

**BETWEEN**

**ADL**

**APPLICANT**

**AND**

**ZWO LTD**

**RESPONDENT**

Date of Order:

31 March 2011

Referee:

Referee A Davidson

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim is dismissed.**

## **Facts**

[1] The Applicant, ADL, purchased a second hand engine from the respondent, ZWO Ltd for \$3,000.00 (incl GST) on 3 September 2010. The invoice described the engine as “Engine Long BMW E39 5 Series 96-03”. ADL inspected the engine and paid ZWO Ltd. When the engine was delivered additional parts were required in order to install it in his vehicle. ADL claims that these parts should have been supplied with the engine and that because the parts were not supplied he needed to pay \$3,217.10 to his mechanics to install the engine instead of the \$1,500.00 that he had been quoted. ADL now claims the cost of installing his engine.

## **Law**

[2] The law governing this claim is the law of contract.

## **Decision**

[3] ADL argued that what he ordered was a “complete engine” but that what he received was a “long engine”. The difference being the extent to which ancillary components are left on the engine. ADL argued that because ZWO Ltd provided him with a long engine that it was necessary for him to acquire additional parts to enable his engine to be fitted.

[4] ZWO Ltd argued that there is no such thing as a “complete engine” and that supplying long engines is the norm in the parts industry. ZWO Ltd argued that those parts that make up a “long engine” are all the parts that are clearly part of the engine. Beyond the parts typically comprised in a “long engine”, the question as to where the engine ends and the vehicle begins arises.

[5] ADL is claiming the entire cost of fitting the new engine and produced the invoice from his mechanic to substantiate his costs. ADL acknowledged during the hearing that the engine itself is working and that he would have had to incur costs to have the engine installed regardless of whether he was supplied with a “complete engine” or a “long engine”. Given

that the engine is working, I find that ADL's claim is one of damages; that is to say, he cannot simply claim the entire cost of having his new engine fitted as this would result in a windfall to him. ADL is entitled to claim any extra costs that he may have had to incur arising out of ZWO Ltd's breach (if any) of the agreement between the parties.

[6] ZWO Ltd supplied the engine with a start only warranty. In addition to describing the engine as a "long engine" in its invoice, ZWO Ltd also provided ADL with its start only warranty description, which stated that for the warranty to be valid the purchaser would need to fit a new water pump and thermostat. ZWO Ltd stated during the hearing that it always removes water pumps from engines before selling them and that this is a common practice amongst parts suppliers to ensure that a new water pump is fitted. The start only warranty also stated that while other components may be attached to the engine, such components were not covered by the warranty and that the condition of oil, seals, gaskets and filters are the responsibility of the purchaser. ZWO Ltd produced evidence during the hearing from a certified BMW mechanic showing that water pumps, thermostats, oil, filters and anti-freeze all need to be replaced in the event an engine is replaced. The mechanic also stated that the extent of the engine as supplied to ADL conformed with what is usually supplied when an engine is purchased.

[7] Reflecting on the invoice for work done and parts purchased in relation to fitting the engine to ADL's vehicle, I am not persuaded on the balance of probabilities that any of the work or parts specified in the invoice are costs that should be borne by ZWO Ltd. Specifically the water pump and thermostat are stated as missing. However, these are items that ADL would have needed to have replaced even if they were present. ADL would have had to incur the labour cost specified in the invoice as his mechanics were never going to fit his engine for free. Also listed are oil, oil filter and a radiator cap, which clearly cannot be expected to be supplied when an engine is supplied. Reviewing the rest of the parts purchased, I am not persuaded that any of them on the balance of probabilities could properly be considered part of the motor. Mostly they appear to be items that would typically need replacing at the time of engine replacement or are not part of the motor but rather part of other components of the vehicle such as the transmission or air-conditioning systems. For the most part, such parts might usually be expected to have been left in the engine bay after the removal of the original engine and so reused when the new engine was fitted.

[8] Throughout much of today's hearing, ADL's focus was on his argument that he was not supplied with a "complete engine" rather than individual items that he thought should have been supplied with the engine. ADL frequently discounted having any knowledge of engines. However, his mechanic must certainly have been familiar with engines and one question that was not answered satisfactorily was if ZWO Ltd supplied the engine missing so many parts why was it not simply returned to ZWO Ltd for a refund once ADL's mechanic discovered that the parts were missing?

[9] During the hearing, ADL produced a letter from the Ministry of Consumer Affairs dated 7 October 2010 addressed to ZWO Ltd to support his claim. I find that the letter from the Ministry of Consumer Affairs does not in fact represent an opinion from the Ministry but rather a restatement of ADL's view of the facts and law. That is how it is worded at least and as such it cannot add more than a little weight to ADL's own arguments.

[10] ADL argued that ZWO Ltd has breached s 9 of the Consumer Guarantees Act 1993, which requires that goods comply with their description. On the balance of probabilities, I find that the engine supplied by ZWO Ltd did comply with its description. ADL wanted a BMW 535 engine and this is what ZWO Ltd provided him. While the engine could have been supplied with additional components, there is insufficient evidence to show that it should have been and as such that what was supplied did not comply with what was agreed.

[11] On the basis of the foregoing, I find that ADL has not been able to prove that ZWO Ltd failed to provide him with all of the parts that it should have and, as such, I find that ZWO Ltd are not responsible for any of the costs incurred by ADL in the course of having the new engine fitted.