own capacity. They further say that they often contract with individuals that operate under trading names and that the reference to ABC in the contract was taken to be a trading name.

[7] YO says that she was first approached by one of the applicant's staff who cold called the shop and spoke to YO about advertising in their magazine. YO was agreeable to meeting with BB and on 17 April 2013 emailed DD at the applicant's office about a meeting. Her email had beneath her name the words 'ABC Limited'.

[8] DD emailed back the next day asking YO if her address/contact details were the same as her email signature? As of that time DD was aware that YO was an officer of ABC Limited.

[9] BB maintains that when contracting for a company an individual can be held personally liable if they do not identify that the company is a limited liability company. YO says that she was signing as an agent for ABC Limited. The general rule about agency is that where an agent does not disclose that it is signing for another party then an intention that they are the contracting party shall more readily be inferred. The Law of Contract in New Zealand at p512 says

The contract, however, is construed according to its natural meaning and, if it clearly shows that the agent must have been understood to have contracted merely as an agent, then, despite the fact that the principal for whom he or she acted has not been named, effect is given to the natural meaning of the words, and the agent drops out of the equation."

[10] YO was approached by a staff member of BL Limited. In her email to that staff member YO identified that she was with ABC Limited. That staff member emailed back, which acknowledged that she had read the email and specifically referred to YO's email signature, address and contact details. The knowledge of an employee is deemed knowledge of the company and as such when contracting with YO BB is deemed to have knowledge that there was a company called ABC Limited.

[11] When BL Limited invoiced for their services they made the invoice to ABC – YO. EE for BL Limited says that this was an invoice to YO trading as ABC. However that is not what the invoice says. BL Limited wishes to have the absence of the word 'limited' in the contract construed literally to mean that YO was not acting as an agent for a company and at the same time have the words 'trading as' implied into the invoice to show that they were not invoicing a company but only an individual.

[12] Having heard from the parties on this matter I find that it is more likely than not that YO was signing the contract as an agent for ABC Limited and that BL Limited had implied knowledge of this through the knowledge of their staff member. Accordingly as an agent for ABC Limited YO has no contractual liability to BL Limited and the claim is dismissed.