

**BETWEEN**

**AFK**

**APPLICANT**

**AND**

**ZUL**

**RESPONDENT**

Date of Order:

4 September 2013

Referee:

Referee Robertshawe

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that ZUL is to pay to AFK the sum of \$999.75 in the following manner: He is to make weekly payments of at least \$20.00 until the sum owed is paid in full; the first such payment is due on or before Friday, 20 September 2013; if ZUL fails to make any payment as required by this order then the full sum owing at that time is to become due and payable immediately.**

## **Facts**

[1] AFK was reversing out of her car park in a car park in [city name] when she struck a trailer being towed by ZUL. ZUL had entered the car park through the “exit” and was passing behind AFK as she reversed out. AFK was looking over her shoulder the other way as she reversed, as she was expecting any cars going past her to be coming from the other direction.

[2] The damage to AFK’s car cost \$1,650.00 to repair. The damage to ZUL’s trailer cost \$517.50 to repair. Each filed a claim against the other for their loss.

## **Issues**

[3] Each party had a duty to the other to enter and exit the car park with reasonable care. There was no dispute over costs. However, each considered that the other was responsible. The following issues need to be resolved:

- (i) Did ZUL exercise reasonable care when entering the car park?
- (ii) Did AFK exercise reasonable care when exiting her park?
- (iii) If both are responsible, in what proportion are they liable?

[4] Each is considered in turn.

## **Decision**

*Did ZUL exercise reasonable care when entering the car park?*

[5] Having considered the evidence of both parties in this matter, I find that ZUL failed to exercise reasonable care when entering the car park.

[6] ZUL had a duty to other motorists in the car park to comply with the car park rules. His decision to come in the “exit” was in breach of those rules. I understand that he had a trailer on the back, and that he had to come in that way because there was not room to get the trailer to where he wanted it unless he did so. However, he then had a duty to watch out for motorists reversing, because in all likelihood, they would not see him coming. They would be looking the other way for cars coming the correct way around.

*Did AFK exercise reasonable care when exiting her park?*

[7] However, I also find that AFK had a duty to ensure the way was clear before reversing, and failed to fulfil this duty. AFK had only moved a short distance back in her park before she was struck by ZUL’s trailer. ZUL must therefore have already been in the car park as she started to reverse. Whilst there was a car to her left that might have partly obscured her vision of him, and whilst she might not have been expecting a car to be coming from that direction, I am satisfied that a prudent driver would check the rear vision mirror and look behind to ensure the way is clear before starting the manoeuvre. The fact that ZUL almost got past AFK suggests that she probably had an opportunity to see ZUL had she done so.

*In what proportion are the parties liable?*

[8] I find that ZUL is primarily responsible for the collision, as he was performing the unusual manoeuvre. The collision would not have occurred without his decision to enter the car park from the incorrect entrance. I have determined his contribution to be at 70 per cent.

[9] However, as noted above, a prudent driver who is reversing does need to look out for the unexpected. In this sense, whilst I do not believe AFK is primarily liable, I have set her contribution at 30 per cent.

[10] The calculation of the payment to be made is made as follows:

	70% of \$1,650.00	=	\$1,155.00	(ZUL's liability)
Less	30% of \$ 517.50	=	\$ 155.25	(AFK's liability)
	Total for ZUL to pay	=	\$ 999.75	

### **Conclusion**

[11] For these reasons, ZUL is to pay AFK the sum of \$999.75. The parties agreed on payment over time as set out in the order. The parties have also agreed that ZUL may meet this obligation by paying [a panel beater and painter] directly at \$20.00 per week. However, AFK remains the party entitled to receive payment directly if her position on this changes for any reason.