

BETWEEN

AFW

FIRST APPLICANT

AND

AFX

SECOND APPLICANT

AND

ZVY Insurance Ltd

RESPONDENT

Date of Order:

20 January 2014

Referee:

Referee Tunncliffe

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZVY Insurance Ltd is to pay \$6,496.00 to AFW and AFX on or before 31 January 2014.

Facts

[1] AFW and AFX had a house insurance policy with ZVY Insurance Ltd. They had made a deliberate decision some years earlier not to continue contents insurance, taking that risk upon themselves. AFW and AFX understood that carpet was included in the house policy. In April 2013 there was severe rainfall. Flood water entered AFW and AFX's house damaging walls and carpets. The cost of repairing the walls was covered under the house policy. ZVY Insurance Ltd declined to pay for replacing the carpet. In declining the claim for carpet, ZVY Insurance Ltd relied on the definition of "house" in the policy.

"House means the domestic building(s) shown in the certificate of insurance you own at the situation including its fixtures, fittings (other than floor coverings not permanently fixed or glued in place, drapes and blinds)...".

[2] ZVY Insurance Ltd considers that the carpet was not permanently fixed because it was capable of being removed without damage, unlike floor coverings that are glued or otherwise adhered to the floor. AFW and AFX claim \$6,469.00, being the cost of replacing the carpet. This is on the basis that a carpet tacked to straight edges fixed to the floor around the perimeter is "permanently fixed." AFW and AFX also claim \$621.00, being the cost of moving furniture from the premises. This is on the basis that the insurance assessor told AFW the furniture had to be moved so the walls could be repaired.

Issues

[3] The issues to be decided in this claim are:

- (i) Whether the carpet was permanently fixed;
- (ii) Whether ZVY Insurance Ltd is liable to pay the cost of removing furniture; and
- (iii) If AFW and AFX are entitled to payment, the amount to which they are entitled.

Decision

Was the carpet permanently fixed?

[4] The policy states:

“House means the domestic building(s) shown in the certificate of insurance you own at the situation including its fixtures, fittings (other than floor coverings not permanently fixed or glued in place, drapes and blinds)....”.

It is agreed that the carpet was not glued. “Permanently fixed” is not defined in the contract.

[5] *The Concise Oxford English Dictionary* (11th ed, Oxford University Press, New York, 2008) at 1091 defines “permanent” as “lasting or remaining unchanged indefinitely, or intended to be so; not temporary”. The dictionary meaning of “fix” is “attach or position securely”.

[6] ZVY Insurance Ltd’s position is that because the carpet was capable of being lifted without damage, it is considered not to be permanently fixed. However, it seems to me that the ordinary person would consider carpet fastened to the floor via tacked straight edges to be permanently fixed. That is because fixed carpet is not usually taken from a house when selling a property in the same way as a carpet square, mats or rugs would be. Nor is carpet usually taken up until it requires replacing, and it generally requires an expert to take it up and relay it. This is in contrast to the two following items in the definition sentence “drapes” and “blinds”, which are relatively easily removed and reinstalled even by the inexperienced. Therefore, carpet fixed by straight edges is in a different category from “drapes” and “blinds”.

[7] Carpet attached by straight edges is attached and positioned securely, and is intended to be lasting or remaining unchanged indefinitely. Therefore, it is not temporary.

I find that the ordinary person would not reasonably understand that ZVY Insurance Ltd intended a carpet fixed by way of straight edges to be excluded from cover.

[8] ZVY Insurance Ltd did not intend for carpet fixed by way of straight edges to be included in the house policy, but the ordinary person would reasonably expect cover. ZVY Insurance Ltd has a responsibility to make its intention clear. In this case, the wording of the policy is ambiguous. The law is that any ambiguity in a contract be interpreted against the party who drafted the contract. That is ZVY Insurance Ltd.

[9] For the reasons set out above, I find that the carpet is permanently fixed and is covered under the house insurance policy.

Should ZVY Ltd pay the cost of removing furniture?

[10] Parties are bound by the agreed terms of the contract. The policy is silent as to whether the cost of removing furniture necessary for repairs to be carried out is covered. Therefore, I find it is not a term of the policy that the cost of removing furniture be met by ZVY Insurance Ltd. The question is whether the fact that the insurance assessor told AFW that the furniture would have to be removed is sufficient to bind ZVY Insurance Ltd to payment of the cost.

[11] I find that it does not. The insurance assessor may simply have been stating the obvious: that repairs were such that furniture would have to be removed prior to the repairs being carried out. There can be no reasonable inference that ZVY Insurance Ltd would pay the cost.

[12] I find ZVY Insurance Ltd is not liable to pay the cost of removing furniture even though the removal was necessary because of the flood. This is because the cost was not part of the insurance contract.

How much should ZVY Ltd pay?

[13] ZVY Insurance Ltd has agreed that the policy is a “replacement policy”. Therefore, I find AFW and AFX are entitled to the full cost of replacing the carpet. The cost has been

proved by way of a tax invoice from [a carpet retailer] to be \$6,496.00. That is the amount ZVY Insurance Ltd is to pay