

BETWEEN

AEZ

FIRST APPLICANT

AND

AFA

SECOND APPLICANT

AND

ZUV

RESPONDENT

Date of Order:

16 July 2013

Referee:

Referee Tunncliffe

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZUV trading as SR is to pay \$1,075.00 to AEZ and AFA on or before 26 July 2013.

Facts

[1] AEZ, AFA and ZUV operate businesses from adjoining premises and a good relationship developed over time. In 2010, ZUV's business was struggling and AEZ and AFA offered to lend him some money. A loan of \$3,000 was agreed. Interest was not discussed and neither was a repayment date.

[2] In 2010 or 2011, AEZ purchased three rods and two reels from ZUV and it was agreed the price would be deducted from the loan. The parties now agree that the value of the rods and reels is \$1,075.00.

[3] At some point it was agreed that ZUV would do work for AEZ and AFA to be off-set against the loan. ZUV did some welding on a spiral staircase, the value of this work to be deducted from the loan. The work was completed months ago but no one remembers when.

[4] In November 2012, there was an altercation between AEZ and the occupant of another of the adjoining units. ZUV was upset by AEZ's actions and gave AEZ and AFA an invoice for the rods and reels (\$1,075), and the work on the staircase (\$1,621.50). He also gave them a cheque for \$303.50, which he said was the remaining amount of the loan after the deductions.

[5] AEZ and AFA refused the cheque and disputed the amount charged for the staircase.

[6] AEZ and AFA have since obtained three alternative prices for the work done on the staircase, which range from \$365 to \$460 plus materials.

[7] AEZ and AFA claim that \$1,425 remains outstanding on the loan, based on deductions of \$1,075 for the rods and reels, \$400 for the work on the staircase, and \$100 to transport the staircase to and from the sandblasters. They also claim interest of \$300.

Issues

[8] The issues for the Tribunal to consider are as follows:

- (i) Whether ZUV has charged more than a reasonable amount;
- (ii) If so, how much should be charged, whether ZUV should pay interest, and how much ZUV owes the Applicants to repay the loan.

Decision

Has ZUV charged more than a reasonable amount for the work on the staircase?

[9] The Consumer Guarantees Act 1993 applies to this transaction. Where no price has been agreed, no more than a reasonable price may be charged.

[10] AEZ and AFA have presented prices from three other tradespeople. Two prices were based on photographs and a description from AEZ and AFA. The third price was after an inspection. All three prices are considerably less than that charged by ZUV.

[11] ZUV described the extent of the work done. While I accept ZUV's point that it is difficult for others viewing the finished work to appreciate the extent of the work ZUV did, I cannot ignore the vast difference between the prices given by other tradespeople compared with the amount ZUV charged. In addition, ZUV does not have a record of the dates and hours he worked on the staircase. ZUV said that he threw his notebook page containing these details away when he made up the account, as is his usual practice. As a result, ZUV is unable to prove the hours he has spent on this job and I cannot have confidence that the hours he has charged represent the hours actually spent on the job.

[12] I have decided to rely on the three alternative prices obtained by AEZ and AFA as representing a range of reasonable prices for the work done, and I find that ZUV has charged more than a reasonable price.

How much is a reasonable price?

[13] In establishing what constitutes a reasonable price, I have used the three alternative prices as a base point. I have decided these should be inflated to take into account the fact that those three people did not see the state of the staircase prior to ZUV's work, so they are not able to know the true extent of the work. The highest price of the three was \$460 excluding materials. I have decided \$600 is the maximum that could reasonably be charged, plus the \$150 materials ZUV claims were used. I have decided that \$750 including GST is the maximum that could be considered reasonable, based on the evidence available to me.

Should ZUV pay interest?

[14] Interest on the loan was not a term of the contract.

[15] Where interest on unpaid money is not a term of the contract, the Disputes Tribunals Act does allow an award of interest of up to five per cent per annum.

[16] I have decided not to make an award of interest for the following reasons. The loan was made between friends so I am not satisfied that either party envisaged that more than the original loan would be returned. Secondly, when AFA had to go to England in 2010, ZUV offered to repay the loan but his offer was rejected by AEZ, as was a subsequent offer. This appears to be because AEZ preferred ZUV to repay it by work. Had AEZ accepted ZUV's offer to repay, the term of the loan would only have been a matter of months, perhaps only six months. If AEZ and AFA expected interest, this ought to have been made clear to ZUV when his offer to repay was rejected. Because it was not, ZUV has not been able to make an informed decision to retain the money.

Decision

[17] I have decided that ZUV owes \$1,075 to AEZ and AFA. This is this is calculated as follows:

Original Loan	3,000.00
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Minus work on staircase	750.00
Minus transporting the staircase to and from sandblasters	100.00
Minus price of rods and reels	<u>1,075.00</u>
Total	\$1,075.00