

**BETWEEN**

**AFV**

**APPLICANT**

**AND**

**ZUA Ltd**

**RESPONDENT**

Date of Order:

28 August 2013

Referee:

Referee Kane

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim by AFV is dismissed. AFV appeared in person. Mr JR representing ZUA Ltd appeared in person. Mr BT attended as a support person for Mr JR.**

## **Facts**

[1] The background to this claim is that on the 4 January 2013, AFV took his Subaru car to ZUA Ltd to repair a broken cam belt. This was an insurance job authorised by XY Insurance. When AFV received the car back the temperature gauge would increase on the motorway and going up hills, indicating a heating problem. Also, he could smell burning oil. Over a period of visits, ZUA Ltd diagnosed the heating problem to be due to a faulty radiator. It was found by [a radiator shop] that the radiator was completely blocked. A reconditioned radiator was purchased and installed. However, subsequently there was still a smoking engine. AFV then took the car to JR Ltd, which is a licensed Subaru repairer. AFV alleges that based on the work carried out by JR Ltd, it is clear that the work of ZUA Ltd was below standard and that he should be compensated for the cost of repairs he paid to JR Ltd of \$698.49.

## **Issues**

- [2] The issues to be decided in this claim are:
- (i) Did ZUA Ltd fail to use reasonable care and skill in the services it provided to AFV? In particular, did it miss a lip on the surface of the cam gear that should have been sanded? Also, did it unnecessarily use silicone sealant when the seals should have been sufficient for the job, and was the cam belt cover incorrectly attached?
  - (ii) Was AFV justified in taking his car to another repairer because ZUA Ltd failed to remedy the matter in a reasonable time?
  - (iii) Is ZUA Ltd responsible for the invoice of JR Ltd?

## **Law**

[3] The relevant law is the Consumer Guarantees Act 1993 (CGA). The CGA implies

guarantees into contracts for the supply of goods and services of a kind ordinarily acquired for personal, domestic or household use. In the case of the supply of services, there is a guarantee that the services supplied are provided with reasonable care and skill. The standard is that of a competent person exercising the trade in question. It is a standard of reasonableness rather than perfection.

[4] If a supplier of services breaches this implied guarantee, a consumer has remedies under s 32. Where the failure can be remedied, the customer can require the supplier of services to remedy within a reasonable time. Where the service provider does not do so, the consumer can have the failure remedied elsewhere and recover the reasonable cost of doing so from the supplier.

### **Decision**

*Did ZUA Ltd fail to use reasonable care and skill in the services it provided to AFV? In particular, did it miss a lip on the surface of the cam gear that should have been sanded? Also, did it unnecessarily use silicone sealant when the seals should have been sufficient for the job, and was the cam belt cover incorrectly attached?*

[5] Essentially AFV's argument was that the oil leak causing the smoking was due to leaking cam seals that ZUA Ltd should have repaired properly when it did its original work in replacing the cam belt. In particular, there was a lip on the sealing surface of the cam gear that was missed. The invoice of JR Ltd shows that this work was needed to remedy the matter. Also, there was evidence, which JR Ltd referred to at the time and in its invoice, that ZUA Ltd had provided poor quality services. ZUA Ltd responded that the real cause of the cam seals requiring attention would have been the overheating of the engine from the blocked radiator rather than poor workmanship. If it had been able to continue to work with the car, this would have been addressed. From what it had been told by AFV, the car had been driven for a period with a faulty radiator and this would have caused the seals to be heated and lose their flexibility. JR Ltd had replaced four seals yet only found one lip on the sealing surface. The claim is that there was poor workmanship due to it missing the lip on one surface but four seals were replaced.

[6] AFV considered he was not in a position to respond, not being a mechanic. I therefore suggested telephoning JR Ltd. It was possible to speak to the manager Mr RD and the mechanic who had worked on AFV's car Mr ML. However, the evidence in relation to the lip was not conclusive from Mr ML. When asked what the size of the lip was, he said he could not honestly remember. The lip size is clearly important in relation to the size of the leak. As to the seals being replaced, this appeared to be due to a need to replace aftermarket seals with genuine Subaru seals. Mr ML said they were aware from experience that the aftermarket seals were inferior. When asked if there was some industry evidence to confirm this, he said it was just something they had found. When asked if the aftermarket seals would have failed within the few months of being installed in this case, he said it was unlikely. As to whether the seals could have been damaged by the overheating caused by the radiator, Mr RD said one overheating incident may not cause this but over a period of overheating the seals would likely be damaged. Based on this evidence and the alternative evidence presented by ZUA Ltd, it is not possible to find that ZUA Ltd has failed to use sufficient care and skill in the provision of its services causing the oil leak.

[7] In coming to this finding, I also refer to the Motor Trade Association's (the MTA's) response it made to a complaint made by AFV in relation to ZUA Ltd's services. Their conclusion was "that in a case like yours where you have two well documented repairs it is difficult to separate the two explanations, they are both credible and a situation we cannot either decide or adjudicate on." AFV said that the MTA had advised him he would have a strong case in the Tribunal. However, I find no evidence of this in this response. What I understand the conclusion to be is that there is insufficient evidence to prove that the cause of the oil leaking is the failure of ZUA Ltd's work on the cam seals, given that the faulty radiator could have equally caused the need for new seals.

[8] I have also considered the other matters raised by AFV as evidence of poor workmanship by ZUA Ltd. There is evidence from JR Ltd that the cam belt cover needed some attention to secure it properly. The extra nuts required to secure the cam belt cover were \$4.00 each. Mr ML described its attachment as a minor job, which was done given he was working on the cam seals. The use of silicone, even if objectively a finding was possible

as to its inappropriateness, it has not led to any costs claimed. Also, the invoice indicates the fitting of a new tensioner was the most expensive part at \$150.00, plus an unknown amount of associated labour for its installation, but there is no suggested explanation as to how ZUA Ltd was responsible for this when it had also fitted a new tensioner. I find there is nothing presented in evidence here that conclusively proves a loss for AFV due to ZUA Ltd's workmanship. Accordingly, given this finding and the finding in paragraph six, it is necessary to dismiss AFV's claim. As a result, it is not necessary to consider the remaining issues outlined for determination in paragraph two.