

**BETWEEN**

**ADC**

**APPLICANT**

**AND**

**ZWY**

**RESPONDENT**

Date of Order:

31 July 2009

Referee:

Referee ter Haar

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that ZWY's claim against ADC is dismissed, and ADC's counterclaim is successful. ZWY is ordered to pay ADC the sum of \$223.44 within ten days of the date of this order.**

## **Facts**

[1] ADC and ZWY were engaged in a contractual relationship for a period of approximately six months, which involved ZWY sewing garments as an outworker for ADC's clothing manufacturing and retail business. On 5 June 2009, ADC collected ZWY's work from her home and paid ZWY's invoice for the work totalling \$178.00. On 9 June 2009, ADC left a phone message for ZWY informing her that she was stopping the payment because the garments she had sewn were not of the required standard and that she would no longer be using ZWY for any further work.

[2] ZWY is now claiming payment of her invoice and ADC is counterclaiming the cost of the materials used for the sewing of the garments.

## **Law**

[3] The law governing this matter is the law of contract and the Contractual Remedies Act 1979.

## **Issues**

[4] The issues to be decided are as follows:

- (i) Did ZXY breach her contract with ADC?
- (ii) If the answer to (i) is yes, then what compensation is ADC entitled to?
- (iii) If the answer to (i) is no, then what compensation is ZXY entitled to?

## **Law**

[5] Section 7 of the Contractual Remedies Act 1979 (“CRA”) provides that where a term of the contract has been broken, and the parties have expressly or impliedly agreed that the performance of that term is essential, then a party may exercise the right to cancel.

## **Decision**

### *Did ZXY breach her contract with ADC?*

[6] In this case, the very nature of the contract implies that the sewing work is required to be of an acceptable standard and that this is essential to the performance of the contract. The parties, however, disagree as to whether the work was of an acceptable standard. ZWY states firstly that the problem may have been as a result of ADC's poor cutting of the material by cutting it too small. Secondly, she claims that she sewed the garments to an acceptable standard. Thirdly, she claims that ADC ought to have shown her the garments in question so that she had an opportunity to remedy the problem.

[9] In relation to ZWY's first point, no evidence was presented to support this statement. There was no reason put forward as to why ADC might have done this, nor could the Tribunal think of any reason that she might have done so.

[10] In relation to ZWY's second point, ADC provided ample evidence at the hearing to show that ZWY's work was not of the required standard. Evidence was presented in the form of the actual garments sewn, which showed many instances of darts and side seams being sewn too big. ADC was also able to show the considerable impact this had on these particular garments, which were fitting in nature. I therefore find that ZWY had breached the contract by not sewing the garments to an acceptable standard.

[11] In the latter stages of the hearing, ZWY accepted that the sewing was not of the required standard. She stated that her biggest issue here was that she was not given the opportunity to remedy the problem. However, I find that since sewing the garments to an acceptable standard was impliedly an essential term of the contract, then ADC is entitled to cancel the contract as provided by s 7 of the CRA.

*If ZWY breached the contract, what compensation is ADC entitled to?*

[12] In relation to the second issue, s 9 of the CRA allows an order for damages when a contract is cancelled by any party. ADC provided evidence to the Tribunal as to the cost of the materials used in the making of the garments. She states that the garments now have no value because they are unable to be altered without distorting the garment's size and without the alterations being visible. I accept her evidence in this regard because she provided the Tribunal with an example of one of the garments that she had previously tried to alter and the previous stitching was visible. I therefore find that ADC's claim for the cost of materials for seven garments sewn to an unacceptable standard is reasonable.

[13] Further to this, I find that no compensation is payable to ZWY for her performance of the contract because as stated in the paragraph above, I find that the garments now have no value.

[14] I note that ADC has reduced her total claim by \$42.00, which both parties accept is payable to ZWY for the three garments that she sewed to an acceptable standard.