

BETWEEN

**DP
APPLICANT**

AND

**VK LIMITED
RESPONDENT**

Date of Order:

28 November 2014

Referee:

Referee Roberts

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that VK Limited is to pay \$10,862.33 to DP t/a ABC by 5.00pm on Friday 12 December 2014.

Facts

[1] The title for the land area known as AA Station names the proprietor as DEF. The Respondent entity DEF has since changed its name to VK Limited as advised by BB, director of the company.

[2] CC, Farm manager at AA Station, contacted DP t/a ABC to rock pick a number of large paddocks on the station.

[3] DP commenced work on 4 November 2013 and continued until stopped at 1.30 on 6 November 2013. He gave an invoice to CC for \$ 9,948.08 for the removal of about 625 tons of rock and CC took that to a meeting with the Farm owner BB.

[4] CC asked DP to leave the machinery on site as he was going to speak to BB about more rock picking work that needed to be done.

[5] DP was given the go ahead to continue work and completed the removal of a further 325 tons of rock over 2 more days on 11 and 12 November 2013. He presented a second invoice for \$4,083.65.

[6] DP is claiming payment of the amounts of the 2 invoices amounting to a total of \$14,031.17

Issues

[7] What were the terms of the agreement between CC and DP in relation to the rock picking work done at AA?

[8] Did CC have actual or apparent authority to contract with DP?

[9] Did BB, by agreeing to further work to be done on 11 and 12 November ratify the earlier contract so that VK Limited is liable to pay for the work completed on 4, 5 and 6 November as well as work completed on 11 and 12 November 2013?

[10] If so, is VK Limited liable to pay the amount claimed by DP of \$ 14,031.17?

What were the terms of the agreement between CC and DP in relation to the rock picking work done at AA?

[11] The law of contract and agency applies to this dispute.

[12] CC gave evidence in person and stated that he agreed with DP that DP would transport his rock picking machine to AA Station and the rate would be \$265 per hour plus the cost of broken tines. CC selected the areas to be rock picked and dictated when work stopped and started.

Did CC have actual or apparent authority to contract with DP?

[13] CC was the farm manager at AA Station at the relevant time and the question arises as to whether he had actual or apparent authority to bind the owner of the farm VK Limited.

[14] DP says he was contacted by CC to do the work at AA. He says he had no reason to think CC as farm manager would not have had authority to agree to such contracts as the work was part of the ordinary running and maintenance of the farm. A number of witnesses for BB of VK Limited, including EE and FF, clearly had concerns about the rock picker at work on AA but DP says he worked for a number of days in broad daylight and during working hours and no one came up to him to say CC had no authority to contract with him. He says he did notice that the farm had a "For Sale" sign on it and was told by CC not to be concerned about that as he wanted to get the winter crop on anyway. He says he did the work as instructed to by CC. The first he heard about authority or otherwise was when he received an abusive call from BB in which he said he would not be paying as he had not authorised the work as there was no Order number for the job and in any event it was a poor job.

[15] BB says that CC did not have actual authority to contract with someone in this way. He says that CC's employment contract is silent on the matter of what sorts of contracts he was able to agree to, on behalf of the farm's owner. In practice he says that the expenditure by CC was limited to a thousand or so here and there. He says the fact that CC had to take DP's invoice to him for payment is proof of that.

[16] BB says that there was no apparent authority either as he (as director of VK Limited) had done absolutely nothing to lead DP into thinking CC had authority. He says it is not enough for DP to presume that just because CC was the farm manager. He referred to *Savill v Chase Holdings (Wellington) Ltd* [1989] 1 NZLR 257 at 307: "it is the principal's

representation that creates the authority; not the agent's assertion that he has that authority", in support of that view. He says it was also noticed by DP the farm was For Sale – so why would anyone want to spend large sums on rock picking in such a case? He says DP ought to have been more careful.

[17] The parties produced a lot of information about e mails and forensic analysis of those emails. I need not rely on that information in my findings as the conduct of the parties is sufficient for me to be satisfied that it is more likely than not that CC did not have actual authority nor was there apparent authority to bind VK Limited to a contract amounting to over \$9,000.00 for the first few days work. I accept BB's evidence that CC had to take invoices to BB to effect payment of any invoices over small amounts even where the work may be part of the general maintenance of the farm. I find there was no apparent authority either as there was no contact between DP and BB at all and no evidence of any "holding out" by BB for the company that CC did have such authority.

Did BB, by agreeing to further work to be done on 11 and 12 November ratify the earlier contract so that VK Limited is liable to pay for the work completed on 4, 5 and 6 November as well as work completed on 11 and 12 November 2013?

[18] If an agent purports to act on behalf of a principal without actual authority, the absence of assent can be supplied retrospectively by the principal. This is called "ratification". The person ratifying must have actual authority and is effective even where the person ratifying did not appreciate the full legal effect of the ratification. Ratification can be by words or conduct and the central idea is that it operates as if the unauthorised agent always had authority, therefore binding the company owner to contracts entered into, that are later ratified.

[19] BB says that when CC met with him and presented the first invoice from DP he was very unhappy about what had gone on. He says he could have had the job done better and cheaper than it had been done by DP.

[20] CC says that BB told him at the meeting that DP could carry on with rock picking the following week. BB says there was a conversation about that but he says he agreed DP could do further rock picking work but limited that to 3 hours, on the ridges only.

[21] DP was sent back to work on 11 and 12 November and did \$4,083.65 worth of work.

[22] I find that by agreeing to DP continuing to rock pick at the rate and on the terms previously agreed to by CC without authority, BB as the director of VK Limited, has ratified the contract for the work done on 4, 5 and 6 November 2013 and has therefore bound the company to pay for it. I find CC entered into a contract for further work by DP with actual authority for 3 hours extra work "on the ridges". I find that BB knew the terms of the deal fully as CC gave him the first and detailed invoice from DP at the meeting and BB ratified the agreement by then authorising DP to do 3 more hours of the same kind of work, as before.

If so, I need to decide whether VK Limited is liable to pay the amount claimed by DP of \$ 14,031.17?

[23] DP and CC say that the renewed work for 11 and 12 November 2013 was not limited to 3 hours of work only. BB says it was so limited. I accept what BB says in this case and find that the "continued contract" was limited to 3 hours to finish off the rock picking job. In making this decision I am mindful there are a number of allegations made about each of the parties as to the credibility of the other. However, I found BB's statement that he authorised 3 more hours of work by DP credible in the circumstances and I am also aware that this conduct also ratified the earlier arrangement made without authority by CC.

[24] DP produced testimonials about the good quality of his work. I also find that BB asked that DP do further work after the first 3 days so that he cannot now complain that the quality wasn't up to scratch. It is reasonable to infer he was satisfied with the quality of the work or he would not have asked him to continue with the same work using the same machine. I find therefore that the full amount of the first invoice as ratified by BB plus 3 hours of the second invoice is to be paid to DP.

[25] I find that VK Limited is to pay DP the sum of \$10,862.33 made up of the full amount of the first invoice 8/11/2013 for \$9,948.08 incl GST plus 3 hours of work on 11/11/2013 at \$265 per hour(\$795.00 + 119.25 GST = \$914.25) .