

**BETWEEN**

**ACC**

FIRST APPLICANT

**ACD**

SECOND APPLICANT

**AND**

**ZYA**

RESPONDENT

Date of Order:

18 March 2013

Referee:

Referee Meyer

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that ZYA is to pay to ACC and ACD the sum of \$750.68 by 26 March 2013.**

### **Facts**

[1] ACC and ACD contracted with ZYA on a labour only job to lay tiles in their kitchen. They were dissatisfied with his workmanship and advised him of this but he has refused to carry out remedial work. Consequently, they have had the work redone by another tradesman.

### **Issues**

[2] The issues to be decided are:

- (i) Whether ACC and ACD are entitled to have the work carried out by another tradesman at ZYA's expense;
- (ii) If so, what compensation should be paid by ZYA?

### **Law**

[3] The relevant law is the law of contract and the Consumer Guarantees Act 1993 (the CGA).

### **Decision**

[4] I find that ACC and ACD are entitled to have the remedial work carried out by another tradesman at ZYA's expense.

[5] ACC and ACD have presented evidence in the form of photos of the work completed by ZYA. These show tiles laid in an uneven manner. Based on these photos, I find on balance that the workmanship is unsatisfactory and has not been carried out with reasonable care and skill, to the point where it is reasonable that the work should be redone.

[6] ZYA states that the substrate was unsatisfactory to the point where a satisfactory job was not possible and that this was made known to the Applicants before and during the course of the

work. ACC and ACD deny this and state that if that were the case he should not have commenced the work or carried on with it.

[7] On this basis, I find that ZYA is in breach of the guarantee of reasonable care and skill set out in s 28 of the CGA, and that ACC and ACD are entitled to the remedies set out in s 32, which require ZYA to remedy the work and, if he does not do so, to have the remedial work carried out at his expense. I am satisfied that they put him on notice that he should do this and that they would first obtain a second opinion from DZ, and that his response was to require that they put his tools on the doorstep for him to collect. To me, that constitutes a refusal to do the work and ZYA should pay for the remedial work.

[8] I find that the amount ordered above should be paid.

[9] The only way to carry out the remedial work was to remove the tiles from the walls in their entirety, destroying or damaging them in the process. This also meant that the underlying gib-board was also destroyed. As ZYA has not been paid for his labour, the Applicants are only entitled to the cost of the extra work required over and above the agreed price with ZYA. They are entitled to the cost of the new gib-board, and the original purchase price of the tiles and edging, but not the increased costs of the new tiles, as these are different from those that were originally supplied to ZYA. I am unable to award costs associated with the hearing of the claim or the tool that was purchased to cut the gib-board, as this was not consumed in the process and is available for other uses around the home or in the workshop.

[10] The quantum awarded above is as follows:

| <b>Item</b>                      | <b>Claim</b> | <b>Award</b> |
|----------------------------------|--------------|--------------|
| Original purchase price of tiles | \$453.74     | \$453.74     |
| New tiles                        | 124.53       | Nil          |
| New gib                          | 96.94        | 96.94        |
| New trim                         | 68.10        | 68.10        |
| Labour difference                | 131.90       | 131.90       |
| Multi-tool to cut gib            | 59.99        | Nil          |
| Photocopies                      | 16.40        | Nil          |
| Filing fee                       | 36.30        | Nil          |

**Amount awarded**

**\$750.68**