



PAUL GARREFFA t/as PAUL'S HOME MAINTENANCE  
AND RENOVATIONS  
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**Application concerning VINCENZA KURSUN - PAUL GARREFFA T/AS PAUL'S HOME MAINTENANCE AND RENOVATIONS & KAMRAN HADDADI T/AS BETTER HOMES BUILDING MAINTENANCE**

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Applicant: VINCENZA KURSUN

Respondent: PAUL GARREFFA t/as PAUL'S HOME MAINTENANCE AND RENOVATIONS and KAMRAN HADDADI t/as BETTER HOMES BUILDING MAINTENANCE

On 13-Oct-2015 the following orders were made:

1. The hearing was adjourned to a date to be fixed by the Registrar for a Directions Hearing.
2. The First Respondent's application to be removed as a respondent to these proceedings is refused.

A separate written notice of the new hearing date will be sent to you in the near future.

**REASONS**

(These reasons are given to comply with section 62(3) of the Civil and Administrative Tribunal Act 2013).

The Applicant, Ms V Kursun, appeared in person. She was represented by Mr T Bland of Counsel (instructed by O'Brien Lawyers).

The First Respondent, Mr P Garreffa appeared in person. He was represented by Mr Allan of Counsel (instructed by Drayton Sher, Lawyers).

At the hearing both parties were given an opportunity to present their evidence and make submissions.

There was no appearance by the Second Respondent, Mr K Haddadi.

There appears on the Tribunal file a copies of two notices of hearing addressed to the Second Respondent dated 16 September 2015 advising of the time and location

of the hearing. The Tribunal is aware of the Registrar's standard practices in notifying parties of the time and place of hearing as set out in her statutory declaration of 30 July 2014. Having perused the file, the Tribunal is satisfied that in accordance with the Registrar's usual practices notice of hearing of today's proceedings was posted to the Second Respondent, that the Second Respondent has been given notice of the hearing and that the hearing notice has not been returned. Further, the Tribunal is satisfied that the justice of the case requires the matter proceed in the absence of the Second Respondent: Rule 35(2) Civil and Administrative Tribunal Rules 2014.

## Background

The proceedings were commenced by the Applicant on 29 May 2015 by filing an application form electronically which was completed by her (the Application).

In the Application the dispute details, orders sought and reasons for the orders were set out. While this document has not been drafted with precision, it sets out that the Respondents had carried out residential building work for her, she paid them money and the work is incomplete and defective. The orders sought are: repayment to her of \$26,514; and, the delivery, return or replacement of goods valued at approximately \$20,000. In total, \$46,514.

The outcome of the first hearing before the Tribunal on 28 July 2015, when all parties appeared, is set out in Notice of Order issued on that day. The matter was set down for a hearing to identify the correct respondent and directions made for the exchange of evidence on that matter. This issue of who was the correct respondent was raised by the First Respondent who claimed that the Second Respondent was the head contractor. It is unfortunate that, given the imprecise and disorganised nature of the Application, the Applicant was also not required to amend the Application and to seek assistance in that task.

At the second hearing, on 16 September 2015, there was no appearance by the Second Respondent. The Applicant was legally represented and tendered written submissions. After the unrepresented First Respondent was given an opportunity to consider the submissions by the Tribunal he sought an adjournment which was granted. Directions were made on 16 September 2015 for the exchange of evidence relating to the issue of determining the parties to the Contract.

## Facts not in Dispute

(a) On 4 January 2015, the Applicant sent the First Respondent a SMS (short message service) seeking a quote for bathroom renovations - 4th paragraph of the Applicant's Affidavit sworn on 10 August 2015 (the A's Affidavit); 7th paragraph of the First Respondent's affidavit sworn on 9 October 2015 (the FR's Affidavit).

(b) On 15 January 2015, the parties met at the Applicant's premises - 6th paragraph of the A's Affidavit; 8th paragraph of the FR's Affidavit.

