

BETWEEN

**BK
APPLICANT**

AND

**YP LIMITED
RESPONDENT**

Date of Order:

25 November 2013

Referee:

Referee McKinstry

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] On 22 March 2013 the applicant withdrew money from his bank account with YP Limited. The applicant says that he wanted to withdraw \$3,300.00. The bank says that the applicant asked to withdraw \$6,300.00.

[2] YP Limited says that they gave the applicant \$6,300.00 and the applicant accepts that this is most likely to have been the case. The applicant says that he withdrew the money to give to a builder and that he trusted the bank to have given him \$3,300.00 so he did not check the amount apart from taking out \$300.00 and then giving the envelope with the rest of the money in it to his wife who then gave it to the builder.

[3] The applicant seeks to recover from the Bank the \$3,000.00 he says the bank gave him in error.

Law

[4] The relevant laws are the laws of contract and negligence.

Issues

[5] Did the bank believe that the applicant had asked to withdraw \$6,300.00?

[6] Did the applicant receive \$6,300.00?

[7] If the applicant received \$6,300.00 does the bank have any potential liability from that time on?

Findings

Did the bank believe that the applicant had asked to withdraw \$6,300.00?

[8] The applicant says that he gave his bank card to the teller and requested to withdraw \$3,300.00. He says that he did not sign anything nor did he receive a withdraw receipt. He further says that he did not see the money being counted on the counting machine as this was behind the computer terminal.

[9] The bank says that when the applicant asked for an amount more than \$5,000.00 a second staff member joined the teller to watch the money being counted and that the money machine was in front of the applicant with the money being counted towards him. They also say that the machine has a number counter that faces the applicant which would have shown that 63 notes had been counted.

[10] The bank further says that a receipt is automatically printed and that while they cannot confirm or deny the applicant's statement that he was not given a receipt they are certain that one would have been provided.

[11] Having heard the evidence from the parties on this point on find that on the balance of probabilities the bank believed that the applicant had asked to withdraw \$6,300.00 from his account.

Did the applicant receive \$6,300.00?

[12] The bank says that the tellers balanced their cash at the end of the day and there was no \$3,000.00 error. Further, as the transaction was in front of another staff member the transfer of the money to the applicant was witnessed by that other staff member.

[13] The applicant's position is that he is claiming that he was given the additional \$3,000.00 when he did not want it.

If the applicant received \$6,300.00 does the bank have any potential liability from that time on?

[14] The applicant says that neither he nor his wife checked the envelope as they trusted the bank.

[15] Having received funds from the bank the applicant confirms that he did open the envelope to withdraw the \$300.00 before giving the envelope to his wife.

[16] Having received money from the bank the applicant was in a position to confirm the amount of money in the envelope anytime before he or his wife handed this to the builder. If the builder was given \$3,000.00 too much then this mistake occurred at the time the money was given to the builder and not when the applicant received money from the bank.

[17] Having heard all the evidence from the parties I find that the applicant has failed to prove on the balance of probabilities that the YP Limited has been negligent in handing him

more than they believed he had asked for and that in not checking the money while in his possession the applicant has been the cause of any loss he has suffered.

[18] Accordingly the claim is dismissed.

[19] The applicant has indicated that he will claim from the builder. This is a separate matter to the claim against the bank.