

**BETWEEN**

**AC**  
APPLICANT

**AND**

**ZX Ltd**  
FIRST RESPONDENT

**AND**

**ZXZ Ltd**  
SECOND RESPONDENT

Date of Order:

14 July 2014

Referee:

Referee Ashcroft

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the second respondent, ZXZ Ltd, is to pay to the applicant, AC, the sum of \$2,145 on or before 5pm Friday, 1 August 2014.**

### **Facts**

[1] AC, the applicant, owns a home at Z town. The previous owner had purchased a new stainless steel hot water cylinder which was manufactured by the second respondent, ZXZ Ltd, and installed by the first respondent, ZX Ltd. The hot water cylinder came with a 10 year warranty.

[2] On 8 January 2014, some two years after the new cylinder was supplied and installed, AC discovered that it was leaking and engaged a plumber, AA, trading as ABC Ltd to fix the problem. As the cylinder was under a manufacturer's warranty, AA sent it back to ZXZ Ltd.

[3] ZXZ Ltd initially denied that the problem was covered by its manufacturing warranty and rejected the claim based on incorrect installation and then returned the cylinder to ABC Ltd. AC had the cylinder temporarily repaired and when that fix failed in March, replaced the cylinder at a cost of \$2,145.38.

[4] In the Disputes Tribunal, AC claims \$2,145 from ZX Ltd and ZXZ Ltd.

### **Issues**

[5] The issues are:

- (a) Who caused the hot water cylinder to fail?
- (b) What damages are recoverable on that failure?

### **Law**

[6] The law of contract and the Consumer Guarantees Act 1993 applies. ZXZ Ltd is bound by the Act to ensure that the cylinders it manufactures are of acceptable quality, durable and fit for purpose. ZX Ltd, as the installers of the cylinder, must supply its service with reasonable skill and care and ensure that the product of its goods and services is of acceptable quality and fit for purpose. The tests are objective and based on a reasonable consumer.

[7] Where a service is not provided with reasonable skill and care and that failure is capable of remedy, then a consumer may require the supplier to remedy the failure and if they do not, may have it remedied elsewhere. In that instance the consumer may recover from the supplier all reasonable costs incurred in having the failure remedied. If a breach cannot be remedied, or is substantial, meaning that the product is substantially unfit for purpose, then a reasonable consumer is entitled to a refund of any money paid and damages.

## **Decision**

*Who caused the hot water cylinder to fail?*

[8] I have had regard to ZXZ Ltd's arguments that the failure of the cylinder is not due to a manufacturing or materials fault and further that the warranty does not cover water damage. I have considered the metallurgist's report from DEF Ltd in relation to corrosion on another ZXZ Ltd cylinder dome. I have also had regard to ZXZ Ltd's evidence that the failure of the cylinder was due to a loose top fitting which caused water to leak which is a failure not by it or the installer but by the owner; in failing to carry out regular routine maintenance on the cylinder to ensure that fittings had not worked, loose and leaked.

[9] I have also had regard to the other evidence before me:

- (a) That at the time of the hearing all parties accepted that the cylinder had been installed correctly by ZX Ltd;
- (b) In the two years, to January 2014, the cylinder had not leaked;
- (c) AA (the plumber), identified a slow leak coming from the dome at the top of the cylinder. AA did not identify any loose fittings or outstanding maintenance as being the cause of the leak. He determined that this was a manufacturing issue typically covered by warranty and to that end returned the cylinder to ZXZ Ltd;
- (d) ZXZ Ltd initially declined the warranty claim on the basis that it had been installed incorrectly. ZXZ Ltd now says it is due to outstanding maintenance by the homeowner and failure by the homeowner to ensure fittings were tight and to identify the leak;

(e) ZX Ltd has been installing cylinders since 2006 and in its experience, ZXZ Ltd cylinders fail at a greater rate (about 33 per cent) than others and are difficult to deal with over warranty claims. Stainless steel should not rust. While a homeowner is responsible for taking action if a cylinder is leaking, if it doesn't leak when installed, any subsequent failure must be due to either a manufacturing fault or other external factor. AA's evidence of the state of the cylinder is the best evidence available. That the metallurgist's report was not on AC's cylinder and it is not analogous as the other cylinder inspected was on a wetback and subject to greater extremes of temperature and pressure. In his opinion this cylinder leak was caused by the dome failing; if it was a loose fitting then AA would have seen that and the leak would have forced water out differently and more easily, and given AC's high pressure water system, the leak would have been identified almost immediately. This was not, as ZXZ Ltd maintained, the case of a top pipe leaking under mains pressure;

(f) AC is a stainless steel engineer and has not seen rust of this kind before.

[10] The purpose of a hot water cylinder is to hold and heat water. The Act guarantees that the cylinder be of acceptable quality, durable and fit for purpose.

[11] I find that the cylinder failed due to a cause of the manufacturer ZXZ Ltd.

*What damages are recoverable on that failure?*

[12] The evidence established that once exposed to corrosion the dome could not be repaired and a replacement cylinder was necessary.

[13] I find that failure to be of a substantial character and not capable of remedy.

[14] I note that some time after the warranty claim was declined and the cylinder failed, ZXZ Ltd subsequently offered to supply a replacement cylinder at cost. However it is clear that by that time, AC had lost faith in ZXZ Ltd and its products and it is equally clear given its handling of this dispute that he was not prepared to invest in another one of their cylinders.

[15] Under the Act, AC is entitled to damages from ZXZ Ltd. I find the damages to be the replacement cost of the cylinder.

[16] AC claims \$2,145. I find those damages established and reasonable.