

BETWEEN

AFU

APPLICANT

AND

ZUC

FIRST RESPONDENT

AND

ZUB

SECOND RESPONDENT

Date of Order:

21 March 2013

Referee:

Referee Benson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZUC and ZUB are jointly and severally liable to pay \$900.00 to AFU within ten days of the date of this order.

Facts

[1] AFU claimed \$1,075.00 as the damage to her sofa by ZUB (acting for his company, ZUC) in washing a house.

[2] VZ (the owner of [the property]) employed ZUC to clean her house. When ZUB (director, shareholder of ZUC) duly attended the property early on 23 November 2011, AFU (the tenant at the property) asked ZUB what she needed to do. ZUB advised her to close windows and doors (and helped to close some windows).

[3] AFU had left for work and ZUB then carried out the work. She returned home that evening and found damage to her sofa (pink stains over the top side and seat cushions).

Issues

[4] The issues are whether the respondents are liable and, if liable, the amount of their liability. These issues are determined on the evidence (what most likely happened) and law (negligence).

Law

[5] In law, the tort of negligence requires:

- (i) A breach of a duty of care owed to another person which results in reasonably foreseeable loss to the other person; and
- (ii) A duty of care owed to persons in such a relationship of proximity that a reasonable person would recognise that harm might ensue to them if reasonable care were not exercised.

Decision

[6] ZUB is liable in negligence for the damage to AFU's sofa for the following reasons.

[7] ZUB owed a duty of care in cleaning a house to be to take reasonable care to ensure that the work did not cause damage to goods inside the house.

[8] ZUB did not exercise reasonable care. He knew from his knowledge of cleaning houses and joinery (in particular, susceptibility of cedar to shrinkage and leaking) that windows could leak in the course of cleaning a house. His advice to AFU to close windows and doors was negligent because it was reasonably foreseeable that the sofa underneath a window could be damaged by water entering through the cedar joinery window. Therefore, ZUB's negligence caused the damage claimed to AFU's sofa.

[9] ZUC was liable for this negligence because the company was engaged to do the work by VZ and ZUB acted as an agent or employee of the company in carrying out the work.

[10] ZUB argued that liability was excluded under clause 7 of the contract between VZ and ZUC ("ZUC accepts no liability for damage as a result of non-weathertight joinery, flashings, exterior cladding ..."). However, this was not accepted. Firstly, the exclusion did not apply to AFU because she was not party to the contract between ZUC and VZ. Secondly, the clause excluded "non weathertight joinery", but the evidence was that the joinery resisted ingress of water from weather and was therefore weathertight.

[11] ZUB argued that the joinery leaked because the joinery was defective. However, the relevant negligence was not the washing of the house (in which entry of water was always a possibility), but the deficient advice to AFU (not to protect her sofa and/or move her sofa from under the window) which probably would have avoided damage.

[12] The loss to AFU was \$900.00. The sofa was purchased six years before the date of damage for about \$2,000. On the standard rate of depreciation of furniture (ten years, according to Inland Revenue), the sofa had depreciated by about 60 per cent (\$1,200.00) in

six years. The standard rates of depreciation were an average so that, given AFU's evidence of the excellent condition of the sofa, the value was \$900.00. The value of the sofa exceeded the reasonable cost of repair (\$1,075.00).

[13] ZUB and ZUC were therefore liable to pay \$900.00 to AFU.