

**BETWEEN**

**AG Ltd**  
APPLICANT

**AND**

**ZT Ltd**  
RESPONDENT

Date of Order:

6 May 2014

Referee:

Referee Costigan

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that ZT Ltd (the respondent) is to pay AG Ltd (the applicant) \$1,144.25 on or before 20 May 2014.**

### **Facts**

[1] AG Ltd (the applicant) agreed to hire a stand to ZT Ltd (the respondent) at the [industry event] in 2013 for \$2,288.50. It claims the \$1,144.25 balance ZT Ltd has not yet paid it.

### **Issues**

[2] The issues to decide are:

- (a) Did AG Ltd misrepresent the number of people that would attend the show?
- (b) If it did, did that cause ZT Ltd at least \$1,144.25 of loss?

### **Law and Decision**

*Did AG Ltd misrepresent the number of people that would attend the show?*

[3] I find AG Ltd did not misrepresent the number of people that would attend the show.

[4] Section 6 of the Contractual Remedies Act 1979 (CRA) means that if someone is induced to enter a contract by a misrepresentation (which can be innocent or fraudulent) that person is entitled to damages from the other party as if the representation were a term that had been broken.

[5] A misrepresentation must be a representation of present or past fact that is false but an opinion or belief about the future is not usually a misrepresentation.

[6] This is relevant as if there has not been a misrepresentation and loss, ZT Ltd has to pay what it agreed to for the site.

[7] AA has explained how she had an expectation of between 15,000 and 20,000 people attending the show based on the information that she was provided with by AG Ltd. She had decided to attend the show as she had worked through the numbers based on the sales from other shows that ZT Ltd had attended and was confident that the show would be a

profitable option. As it was, only 8,700 people attended the show over the 3 days and ZT Ltd achieved less than half of the sales it had anticipated. She does not believe ZT Ltd got fair value for the cost of the site and the profit made (or not made) when compared with other shows ZT Ltd has attended. She does not accept the weather was 'bad' that weekend.

[8] However, I am not satisfied that any of the representations made by AG Ltd are misrepresentations. In particular, although AA has referred to the statements "over 8,000 people on the Friday alone", "Could you fit over 20,000 people in your showroom over three days? [from] – [to] you can" and "AG Ltd [event] is the largest attended [industry event] in the [island]!". I am not satisfied these are either misrepresentations or a factual representation that 15,000 to 20,000 people would attend in 2013. I am satisfied that these statements, and the comments made in the material I have reviewed, are factually correct statements based on AG Ltd's past experience and are not future representations that provide a basis for ZT Ltd not to pay the full amount for the site. Although AA had a couple of people say they were not aware of any advertising about the show, I accept AG Ltd's evidence that it did undertake the advertising it had agreed to and provided everything else for the site. ZT Ltd has not persuaded me otherwise. In terms of the location of ZT Ltd's site it is clear on the booking form that the floor plan can change without notice and this is no reason not to pay either. Quite simply, even with all of the advertising that could and was undertaken, AG Ltd cannot compel or make people attend the [industry event] if for whatever reason they do not decide to go and they did not legally guarantee that to ZT Ltd.

[9] As I find there has been no misrepresentation I do not need to consider if this has caused ZT Ltd loss. I find ZT Ltd has breached the agreement to pay for the site and must pay in terms of the order above.