

BETWEEN

AGM Ltd

APPLICANT

AND

ZVJ

FIRST RESPONDENT

AND

ZVI LTD

SECOND RESPONDENT

Date of Order:

17 June 2013

Referee:

Referee Phillips

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZVJ is to pay the sum of \$1,984.71 to AGM Ltd by 5.00pm 25 June 2013.

Facts

[1] ZVJ engaged the services of AGM Ltd to apply a peel and stick ZVI Ltd sealant to the floor of her property. As per the instructions given to her by AGM Ltd, she applied the primer to the floor the afternoon prior to AGM Ltd travelling to [a town] to apply the sealant. Upon the applicator's arrival, it was discovered that the primer was not dry. Fans were obtained and applied but to no avail; resulting in a return journey by the applicator.

[2] An element of the agreement was that ZVJ was to supply all the material used in the application process. However, two rolls were supplied by AGM Ltd in order that the sealant could be affixed in one day thereby, relieving the need for further delay or costs to be incurred. AGM Ltd seeks the costs associated with undertaking these services amounting to \$2,237.83.

Issues

[4] The relevant issues that the Tribunal is to consider are as follows:

- (i) Did ZVJ prove AGM Ltd failed to provide the services with reasonable care and skill?
- (ii) Is any fault established in the application of the peel and stick product?
- (iii) Was the material supplied by AGM Ltd of poor quality?
- (iv) Is ZVJ to pay for the two rolls of material supplied by GHB Ltd?
- (v) Was the need for two trips to [a town] the fault of either party?
- (vi) What is to be paid by whom?

Law

[5] Both the general law of contract and the provisions of the Consumer Guarantees Act 1993 (CGA) are to be given consideration.

[6] Section 28 of the CGA states “where services are supplied to a consumer there is a guarantee that the service will be carried out with reasonable care and skill.”

Decision

Did ZVJ prove AGM Ltd failed to provide the services with reasonable care and skill?

[7] No. The work was inspected by a representative of ZVI Ltd on the 16th December 2011. This inspection did not raise any concerns with ZVI Ltd as to the services performed by AGM Ltd. During the following 18 months from the date of the provision of the services to the hearing date, no independent inspection has been undertaken by ZVJ.

Is any fault established in the application of the peel and stick product?

[8] No. ZVJ supplied evidence detailing the standards set by ZVI Ltd that are to be conformed to when applying the ZVI Ltd peel and stick tanking. Although ZVJ has raised questions as to whether the standards have been applied correctly and has been forthcoming with her own opinion in this regard; she has not supplied any evidence to support her assertions that there is a fault in the application.

Was the material supplied by AGM Ltd of poor quality?

[9] No. During the course of the hearing ZVJ made several submissions that it was her belief that the two rolls of peel and stick supplied by AGM Ltd were of old stock or poor quality. However, no evidence has been furnished to support this view.

[10] ZVJ believes that ZVI Ltd has been withholding two pieces of evidence that would assist her in determining this.

[11] The first piece of evidence concerns a cardboard tube from inside the rolls of peel and stick that would enable her to determine the age of the rolls supplied. I am not satisfied that upon a balance of probabilities that obtaining the inner cardboard rolls would establish this

fact and therefore, do not consider that this evidence would be of assistance in determining this matter.

[12] The second piece of evidence is the delivery docket from ZVI Ltd to AGM Ltd. This was submitted at the hearing and I confirmed for ZVJ's benefit that it read delivered x2 quantity on the 21 November 2011. ZVJ, not having had this piece of evidence prior to the hearing, did not warrant an adjournment of the matter as this was not a matter requiring significant debate. This is because there had been no evidence presented by ZVJ questioning otherwise.

[13] ZVJ further submits that she may be able to obtain evidence from a laboratory in Europe to assist her in this matter. However, within the last eighteen months, ZVJ has not undertaken any significant measures in establishing whether or not this is indeed an option open to her.

[14] There is no evidence to support that the material supplied by AGM Ltd was of poor quality, or that it has failed in any way.

Is ZVJ to pay for the two rolls of material supplied by AGM Ltd?

[15] Yes. The evidence clearly supports that ZVJ is to pay for the two rolls of material supplied by AGM Ltd. It is to be noted that had AGM Ltd not done so, ZVJ would have been subjected to greater cost as she did not have enough material to finish the sealing of the floor and yet it was ZVJ's obligation to supply all the material. The sum of \$653.04 + GST = \$751.00 is to be paid.

Was the need for two trips to [a town] the fault of either party?

[16] There is no evidence to support that the fault of the primer not drying in time was due to the fault of either party. A question may be raised as to whether ZVJ applied the primer adequately, or prepared for the primer correctly. However, there is no evidence to support that she did not. Similarly, a question may be raised as to whether AGM Ltd, as the

professional applicator, should have been aware that this situation may occur. Having heard from AGM Ltd that this was a one off event, I cannot determine that they should have known. Therefore, the only reasonable conclusion is that it is the fault of neither party. Therefore, the costs associated with the first day's trip and time in [a town] shall be borne equally by both parties.

Day 1 – vehicle costs $\frac{\$110.20}{2} = \$55.10 + \text{GST} = \$63.36$

Labour 6 hours at \$55.00 per hour = $\frac{\$330.00}{2} = \$165.00 + \text{GST} = \$189.75$

$\$189.75 + \$63.36 = \$253.11$ shall be borne by both ZVJ and AGM Ltd.

What is to be paid by whom?

[17] The evidence establishes that ZVJ is to pay for the following:

- (i) x2 rolls of material supplied by AGM Ltd amounting to \$751.00;
- (ii) A 50% share of the costs associated with day 1 amounting to \$253.11
- (iii) Day 2 vehicle ($\$110.20 + \text{GST} = \126.73) and labour costs (13.5 hours at \$55.00 per hour = $\$742.50 + \text{GST} = \853.87). $\$126.73 + \$853.87 = \$980.60$.

$\$751.00 + \$253.11 + \$980.60 = \$1,984.71$

[18] The sum of \$1,984.71 is to be paid by ZVJ.

[19] There is no evidence establishing liability against ZVI Ltd.