

BETWEEN

AK Ltd
APPLICANT

AND

ZP
RESPONDENT

Date of Order:

11 August 2014

Referee:

Referee Jaduram

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZP, the respondent, is to pay AK Ltd, the applicant, the amount of \$1,690.95 by 29 August 2014.

Facts

[1] AK Ltd (the applicant) is claiming “\$2,268.80 (or for a greater or lesser amount as at the hearing date)”. At the hearing date (statement dated 28 July 2014 (“statement”)) the amount was \$2,288.20.

[2] ZP (the respondent) took out a loan from AK Ltd of \$1,000.00. This was documented on AK Ltd’s document headed “[document title]”. For the purpose of this order I will call that document the “consumer credit agreement”.

[3] As at the date of the consumer credit agreement the total amount borrowed (being the initial unpaid balance) was recorded as \$1,248.75. That amount is made up of the \$1,000.00 ZP wished to borrow, an establishment fee of \$220.00 and fee of \$28.75 for what was called “Security check & PPSR fee. Within that fee there is a charge of \$11.50 for PPSR registration which is the charge for registering a security interest of the Personal Property Securities Register (“PPSR”).

[4] ZP was to pay \$64.00 fortnightly (with a final payment of \$41.36) but fell into arrears after about 3 months into the 12 month term of her loan. AK Ltd have tried contacting ZP with no success.

[5] ZP did not attend the hearing.

[6] The relevant law is the law of contract, the Credit Contracts and Consumer Finance Act 2003 and the Personal Property Securities Act 1999.

Issues

[7] The issues to be determined are whether:

- (a) ZP breached her contract with AK Ltd?
- (b) AK Ltd has proven on the balance of probabilities that ZP owes them the amount they claim?

Law and decision

Did ZP breach her contract with AK Ltd?

[8] ZP's contract is recorded in the consumer credit agreement which has been signed by her. The consumer credit agreement requires her to make certain payments. She stopped making those payments and was therefore in breach of her contract with AK Ltd.

[9] Under the consumer credit agreement where a borrower is in default AK Ltd may ask for repayment of the loan early together with all outstanding and other amounts (including interest) that AK Ltd are able to recover under their agreement and at law.

Has AK Ltd proven on the balance of probabilities that ZP owes them the amount they claim?

[10] I have found the following:

- (a) The \$11.50 PPSR registration fee should not have been charged. ZP did not provide any security for the loan. On page 5 of the consumer credit agreement under the heading "Security Interest" it states "No security taken". AA for AK Ltd said they register a security interest on the Personal Property Securities Register ("PPSR"). The position is that the PPSR is notice to the world of the existence of a security interest. AK Ltd does not have a security interest in any goods owned by ZP and therefore were not entitled to register a security interest on the PPSR. The consumer credit agreement contains "Major Terms and Conditions" and those terms and conditions are AK Ltd's standard terms and conditions and would contain security interest wording whether or not security is taken. The "Disclosure Statement" (the more specific terms) of the consumer credit agreement makes specific reference to whether a security interest is taken and in this case there is none.
- (b) As the \$11.50 PPSR registration fee should not have been charged, interest (including default interest) on that amount should not have been charged.
- (c) AK Ltd also charged interest on the following monthly charges:
 - (i) The \$9.90 monthly Waiver Agreement fee; and
 - (ii) The \$10.00 monthly administration charge

- (d) BB of AK Ltd explained that interest was charged on the outstanding balance at the relevant time. On the AK Ltd statement the monthly charges referred to above were debited monthly to ZP's account and attracted interest. Those monthly charges are not part of the "total advance" (described as the "initial unpaid balance" in the consumer credit contract) or "subsequent advance" and therefore interest should not have been charged on those amounts.
- (e) I was told those charges were included in the fortnightly payments ZP was to make. Further in the first part of the consumer credit agreement those monthly charges are listed under the heading "Credit Fees and Charges" which specifically says those charges are not included in the initial unpaid balance.
- (f) I note that the monthly Waiver Agreement fee was stopped a few months after ZP first went into default. BB explained that they generally keep the Waiver Agreement in place until they start the collection process. Before that they try and communicate with the customer to ascertain why payments have stopped because it may be that he or she was sick, in which case the Waiver Agreement would come into effect to the benefit of the customer.
- (g) There was also a charge relating to commission on the debt from ABC Ltd. The charge was \$385.75 including GST. This was referred to in the statement as the "[company name] Collection Fee". A copy of the relevant invoice was produced at the hearing. That invoices refers specifically to commission. It is difficult to see how a commission can be charged in relation to a debt that has not been recovered, let alone collected by that agency. ZP therefore does not owe that amount. Also interest and default interest should not have been charged on that amount.
- (h) There was also a charge for the Ministry of Justice fee and the Ministry of Justice Application referred to as "MOJ Fee" and "MOJ Application". These charges totalled \$283.40. I am satisfied that AK Ltd are entitled to charge these as those charges are recoverable under the terms of the consumer credit agreement.

[11] In summary the following amounts are deducted from the amount of \$2,288.20:

- (a) \$11.50 - PPSR fee.
- (b) \$385.75 – ABC Ltd commission on debt.

(c) \$200.00 – an estimate of the amount of the interest and/or default interest (as the case may be) charged on the amounts referred to above in a. and b. and on the amounts referred to in paragraph [10](c)(i) and (ii).