

BETWEEN

AEC LTD

APPLICANT

AND

ZVS

RESPONDENT

Date of Order:

25 July 2011

Referee:

Referee Benson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZVS is to pay \$1,135.64 to AEC Ltd within ten days of the date of this order.

Facts

[1] AEC Ltd claimed \$1,096.15 as the amount owing by ZVS from a foreign exchange contract. The issues of whether ZVS owed this money and how much she owed were determined on the evidence (balance of probabilities or what most likely happened) and the law of contract.

[2] The Tribunal found that ZVS owed \$1,096.15 to AEC Ltd.

[3] On 2 November 2010, ZVS entered into a contract for AEC Ltd to convert NZ\$60,000 into Chinese currency (CNY) at an exchange rate of 5.1050.

[4] AEC Ltd effected the exchange but ZVS failed to provide the New Zealand dollars to AEC Ltd.

[5] On 4 November 2010, AEC Ltd therefore reversed the transaction at the prevailing exchange rate (5.2000) and suffered a loss of \$1,096.15:

CNY306,300 at 5.1050	\$NZ60,000.00
Less CNY306,300 at 5.2000	\$NZ58,903.85
Balance	\$NZ1,096.15

[6] ZVS argued that she was not liable for AEC Ltd's claim because AEC Ltd failed to finalise a previous foreign exchange contract (made on 29 October 2010) by the end of 2 November 2010. However, this was not accepted. The terms of the 29 October contract were agreed on that date and did not include any stipulation as to the time of transfer of funds. On the morning of 2 November, ZVS requested that funds for 29 October contract be available by the end of 2 November, but (as just explained) this was not a term of the parties' contract and there was no evidence that this was accepted by AEC Ltd. Therefore, AEC Ltd was not

in breach of the 29 October contract on (or the 2 November contract) for failing to ensure that funds for the 29 October contract were received by the end of 2 November.

[7] ZVS also argued that she was not liable for AEC Ltd's claim because the 2 November contract was not formed and not binding on her as she had not signed the "Open Contract" document sent to her by AEC Ltd on 2 November or paid the deposit requested by AEC Ltd. This, too, was not accepted. The 2 November contract was formed on the telephone on that day when AEC Ltd's foreign exchange dealer offered and ZVS accepted an exchange at a rate of 5.1050. After the contract was formed, AEC Ltd immediately sent an email to ZVS asking her to "please confirm it" and attaching a document entitled "Confirmation of Foreign Exchange Transaction (Open Contract)", which stated:

"I request AEC Ltd to complete the above transaction and I confirm that the above information stated is correct."

There was a space for ZVS to sign below. However, this was (as stated on the document) a "confirmation" (i.e. of the contract already formed on the telephone) not, as argued by ZVS, an offer which she was entitled to accept or reject.

[8] Finally, ZVS argued that AEC Ltd had not proved loss from the transactions. Evidence of the exchange rates was that on 2 November 2010, the parties agreed to a rate of 5.1050. AEC Ltd effected the exchange at an actual rate of 5.1263 (thereby making a profit of \$233.38). On 4 November, AEC Ltd reversed the transaction at the rate of 5.220.

Decision

[9] In law, a party to a contract can claim damages for breach of contract on the basis of the position the party would have been in if the contract had been performed (see Burrows, Finn and Todd *Law of Contract in New Zealand* (3rd ed, LexisNexis, 2007) at [21.2.2(a)]).

[10] AEC Ltd were therefore not limited to their actual loss (i.e. an exchange rate of 5.1263), but could claim damages on the basis of the foreign exchange rate agreed by ZVS (5.1050), which (as calculated above) was a loss of \$1,096.15.

[11] The Tribunal could award interest, if it thought fit, at the prescribed rate of five per cent per year (Disputes Tribunals (Prescribed Rate of Interest) Order 2011 (SR 2011/175), in force from 1 July 2011) from when the cause of action arose to the date of the order (Disputes Tribunal Act 1988, s 20(1)).

[12] This was a proper case for an award of interest because ZVS had kept AEC Ltd out of its money for no good reason. AEC Ltd should receive interest of \$39.49, as the amount owed by ZVS (\$1,096.15) at five per cent per year from 4 November 2010 (when the transaction was reversed by AEC Ltd and loss was suffered) to the date of this order (25 July 2011).

[13] ZVS was therefore ordered to pay \$1,135.64 (as the claim \$1,096.15 and interest \$39.49) to AEC Ltd.