(c) On 29 January 2015 the First Respondent sent to the Applicant an e-mail attaching his quote for work to be done for the Applicant and that quote is Annexure "B" to the A's Affidavit - 8th paragraph of the A's Affidavit; 12th paragraph of the FR's Affidavit. The Applicant accepted the quote on 29 January 2015 - the 9th paragraph of the A's Affidavit and annexure "C" of the A's Affidavit.

(d) On 17 February 2015, the Applicant paid to the First Respondent \$3,500 towards the work to be performed - 10th paragraph of the A's Affidavit; annexure "C" of the A's Affidavit; 15th and 16th paragraph of the FR's Affidavit.

## Findings of Fact

(e) Both Respondents attended the Applicant's premises on 16 March 2015 and commenced work. This finding based on - 14th paragraph of the A's Affidavit. The First Respondent does not dispute attending the premises or that he carried out work.

(f) At no time did the First Respondent directly state to the Applicant or inform her that he was not contracting with her, that he was unable to do so or that he was a subcontractor/employee of the Second Respondent. This finding is based on the 7th paragraph of the A's Affidavit. The Tribunal does not accept, on the balance of probabilities, that the conversation set out at the 7th paragraph of the occurred. This is because it:

- i. is not corroborated by the extensive SMS messages between the Applicant and the First Respondent;
- ii. it is inconsistent with the finding set out at paragraph (c) above; and
- iii. it is inconsistent with the finding set out at paragraph (d) above.

## Application of the Law

(g) On the basis of the findings of fact set out above, on 29 January 2015, the First Respondent entered into a contract, jointly with the second Respondent or otherwise, with the Applicant to provide to the Applicant residential building work as defined in the Home Building Act 1989 (the 1989 Act). Therefore, the Applicant is entitled to bring this Application pursuant to section 48I of the 1989 Act.

(h) While the Tribunal notes the submissions made by Mr Bland on the Applicant's behalf, in this matter there is no ambiguity as to who the contracting parties were and as a consequence the statutory entitlement of the Applicant to bring this claim, as defined in subsection 48A(1) of the 1989 Act, against the First Respondent.

## The First Respondent's Case

While Mr Allan made adept submissions on behalf of the First Respondent, they were not accepted for the following reasons.

(i) There is no viable claim against the First Respondent disclosed in the Application.

The application had the defects referred to in the second paragraph under the heading 'Background' above. However, in this jurisdiction, applications are routinely prepared by lay persons. It would be premature at this stage of the proceedings to strike it out as not revealing a viable claim. The claim can be ascertained as is set out in the paragraph last-mentioned. Indeed it is the statutory duty of the Tribunal to act informally and assist the parties: subsections 38(4) and (5) of Civil and Administrative Tribunal Act 2013.

(j) The First Respondent is not contractually responsible for work the subject of the Application and rectified any complaints regarding work performed by him.

In addition to the matters set out in the preceding paragraph, these are matters that must be the subject of a hearing to determine the First Respondent's liability, if any.

(k) The First Respondent was being paid on a day basis.

While between the two respondents there may have been arrangements as to the distribution of funds between them, such arrangements do not operate to bar the relationship set out at paragraph (g) above.

(l) During the first meeting with the Applicant, the Second Respondent took the lead.

Notwithstanding this, the First Respondent issued the quote and sought the Applicant's acceptance of the same as set out in paragraph (c) above.

(m) Any contract made with the First Respondent during January 2015 was superseded by another quote given by the Second Respondent acting alone. The annexure "G" to the A's Affidavit and page 70 of the Applicant's documents do not take the form of a quote or contract. These are variations claimed but not accepted by the Applicant - paragraph 15 of the A's Affidavit.

(n) There was no partnership between the parties and no sharing of profits. The existence of a partnership is not a necessary prerequisite to establishing the existence of the contract referred to in paragraph (g) above.

(o) The Respondents had separate business names. This does not preclude the existence of the contract referred to in paragraph (g) above.

(p) The First Respondent was the apprentice of the Second Respondent. This does not preclude the existence of the contract referred to in paragraph (g) above.

**C Marzilli**  
Tribunal Member  
**16/10/15**