

**BETWEEN**

**AS LIMITED  
APPLICANT**

**AND**

**ZH LIMITED  
RESPONDENT**

Date of Order:

26 September 2014

Referee:

Referee Perfect

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim is dismissed, the contract dated 18 March 2014 stands and the contract dated 30 April 2014 is cancelled as of the date of this order.**

## **Facts**

[1] On 18 March 2014 the manager of AS Limited's Z store signed a written agreement with ZH Limited.

[2] The written agreement states "three year agreement" on the front page and the first section of the terms and conditions on the reverse side states "both parties agree the prices overleaf reflect a long-term relationship and that is the spirit of the agreement. The term of this agreement shall be for an initial period of three years". On the front page, ZH Limited's area manager has written under the pricing details "fix price for 12 months". AS Limited's manager agrees that that was written on the document she signed.

[3] On 30 April 2014, when AS Limited was moving premises, AA signed another service agreement form recording the new address.

[4] AS Limited contends that they only ever intended to enter into a month by month agreement and that their manager, AA, was misled into signing the agreement and that the document itself is misleading. AS Limited asks for a declaration of non-liability for the amount due under the contract for the term of three years, being \$1482.00.

## **Issues**

[5] Was a valid contract formed between the parties and was there any misleading conduct on the part of ZH Limited?

[6] Was the document signed on 30 April 2014 a new contract and/or did it change the terms of the existing contract?

[7] Is AS Limited liable to pay as per the terms of the contract?

## **Decision**

*Was a valid contract formed between the parties?*

[8] I find that, by signing the document, AA has entered into a binding contract with ZH Limited on behalf of AS Limited. This includes the terms and conditions on the reverse of the page, because even though AA did not sign the reverse of all the pages, her signature appears on reverse of the white ZH Limited copy. Even if she had not signed the reverse, the front page makes reference to “Three year agreement – in accordance with Terms and Conditions on Reverse”, all the wording is on the same sheet of paper and there are no handwritten amendments to the terms and conditions, so the terms and conditions would be included in the agreement.

[9] AA stated, as a witness, that she was aware that head office did not want to enter into a fixed term contract with any provider for rubbish collection and that she, and the assistant manager BB, had rung around several Z providers for prices and information about their services. BB, as a witness, says she was told when she rang ZH Limited that they could be billed monthly and that they would not have to sign a contract. ZH Limited disputes that anyone in their office would have told her that because he says it is standard in the industry for all collection contracts to be on fixed terms, usually three years.

[10] AA later rang ZH Limited to arrange for collections to start and CC, ZH Limited's Area Manager arranged to visit her on site. He presented her with the service agreement form and she says she was alerted by the hand-written wording 'fix price 12 months' to ask whether this was a contract she was signing. She says that CC replied that it was not. BB also stated that she overheard AA ask this question.

[11] However, CC, as a witness for ZH Limited, says no such question was asked, that it was clearly stated during their conversation on site that the agreement was for a period of three years and that AA was fine with that. AA strongly disagrees.

[12] Given the verbal and conflicting nature of the evidence relating to what was discussed immediately before the document was signed, it has not been proven that there was any kind of misleading conduct on the part of ZH Limited's representative CC.

[13] AA did not take the one necessary step which was to read the document. Even reading all of the front page would have told her this agreement was for a three year term. She was the manager of the store, ZH Limited was not dealing with a junior staff member and had no reason to believe she may not have authority to sign the agreement. I therefore find that the contract is valid and shall remain in effect.

*Was the document signed on 30 April 2014 a new contract and/or did it change the terms of the existing contract?*

[14] I find that the document signed on 30 April 2014 is in effect a new contract. However, AS Limited wished only to record a change of address and for ZH Limited to have a new contract dated and signed for this purpose without making expressly clear that they are in effect 'starting the clock again' on a new three-year term is misleading. I find there was no meeting of the minds in those circumstances (because clearly AS Limited were merely notifying a change of premises) and I therefore cancel this second contract under section 19(1)(f) of the Disputes Tribunals Act 1988.

*Is AS Limited liable to pay as per the terms of the contract?*

[15] I find that AS Limited is liable to pay as per the terms of the contract dated 18 March 2014. I note that that contract will automatically roll-over for another three-year term as of 18 March 2017 unless AS Limited cancels in writing as per the terms and conditions.

[16] Ordinarily where there is a claim for a declaration of non-liability, the sum requested must be ordered to be paid if no declaration of non-liability is given. However, because the sum refers to amounts not yet due, the claim was in effect a request for cancellation of a contract and this is how I have dealt with it.