

BETWEEN

AGR

APPLICANT

AND

ZTX Ltd

RESPONDENT

Date of Order:

2 September 2013

Referee:

Referee Macpherson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZTX Ltd is to pay to AGR the sum of \$9,884.25 on or before 5.00 pm Friday, 13 September 2013.

[1] In March 2011 AGR engaged ZTX Ltd to restore his 1972 XA Falcon Coupe. XY of ZTX Ltd assessed the car and the parties agreed on a price of \$20,000 for the restoration. The parties discussed that the car would require re-certification as its registration had lapsed in 1997. XY stated that at the completion of the restoration it would be like a new car, repaired, painted and undersealed.

[2] The work carried out protracted and XY requested more money than had been agreed upon to complete the work. Over the course of 14 months AGR paid a total of \$25,000 to XY at ZTX Ltd. On 1 July 2012 AGR collected the car which had been repaired and repainted. XY assured AGR that the underseal and detail strips would be completed once the vehicle had been returned from the certifier.

[3] AGR took the car to ABC Ltd in “[place name]” for certification. However the work carried out by ZTX Ltd failed on 9 issues and the car could not be certified. The certifier stated that it was the worst example of repairs ever presented.

[4] AGR contacted XY who viewed the car and suggested it be taken to DEF Ltd as he was finishing up his panel beating business ZTX Ltd. DEF Ltd assessed the car for repairs necessary to bring it up to certification standard. DEF Ltd noted that the repairs carried out had been very poorly done and that the car had not been repaired to a tradesman like standard.

[5] In July 2013 DEF Ltd completed the certification repairs at a cost of \$9,884.25.

[6] In the Disputes Tribunal AGR claims that sum from ZTX Ltd.

Can AGR recover the cost of repairs from ZTX Ltd?

[7] The law of contract and the Consumer Guarantees Act 1993 applies. AGR engaged ZTX Ltd to restore his car, by law it was required to do so with reasonable skill and care.

ZTX Ltd are also bound to ensure that the product of its goods and services is of acceptable quality and fit for purpose. The test is objective. Where a service is not provided with reasonable skill and care and that failure is capable of remedy then a consumer may require the supplier to remedy the failure and if they do not, may have it remedied elsewhere. In that instance the consumer may recover from the supplier all reasonable costs incurred in having the failure remedied.

[8] When the car failed its certification AGR immediately contacted XY. XY did not propose that ZTX Ltd fix the problems but directed AGR to DEF Ltd. Apart from supplying surplus paint which had been left over from the restoration ZTX Ltd did not assist with the remedial work required.

[9] DEF Ltd evidence was consistent with that of the certifier's. The work carried out by ZTX Ltd was not of an acceptable standard. The repairs were poor, chassis rails and inner guards required replacement, front sills needed to be re-fabricated and the integrity of the paint finish was questionable and chipped easily. Damaged areas were repaired, it was painted and the remainder of the car re-cleared.

[10] AGR's evidence was consistent. It was supported by two independent panel beaters. ZTX Ltd did not appear in the Tribunal to contest the claim against it and as such AGR's evidence was uncontested.

[11] I find that ZTX Ltd was in breach of contract. It failed to perform the work it was engaged to do to an acceptable standard. ZTX Ltd was also in breach of the Act. It was notified of its failures and was given an opportunity to remedy them but did not do so. Under the Act and at contract law AGR was entitled to have the failures remedied elsewhere and can recover from ZTX Ltd the costs incurred in remedying the failure. Those costs being a loss flowing directly from ZTX Ltd's breach of performance of the contract.

[12] The costs of the repairs of \$9,884.25 were established. I find those costs to be reasonable.

[13] ZTX Ltd is liable to AGR for those repair costs.

[14] GHI solicitors wrote to the Tribunal on 28 August 2013 stating their understanding that the company, ZTX Ltd, had ceased to trade, may have no assets, may be insolvent and may be in the course of being removed from the Register. However as ZTX Ltd is currently a registered legal entity I am able to make an order against it and I do so.

[15] ZTX Ltd is to pay \$9,884.25 to AGR.