

BETWEEN

AEQ

APPLICANT

AND

ZVE

FIRST RESPONDENT

AND

ZVF

SECOND RESPONDENT

Date of Order:

16 July 2012

Referee:

Referee Benson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim against ZVF is dismissed. ZVE is to pay \$700.00 to AEQ (trading as UD) within ten days of the date of this order

Facts

[1] AEQ sought to enforce a contract against ZVF and/or ZVE. At the hearing, ZVE was added as a party and waived notice of the claim.

[2] The issues as to who was liable and for how much were decided on the evidence (balance of probabilities or what most likely happened) and law (contract).

[3] The material facts were as follows. ZVF allowed her daughter, ZVE, and teenage son to use her Trade Me account. On 23 May, ZVE asked her brother to bid on Trade Me for a 2006 Suzuki advertised for sale by AEQ (trading as UD) with a \$1 reserve. The brother made a successful bid of \$8,600.00 for the vehicle. However, the brother (said ZVE) had exceeded the price she could afford to pay and she refused to settle the purchase with AEQ. After warning ZVE, on 24 May, AEQ readvertised the vehicle for sale on Trade Me (\$1 reserve), posted reasons for reselling so soon after the original sale and, on 30 May, sold the vehicle for \$7,950.00.

[4] AEQ claimed the difference in prices (\$650.00) and costs to represent and sell the vehicle (\$100.00).

Decision

[5] The Tribunal found that the bids were made on behalf of ZVE and the contract was between ZVE and AEQ.

[6] ZVF not liable to AEQ because:

- (i) The bids were not made by or on behalf of ZVE.
- (ii) AEQ argued that ZVF was liable for the bids on her account because Trade Me's terms and conditions required her not to permit any other person to use

her user name or membership and not to disclose her password or other information allowing access to her membership (clause 3.4). However, that did not deem all contracts made under the account those of ZVF. For example, she was not liable for contracts made by a person who had stolen her account information or (as in this case) where it was shown that the bids were made by another person.

- (iii) AEQ also relied on the term that bids were not retractable once made (clause 4.3(b)), but that did not state that ZVF was liable for those bids.

[7] ZVE was in breach of the contract because she failed to pay \$8,600.00 to AEQ for the vehicle.

[8] The usual measure of damages for breach of contract was the loss naturally resulting in the ordinary course of events from the buyer's breach of contract. In the case of goods with an available market, this was usually the difference between the contract price and the market price, and a seller had a duty to take all reasonable steps to minimise loss.

[9] AEQ was entitled to recover \$650.00 from ZVE as the difference between the contract price and market price established in the subsequent Trade Me sale. ZVE argued that AEQ did not take reasonable steps to minimise his loss because the subsequent sale had a reserve of \$1 (rather than \$8,600) and he did not contact previous bidders in her auction. However, reasonable steps were taken:

- (i) The original sale also had a \$1 reserve.
- (ii) AEQ was entitled to conclude from his long experience of motor vehicle sales (27 years) that previous bidders were unlikely to purchase at the prices listed on the auction.
- (iii) It was not reasonable to have an \$8,600.00 reserve as the vehicle may never have sold at that price.

[10] AEQ claimed \$100.00 for staff time (two – three hours to readvertise, re-present the vehicle, attend to bidders' inquiries, arrange inspections before sale) and fuel (for test drives,

for example). The Tribunal awarded \$50.00 as more consistent with the hourly rates of staff (\$15 – \$20 per hour) and cost of fuel.

[11] The Tribunal therefore dismissed the claim against ZVF and ordered ZVE to pay \$700.00 to AEQ.