

**BETWEEN**

**ABT Ltd**

APPLICANT

**AND**

**ZYJ Ltd**

RESPONDENT

Date of Order:

5 June 2013

Referee:

Referee Avia

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that ZYJ Ltd is to pay ABT Ltd the sum of \$5,151.29 on or before 19 June 2013.**

## **Facts**

[1] On the evening of 19 May 2012, a truck belonging to ZYJ Ltd collided with a door in a building owned by ABT Ltd.

[2] ZYJ delivered goods to a customer at ABT's storage facility. The customer let the ZYJ truck into the building. To exit the building after delivery, the customer entered a code on a key pad, which opened a large sliding door. Once the customer had driven out of the building, the truck began reversing. Other ZYJ staff helped to guide the truck out. The door began to close and the collision occurred.

[3] The carriage of goods contract between ZYJ and its customer excluded liability for trucks directed onto private property.

[4] ABT claims the cost of repairing the door of \$5,151.29, being \$633.27 to temporarily repair and secure the door until repairs could be done, and \$4,518.02, being the cost of properly repairing the door.

[5] LH and DS appeared for ABT Ltd. NX appeared for ZYJ Ltd.

## **Issues**

[6] The issues are:

- (i) When reversing out of ABT's premises, did the driver of the ZYJ truck drive negligently?
- (ii) Does the exclusion clause between the customer and ZYJ apply to ABT?
- (iii) What are the reasonable costs of repair?

## **Law**

[7] When driving a vehicle, a driver has a duty to take reasonable care to avoid damaging property belonging to others. Any failure to do so breaches that duty and renders the driver liable for the cost of repairing the property. If the driver is an agent for the owner of the property, and is undertaking the owner's business, the owner can be held vicariously liable for the driver's actions.

## **Decision**

*When reversing out of ABT's premises, did the driver of the ZYJ truck drive negligently?*

[8] NX for ZYJ Ltd says that it was dark and the door was black, rendering it invisible as it closed. However, I find the door could be seen as it closed. Even if the door was black, the CCTV footage shows a square white patch on the end of the door closest to the truck. The patch should have been visible to anyone looking towards the door. Therefore, the driver should have seen the door closing as the white patch would have been moving.

[9] NX says that there should have been sensors on the door. He says that had there been sensors on the door, the door would have stopped moving once the truck moved closer to it. However, I accept LH's evidence for ABT Ltd that there are sensors on the door. As LH works for ABT, he is better placed than NX to know that the doors have sensors.

[10] I also find that the sensors would not have prevented the collision as the door did not hit the truck; rather the truck moved into the door as it closed behind the truck. If the truck had partly reversed out of the premises as the door was closing, the sensors would have detected the obstruction and stopped the door from closing any further. However, the evidence shows that before the collision, the door had already closed behind the truck. This is because the impact marks on the door in one of the photographs shows that the rear of the truck hit the door directly. Further, none of the photographs suggest the door hit the truck from the side.

[11] NX says similar facilities have sensors that activate before the vehicle arrives at the door. However, I have no evidence before me to suggest that the lack of such sensors is

negligent. Further, the door had already closed sufficiently to be behind the truck. For this reason, the truck would have hit the door whether or not the door was moving or stationary at the time of impact.

[12] Once a driver activates the opening of the door, the driver has 30 seconds to exit the premises. Here, it was the customer not ZYJ Ltd's driver who activated the door opening. After the door opened and the customer had exited, the driver intended following the customer out. Therefore, the time ordinarily allowed to exit the premises (30 seconds) was reduced as the driver had to wait for its customer to exit. The driver took a risk when choosing to exit in this manner as he must have known he had less time than usual to exit the premises. Further, the risk that the door would close during the manoeuvre was significantly elevated as the driver was reversing a large truck requiring assistance from other ZYJ staff to be guided out.

[13] While the driver may not have known about the 30-second time limit, I do not find this relevant. First, the footage of the customer exiting the facility shows 30 seconds is ample time for any vehicle to exit the building. Secondly, if the driver was not aware of the time limit, he should taken steps to ensure he had enough time to exit the building before the door closed, such as finding out the key-pad code and activating the opening of the door himself. Hoping the door would remain open long enough to enable a large vehicle to reverse out of the building with necessary guidance after another vehicle had exited, was not a prudent action to take.

[14] At first, there was a question about whether or not the door had closed prematurely; however, ABT's CCTV footage showed the door was open for 30 seconds.

[15] For the above reasons, I find the driver for ZYJ Ltd drove negligently when exiting ABT's building. As the driver was an agent of ZYJ Ltd undertaking business for ZYJ Ltd at the time, ZYJ Ltd is vicariously liable for the driver's negligence.

*Does the exclusion clause between the customer and ZYJ Ltd apply to ABT Ltd?*

[16] An exclusion clause may apply if one party to a contract brings the exclusion clause to the notice of the other party.

[17] The exclusion clause does not apply to ABT Ltd. It was not a party to the contract between ZYJ Ltd and its customer; neither did the parties to the contract bring the clause to the attention of ABT Ltd. I accept that had ABT Ltd had notice of the clause, ABT would not have allowed ZYJ Ltd access to the property.

*What are the reasonable costs of repair?*

[18] As the liable party, ZYJ Ltd must compensate ABT Ltd for its reasonable losses.

[19] I find it was reasonable for the door to be secured and fixed temporarily before a proper repair took place. Firstly, the door had to be secured as ABT is in the business of offering its customers secure storage facilities. Secondly, as it was a Sunday night, the likelihood of finding someone to effect an immediate full repair was low; however, a temporary repair enabled customers continued access to the building.

[20] I find the costs of securing the door reasonable as a call out fee had to be paid as well as the attendant's labour costs.

[21] I find the costs of the proper repair were reasonable as the scope of the work outlined in the quote showed that considerable repairs were required. While NX says he thought the costs were excessive, he produced no evidence on this point.