

BETWEEN

AFG

FIRST APPLICANT

AND

AFH

SECOND APPLICANT

AND

ZUO Ltd

RESPONDENT

Date of Order:

17 November 2013

Referee:

Referee Stewart

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that AFH is joined as an Applicant. ZUO Ltd is to pay AFG and AFH the sum of \$3120.0 within 7 days from the release date of this decision.

Facts

[1] ZUO Ltd supplied AFG and AFH with a “Bulldog powder fence” that was powder-coated and installed this fence around their salt water swimming pool. Within 18 months of installation, the powder coating started to deteriorate with noticeable swelling in various places on the fence. AFG and AFH asked ZUO Ltd to remedy the powder coat. ZUO Ltd passed AFG and AFH onto the powder coaters.

[2] There is no warranty given for powder-coated galvanised products installed near high corrosion areas. A salt water pool is deemed to fall within this category for purposes of the warranty.

[3] After the hearing in August 2013, the parties sought to resolve this. ZUO Ltd offered its labour to have the fence remedied by sandblasting to remove the powder coating and to repaint with marine paint. AFG and AFH did not accept this offer and are claiming the sum of \$3,120.00, being the cheaper of two quotes to have the powder coating stripped from the fence and epoxy painted.

Issue

[4] The issue to be decided is whether ZUO Ltd is liable to pay to have the pool fence remedied.

Decision

[5] JK, director of ZUO Ltd, holds the company has no liability as AFG and AFH requested a powder-coated fence for their pool.

[6] If there had not been any other involvement by ZUO Ltd, I would have found a possible defence under s 8(2)(a) of the Consumer Guarantees Act 1993 (“CGA”) that the circumstances show that the consumer was not relying on the supplier’s skill or judgement.

[7] However, while it is true that a powder-coated fence was requested significantly prior to giving a quote for the fence, ZUO Ltd supplied AFG and AFH with the Bulldog brochure.

[8] This brochure advised that “Bulldog accessories offer a wide range of products to compliment your fence, including... powder coating in 200+ colours”.

[9] This brochure did not outline the warranty terms. JK was unaware of the warranty terms and did not give any advice to AFG and AFH that the powder coating could not be warranted within the pool environment.

[10] Under s 28 of the CGA, the supplier is to carry out their services with reasonable care and skill. I find a supplier who provides brochures for consumers needs to be familiar with any warranty exclusions or supply the warranty terms and conditions applicable to that product being sold. To supply a brochure without providing such information as to exclusion terms leads the consumer to believe the product is suitable for its intended purpose.

[11] That ZUO Ltd was not aware of the exclusion clause is no defence.

[12] I find ZUO Ltd’s failure in supplying the brochure that advised the use of powder coating on the fence without drawing AFG and AFH’s attention to the exclusion clause or alternatively a copy of the warranty terms to be a breach of this guarantee.

[13] I find AFG and AFH placed reliance on the information provided by the brochure and made no enquiry as to its suitability for its intended purpose. I find the circumstances show that AFG and AFH did rely on ZUO Ltd’s skill and judgement in purchasing a powder-coated Bulldog fence.

[14] As a powder-coated galvanised fence reacts in a salt air environment leading to a swelling of the powder coating, I find the fence supplied by ZUO Ltd was not fit for its intended purpose and is a breach of s 8(1) of the CGA.

[15] Because AFG and AFH gave ZUO Ltd the opportunity to remedy and it did not do so, I find they have the right under s 18(2)(b) of the CGA to have the failure remedied elsewhere and obtain from the supplier all reasonable costs associated with the remedy.

[16] I find the cheaper of the two quotes for the sum of \$3,120.00 to be reasonable.

[17] Accordingly, ZUO Ltd is found liable to pay this sum.